

**From:** [REDACTED]  
**To:** [Immingham OCGT](#)  
**Cc:** [REDACTED]  
**Subject:** EN010097 - VPI Immingham OCGT Project - Deadline 2 submissions on behalf of Phillips 66 Limited [BURGES-WORK.FID9679692]  
**Date:** 11 September 2019 16:57:51  
**Attachments:** [REDACTED]

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Dear Sirs

Please find attached correspondence and enclosures for your attention, on behalf of our client Phillips 66 Limited.

Kind regards

Maelor

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Your ref: EN010097

11 September 2019

When telephoning please ask for: Alex Minhinick

Dear Sir

**EN010097: VPI Immingham OCGT Project – Deadline 2 submission**


Dear Sirs

We continue to be instructed by Phillips 66 Limited in relation to this project.

Please find enclosed submissions in advance of Deadline 2 on behalf of our client.

Should there be any queries please do not hesitate to contact Alex Minhinick on the details provided above.

Yours faithfully

  
BURGES SALMON LLP

Enc.

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## 1 INTRODUCTION

- 1.1 This is the written representation (“**WR**”) of Phillips 66 Limited (“**P66**”) in respect of VPI Immingham B’s application for the VPI Immingham OCGT DCO, reference EN010097.
- 1.2 All terms used within this WR are as defined in the Applicant’s Statement of Reasons document reference 3.2 unless otherwise stated. This WR expands on P66’s relevant representation relating to the Application dated 25 June 2019.
- 1.3 P66 owns and operates the Humber Oil Refinery (the “**HOR**”) which sits on a 480 acre site at South Killingholme on the Humber estuary.
- 1.4 P66’s position is very straightforward. It objects to the inclusion of powers of compulsory acquisition of rights over its land at the HOR within the proposed DCO. Their inclusion will not meet the statutory test in s.122 of the Planning Act for a compelling case in the public interest.
- 1.5 The rights which the Applicant proposes to acquire can be categorised as four separate packages:
- (a) The first category relates to the rights over the Existing Gas Pipeline Site<sup>1</sup>. The Applicant seeks to acquire unfettered rights over land to own and operate the Existing Gas Pipeline over this land. These correspond to plot numbers 33, 39 to 40, and 42 to 58<sup>2</sup>.
  - (b) The second category of rights relate to crossing P66’s existing overground pipes transporting hydrocarbons which run immediately to the north of the Existing VPI CHP Plant and to the south of the proposed OCGT Power Station. It is in respect of these pipelines which the Applicant has offered the current draft protective provisions contained at Part 4 of Schedule 9 of the draft DCO. These rights are sought over plot 17.
  - (c) The third category of rights are those to run electricity or gas connections across the Existing VPI CHP Plant Site to connect the proposed OCGT Power Station to its key input (gas) and output (electricity) grid networks. These rights correspond to plots 16, 20, 23, 24, 28 to 30 and 35.
  - (d) The fourth category are other rights the Applicant seeks to acquire in the Existing VPI CHP Plant Site for access, other service connection or temporary use. These are plots 7 to 15, 18, 19, 21, 22, 25 to 27, 31, 32 and 34 to 38.
- 1.6 The reasons why the statutory tests are not met are set out in detail within this WR. In brief however, the proposed DCO would result in a series of adverse impacts on P66’s business at the HOR. When weighed against the public benefits of the Applicant’s proposals, there is not a compelling case in the public interest.
- 1.7 The impacts are:
- (a) Business interruption to the existing HOR by virtue of the proposed compulsory acquisition of the Existing Gas Pipeline (the first category of rights outlined above);

<sup>1</sup> As defined in the Applicant’s Statement of Reasons document reference 3.2.

<sup>2</sup> As identified in the Book of Reference and on the Land Plans.

- (b) Business interruption to the existing HOR by virtue of the proposed compulsory acquisition of rights to cross the existing hydrocarbon pipelines (the second category of rights outlined above)
- (c) An unacceptable increase in the risk profile of the COMAH classification of the HOR (arising from the first category of rights referred to above);
- (d) Disproportionate acquisition of land on the part of the Applicant for its stated purposes (arising from all categories of rights referred to above);
- (e) The adverse impact on P66's future development of the HOR arising from the proposed compulsory acquisition of the Existing Gas Pipeline (arising from the first category of rights outlined above); and
- (f) The adverse impact on P66's future development of the Existing VPI CHP Site arising from the proposed compulsory acquisition of rights over that land (the third and fourth category of rights outlined above).

1.8 In addition, the Applicant has failed to:

- (a) Have regard to alternatives, on its own admission; or
- (b) Provide adequate protective provisions in favour of P66.

## **2 PHILLIPS 66 AND THE HUMBER OIL REFINERY**

- 2.1 P66 owns and operates the Humber Oil Refinery (the "**HOR**") which sits on a 480 acre site at South Killingholme on the Humber estuary.
- 2.2 The HOR is at the heart of the Humber region's economy providing highly skilled and high value roles for 1,100 employees and contractors. The HOR is one of the most complex refineries in Europe, it has an expansive range of upgrading units that allow the refinery to manufacture a range of products, including materials not manufactured elsewhere in the UK or Europe. The HOR injects approximately £100 million on an annual basis into the region's economy through salaries, investments and payments for goods and services.
- 2.3 The HOR is a nationally significant piece of infrastructure. It provides 11% of UK road fuel demand and 20% of all UK demand for petroleum products. The HOR also produces high grade petroleum coke used to recycle steel and for components in lithium ion batteries used for smart phones, tablets and electric vehicles.
- 2.4 Since 2000, P66, with the HOR as its economic engine, has paid over £550 million in corporation tax to the HM's Treasury.
- 2.5 The Existing Gas Pipeline runs immediately adjacent to, under, and through a part of the HOR which contains a series of tanks, with a capacity in excess of 8 million barrels, which store the petroleum based products refined at the HOR (that area referred to as the "**Tank Farm**").
- 2.6 The HOR is a critical component of the country's economy, and the Tank Farm is a critical component of the HOR. Any prejudice to their ongoing operation would be contrary to the public interest.
- 2.7 The importance of the HOR (together with the adjoining Total Lindsey refinery) to the region and wider country's economy is expressly acknowledged in a wide range of economic and development plan policy documents, including for example:
- (a) Greater Lincolnshire LEP – Strategic Economic Plan: 2014-2030 (at page 27)
  - (b) North Lincolnshire Core Strategy (at 9.39)

- (c) North East Lincolnshire Council – Local Plan 2013 to 2032 (at 6.9)
- (d) Government Parliamentary Review, Best Practice Representative (to be released September 2019)

### 3 THE APPLICANT'S PROPOSAL

- 3.1 Much is made in the Applicant's documents of the urgent need for new generating capacity. For example, paragraph 3.3.310 of its Planning Statement provides:

*“The urgency of the need for new electricity generating capacity is underlined within EN-1 at paragraph 3.3.7 with up to 22 gigawatts ('GW') of existing capacity (including a large amount of fossil fuel power generation) needing to be replaced, particularly in the period up to 2020, in part due to the Industrial Emissions Direction, but also as a result of some power stations reaching the end of their operational lives. In response to this, EN-1 identifies a minimum need for 59 GW of new generating capacity over the period to 2025 (paragraph 3.3.23).”*

- 3.2 None of this is in dispute. However, what the Applicant fails to express is that the proposed OCGT Power Station's contribution to that new minimum generating capacity would be 0.51%<sup>3</sup>. Or a share of one in two hundred. And even that is not a true analysis, given that as a peaking plant the OCGT will be run on an intermittent and short-term nature<sup>4</sup>.
- 3.3 That contribution needs to be put in the context of the HOR and its contribution to the wider UK economy. Less than one in two hundred's share of new generating capacity<sup>5</sup>, compared against 11% of the UK's road fuel needs and 20% of its demand for petroleum products (see paragraph 2.3 above). The disparity between the competing public interests is of several orders of magnitude.

### 4 EXISTING ARRANGEMENTS AND THE NEW RIGHTS SOUGHT

- 4.1 To assist the ExA in understanding the nature of the existing arrangements under which the Applicant currently occupies and uses those parts of the Order Land presently owned by P66 (the “**Existing Arrangements**”), **Appendix 1** to this WR summarises those Existing Arrangements against what is proposed within the DCO.
- 4.2 Strictly, it is a group company of the Applicant (Immingham CHP LLP, since renamed VPI Immingham LLP) which benefits from the Existing Arrangements, rather than the Applicant VPI Immingham B Ltd. For ease of reference however, the company benefiting from the Existing Arrangements is also referred to as the Applicant in this WR.
- 4.3 Appendix 1 includes reference to the leases granted by P66 to the Applicant which comprise the Existing Arrangements. Those are:
- (a) A Lease of part of the Existing Gas Pipeline from Conoco Limited (now P66) to Immingham CHP LLP dated 16 February 2005 (**Appendix 2**);
  - (b) As varied by the Deed of Variation between P66 and Immingham CHP LLP dated 23 July 2013 (**Appendix 3**).

It should be noted the demise of the Existing Gas Pipeline Site is covered by two separate leases and deeds of variation. Those two leases are substantively identical save for the area of their demise; one covers the pipeline within the Tank Farm, the other the area to the west. To avoid unnecessary duplication, only one example (in this case the part of the demise including the Tank Farm) is appended

<sup>3</sup> Being the percentage 299 MW bears to the 59 GW of new generating capacity EN-1 identifies as being required.

<sup>4</sup> See 5.2.16 of the Applicant's Planning Statement.

<sup>5</sup> The figure as a proportion of total generating capacity would be even lower.

to this WR. Together the two leases and their variations are referred to as the “**Pipeline Leases**”; and

- (c) The Lease of the Existing VPI CHP Plant Site to VPI Immingham LLP dated 29 August 2013 (the “**CHP Lease**”) (**Appendix 4**).

4.4 The Applicant has explained its use of the Existing Gas Pipeline Site in its SOR (document 3.2). It should be noted that this explanation is misleading and inconsistent. For example, on the second page of the SOR it is said that the Existing Gas Pipeline is “owned” by the Applicant. That much is incorrect with reference to the remainder of the SOR where the Applicant explains the nature of the rights it has to use the Existing Gas Pipeline (i.e. under the Existing Arrangements described above), and those additional rights it seeks to acquire compulsorily through the DCO.

## **5 ALTERNATIVES**

5.1 In its Statement of Reasons the Applicant confirms that it:

- (a) “*Has not considered an alternative location for the new generating station*” (i.e. the proposed OCGT Power Station) as any such location would require “*considerably more land and/or acquisition of new and temporary rights*” (paragraph 6.7.4); and
- (b) “*In relation to the Existing Gas Pipeline, there was no need to consider alternative routes – the pipeline is already in place, and VPIB is seeking powers of compulsory acquisition solely to ensure it can operate and maintain the Existing Gas Pipeline...*” (paragraph 6.8.4).

5.2 What the Applicant has entirely failed to do is to comply with the DCLG Guidance<sup>6</sup> on compulsory acquisition paragraph 8 which provides:

*“8. The applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored...”*

5.3 The Applicant openly acknowledges that it has given no consideration to alternative sites, either for the OCGT Power Station or the Existing Gas Pipeline. They have not been considered. That cannot amount to such alternatives being “explored”.

5.4 Instead, the Applicant has simply sought to compulsorily acquire the rights which are most commercially advantageous to it in its business proposals to sell electricity to the national grid. The location of the OCGT Power Station is driven by the decreased costs (the “synergies” as they are put at 6.7.3 of the Statement of Reasons) the Applicant will experience in constructing it in its intended location. The Existing Gas Pipeline is being used because it already exists, and therefore reduces the Applicant’s costs.

5.5 No regard has been had to alternative sites, or alternative means of delivering the gas supply necessary to fuel the proposed development<sup>7</sup>, or the land use advantages of such alternatives. Instead, the Applicant has simply promoted the scheme which is most beneficial to the Applicant (i.e. minimises its costs and thereby maximises its profits), and sought to do so with the benefit of powers of compulsory acquisition.

5.6 Cost savings (lower construction costs) to a developer that would be to its commercial advantage are not a public benefit. Yet it is those cost savings which the Applicant seeks to obtain by relying on the wide and extensive powers of the Planning Act to include

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<sup>6</sup> Guidance related to procedures for the compulsory acquisition of land, DCLG, September 2013

<sup>7</sup> It should be noted that paragraphs 6.8.1 to 6.8.3 of the Statement of Reasons, which purport to assess alternatives for the gas connection, have in fact only considered the final metres of the gas connection from the existing end-point of the Existing Gas Pipeline.

compulsory acquisition in its DCO. The Applicant, on its own admission, has failed to demonstrate that reasonable alternatives to compulsory acquisition have been explored.

## **6 SAFETY AND THE CONTROL OF MAJOR ACCIDENTS AND HAZARDS**

- 6.1 HOR is an upper tier site under the Control of Major Accident Hazards Regulations 2015 (the “**COMAH Regulations**”).
- 6.2 The COMAH Regulations require the operator to demonstrate that major accident hazard risks are reduced to the level of ‘As Low As Reasonably Practicable’ (“**ALARP**”); see Regulation 5. One of the means by which P66 has achieved ALARP at the HOR is through the controls of the Existing Arrangements described in the previous section. In particular, they provide certainty around the standard to which the Applicant is required to maintain the Existing Gas Pipeline. They also provide express controls on the manner in which the Applicant is able to access the Existing Gas Pipeline Site. Neither of those controls are being offered in the DCO application.
- 6.3 The HSE Guide ‘Risk Assessment: A brief guide to controlling risks in the workplace’ provides a framework for conducting risk assessments. Hazards are first identified, and then risk assessed to determine tolerability. If the Applicant is granted the powers to acquire unfettered rights over land and to own and operate the Existing Gas Pipeline within the HOR P66 would not be able to determine the risk as required as part of the COMAH Report since this requires activities within the boundaries of the HOR to be known and managed.
- 6.4 There are therefore real concerns that the absence of appropriate controls on the repair of the Existing Gas Pipeline, and unfettered access to it, within an upper tier COMAH site, will significantly affect its risk profile.

## **7 EXISTING HYDROCARBON PIPELINES AND PROTECTIVE PROVISIONS**

- 7.1 Between the Existing VPI CHP Site and the site of the proposed OCGT Power Station run a series of three<sup>8</sup> hydrocarbon pipelines. These pipelines carry liquid petroleum gas, gasoline, kerosene, butane and diesel. The export of those materials through the pipelines accounts for a volume greater than 60% of the HOR’s output of road fuel. That therefore amounts to more than 6% of the country’s road fuel supply<sup>9</sup>. These existing hydrocarbon pipelines are therefore critical to the ongoing operation and output of the HOR.
- 7.2 It should also be noted that these pipelines are different in nature to the Existing Gas Pipeline which is discussed elsewhere in this WR.
- 7.3 The Applicant proposes to acquire rights (what we have referred to as the second category of rights) to cross these pipelines with gas and electricity infrastructure for its new OCGT Power Station. In doing so it recognises the potential impact of those works on the existing hydrocarbon pipelines, and has offered protective provisions (Part 4 of Schedule 9 to the DCO) in order to mitigate that potential impact.
- 7.4 The nature of those protective provisions are broadly that:
- (a) Plans and sections of the proposed works to cross the pipelines must be submitted to P66;

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<sup>8</sup> Not four, as specified in Part 4 of Schedule 9 to the DCO.

<sup>9</sup> The HOR being responsible for 11% of national road fuel supply. See section 2 above.

- (b) No works which may have an impact on the operation, maintenance or abandonment of the pipelines or access to them may commence until those plans and sections are approved; provided that
- (c) No approval may be unreasonably withheld or delayed; and
- (d) P66 may impose such reasonable requirements on the Applicant as may be required for the continuing safety and operational viability of the pipelines and P66's requirement to have uninterrupted access to them at all times.

7.5 Those provisions are welcome and necessary.

7.6 However, the Applicant has entirely failed to offer the protections usually provided to pipeline operators in situations where their apparatus is affected by works within a DCO. An operative example are the protective provisions in favour of the operators of the Central Area Transmission System ("**CATS**") high pressure gas pipeline contained within the York Potash Harbour Facilities Order 2016 (the "**Potash DCO**"). Whilst a number of the Potash DCO provisions reflect that the CATS pipelines are buried and the proposed development was the erection of a conveyor above those pipelines, they also make provision for the crossing of a high value pipeline asset. Similar crossing protections are required here.

7.7 Particular protections for crossing pipelines which are afforded within the Potash DCO which are absent from the proposed protective provisions here include (references are to paragraphs of Schedule 9 of that DCO):

- (a) An entitlement for the owner of the pipeline to withhold its authorisation for the crossing works where it can reasonably demonstrate that the proposed development would significantly adversely affect the safety of its pipeline (Paragraph 6(2));
- (b) Provisions for the resolution of differences between the parties by reference to an expert (Paragraph 7 and 34);
- (c) 28 days' notice of the commencement of works to be provided so that an engineer can observe the relevant works being carried out (Paragraph 8);
- (d) Minimum clearance required between the existing pipelines and the proposed development (Paragraph 17);
- (e) Monitoring of the pipelines during the carrying out of works in their vicinity (Paragraph 18);
- (f) Provisions for the immediate cessation of works and evacuation of personnel in the event the pipeline asset is damaged (Paragraph 19);
- (g) In carrying out any works the Applicant is to comply with relevant regulations concerning health and safety (Paragraph 20);
- (h) Restrictions on the exercise of the powers with the DCO so as to minimise impacts on the operation of the existing pipeline (Paragraph 24);
- (i) A requirement for the undertaker to obtain appropriate insurance before carrying out works which may affect the pipeline (Paragraph 26);
- (j) The payment of costs incurred by the pipeline operator in relation to the supervision or other engagement with the undertaker in respect of the crossing works (Paragraph 28);
- (k) The provision of an indemnity to the pipeline operator in respect of all damages, expenses, consequential loss and damages arising from the crossing works (Paragraph 28).



- (l) A series of further measures requiring notice in the event of certain circumstances under the operation of the remainder of the order (e.g. its transfer to a third party) (Paragraphs 29 to 33).

- 7.8 These protections are standard practice in DCOs where crossing works to a high value pipeline asset are proposed. They are necessary to adequately protect P66's interests in the three hydrocarbon pipelines in this instance. A version of the protective provisions for the benefit of P66 which ought to be included in the present DCO for the OCGT Power Station (if it is to be made) are attached at **Appendix 5** of this WR.
- 7.9 Many of these matters could have been addressed in pre-application discussions and agreed with the Applicant. However, the Applicant has failed to adequately (or at all) consult P66 on the terms of the proposed protective provisions.

## **8 IMPACTS OF NEW RIGHTS**

- 8.1 The impacts of the new rights the Applicant seeks to acquire are potentially catastrophic to P66's nationally significant business.

### **Impact 1 - Business interruption – Existing Gas Pipeline**

- 8.2 P66 operates a business with a throughput somewhere in the region of 221,000 barrels a day. The Applicant proposes to interfere with the existing matrix of land rights and protections which are essential to the safe and efficient operation of that nationally significant business.
- 8.3 The first category of rights relating to the Existing Gas Pipeline are sought in the context of the Applicant's existing leasehold rights under which it presently uses the Existing Gas Pipeline for the purposes of the Existing VPI CHP Plant. Those leasehold rights carefully regulate the use of the pipeline within the context of P66's existing operations. It is only with that regulation that use of the pipeline within the HOR are acceptable. The current proposal is that the Applicant takes the right to use the Existing Gas Pipeline free from any such regulation, restriction, or liability.
- 8.4 In particular, under the Existing Arrangements (and as outlined in Appendix 1 in detail), the Applicant is required to keep the Existing Gas Pipeline in good and substantial repair. It must avoid damage or interference to P66's land. It is required to indemnify P66 in the event of non-performance. P66 has step in rights to repair should the Applicant default. The effect of the DCO would be to grant the rights sought over the Existing Gas Pipeline Site without any equivalent protection.
- 8.5 The Applicant has failed to propose a package of measures which offer any assurances as to the ongoing maintenance of the Existing Gas Pipeline.
- 8.6 As a result, its proposed DCO creates the opportunity for P66's nationally significant business to be severely interrupted. The cost of such an interruption to P66, the local economy, and the wider national economy is of an order of magnitude which dwarves the contribution the Applicant's proposal would make to the national grid and energy demand.
- 8.7 The ready comparison is 20% of the country's petroleum products (the HOR), against an intermittent contribution to new generating capacity which at most can be said to amount to 0.51% of that need (the Applicant's proposal)<sup>10</sup>.

### **Impact 2 - Business interruption – hydrocarbon pipeline crossings**

- 8.8 The Applicant also proposes to acquire rights to cross a series of existing hydrocarbon pipelines which run immediately to the north of the Existing VPI CHP Site. The

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<sup>10</sup> See paragraph 3.2 above.

deficiencies in the protective provisions offered are explained at section 7 of this WR above.

- 8.9 On the protections offered by the Applicant at this stage there is a very real prospect that the crossing works may result in the interruption or interference with the use of the three existing hydrocarbon pipelines. In the event of such an interruption or interference, no indemnity is offered to address P66's loss.
- 8.10 The Applicant has therefore failed to propose a package of measures which offer adequate assurances that the carrying out of the crossing works to the existing hydrocarbon pipelines will not adversely affect the nationally significant P66 business.

**Impact 3 - COMAH classification of the HOR**

- 8.11 The HOR is an upper tier facility.
- 8.12 The Applicant seeks to obtain unfettered rights of access over that facility. It fails to offer any obligation to keep the Existing Gas Pipeline in good repair, as required under the Existing Arrangements. Those two acts create real concerns that the DCO proposals will significantly affect the COMAH risk profile of the HOR .Given the unknown and all-encompassing nature of the proposed rights and how they might be exercised it would not be possible to carry out a risk assessment of the impact of the proposals on the HOR.

**Impact 4 - Disproportionate acquisition**

- 8.13 In respect of the Existing VPI CHP Site, the Applicant's current interest under the Existing Arrangements expires in 2047.
- 8.14 The term of the lease the Applicant has the benefit of for the OCGT Power Station is not specified in its Statement of Reasons<sup>11</sup>.
- 8.15 In respect of the Existing Gas Pipeline Site, the Applicant's current interest under the Existing Arrangements (described in Appendix 1) expires in 2047 (at the latest).
- 8.16 The extent of the acquisition proposed by the Applicant in the DCO is not time-limited. It is therefore disproportionate to the underlying commercial interests it is being relied on to serve. The effect of this disproportionate acquisition is manifest in the effects on future development canvassed below.

**Impact 5 - Future development – lift and shift of Existing Gas Pipeline**

- 8.17 P66's HOR site is a nationally significant business. However, it is recognised as a tightly constrained refinery site, with limited development land or expansion capacity available to it.
- 8.18 In order to protect its ability to develop the HOR as it saw fit in light of changing circumstances over time, P66 included the usual "lift and shift" diversion provisions within the Existing Arrangements for the Existing Gas Pipeline. That is, at its election (in the event planning permission is obtained), P66 can require the Applicant to divert the Existing Gas Pipeline. The diversion provisions are explained in Appendix 1 to this WR.
- 8.19 The rights the Applicant proposes to acquire over the Existing Gas Pipeline Site do not involve any provisions. Accordingly, should P66 wish to redevelop its Tank Farm in an alternative arrangement, or expand those operations into adjoining land, or carry on a new process on land adjoining the Tank Farm which is subject to the Existing Gas Pipeline, it will be stymied from doing so in the absence of such provisions.

**Impact 6 - Future development – Existing VPI CHP**

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<sup>11</sup> See for example paragraph 4.4.1

- 8.20 The Existing VPI CHP Site would, absent the proposed DCO, become vacant and returned to P66 for its future use in 2047. That is a significant plot of development land which could be put to any manner of future development needs of the P66 business.
- 8.21 However, the nature of the rights sought by the Applicant would see that site encumbered with gas, electricity, and other service infrastructure for the benefit of the adjoining OCGT Power Station Site.
- 8.22 The future development of this site for an extension of operations relating to the HOR is expressly acknowledged, and has policy support, in the North Lincolnshire Local Plan at paragraph 5.3.1:
- “This policy also ensures that existing companies [in the South Humber Bank Industrial Area] can in principle extend their operations onto adjacent land already in their ownership. In particular this will be acceptable on land between the existing refineries and at Rosper Road not defined as buffer areas.”*
- 8.23 It is entirely inappropriate and disproportionate for the Applicant to seek to acquire new rights which have the impacts on P66’s future development of its HOR in this way.

## **9 EXTINGUISHMENT OF EASEMENTS AND RIGHTS**

- 9.1 The effect of Article 22 is to extinguish private rights and restrictions over land. These are those easements or other private rights identified at Part 3 of the Applicant’s BOR.

### **Easements/wayleaves where P66 is the freehold owner**

- 9.2 P66 is identified as a party with the benefit of an “easement/wayleave” in respect of a large number of land plots in Part 3 of the BOR. For the vast majority of those plots, P66 is the freehold owner of those plots (as identified in Part 1 of the BOR). The Applicant must therefore identify the specific easement or wayleave it believes P66 has the benefit of in respect of those plots where it is also the freehold owner.
- 9.3 Absent any explanation it is considered that the inclusion of reference to an “easement/wayleave” for P66’s benefit is in error, and reference to P66 should be removed from the following plots within Part 3 of the BOR: Plots 9 to 40, 42, 43, 46 to 58.

### **Rosper Road**

- 9.4 There is one instance in which the Applicant proposes to extinguish the benefit of an easement or wayleave available to P66 in third party land. That is its right to retain apparatus in Rosper Road in respect of plot 8.
- 9.5 The only apparatus that P66 has within Rosper Road at this location is the three hydrocarbon pipelines referred to above in section 7. For the reasons outlined in that section, it is entirely inappropriate for the Applicant to seek to extinguish P66’s rights to retain those pipelines in this plot. It can only be assumed that the Applicant has include this provision in error.

## **10 HISTORY OF NEGOTIATION**

- 10.1 The Applicant provides an incomplete account of negotiations with P66 at Table 6.1 of its Statement of Reasons – see in particular page 27 onwards. P66’s commentary (in italics and underlined) appears at **Appendix 6** to this WR. The Applicant has failed to discharge its obligation to acquire land by negotiation where practicable (paragraph 25 of the Guidance).
- 10.2 The key issues in negotiations to date have been:
- (a) The Applicant has failed to provide details of the commercial terms of what it would be prepared to pay for the rights it seeks over P66’s HOR;

- (b) The Applicant has failed to provide protections which offer an equivalent level of protection to P66 and the HOR as those contained within the Existing Arrangements;
  - (c) In particular, the Applicant has failed to provide P66 with evidence that the covenant strength of the Applicant, by which we mean the applicant company's ability to fulfil its financial obligations, is comparable to the counter party under the Existing Arrangements i.e. the existing operator of the Existing VPI CHP Site; snf
  - (d) The Applicant has failed to identify how the covenants provided under the Existing Arrangements would interact with the rights it seeks under the DCO.
- 10.3 Attempts to acquire by agreement have so far failed; but the reason for that failure is the Applicant's failure to provide P66 with the information it has sought in the discussions which have occurred to date. This is apparent from a brief review of P66's commentary at Appendix 6. The information requested by P66 is a reasonable minimum that an operator of a facility such as the HOR may be expected to ask to see before It grants rights over its nationally significant facility to a third party. The Applicant's failure to provide that information means that it cannot show it has sought to acquire the rights it seeks by negotiation "where practicable".

## **11 EXAMINING AUTHORITY QUESTIONS**

- 11.1 The ExA's written questions of Thursday 15 August 2019 included one direct specifically at P66:

**Q 1.2.6.** *"Please provide an update on discussions in relation to the matters raised by Phillips 66 as part of their Relevant Representation.*

*Please provide confirmation that the works will not affect the Control of Major Accident Hazards risk profile of the Humber Refinery."*

- 11.2 The Applicant has not sought to engage with P66 on the matters raised in its Relevant Representation, and expanded upon in this WR.
- 11.3 P66 respectfully suggests that the second part of the question ought to be addressed at both the works authorised by the proposed DCO, and the compulsory powers of acquisition sought by the Applicant over P66's land at the HOR which is subject to the COMAH regime.
- 11.4 In that regard, P66 cannot confirm that the risk profile will not be affected by the DCO. To the contrary, for the reasons particularised within this WR, the risk profile for the HOR may be significantly affected by the DCO

## **12 ACCOMPANIED SITE VISIT**

- 12.1 It is noted that the Applicant has provided (at deadline 1) a proposed itinerary for the accompanied site visit (ASI). In its deadline 1 submission, P66 suggested to the ExA that it would be sensible for the ASI to encompass the HOR. It is hoped that this WR demonstrates why that is the case, and why it is essential that the ExA is able to see the context of the Existing Gas Pipeline from within the Tank Farm of the HOR.
- 12.2 If the ASI is to include the HOR, P66 will require at least two weeks' notice, together with details of the parties attending the site visit. The HOR is an upper tier COMAH facility, and these controls are necessary to manage the risk of that facility.

## **13 P66 OBJECTION**

- 13.1 For the reasons outlined in this Written Representation there is no compelling case in the national interest for the compulsory acquisition of the rights sought by the Applicant over P66's land and infrastructure. The Applicant has failed to comply with Government

Guidance on consideration of alternatives to the compulsory acquisition of land and rights. The Applicant has also failed to comply with the Guidance in so far as it relates to the negotiated acquisition of the rights sought.

13.2 In particular, P66 objects to:

- (a) The compulsory acquisition of the first category of rights; being plots plot numbers 33, 39 to 40, and 42 to 58. Those plots should be removed from the proposed DCO;
- (b) The compulsory acquisition of the second category of rights without adequate protection provisions being imposed on any DCO; these are the rights sought over plot 17. Adequate protective provisions would be those included at Appendix 5 to this WR;
- (c) The compulsory acquisition of the third category of rights; being plots plot numbers 16, 20, 23, 24, 28 to 30 and 35. Those plots should be removed from the proposed DCO;
- (d) The compulsory acquisition of the fourth category of rights; being plots plot numbers 7 to 15, 18, 19, 21, 22, 25 to 27, 31, 32 and 34 to 38. Those plots should be removed from the proposed DCO;
- (e) The compulsory extinction of unspecified easements or wayleaves in respect of plots 10 to 40, 42, 43, 46 to 58. Reference to P66 in Part 3 of the Book of Reference should be removed from these plots; and
- (f) The compulsory extinction of easements or wayleaves in respect of plot 8. Reference to P66 in Part 3 of the Book of Reference should be from this plot.

13.3 P66 reserves the right to expand on the arguments outlined in this WR in response to how the Applicant's case is promoted through the DCO examination, and in response to further questions from the ExA.

13.4 P66 seeks its costs of engaging in the DCO process, in accordance with the Secretary of State's Guidance 'Awards of costs: examinations of applications for development consent orders', which provides that (page 13, Part D, paragraph 2):

*"Where the objections to a compulsory acquisition request have neither been disregarded by the Examining Authority nor withdrawn before the decision of the Secretary of State on a development consent application and the objectors have been successful in objecting to the compulsory acquisition request, an award of costs will normally be made against the applicant for development consent and in favour of the objectors..."*

13.5 Any ExA cost award would of course only be made at the close of examination. However, P66 wishes both the ExA and the Applicant to be aware of its intentions in that regard.

**Burges Salmon LLP**

**On behalf of Phillips 66 Limited**

11 September 2019

# Appendix 1



**TABLE 1 – EXISTING GAS PIPELINE SITE**

This table relates to P66’s interest in the Existing Gas Pipeline Site; plots 33, 39 to 40, and 42 to 58.

Note: defined terms are as they appear in the example of the Pipeline Lease at Appendix 2 (as varied by Appendix 3)

<u>Existing Arrangements</u>	<u>Proposed DCO rights</u>	<u>Impacts</u>
<p>The Demised Land is the subsoil and undersurface of a strip of land one metre wide.</p>	<p>The rights sought in respect of the Existing Pipeline Site are (a) and (f) of Table 5 to Schedule 6 of the DCO, namely:</p> <p>(a) to pass and repass on foot, with or without vehicles, plant or machinery; and</p> <p>(f) to retain, use, maintain, inspect, alter, remove, refurbish, reconstruct, replace, protect and improve an underground gas pipeline, control systems and cables and any other ancillary apparatus and any other works as necessary.</p>	
<p>The Specified Rights include a Construction and Maintenance Strip up to 26 metres in width which the Applicant may enter at all reasonable times subject to the route to be used for access to that strip being agreed with P66</p>	<p>The SOR at paragraph 2.4.4 indicates that the rights are sought over the Existing Gas Pipeline on a similar width i.e. 13m either side of the pipeline.</p>	

<b><u>Existing Arrangements</u></b>	<b><u>Proposed DCO rights</u></b>	<b><u>Impacts</u></b>
The Applicant offers to P66 a series of guarantees about the manner in which it will operate its rights to use the Existing Gas Pipeline including (but not limited to):		
To avoid damage or interference to P66's land (clause 4.2)	There is no equivalent provision provided within the DCO.	P66 would have no equivalent protection to that offered under the Existing Arrangements.
To reinstate the Construction and Maintenance Strip (clause 4.3)	There is no equivalent provision provided within the DCO	Failure to reinstate the Existing Gas Pipeline Site has the potential to interrupt P66's use of the Tank Farm and the production of petroleum based products at the HOR.
To keep the pipeline in good repair (clause 4.5)	There is no equivalent provision provided within the DCO	There is no equivalent provision within the DCO which compels the Applicant to keep the pipeline in good repair. This is a critical omission with potentially catastrophic implications from a health and safety perspective. It also has the potential to interrupt P66's use of the Tank Farm and the production of petroleum based products at the HOR.
To perform the Diversion Provisions which can be relied on to divert the pipelines, render them compatible with development, or give rise to a compensation claim, in the event P66 wishes to develop the Existing Gas Pipeline Site (clause 4.6)	There is no equivalent provision provided within the DCO	Under the Existing Arrangements P66 at its election can require the realignment of the gas pipeline; whether to enable expansion of its operations on land not currently part of the operational HOR, or to rearrange existing operations in a more efficient manner. The DCO would remove that right from P66. The potential implications on

<b><u>Existing Arrangements</u></b>	<b><u>Proposed DCO rights</u></b>	<b><u>Impacts</u></b>
		the expansion and / or efficient operation of the HOR at significant.
To comply with detailed terms and conditions concerning its use of the land (clause 4.8). These include providing notice of entry to the land for inspection and repair purposes (Schedule 3 paragraph 19), limits on the land to which the Applicant has access (Schedule 3 paragraph 21) and general controls on behaviour on land (Schedule 3 paragraph 23).	There is no equivalent provision provided within the DCO	P66 would have no equivalent protection to that offered under the Existing Arrangements.
To yield up the land on expiry of the term (i.e. in July 2027, subject to the Applicant's ability to call for new leases through to 2047) (clause 4.9)	There is no equivalent provision provided within the DCO	The DCO would transfer the rights to the Existing Gas Pipeline Site to the Applicant in perpetuity. That is disproportionate to its existing lease term of the Existing CPI CHP Site, and the term of the lease we are told it has the option to take from Total for the proposed OCGT Power Station Site (see 6.3.2 of the SOR).
To comply with Applicable Legislation in its demise (clause 4.10)	There is no equivalent provision provided within the DCO	P66 would have no equivalent protection to that offered under the Existing Arrangements. In the event that failure to comply with relevant legislation and guidance led to the failure to keep the pipeline in good repair, that is a critical omission with potentially catastrophic implications from a health and safety perspective. It also has the potential to interrupt P66's use of the Tank Farm and the production of petroleum based products at the HOR.
To provide information to P66 on request (clause 4.11)	There is no equivalent provision provided within the DCO	P66 would have no equivalent protection to that offered under the Existing Arrangements.



<b><u>Existing Arrangements</u></b>	<b><u>Proposed DCO rights</u></b>	<b><u>Impacts</u></b>
To indemnify P66 against all losses as a result of breach of the Pipeline Lease (clause 4.12)	There is no equivalent provision provided within the DCO	The absence of an obligation on the Applicant to keep the pipeline in good repair makes the absence of an indemnity in P66's favour in the event of loss arising a critical omission.
To remedy all defects notified by P66 within two months (clause 4.14)	There is no equivalent provision provided within the DCO	P66 would have no equivalent protection to that offered under the Existing Arrangements.
To permit entry to P66 to the Demised Land for inspection purposes (clause 4.15)	There is no equivalent provision provided within the DCO	P66 would have no equivalent protection to that offered under the Existing Arrangements.
A restriction on alienation of the Demised Land (clause 4.17)	There is no equivalent provision provided within the DCO	P66 would have no equivalent protection to that offered under the Existing Arrangements. This is a critical omission given the COMAH classification of the HOR.
To perform additional specific and detailed obligations in respect of contaminated land, including the provision of a tailored indemnity (clause 6)	There is no equivalent provision provided within the DCO	The absence of an obligation on the Applicant to keep the pipeline in good repair makes the absence of provisions relating to contaminated land a critical omission.
The Pipeline Lease is to terminate automatically in the event that the lease for the Existing VPI CHP Site determines (clause 8.14)	There is no equivalent provision provided within the DCO	The DCO would transfer the rights to the Existing Gas Pipeline Site to the Applicant in perpetuity. That is disproportionate to its existing lease term of the Existing CPI CHP Site, and the term of the lease we are told it has the option to take from Total for the proposed OCGT Power Station Site (see 6.3.2 of the SOR).

**TABLE 2 – EXISTING VPI CHP SITE**

This table relates to P66’s interests in the Existing VPI CHP Site, and the third and fourth categories of rights the Applicant proposes to acquire, being:

- (a) Rights to run electricity or gas connections across the Existing VPI CHP Plant Site: plots 16, 20, 23, 24, 28 to 30 and 35; and
- (b) Other rights for access, other service connection or temporary use: 7 to 15, 18, 19, 21, 22, 25 to 27, 31, 32 and 34 to 38.

Note: defined terms are as they appear in the CHP Lease at Appendix 4

<u>Existing Arrangements</u>	<u>Proposed DCO rights</u>	<u>Impacts</u>
The Term of the Applicant’s existing lease runs to 12 February 2027 (clause 3)	There is no time limitation on the third or fourth category of rights sought by the Applicant.  The rights sought over this land are those detailed in respect of the relevant plots identified above at Schedule 6 of the draft DCO.	The Applicant will encumber the fee simple of the Existing VPI CHP Site with the rights to
To comply with all present and future Enactments relating to the sure of the Premises (clause 3)	There is no equivalent provision provided within the DCO	P66 would have no equivalent protection to that offered under the Existing Arrangements in respect of the additional gas and electricity infrastructure the Applicant proposes to install on the Existing VPI CHP Site.
To maintain the Premises in good repair in accordance with Good Industry Practice (clause 6)	There is no equivalent provision provided within the DCO	P66 would have no equivalent protection to that offered under the Existing Arrangements in respect of the additional gas and electricity infrastructure the Applicant proposes to install on the Existing VPI CHP Site.
A restriction on alienation with P66’s consent (clause 12)	There is no equivalent provision provided within the DCO	P66 would have no equivalent protection to that offered under the Existing Arrangements in respect of the

<u>Existing Arrangements</u>	<u>Proposed DCO rights</u>	<u>Impacts</u>
		additional gas and electricity infrastructure the Applicant proposes to install on the Existing VPI CHP Site.
To indemnify P66 against all liabilities arising out of any breach of the Applicant's covenants under the CHP Lease (clause 15)	There is no equivalent provision provided within the DCO	P66 would have no equivalent protection to that offered under the Existing Arrangements in respect of the additional gas and electricity infrastructure the Applicant proposes to install on the Existing VPI CHP Site.
To yield up the Premises on expiry of the Term and to take responsibility for decommissioning works on the site (clauses 17 and 18). Financial security is to be provided to support its decommissioning obligations pursuant to clause 18.3.	There is no equivalent provision provided within the DCO	<p>The absence of any requirement to yield up the land the subject of the new rights has the effect of preventing P66 of using the Existing VPI CHP Site for any other purpose following the expiry of the Term of the CHP Lease.</p> <p>Whilst the Applicant has not provided details of the term of its option for the proposed OCGT Power Station Site, if those terms are for less than a freehold interests, the Applicant also seeks to acquire rights for grid connection infrastructure which exceed the term of its Power Station Site. Such acquisition is disproportionate.</p>

# Appendix 2



**The Lease of the Existing Gas Pipeline from Conoco Limited (now P66) to Immingham CHP  
LLP dated 16 February 2005**

16 February 2005

**CONOCO LIMITED**

**IMMINGHAM CHP LLP**

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**LEASE**  
**of a subterranean pipeline corridor at the**  
**Humber Oil Refinery, South Killingholme, North**  
**Lincolnshire.**

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## LEASE PARTICULARS

1. <b>Date</b>	<p><u>16 February</u> 2005</p> <p>This Lease is and is intended to be delivered on the date written above</p>
2. <b>The Landlord</b>	<p>Name: <b>CONOCO LIMITED</b></p> <p>Company No: 529086</p> <p>Registered Office: Warwick Technology Park Gallows Hill, Warwick CV34 6DA</p>
3. <b>The Tenant</b>	<p>Name: <b>IMMINGHAM CHP LLP</b></p> <p>Partnership No: OC300980</p> <p>Registered Office: Park House 116 Park Street London W1K 6NN</p>
5. <b>The Demised Land</b>	The land more particularly described in clause 1.
6. <b>The Contractual Term</b>	25 years from and including <u>1 July 2002</u>
7. <b>The Rent</b>	The yearly sum of a peppercorn (if demanded)
8. <b>Applicable Title Guarantee</b>	None

**THIS LEASE** is made on the date stated in the Particulars between the parties specified in the Particulars and is a new tenancy under the Landlord and Tenant (Covenants) Act 1995

#### **DEFINITIONS**

1. In this Lease the expressions in the Particulars have the meanings given to them in the Particulars and the following words and expressions have the following meanings:

**Applicable Legislation** means European Union directives and regulations, statutes (including without limit the Planning Act), regulations or subordinate or local legislation or notices or other requirements or directions of any relevant body (including but not limited to any public body or agency or other authority) and any formal guidance notes or codes of conduct issued by or under the same, and common law but only in so far as the same are valid and have the force of law during the term of this Lease relating to:

- (a) the use of or any activity on the Demised Land; or
- (b) any process, conduct or activity (including without limit treatment, transport, storage, disposal or release) involving any Hazardous Material on under above in or about the Demised Land; or
- (c) the health and safety of employees, visitors, contractors and other persons at or in the vicinity of the Demised Land; or
- (d) the exercise of the Specified Rights; or
- (e) otherwise the protection of the Environment; or
- (f) any requirement pertaining to reporting, notification or disclosure of information to any body or person concerning any matter referred above;

**Authorised Pipeline** means the Pipeline constructed or to be constructed in accordance with a Planning Permission obtained under the Planning Act and including such apparatus and works as are specified in Section 65(2) of the Pipe-lines Act and all wrapping and protective materials required to implement the said Planning Permission;

**Base Rate** means the base rate of the Bank of England from time to time ruling or if the same shall be incapable of determination such reasonable rate of interest as the Landlord may from time to time specify in substitution therefor;

**Construction and Maintenance Strip** means so much of the Landlord's Land as forms part of a strip of land 26 metres in width including the Demised Land and an additional area of 500 square metres on each side of the strip of land at crossing points of roads railways or similar obstacles and 100 square metres on each side of the strip of land at ditches whose true cleaned out bottom is one metre deep or more or whose width is two metres or more;

**Contamination** means any contamination of the Demised Land or the Landlord's Land by Hazardous Material which harms or damages or otherwise adversely affects or presents a significant risk of harm or damage or other adverse effects or a significant possibility of such harm or damage or other adverse effects to the Environment or in relation to Controlled Waters the presence of substances which cause or are likely to cause pollution of Controlled Waters;

**Controlled Waters** has the meaning given to it in Section 104 of the Water Resources Act 1991;

**Demised Land** means the subsoil and undersurface of the Described Land comprising a strip one metre wide in which the Pipeline is centrally situated, the approximate position of which said strip is shown coloured red on the Plan, the upper limit of which is 0.800 metres above the centre-line of the Pipeline (as laid) or (if lower) 0.610 metres below the original surface of the land and the lower limit of which is 5 metres below the centre-line of the Pipeline (as laid) together with any such apparatus as specified in section 65(2) of the Pipe-lines Act reasonably required for the operation of the Pipeline;

**Described Land** means so much of the Landlord's Land as lies within the limits of lateral deviation authorised by the Planning Permission;

**Diversion Provisions** means the covenants agreements rights and provisions specified in Schedule 2;

**Easement Strip** means the strip of land seven metres wide in which the Pipeline is centrally situated;

**Environment** means:

- (a) land including without limit natural or man made structures;
- (b) water including without limit Controlled Waters, groundwater and waters in drains and sewers;
- (c) air including without limit air within buildings and other natural or man made structures above or below ground;
- (d) flora and fauna including without limit man;

**Environmental Protection Act** means the Environmental Protection Act 1990;

**Good Industry Practice** means the standards and practice which would reasonably and ordinarily be expected from a skilled and experienced provider of gas via an underground pipeline to a combined heat and power station in the United Kingdom;

**Hazardous Material** means any substance (whether in solid, liquid or gaseous form) which alone or in combination with one or more others is capable of polluting the Environment or capable of causing significant harm to the Environment;



**Historic Contamination** means Contamination which was present at the Demised Land or the Landlord's Land on or before the date of the Agreement for this Lease;

**Indemnified Parties** means persons entitled to payment, indemnity and/or reimbursement pursuant to a term of this Lease whether as a Party or as a party to a consent in respect of this Lease and "Indemnified Party" shall be construed accordingly;

**Landlord's Land** means land on the North West and South East sides of Humber Road and further land to the west of Rosper Road South Killingholme including the land registered with Title Number LL1238 at HM Land Registry and such other registered or unregistered land as from time to time forms part of the Landlord's Humber Oil Refinery site of which the Described Land forms part (excluding the Demised Land);

**Losses** means all costs, expenses (including legal and other professional fees and expenses reasonably incurred), losses, damages, liabilities, actions, demands, fines or penalties suffered or reasonably and properly incurred by the Landlord or the Occupier (including any liability for claims from third parties or from any Public Authority) as the case may be in each case arising whether directly or reasonably foreseeably out of the exercise by the Tenant of its rights under this Lease or any breach or non-observance of the Tenant's covenants or obligations under this Lease or otherwise attributable to any act or omission of the Tenant, its employees, contractors or agents or any person acting expressly or impliedly with the Tenant's authority or permission;

**Occupier** means (in each case from time to time) any person who has a legal estate in the whole or any part of the Construction and Maintenance Strip by virtue of a legal term of years absolute or who is in physical occupation of the Construction and Maintenance strip and for the avoidance of doubt this includes agricultural tenants from year to year and, for the purposes of the Schedules only shall, where the context permits, include the Landlord;

**Party** means a party to this Lease and "Parties" shall be construed accordingly;

**Pipeline** means such part of the Authorised Pipeline as has been or is to be laid through under or over the Described Land;

**Pipe-lines Act** means the Pipe-lines Act 1962;

**Plan** means the plan annexed hereto;

**Planning Act** means the Town and Country Planning Act 1990;

**Planning Permission** has the meaning given to it under Section 336 of the Planning Act;

**Scheme of Works** means such works designed to investigate, rectify, remove and/or treat and render harmless Contamination and its effects including making good any damage caused in so doing;

**Specified Rights** means the easements and rights specified in Part 1 of Schedule 1;

**Term** means the Contractual Term together with any period of holding-over or continuation by the Tenant;

**Value Added Tax** has the meaning given to those words in the Value Added Tax Act 1994 including any similar tax whether in substitution for it or in addition to it and **VAT** shall have the same meaning.

## **CONSTRUCTION AND INTERPRETATION**

2. The following rules of construction and interpretation apply to each and every part of this Lease:

### **Successors to original parties**

2.1 References to the **Landlord** include the person for the time being entitled to the reversion immediately expectant on the determination of the Term (and where such person or the Landlord is an individual his personal representatives) and references to the **Tenant** include the successors-in-title and assigns of the Tenant.

### **Whole or part**

2.2 References to the Demised Land, the Construction and Maintenance Strip, the Described Land, the Easement Strip and the Landlord's Land are in the absence of any contrary indication to be construed (respectively) as references to the whole or to any part thereof.

### **Statutes**

2.3 A reference to Applicable Legislation or to a statute, statutory instrument or provision therein includes any modification amendment extension or re-enactment of it (and for the avoidance of doubt includes any laws introducing materially more onerous comprehensive or stringent requirements than were applicable at the date of this Lease) and such references and any general references to legislation include any instruments regulations directives orders notices bye-laws or permissions made under it or made by any public or local authority.

### **This Lease**

2.4 This Lease incorporates any variation addition or qualification expressed to relate to it which is contained in any deed made between the Landlord and the Tenant.

### **Particulars contents and headings**

2.5 The Lease Particulars form part of this Lease but the clause paragraph and schedule headings and the table of contents are not to be taken into account in the construction and interpretation of this Lease.

## **Clause References**

2.6 References to a clause or a schedule shall be construed as a reference to a clause or a schedule so numbered in this Lease.

## **DEMISE AND RENT**

3. In consideration of the sum of One Pound (£1.00) paid by the Tenant to the Landlord (receipt of which the Landlord acknowledges) the Landlord with the Applicable Title Guarantee hereby demises the Demised Land to the Tenant for the Contractual Term together with the Specified Rights excepting and reserving to the Landlord the rights set out in Part II of Schedule 1 the Tenant yielding and paying to the Landlord the annual rent of one peppercorn (if demanded) subject so far as they affect the Demised Land or the exercise of any of the Tenant's rights in this Lease to the matters contained in the leases tenancies and deeds (if any) detailed in Schedule 4.

## **TENANT'S COVENANTS**

4. The Tenant covenants with the Landlord that the Tenant will:

### **To pay rent**

4.1 Pay to the Landlord the Rent (if demanded) or any other amounts payable under this Lease at the times and in the manner as provided herein.

### **To avoid causing damage or interference**

4.2 Without prejudice to the generality of clause 4.5 at all times to take all reasonable and proper precautions to ensure that in the exercise of the Specified Rights as little damage to property as is reasonably possible is caused to the Landlord's Land or to any crops or structures in, on or under that land or to any drains or other conducting media on or under it and to cause the least practicable disturbance to or interference with the business and operations of the Landlord or Occupier and to make good such damages to the Landlord's Land to the Landlord's and/or Occupier's reasonable satisfaction as soon as reasonably practicable and pay compensation as soon as reasonably practicable to the Landlord and any Occupier for any Losses incurred or suffered by them or either of them as a result of the exercise of the Specified Rights or any of them which is incapable of being made good.

### **To reinstate the Construction and Maintenance Strip**

4.3 With all practicable speed reinstate and put any part of the Construction and Maintenance Strip opened or broken up in the exercise of the Specified Rights into as good a condition in all respects so far as is reasonably practicable as it was in before it was opened or broken up and make compensation to the Landlord and any Occupier as soon as reasonably practicable for any Losses incurred or suffered by them or either of them as a result of the exercise of the Specified Rights or any of them which is incapable of being made good.

#### **As to restoration of grazing crops, trees etc**

4.4 If required by the Landlord or any Occupier replace or restore on or in the Construction and Maintenance Strip any growing crops, trees (save where to do so would in the reasonable opinion of the Tenant impede access to the Easement Strip or cause damage to the Pipeline), hedges, bushes or plants removed in the exercise of the Specified Rights or if replacing or restoring is not required or is not reasonably practicable or safe or if the Landlord or any Occupier has suffered loss of production pay reasonable compensation to the Landlord or Occupier or the person or persons entitled to it in accordance with clause 4.2 including compensation for Losses arising from the loss of any growing crops.

#### **As to repair**

4.5 Keep the Pipeline in good and substantial repair and condition in accordance with Good Industry Practice.

#### **To perform the Diversion Provisions**

4.6 Perform and observe the Diversion Provisions so far as the obligation to perform and observe the same falls upon the Tenant.

#### **Indemnity against rates and taxes**

4.7 Pay discharge and indemnify the Landlord and any Occupier against all existing and future rates, taxes, duties, charges assessments, impositions and outgoings whatsoever (whether parliamentary, parochial, local or of any other description and whether or not of a capital or revenue or non-recurring nature and even though of a wholly novel character) (Charges) which are now or may at any time hereafter be assessed, charged, levied or imposed or payable in respect of the Demised Land, the Pipeline and the exercise of the Specified Rights.

#### **To comply with Schedule 3**

4.8 Comply with the terms and conditions set out in Schedule 3.

#### **To yield up**

4.9 At the end or sooner determination of the Term quietly to yield up the Demised Land to the Landlord in accordance with the Tenant's covenants and conditions contained in or imposed by virtue of this Lease.

#### **To comply with Applicable Legislation**

4.10 Subject to the provisions of clause 6, to the extent that such legislation relates to the Demised Land and/or (in relation to any land) to the Tenant's exercise of its rights under this Lease or the Agreement pursuant to which this Lease is granted and the Tenant's use of the Construction and Maintenance Strip and the Easement Strip the Tenant shall at all times at its own cost and expense comply with all Applicable Legislation and all requirements created or imposed thereby or thereunder.

## **As to information**

4.11 The Tenant shall at its own cost and expense:

4.11.1 as soon as reasonably practicable following a written request from the Landlord or any Occupier of the same, provide to such person such written information concerning the Pipeline, the Demised Land, compliance with Applicable Legislation or the exercise of the Specified Rights or any activity incidental thereto as such person may reasonably require;

4.11.2 copy promptly to the Landlord and to any Occupier any notification required at any time to be given and any information required to be furnished to any person pursuant to any of sections 35 to 38 of the Pipe-lines Act and any document received at any time by the Tenant or its contractors or agents which was served sent or issued pursuant to any of sections 20-26 of the Pipe-lines Act.

## **Indemnity**

4.12 Save in cases of Contamination (which is dealt with separately under the provisions of clause 6.3) to pay and make good to the Landlord and keep the Landlord fully and effectively indemnified against all Losses howsoever incurred or sustained by the Landlord directly or reasonably foreseeably as a consequence of or in connection with any breach, non-performance or non-observance of any of the covenants and conditions on the part of the Tenant contained or implied in this Lease or any act or omission of the Tenant, its employees, contractors or agents or any person acting expressly or impliedly with the Tenant's authority or permission including all costs and expenses incurred by the Landlord in connection with any steps which the Landlord may (at its absolute discretion but without being in any way obliged to do so) take to remedy any breach of covenant or condition by the Tenant contained or implied in this Lease and such indemnities shall be without prejudice to the rights or remedies of the Landlord under this Lease.

## **Comply with Title Matters**

4.13 To perform and observe all covenants conditions and provisions affecting the Demised Land so far as the same relate to the Demised Land and are still subsisting and capable of being enforced.

## **Remedy Wants of repair and entry for Landlord on Default**

4.14 Forthwith to proceed to remedy any breach of clause 4.5 and make good all defects of which notice shall be given by the Landlord to the Tenant. Provided that if within two months from the date of such notice or such shorter period as is reasonable in all the circumstances the Tenant shall fail to commence to remedy such breach or carry out such works prescribed in such notice to permit the Landlord and all persons authorised by the Landlord with workmen, servants, agents and others with or without plant, machinery, equipment, tools and appliances to enter into and stay upon the Demised Land and reinstate such breach and make good the same at the expense of the Tenant (but so that the Landlord's right of entry or any other right or remedy of

the Landlord under this Lease shall not thereby be prejudiced) and to pay on demand the costs and expenses thereof reasonably and properly incurred together with interest thereon at 4% above the Base Rate from the respective dates of expenditure by the Landlord to the date of reimbursement.

#### **Permit entry for Landlord and others**

4.15 To permit the Landlord and its servants, agents, contractors and workmen and all others authorised by the Landlord with all necessary plant machinery equipment, tools and appliances at all times in cases of emergency and otherwise at any reasonable times on reasonable prior written notice to enter upon the Demised Land and remain thereon for such period as shall be reasonably necessary:

- (i) to examine the Demised Premises to ensure that nothing has been done or omitted which constitutes or may be or tend to be a breach or non-performance of any of the covenants contained in this Lease;
- (ii) to exercise any rights excepted and reserved to the Landlord or such owners, tenants and occupiers and for any other purpose connected with the interest of the Landlord in the Demised Premises;
- (iii) to enable the Landlord to comply with any of its covenants;
- (iv) for the purpose of inspecting and exercising repairs additions or alterations to or upon or maintaining any adjoining or neighbouring premises the person exercising such rights making good to the Tenant all damage to the Demised Premises thereby occasioned.

#### **Costs**

4.16 To pay on demand all reasonable and proper expenses including Solicitors' costs and Surveyors' fees properly incurred by the Landlord in contemplation of or incidental to or arising from the preparation and service of:

- (i) a notice under Section 146 of the Law of Property Act 1925 or of proceedings under Sections 146 and 147 of that Act notwithstanding that in any such case forfeiture is avoided otherwise than by relief granted by the Court; and
- (ii) any notice whether served on the Tenant or any other person required to be served by virtue of the Landlord and Tenant (Covenants) Act 1995 in connection with any breach of the covenants or conditions on the part of the Tenant contained in this Lease or otherwise pursuant to the Landlord and Tenant (Covenants) Act 1995; and
- (iii) any application made by the Tenant for a consent licence or approval (whether the same be granted withdrawn or refused or proffered subject to any qualification or condition).

## **Alienation**

4.17.1 Not to assign or charge the Demised Land in any part less than the whole.

4.17.2 Not to assign the whole of the Demised Land unless:

- (a) the proposed transferee (or, if it is proposed that any person guarantees the obligations of the proposed transferee, such guarantor) has the legal capacity power and authorisation to perform the Tenant's covenants and the conditions under this Lease;
- (b) the proposed transferee or any such guarantor has the technical and/or financial resources available to it to comply with the Tenant's covenants and the conditions under this Lease.

4.17.3 Not to assign or transfer the whole of the Demised Land otherwise than in accordance with nor without in each and every such case first complying with the foregoing provisions and subject to having complied with them and subject to paragraph 13.4 of this Schedule not without obtaining the prior written consent of the Landlord which consent shall not be unreasonably withheld or delayed.

4.17.4 The Landlord and the Tenant agree that for the purposes of section 19(1A) of the Landlord and Tenant Act 1927 the Landlord may give its consent to an assignment subject to the condition that the assignee covenants by deed with the Landlord to pay the Rent and all other rents reserved by this Lease and to observe and perform all the covenants on the part of the Tenant and the conditions contained in this Lease from the date of the deed of transfer or deed of assignment of the Demised Land until such time as the assignee shall be released pursuant to the Landlord and Tenant (Covenants) Act 1995.

4.17.5 Not to underlet the Demised Land or any part thereof without ensuring that the underlease shall contain an agreement authorised by an Order of a court of competent jurisdiction excluding in relation to the tenancy to be created by such underlease the provisions of sections 24 to 28 inclusive of the Landlord and Tenant Act 1954 and without in any event ensuring that vacant possession of the whole of the Demised Land can be given at the Termination of the Term.

4.17.6 Not to underlet the whole or any part of the Demised Land otherwise than in accordance with nor without in each and every such case first complying with the foregoing provisions and subject thereto not without obtaining the prior written consent of the Landlord which consent shall not be unreasonably withheld.

4.17.7 Not to part with or share possession or occupation of the Demised Land or any part thereof other than in a manner permitted by the foregoing provisions of this paragraph 13 and otherwise not without first obtaining the consent of the Landlord which consent may not be unreasonably withheld or delayed

4.17.8 Not to charge the Demised Land as a whole without the prior written consent of the Landlord (which may not be unreasonably withheld or delayed) save that the

Tenant may assign or charge this lease by way of security to the Project Lenders without the prior written consent of the Landlord.

4.17.9 The Tenant may share occupation of the Demised Land or the relevant part thereof with a company within the same group of companies (within the meaning of section 42 of the Landlord and Tenant Act 1954) as the Tenant:

- (a) for so long only as such company shall remain within such group;
- (b) on terms whereby such company is not given exclusive occupation of the Demised Land or any part thereof and no relationship of landlord and tenant is created; and
- (c) provided that any rent or other payment received by the Landlord from any such company shall be deemed to have been paid by such company as agent for the Tenant.

4.17.10 Within one month of every transaction affecting the Demised Land or any devolution of the estate of the Tenant therein or this Lease, to give notice in writing with particulars thereof to the Landlord together with a certified copy thereof and in every case to pay to the Landlord a registration fee of £25.00 plus Value Added Tax thereon.

#### **Reinstatement**

4.18 Without prejudice to 4.8 above prior to the end or sooner determination of the Contractual Term if the Landlord reasonably requires at the cost of the Tenant remove from the Demised Land the Pipeline and any other buildings plant or equipment of the Tenant and any Contamination other than Historic Contamination and reinstate the Demised Land, the Easement Strip and the Construction and Maintenance Strip to the reasonable satisfaction of the Landlord.

#### **LANDLORD'S COVENANTS**

5. The Landlord covenants with the Tenant:

##### **Quiet enjoyment**

5.1 The Tenant paying the rent (if demanded) and any other sums payable under the Lease and performing and observing the several covenants and stipulations on the part of the Tenant contained in this Lease may quietly enjoy the Demised Land and the Specified Rights during the Term without any interruption by the Landlord or any person or persons lawfully claiming under or in trust for the Landlord.

##### **Not to build etc on the Easement Strip**

5.2 Not to erect construct or place any building or structure, to carry out any excavation or to plant or suffer to be planted or otherwise permit to subsist any trees on the Easement Strip without the previous consent in writing of the Tenant (such consent not to be unreasonably withheld or delayed).



### **Not to raise or lower the surface of the Easement Strip**

5.3 Not materially to raise or lower the existing level of the surface of the Easement Strip without the previous consent in writing of the Tenant (such consent not to be unreasonably withheld or delayed).

### **Not to undermine or damage the Pipeline or the Easement Strip**

5.4 Not to undermine or damage the Pipeline, the Demised Land or the Easement Strip nor do anything which may interfere with free flow and passage of gas through the Pipeline or to do anything which would reasonably foreseeably inhibit or prevent the Tenant from complying with the Tenant's Covenants set out in this Lease.

### **To perform the Diversion Provisions**

5.5 To perform and observe the Diversion Provisions so far as the obligation to perform and observe the same falls upon the Landlord.

### **Normal Agricultural Operations**

5.6 Provided that nothing in this clause 5 shall prevent the Landlord or any Occupier of the Easement Strip from carrying on normal agricultural operations and normal acts of good husbandry (including but not limited to fencing hedging and ditching) not causing or likely to cause damage to the Pipeline nor shall the Landlord be liable for any breach of the obligations imposed by this clause 5 committed by any Occupier or for any breach or damage caused by third parties or for any Loss caused by any natural causes beyond its control except to the extent that the breach could have been prevented or shortened or otherwise limited by the exercise of proper care by the Landlord or those undertaking the obligation on behalf of the Landlord and provided that the Landlord uses reasonable endeavours to remedy the breach.

### **To Mitigate his Losses**

5.7 On all occasions when the Landlord or any person or firm authorised by the Landlord might suffer any loss or might anticipate or receive any third party claim against him resulting from any action by the Tenant or by any person or firm acting for or on behalf of the Tenant or purporting to act for or on behalf of the Tenant or in any way arising out of the existence of the Pipeline or this Lease or the rights granted pursuant to this Lease the Landlord will use all reasonable endeavours to mitigate his losses (including but not limited to Losses).

### **To have due regard**

5.8 The Landlord shall have due regard in the light of information made available in writing by the Tenant to the Landlord to the reasonable interests of the Tenant and to the safety and integrity of the Pipeline in relation to the exercise of the rights excepted and reserved in Part II of Schedule 1 of this Lease.

## **6. CONTAMINATION**

### **Information**

6.1 If reasonably required by the Landlord the Tenant shall provide the Landlord with a list of all materials (including but not limited to all Hazardous Materials) used in the construction and the laying of the Pipeline as soon as reasonably practicable following completion of the construction of the Pipeline.

### **Leaks and spills**

6.2 The Tenant covenants to use all reasonable endeavours and take all reasonable precautions to ensure that other than authorised discharges no Hazardous Material leaks, spills, escapes or is discharged from the Pipeline and that no Contamination will occur as a result of the use by the Tenant of the Demised Land or the exercise of its Specified Rights or the Tenant's rights under the Agreement pursuant to which this Lease is granted.

### **Indemnity**

6.3 Without prejudice to the provisions contained in Clause 4.14 and subject to the provisions contained in sub-clauses 6.4, 6.8.1 and 6.8.2 the Tenant shall indemnify and keep the Landlord indemnified from and against all Losses incurred by the Landlord in respect of any Contamination (i) in or on the Demised Land; or (ii) which escapes or migrates from the Demised Land onto the Landlord's Land; or (iii) which escapes or migrates from the Demised Land onto any adjacent land and which relates to:

- 6.3.1. the Tenant's installation of the Authorised Pipeline; or
- 6.3.2. the Tenant's exercise of the Specified Rights or of its rights under this Lease or the Agreement pursuant to which this Lease is granted; or
- 6.3.3. a breach by the Tenant of its obligations under this Lease or the Agreement pursuant to which this Lease is granted.

### **Notice of Claims**

6.4 The Tenant shall not be liable under sub-clause 6.3 in respect of any Contamination unless the Landlord gives written notice to the Tenant providing reasonable particulars of the basis of the Landlord's claim under sub-clause 6.3 including where reasonable an estimate of the amount of such claim. Notice of any such claim must be served on the tenant within three years after the determination or earlier termination of the Term.

### **Landlord's covenant to comply with Tenant's requests**

6.6 The Landlord shall to the extent reasonable use its reasonable endeavours to comply (save to the extent that to do so would restrict or prevent the carrying out of normal agricultural practices) at the cost of the Tenant and (save in the case of

emergency) upon notice with all reasonable written requests of the Tenant in relation to the use of Easement Strip that are so requested for the safety and protection of the Pipeline.

### **Investigation of Contamination**

6.7.1 If during the construction of the Authorised Pipeline or the exercise by the Tenant of its Specified Rights it appears that there is Contamination in or on the Described Land that has not resulted from the circumstances described in sub-clauses 6.3.1, 6.3.2 or 6.3.3 the Tenant shall give written notice of such Contamination to the Landlord. On receipt of such written notice from the Tenant and in accordance with the terms of such notice (including as to timing) the Landlord and the Tenant shall if it is reasonable to do so in the circumstances jointly instruct environmental consultants in terms agreed between them to produce and implement a Scheme of Works to be approved by the Landlord and the Tenant (both acting reasonably).

6.7.2 The Landlord shall not be liable for any costs incurred by the Tenant in constructing or maintaining the Authorised Pipeline by reason of the presence of Historic Contamination in, on or under or otherwise affecting the Demised Land.

### **Historic Contamination**

6.8.1. Notwithstanding the Tenant's covenants in this Lease the Tenant shall not be liable in respect of any Historic Contamination except to the extent that any of the circumstances described in sub-clauses 6.3.1, 6.3.2 or 6.3.3 results in the condition or extent of any Historic Contamination being exacerbated, worsened or increased.

6.8.2. It is agreed that, without prejudice to the generality of Clause 6.8.1, the Tenant shall not be required by any of its covenants contained in this Lease or otherwise to make good or rectify (or pay to make good or rectify) any defect or want of repair resulting from Historic Contamination nor shall the Tenant be required to rectify remove treat or render harmless Historic Contamination or rectify any damage or other adverse consequence directly or indirectly attributable to any Historic Contamination except to the extent that any of the circumstances described in sub-clauses 6.3.1, 6.3.2 or 6.3.3 results in the condition or extent of any Historic Contamination being exacerbated, worsened or increased.

### **To render Pipeline harmless**

6.9 Should this Lease be terminated pursuant to clause 7.1 or should the Term determine for any reason, the Tenant shall at its own cost and as soon as is reasonably practicable, using contractors and a Scheme of Works approved by the Health and Safety Executive (or other appropriate supervisory body or person) and also approved by the Landlord (such approval not to be unreasonably withheld or delayed), purge the Pipeline and otherwise render it permanently safe and harmless and, if required by the Landlord, to remove or otherwise remedy any material contamination to the reasonable satisfaction of the Landlord.

## **GENERAL PROVISOS**

### **Early Determination**

Provided always and it is hereby agreed and declared that:

### **Forfeiture and re-entry**

- 7.1 Without prejudice to any other remedies and powers contained in this Lease or otherwise available to the Landlord if any rent is unpaid for twenty-one days after being formally demanded
- 7.2 If the event set out in paragraph 7.1 above occurs the Landlord shall before exercising any right of re-entry give written notice thereof to any mortgagee of the Tenant of whom it has notice if the mortgagee then the Landlord will not exercise such right of re-entry

the Landlord may at any time thereafter (and notwithstanding the waiver of any previous right of re-entry) forfeit this Lease by re-entry whereupon this Lease shall absolutely determine but without prejudice to either party's right of action in respect of any antecedent breach of the other party's covenants in this Lease.

7.3 If at any time the Tenant wishes to abandon the Pipeline or any part or parts of it and gives three months written notice of such wish to the Landlord then subject to the provisions of this clause the Term shall determine and the provisions of this Lease shall cease to have effect without prejudice:

- 7.3.1. to any claim by the Landlord or by the Tenant in respect of or arising out of any antecedent breach of any covenant or condition contained in this Lease;
- 7.3.2. to the continued survival in full force and effect of all of the provisions of this Lease as to indemnity and/or reimbursement or the making good or payment of compensation for Losses; and
- 7.3.3. to all accrued rights liabilities and obligations of either Party or any Occupier or person who has consented to the Lease under any indemnity provision for the making good of or payment of claims for Losses by the other Party whether in respect of any antecedent breach of any covenant or condition or otherwise

### **As to reimbursement**

7.4.1. An Indemnified Party shall not make any admission of liability to the person making or bringing the claim, demand or proceedings (as the case may be) in question or settle or compromise it without the consent in writing of the other (indemnifying) Party such consent not be unreasonably withheld or delayed Provided that this clause 7.4.1 shall not apply to the extent that conduct contrary to it is required by law or by any authority or to comply with this clause 7.4.1 might reasonably be considered likely to have an adverse effect on the liabilities or goodwill of the Indemnified Party;

7.4.2. The (indemnifying) Party, shall be entitled, with the consent of the Indemnified Party (such consent not to be unreasonably withheld or delayed unless to give such consent might reasonably be considered likely to have a materially adverse effect on the liabilities or goodwill of that Indemnified Party) to negotiate a settlement of any claim demand or proceedings against that Indemnified Party pursuant to clause 7.4.1 above and to conduct on his behalf any litigation which may arise in respect thereof.

#### **User**

7.5 The Tenant may use the Demised Land to lay and maintain the Pipeline and for the purposes set out in the Specified Rights and not otherwise.

#### **Ownership of the Pipeline**

7.6 For the avoidance of doubt but subject to the provisions of clause 7.3 the Pipeline shall at all times belong to and be the property of the Tenant.

#### **Perpetuity Period**

7.7 The perpetuity period applicable to this Lease will be a period of eighty years from the date of execution of this Lease.

#### **Future Interests**

7.8 Whenever in this Lease either Party is granted whether expressly or by implication a future interest in property (including a grant by way of reservation) and that grant would be void for remoteness if it failed to vest within the perpetuity period there is deemed to be included in respect of that grant a provision requiring that future interest to vest within the perpetuity period and for it to be void for remoteness if it has not so vested.

#### **Dispute Resolution**

7.9.1. Any difference (not being one affecting the construction of this Lease) which may arise between the Landlord and the Tenant and for the determination of which this Lease does not expressly otherwise provide shall be conclusively determined by an expert to be agreed between them or failing such agreement to be appointed on the application of either of them by the President for the time being of The Royal Institution of Chartered Surveyors (RICS) having regard in such appointment to the areas of expertise required for the satisfactory determination of that difference the cost of the appointment of such expert to be at the initial cost and expense of the Tenant and thereafter subject to clause 7.9.2 Provided nevertheless that the Landlord and the Tenant shall be entitled to institute proceedings to restrain the other from doing anything which is contrary to the terms and conditions of this Lease.

7.9.2. The Parties will bear such proportion of the expert's costs as the expert determines.

7.9.3. The expert's determination will be final and binding on the Parties except in cases of fraud or manifest error.

### **Acknowledgement for Production**

7.10 The Landlord acknowledges the right of the Tenant to the production of the documents of title specified in Schedule 4 and to delivery of copies of them and undertakes with the Tenant for the safe custody of them.

### **Option to Renew**

7.11 For the purposes of the options set out in subclauses 7.11.1 and 7.11.2 and the other provisions of this clause 7.11 the following words shall have the following meaning:

*New Lease* means a lease between the Landlord and the Tenant commencing on the day following the expiry of the Term and otherwise on terms identical to this Lease save that:-

- (a) the term shall be for 10 years;
- (b) the following shall replace this clause 7.11:

“7.11.1 The grant of this Lease shall in no way operate as a waiver by either Party of any antecedent or continuing breach or breaches of the other Party (or any of its predecessors in title) of the covenants conditions or obligations contained in the lease of the Demised Land dated 16 February 2005 between Conoco Limited (1) and Immingham CHP LLP (2) (the *Old Lease*) nor shall it waive any right of either Party to any payment from the other pursuant to any of the indemnities contained in the Old Lease.

7.11.2 All provisions in this Lease for remediation of contamination and for decommissioning shall where the context permits be construed and operate on the basis that the standard of remediation and decommissioning required shall be such as to return the Premises to the same state and condition they were in at the date of the agreement for the Old Lease.”

7.11.1 The Tenant may by giving not less than five years prior notice in writing prior to expiry of the Term require the Landlord to grant to the tenant the New Lease.

7.11.2 The Landlord may by giving notice in writing at any time within the last 9 years and 11 calendar months of the Term require the Tenant to accept from the Landlord the New Lease provided that the Landlord shall not be entitled to exercise this option where:

- 7.11.2 (a) the Tenant has already exercised the option in clause 7.11.1 above; or
- 7.11.2. (b) the Tenant has served notice under clause 7.3 hereof and has complied or is complying with the provisions of clause 4.20.

7.11.3 In the event that an option to renew pursuant to clause 7.11.1 or 7.11.2 above is exercised the Tenant will accept the grant of the New Lease in accordance with the following provisions of this sub-clause 7.11.3:

7.11.3 (a) not less than two months prior to expiry of the Term the Landlord and the Tenant shall make a joint application to the Court to exclude from the New Lease the security of tenure provisions of the Landlord and Tenant Act 1954 or (if that Act no longer applies) shall take such other steps as shall be necessary to ensure that the Tenant obtains no security of tenure under the New Lease.

7.11.3 (b) completion of the New Lease shall take place on the later of the date one calendar month prior to expiry of the Term or the fulfilment of all necessary requirements of clause 7.11.3(a) above.

7.11.3 (c) the Landlord shall be responsible for drafting and preparing engrossments of the New Lease.

7.11.3 (d) the Tenant shall be responsible for the Landlord's properly incurred costs in connection with this clause 7.11.

#### **Service of Notices**

7.12.1. All applications notifications, consents, approvals and notices under this Lease must be in writing.

7.12.2. Unless the receiving party or its authorised agent acknowledges receipt a notice is valid only if it is given by hand or sent by registered post or recorded delivery.

7.12.3. Where the receiving party is a company incorporated in the United Kingdom effective service takes place at its registered office and in the case of the Landlord effective service takes place at the Landlord's address shown in this Lease or any address specified in a notice given by the Landlord to the Tenant.

7.12.4. Unless it is returned through the Post Office undelivered a notice sent by registered post or recorded delivery is to be treated as served on the working day after posting whenever (and whether or not) it is received.

#### **No warranty as to Use**

7.13 Nothing contained in this Lease shall constitute or be deemed to constitute a warranty by the Landlord that the Demised Land are authorised under the Planning Acts to be used or are otherwise fit for any specific purpose.

#### **VAT**

7.14 Where this Lease requires the Tenant to pay any amount or sum such sum or amount shall be deemed to be exclusive of any Value Added Tax which may from time to time be lawfully payable thereon and the Tenant shall pay to the Landlord

(upon receipt of a valid Value Added Tax invoice) a sum equal to the Value Added Tax lawfully payable thereon.

#### **Acknowledgement by Mortgagee**

7.15.1 The Mortgagee consents to and admits the payment of the premium to the Landlord

7.15.2 The Mortgagee releases and confirms to the Tenant the Demised Land together with the Specified Rights.

#### **CERTIFICATE OF VALUE**

8. It is hereby certified that the transaction hereby effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration other than the rent exceeds Sixty Thousand Pounds (£60,000.00).

#### **RECORD OF EXCLUSION ORDER**

9. Having been authorised to do so by Order of the <sup>Newbury County</sup> ~~Mayor's & City of London~~ Court dated 20 January 2005 the parties hereto agree that the provisions of sections 24-28 inclusive of the Landlord and Tenant Act 1954 be excluded in relation to this Lease.

#### **THIRD PARTY RIGHTS**

10. A person who is not a party to this Lease shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

#### **GOVERNING LAW AND JURISDICTION**

11.1 This Lease shall be governed by and interpreted in accordance with English law

11.2 The parties give the courts of England exclusive jurisdiction to settle any dispute (including claims for set-off and counterclaims) which may arise in connection with the validity effect interpretation or performance of or the legal relationships established by this Lease or otherwise arising in connection with this Lease

11.3 The agreement contained in paragraph 10 of this Schedule is included for the benefit of the Landlord and accordingly notwithstanding the exclusive agreement in paragraph 10 the Landlord shall retain the right to bring proceedings in any other court which has jurisdiction by virtue of the Convention on Jurisdiction and the Enforcement of Judgments signed on 27 September 1968 (as from time to time amended and extended)

**EXECUTED as a DEED** and delivered on the date stated in the Particulars



## SCHEDULE 1

### Part I

#### The Specified Rights

Subject to the provisions of Schedule 3 to this Lease:

**1. To excavate**

A right (subject to the person or persons exercising such right using all due care and attention and causing as little property damage and disturbance as is reasonably practicable to the Landlord and any Occupier) to excavate and open up so much of the Construction and Maintenance Strip and to carry out such works on in or under it as may be reasonably required for the beneficial use of the Demised Land and for the purpose of laying, constructing, inspecting, maintaining, adjusting, altering, renewing, repairing, testing, cleansing, relaying, diverting, making safe, making incapable of operation or removing any part or parts of the Authorised Pipeline.

**2. To construct**

A right to construct, place and use (such use to be in accordance with the terms of this Lease) in on and under the Easement Strip as nearly as reasonably practicable along the line coloured red on the Plan any such apparatus and works as are specified in section 65(2) of the Pipe-lines Act.

**3. To enter and use rights of way**

A right for the contractors, workers, officers, servants and agents of the Tenant:

3.1 at all reasonable times and in an emergency at all times with or without contractors, surveyors, employees and others and with or without motor or other vehicles plant, apparatus and materials to enter upon the Construction and Maintenance Strip and to pass over and across the adjoining land of the Landlord to obtain access to and egress from the Construction and Maintenance Strip along such route as shall be agreed between the Landlord acting reasonably and the Tenant acting reasonably for the purpose of enjoying the beneficial use of the Demised Land and for the purpose of exercising or in connection with the exercise of any of the rights granted to the Tenant by this Lease or to enable the Tenant to perform its obligations under this Lease including, without limitation, the right to walk the line of the Pipeline and to place on the Construction and Maintenance Strip any such plant apparatus and materials as may be reasonably required to be used for such purposes for so long as is reasonably necessary for the Tenant to carry out such purposes with despatch and all due care and attention.

3.2 to exercise in common with the Landlord and all others so entitled such rights of access (if any, and as to which the Landlord makes no representation and gives no warranty) as the Landlord is entitled to exercise over the track leading from West Middle Mere Road to the Landlord's Land and to the Construction and Maintenance

Strip along the routes coloured green on the Plan for the purposes of constructing and maintaining the Pipeline.

**4. Ancillary structures**

A right to construct, maintain and use on the Easement Strip ground and aerial marker posts including marker posts for any cathodic protection system steps stiles, gates and pedestrian crossings over ditches and protective concrete slabs and culverts reasonably required to facilitate inspection and maintenance of the Authorised Pipeline or for protecting it whether cathodically or otherwise from damage.

**5. To support**

A right to vertical and lateral support for the Pipeline and the Demised Land, the Easement Strip and the Construction and Maintenance Strip.

**6. To remove trees etc**

Except as to any planting in accordance with clause 4.3 a right to remove any tree or shrub growth which or the roots of which may grow in on or under the Easement Strip.

**7. To transport gas**

A right to transport or store gas through the Pipeline.

## **Part II**

### **Rights excepted and reserved**

#### **1. To lay, use, maintain etc conduits**

The right to lay, use, maintain and support all drains, sewers, pipes, conduits and cables which are now or may at any time during the Term pass through the Easement Strip and or the Demised Land.

#### **2. To provide new access and for agriculture**

The right:

- 2.1 to provide at the Landlord's own cost (but subject to the conditions set out in paragraph 3 of this Part of this Schedule) any new or improved access and to lay, maintain and support sewers, drains, pipes, cables and other services reasonably required across the Easement Strip and/or the Demised Land; and
- 2.2 to disturb for agricultural purposes the soil and subsoil in any part of the Described Land to a depth no greater than 0.557 metres subject to compliance with the conditions set out in paragraph 3 of this Part of this Schedule.

#### **3. Conditions of exercise of rights in paragraph 2**

The rights set out in paragraphs 1 and 2 of this Part of this Schedule are excepted and reserved subject to the Landlord complying with the following conditions:

- 3.1 (save in cases of emergency) the Landlord hereby covenants that he will before exercising any of the rights furnish plans or other appropriate details of the proposed works to the Tenant;
- 3.2 the Tenant will advise the Landlord of any protective works whether temporary or permanent which the Tenant reasonably requires to be carried out to ensure the safety of the Authorised Pipeline and such protective works shall be constructed by and at the cost of the Tenant except where the access, sewers, drains, pipes, cables or other services to be constructed are not for the benefit of or are not to be used in connection with premises in the ownership of the Landlord when the cost of those protective works will be borne by the Landlord;
- 3.3 (save in cases of emergency) the Landlord covenants that it will give the Tenant fourteen days notice in writing of its intention to commence work;
- 3.4 the Landlord covenants that all works to be carried out in connection with the exercise of the rights set out in paragraphs 1 and 2 of Part II of this Schedule shall be carried out in accordance with the plans and details submitted to the Tenant and shall when commenced be carried out with all reasonable despatch and with all due care and attention.

## SCHEDULE 2

### The Diversion Provisions

#### 1. Definitions

In this Schedule the following words and expressions have the following meanings:

**Decision** means the decision of the local planning authority (or of an inspector appointed by the Department of Transport, Local Government and the Regions to decide an appeal lodged against the local planning authority's decision) to grant or refuse (as the case may be) the Planning Permission;

**development** has the meaning given to it by section 55 of the Planning Act;

the **Diversion Route** means the route to be agreed or determined in accordance with paragraph 3 of this Schedule;

**Plan** means the unitary development plan or a structure plan or a local plan operative in respect of any part of the Described Land following adoption of it or a consultation draft or deposit draft of any such plan by the local planning authority or (as the case may be) approved by the Secretary of State for Transport, Local Government and the Regions;

**Relevant Plan Provision** means a policy or provision contained in a Plan restricting development or to the effect that no development shall be carried out in some part of the Described Land where either (i) the policy or provision is included for any reason related to the position of the Pipeline; or (ii) the decision to apply the said policy or provision to that part of the Described Land was made for any reason related to the position of the Pipeline.

#### As to a proposed development

2.1 If the Landlord wishes to carry out any development of the Described Land he shall:

2.1.1. supply to the Tenant full details of the proposed development in writing as soon as reasonably possible and in any event not less than two months before the submission of the planning application for the proposed development and keep the Tenant reasonably informed in writing of the progress of the planning application; and

2.1.2. the Landlord shall have due regard to any reasonable proposals of the Tenant for the purpose of safeguarding the Pipeline and minimising the interference to the Pipeline and its use; and

2.1.3. use his reasonable endeavours with the assistance (if requested) of the Tenant (whose assistance shall be free of charge to the Landlord) to so arrange the development as to avoid the diversion of the Pipeline and will fully consult

with the Tenant to that end and have due regard to the Tenant's comments and representations.

2.2. If following such consultation the Landlord obtains Planning Permission for the development but the development is prevented for any reason related to the presence and/or position of the Pipeline or by such Planning Permission being made subject to a condition which prevents the development for any reason related to the position of the Pipeline or renders it unviable or Planning Permission for the development is refused for any reason related to the position of the Pipeline or the Landlord's obligations in this Lease or the existence or effect of a Relevant Plan Provision the Landlord shall give written notice to the Tenant stating whether or not the Landlord requires the diversion of the Pipeline or part of the Pipeline whereupon the Tenant may elect by written notice served within three months of the receipt of the Landlord's notice either:

2.2.1. to carry out such works to the Pipeline as may be necessary so that the position of the Pipeline does not materially affect the development; or

2.2.2. to divert the Pipeline or part of it along the Diversion Route; or

2.2.3. to pay to the Landlord compensation (assessed at the date of the Decision) equivalent to the amount by which the principal amount of compensation which would have been payable in respect of compulsory acquisition by the Tenant of this Lease in pursuance of a notice served on the date of notice of the Decision exceeds the sum set out in Clause 3 of this Lease modified as set out in paragraphs 2.2.3.1. and 2.2.3.2. below.

The sum is to be calculated as follows:

2.2.3.1. In the event of the restriction on development affecting the entirety of the Easement Strip then the compensation shall be reduced by the amount of the sum set out in Clause 3 of this Lease increased in proportion with the increase which the Retail Prices Index (or any reasonable substitution therefor) for the month immediately preceding the date of the Decision bears to the Retail Prices Index for the month immediately preceding the date of the Agreement for Lease pursuant to which this Lease was granted.

2.2.3.2. In the event of the restriction on development affecting only part of the Easement Strip then the compensation payable shall be ascertained by the means referred to in paragraphs 2.2.3. and 2.2.3.1. above in respect of the entire Easement Strip but reduced by a pro rata amount in respect of the part of the Easement Strip so affected.

**PROVIDED ALWAYS THAT**

2.3.1. if the Landlord obtains Planning Permission for the development but does not give notice in accordance with paragraph 2.2 of this Schedule to the Tenant requiring diversion of the Pipeline or part of the Pipeline he covenants nevertheless to notify the Tenant that such Planning Permission has been

obtained and if the Tenant is of the reasonable opinion that the development would be likely to cause damage to the Pipeline or any interference with the exercise of the Specified Rights the Tenant may elect at its own sole cost and expense to divert the Pipeline or part thereof along the Diversion Route or to carry out any such works as are described in paragraph 2.2.1 above provided that the Tenant shall not be required to commence to implement any such works before the expiry of the period of six months from the date of such notice.

- 2.3.2. the Landlord is not entitled to give the Tenant notice under paragraph 2.2 of this Schedule by reason of the refusal of Planning Permission (or by reason of the imposition of a condition in a Planning Permission) unless the Landlord has first given the Tenant the opportunity (at the Tenant's expense) of appealing against the refusal of Planning Permission (or the imposition of such condition) and allowed the Tenant to lodge or to continue and to conduct any such appeal in the name of the Landlord subject to the Tenant bearing and indemnifying the Landlord against all proper and reasonable costs and expenses incurred by the Landlord directly in connection with such appeal.

#### **As to the diversion route**

3. The Diversion Route shall be such route within the Landlord's Land as shall be agreed between the Landlord and the Tenant or failing agreement as shall be determined in accordance with clause 7.9.1 (but with the reference therein to the RICS being replaced by a reference to the Institution of Civil Engineers) as being the route which will cause the least practicable interference with the use and enjoyment by the Landlord of the Described Land commensurate with the reasonable requirements of the Tenant in connection with the reconstruction of the Pipeline and its use as part of the Authorised Pipeline.

#### **As to the conditions applicable to a diversion**

4. On a diversion of the Pipeline or part of the Pipeline in accordance with the preceding paragraphs of this Schedule:
- 4.1. No consideration shall be payable by the Tenant to the Landlord but the Tenant shall reimburse the Landlord and any Occupier in respect of any Losses directly resulting from the diversion and the Tenant shall make good any resulting property damage to the Described Land to the reasonable satisfaction (not to be unreasonably withheld or delayed) of the Landlord;
- 4.2. The Pipeline's point of ingress to and egress from the Described Land will not (unless the Tenant allows otherwise) be varied and any special gates or marker posts to the points will remain in situ;
- 4.3. The Landlord's reasonable and proper costs and expenses properly and reasonably incurred including his legal and other professional costs (in the case of surveyor's fees calculated in accordance with the then current edition of Ryde's Scale) in connection with the diversion will be borne by the Tenant.

### **Construction of Lease following diversion**

5. Following any diversion the Landlord and the Tenant shall cause a memorandum of and plan showing the diverted route of the Pipeline to be affixed to the original and counterpart of this Lease and all provisions concerning the Pipeline, the Demised Land, the Easement Strip and the Construction and Maintenance Strip shall be construed by reference to such revised plan Provided that from the date of such diversion all provisions contained in the Lease with regard to diversion (including without limitation the provisions of this Schedule 2) shall be deemed deleted and of no further effect.

## SCHEDULE 3

### Execution of Works

1.1. All reasonable and proper precautions will be taken by the Tenant to minimise damage to property and livestock caused as a result of the construction of the Pipeline.

1.2. The construction work will be carried out under the supervision of an engineer acting on behalf of the Tenant who will appoint adequate local representatives properly to supervise the execution of the works and to maintain contact with the Landlord and any Occupiers along the route of the Pipeline. The Landlord and the Occupier will be given the name, address and telephone number of the person to whom queries may be addressed. The Tenant will accept responsibility for the actions and omissions of its contractors and of their sub-contractors and of all persons employed in connection with the works, except for actions carried out, or omissions directed, expressly at the request of the Landlord or the Occupier.

### Preliminary survey, etc and commencement of work

2.1. Exploratory trial pits and/or boreholes in advance of the work where necessary will be opened or performed only after consultation with and with the consent of the Landlord or Occupier (in each case such consent not to be unreasonably withheld or delayed) and/or any necessary surveys, soil investigation, drainage works, and/or other similar activities considered necessary by either Party or the Occupier acting reasonably. The methods of carrying out the work will be such as to cause the least practicable disturbance to the Occupier.

2.2. Written notice of intention:

- (a) to commence soil investigation, drainage or other work to be carried out prior to Pipeline construction, and
- (b) to commence Pipeline construction itself;

will be given to the Landlord and any Occupiers before entry. The notice period will be as long as is reasonably practicable and in any event not less than seven days in the case of (a) above and fourteen days in the case of (b) above. The work will, so far as it is practicable, be carried out in accordance with a programme previously discussed with the Landlord and any Occupiers and to which they have consented. Where entry on foot only for survey purposes is required, 48 hours notice will be given.

2.3 Any information or data obtained from any of the activities carried out under paragraphs 2.1 or 2.2 above shall be treated by the Tenant as confidential and shall not be disclosed to any third party not immediately connected with the Tenant's activities other than with the consent of the Landlord.



### **Record of condition**

3. Before any construction work is commenced the Tenant will at its own expense conduct an investigation or procure that an investigation is carried out into the condition of the Demised Land and the Described Land and prepare at its own expense a written record of such condition for agreement with the Landlord and the Occupier. Such investigation and record shall be sufficient to detail (among other things) any Historic Contamination that affects the Demised Land and the Described Land.

### **Timber**

4. Where it is reasonably necessary so to do the Tenant will be entitled to remove trees within the working area subject to prior consultation and agreement with the Landlord and the Occupier. All timber will remain the property of the Landlord and be cut and disposed of in accordance with the reasonable requirements of the Landlord. Where timber is cut and disposed of the Tenant will compensate the Landlord for any loss thereby properly and reasonably incurred by the Landlord. Where practicable, trees will be replanted and the Tenant will maintain them until they are reasonably well established.

### **Fencing the Working Area**

5.1 Unless otherwise agreed with the Occupier, the method of fencing the working width will be a fence adequate for the purpose of excluding any livestock kept on adjoining land, and where no livestock is kept, a demarcation fence of posts and wire will be used provided that where necessary such fencing complies with any requirement of any statutory or other body or pursuant to any statute or other obligation. All temporary fencing will be maintained in position during construction work and until reinstatement and will then be removed by and at the cost of the Tenant (unless otherwise agreed with the Occupier).

### **Reinstatement of Field and Farm Boundaries**

5.2 If it is reasonably practicable existing hedges will be preserved but any hedges, fencing, banks or walls destroyed or rendered ineffective by the operations of the Tenant will be replanted or restored and any replanted hedge will be maintained until reasonably established. The Tenant will during construction of the Pipeline, at its own expense, erect straining posts in field boundary fences where they are intersected by the working area and each part of the field boundary fence will be secured and strained to these straining posts.

### **Notifiable soil borne pests and diseases**

6. The Tenant, in conjunction with the Landlord and any Occupiers directly affected by the Pipeline operations, will take such reasonable precautions as may be necessary in accordance with the Department of the Environment Food and Rural Affairs Code of Precautions against the spread of animal or plant disease to avoid the spreading of notifiable soil borne pests and diseases.

### **Straying stock**

7. The Tenant will after consultation with the Occupier take all necessary precautions to prevent the straying of livestock via the working area on to neighbouring land and will relieve the Landlord, the Occupier or other owner of such livestock of all losses, damage or claims arising from the straying of such animals and will pay compensation for injury to or death of the animals where such straying is due to any act or omission on the part of the Tenant.

### **Bridging and services**

8. Wherever an access is obstructed by the Tenant's excavations proper and adequate temporary crossings of the working area will be provided by the Tenant as reasonably required by the Occupier and also any crossings that may be reasonably required to provide any alternative access. The Tenant will take all reasonable steps to permit the provision of any new or improved access or water supply pipes and drains reasonably required after the execution of the works.

### **Restoration of land**

9. Topsoil excavated during the works will be kept apart from all other excavated material and will not be run over by any machinery. If reasonably required by the Landlord or Occupier of the working area all cultivated turf will be carefully reinstated or replaced with turf of equivalent quality. All trenches will be backfilled as soon as practicable and care will be taken to ensure that backfill material is properly consolidated in accordance with Good Industry Practice. Excavated material will be replaced with topsoil uppermost so as to restore the working area to its former condition so far as is reasonably practicable. The Tenant will ensure that no large stones are left on the surface after reinstatement of the trench. Large stones and any surplus subsoil will be removed by the Tenant where specifically requested by the Landlord or the Occupier and where deemed by the Tenant to be necessary. All construction debris, tools, equipment, temporary work and litter will be removed from the working area as soon as practicable. The topsoil of agricultural land will be left in a loose and workable condition to its full depth. Compacted subsoil will be loosened with a cultivator where the topsoil has been removed and before it is replaced.

### **Depth of pipe**

10. The Pipeline will be laid to contour at a depth of not less than 1.1 metres from the original ground surface to the top of the Pipeline. This depth will only be departed from where necessary in which event written notice of the departure will be given to the Landlord. The Pipeline will generally be laid so as to avoid as far as possible continued interference with normal agricultural operations.

### **Support of structures**

11. Temporary underpinning, supports and other protective measures for buildings, structures and apparatus in or adjacent to the trench will be of proper design and sound construction and will be securely placed to the reasonable

satisfaction of the Landlord or Occupier and of the Tenant and in accordance with Good Industry Practice.

### **Ditch crossings**

12. Where the pipe crosses below a ditch or stream it will be protected by a concrete slab. The pipe will be located at such a depth as to provide at least 1.1 metres cover from the true cleaned bottom of the ditch or stream to the top of the pipe. All ditches, open drains or watercourses interfered with by the Pipeline will be maintained in effective condition during construction and finally restored to as good a condition as before the commencement of the works.

### **Protection of water supplies**

13. With the assistance of the Occupier or Landlord in locating water supplies, the Tenant will use all reasonable endeavours to ensure that existing water supplies, drainage systems and any other services are not interrupted or detrimentally affected during construction, failing which the Tenant will make good all damage caused to the reasonable satisfaction of the Occupier or Landlord or make available an adequate and unpolluted alternative supply or system as the case may require. Supplies of water to stock will not be completely withdrawn. The Tenant will take all reasonably practicable steps to prevent the pollution of water supplies or watercourses. In the event of such pollution occurring because of the construction or use of the Pipeline or the works, the Tenant will pay compensation in respect of any costs, claims, damage or expenses arising.

### **Sporting rights**

14. The Tenant will prohibit its agents and servants from carrying firearms and will take all reasonably practicable steps to protect fishing and sporting rights in or over the land affected by the construction and use of the Pipeline and the works.

### **Land drains**

15. Particular care will be taken to ensure that minimum damage or disturbance to land drains is caused and, where practicable, the Pipeline will be laid to run below the level of land drains. The position of all land drains cut or disturbed during excavation will be prominently marked by pegs at both sides of the trench immediately following their location. Such land drains will also be logged and a subsequent land drainage record kept by the Tenant for future reference. The Tenant will engage a land drainage expert to design appropriate pre-construction drainage, where necessary, and also any necessary land drainage reinstatement. The methods to be employed in repairing damage to field drainage systems will be agreed with the Landlord and the Occupier and, failing agreement, will be referred to an expert acceptable to the Tenant and the Landlord and the Occupier. Where new drains are laid, 'as built' plans showing their position will be provided after the Pipeline has been constructed.

### **Reinstatement of roads**

16. Private roads and footpaths will be permanently reinstated to a condition equivalent to that subsisting before the commencement of the works to the reasonable satisfaction of the Landlord and the Occupier.

### **Access to working areas and Pipeline**

17. It is not expected that it will be necessary to install any apparatus (other than marker posts and cathodic protection marker posts) above ground, but any such apparatus so installed will wherever practicable be sited by agreement between the Landlord and the Occupier and the Tenant's agents. As far as is practicable marker posts will be sited in or adjacent to hedges or fences. If the Occupier so requires, marker posts will be placed on both sides of fences or hedges. Marker posts and apparatus will not be treated with any substance toxic to livestock. All marker posts will be properly maintained and the Tenant will take all reasonable steps to ensure that marker posts remain visible at all times.

### **Cathodic protection**

18. The Pipeline will be cathodically protected against corrosion and any buildings and structures likely to be affected will be suitably protected provided reasonable facilities are given for this to be done. This condition does not extend to pipes, cables or like apparatus or any building or structure laid or constructed in the land by third parties after the construction of the Pipeline.

### **Inspection and maintenance**

19. Except in case of emergency, notice will where practicable be given to the Occupier of any subsequent entry for purposes of maintenance or inspection of the Pipeline. Wherever practicable the Landlord and the Occupier will be consulted as to the means of access necessary to carry out such works. Such works will be suspended or restricted to comply with any requirements of the Department of the Environment, Food and Rural Affairs and the Occupier if the area is declared infected on account of foot and mouth disease, fowl pest, swine fever, blue ear disease, brucellosis, rhizomania or other notifiable disease. All representatives of the Tenant entering on the land for the purposes of inspection, maintenance or executing the works or any subsequent works will carry and produce on request adequate means of identification.

### **Fossils coins and other articles of value**

20. During the course of work and the exercise of the rights granted to the Tenant, fossils, coins or other articles of value may be discovered. As between the Landlord and the Tenant the Tenant regards such objects as being the property of the Landlord and will acknowledge that the Landlord will not be deemed to have surrendered (whether to the Tenant or its contractors) any right to any reward under the Treasure Act 1996. The Tenant will make all reasonable efforts to comply with the reasonable requirements of the Landlord with respect to such objects (and will oblige his contractors to do so) provided that the Landlord will pay any costs reasonably incurred by the Tenant in so doing.

### **Avoidance of trespass**

21. Strict instructions will be given to prevent contractor's workmen trespassing outside the working area or any agreed access to it.

### **Abandonment**

22. Should the Tenant at any time after construction of the Pipeline decide to abandon the Pipeline or any part of it the Tenant will purge the Pipeline or that part of it and otherwise render it (or that part) permanently safe and harmless and will give the Landlord and the Occupier written notice to that effect.

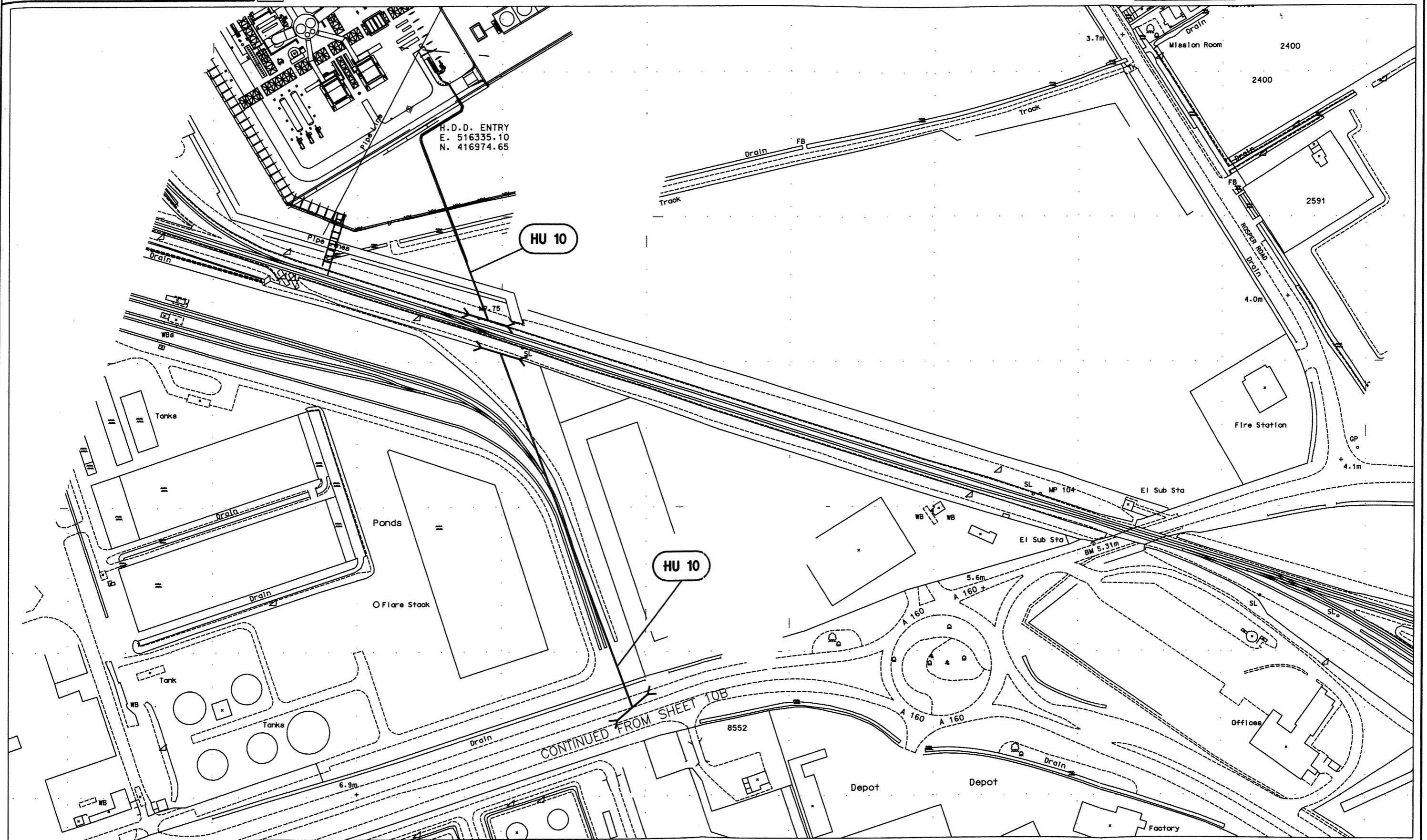
### **General**

23.1 The Tenant will not permit caravans or huts to be brought on to the Landlord's Land for sleeping accommodation and will ensure that all workmen leave the Landlord's Land at the conclusion of their duties each day.

23.2 The Tenant will provide such sanitary equipment as may be considered necessary for the convenience of workmen.

23.3 Work on the Pipeline will normally cease at or before dusk but in the event of work continuing beyond dusk the Landlord and Occupier will be notified in writing in advance.

23.4 Fires will not be lit on site save with the consent of the Landlord or the Occupier.

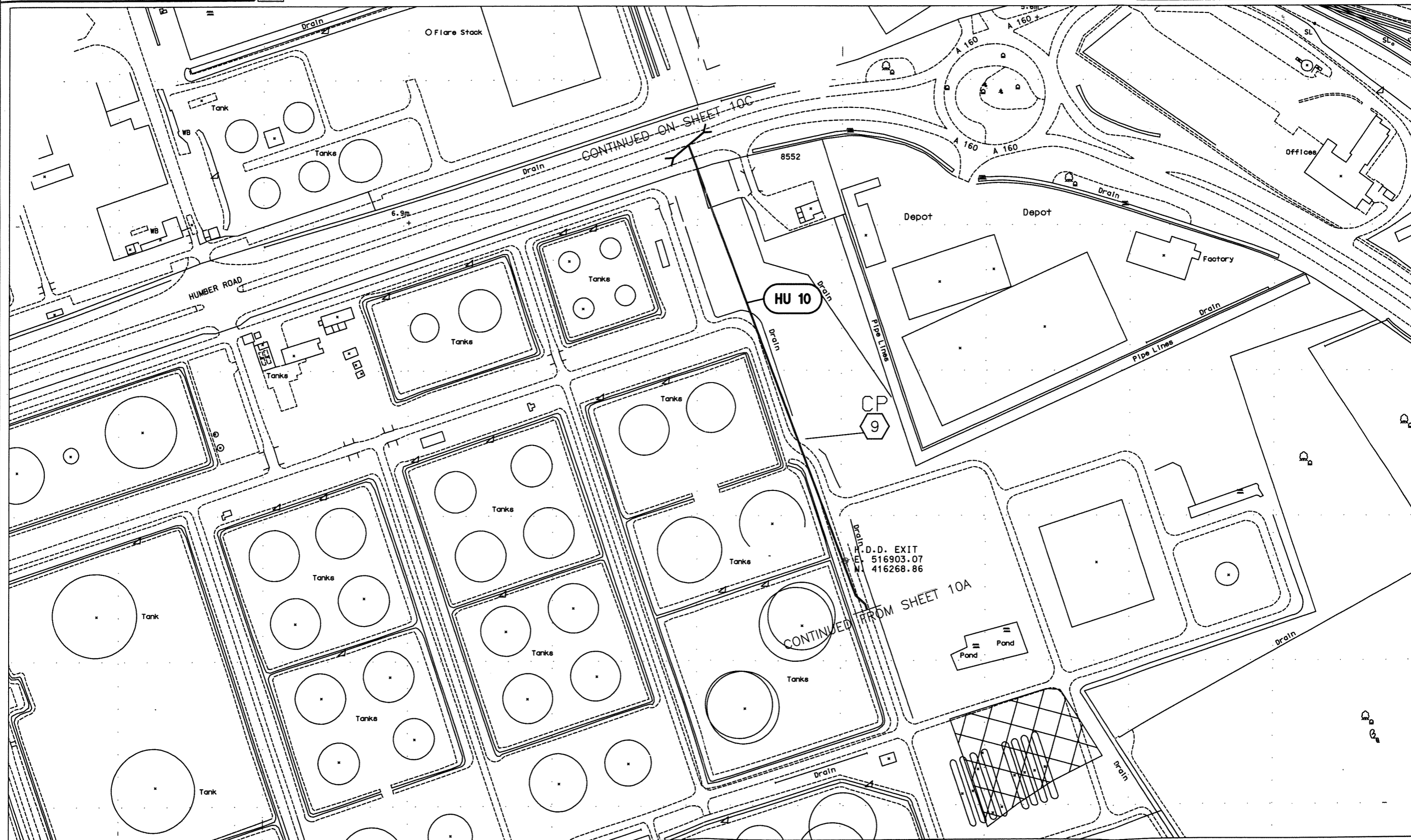


Penspen Limited  
Darpen House  
1 Citadel Place  
London SE11 5EF  
Tel: 020 7582 5577



## IMMINGHAM CHP GAS PIPELINE PROJECT

Owner Reference No.	HU-10
Date.	16/JUN/2004
Drg. No.	9760/PL/HU-10C Rev. A

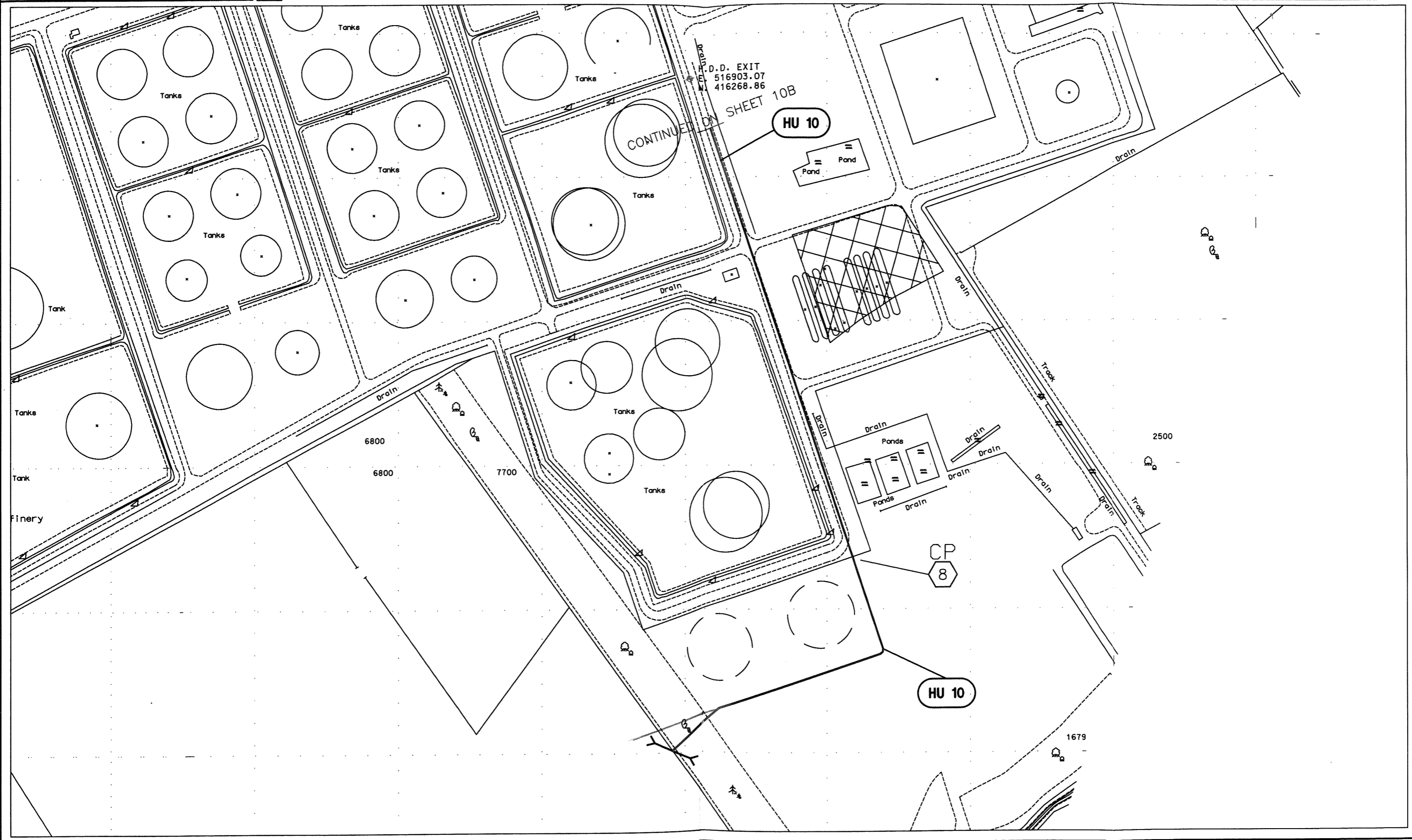


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## IMMINGHAM CHP GAS PIPELINE PROJECT

Owner Reference No.	HU-10
Date.	16/JUN/2004
Drg. No.	9760/PL/HU-10B
Rev.	A



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## IMMINGHAM CHP GAS PIPELINE PROJECT

Owner Reference No.	HU-10
Date.	16/JUN/2004
Drg. No.	9760/PL/HU-10A
Rev.	A



**SCHEDULE 4**

**Leases Tenancies and Deeds**

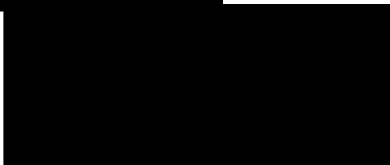
Licence dated 25 May 1995 between Conoco Limited (1) and Air Products (BR) Limited (2).

**EXECUTED as a DEED by** )  
**CONOCOPHILLIPS LIMITED** )  
acting by two )  
Directors/a Director and its Secretary )

Director



~~Director~~/Secretary



**EXECUTED as a DEED** )  
and **DELIVERED** by \_\_\_\_\_ )  
as an attorney for )  
**IMMINGHAM CHP LLP** )  
under a power of attorney dated \_\_\_\_\_ )  
in the presence of: )

Witness – Signature:

Name:

Address:

# Appendix 3



**The Deed of Variation between P66 and Immingham CHP LLP dated 23 July 2013**

# DEED OF VARIATION

DATED 23 JULY 2013

PHILLIPS 66 LIMITED

and

IMMINGHAM CHP LLP

of the lease of a subterranean pipeline corridor at East End Farm, South Killingholme, North  
Lincolnshire

ALLEN & OVERY

Allen & Overy LLP

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**THIS DEED OF VARIATION** is made on **23 JULY** 2013

**BETWEEN:**

- (1) **PHILLIPS 66 LIMITED** (registered number 529086) whose registered office is at Portman House, 2 Portman Street, London W1H 6DU (the **Landlord**); and
- (2) **IMMINGHAM CHP LLP** (registered number OC300980) whose registered office is at Portman House, 2 Portman Street, London W1H 6DU (the **Tenant**),

**AND** is supplemental and collateral to the Lease.

**THIS DEED WITNESSES** as follows:

**1. DEFINITIONS**

In this deed:

**End of the Term** includes the expiry of the Term by effluxion of time or the determination of the Term by forfeiture, surrender, merger, notice or in any other way;

**Landlord** includes the person for the time being entitled to possession of the Premises at the End of the Term;

**Lease** means the lease relating to the Premises and registered with leasehold title number HS322076 which is dated 16 February 2005 and made between the Landlord (1) and the Tenant (2), and all deeds varying the lease and all licences and consents granted under the lease or under any deed of variation;

**Premises** means a section of the subsoil and undersurface of land at East End Farm, South Killingholme, North Lincolnshire as more particularly described in the definition of "Demised Land" in the Lease;

**Tenant** includes the Tenant's successors in title; and

**Term** means the term granted by the Lease.

**2. INTERPRETATION**

2.1 Capitalised terms not otherwise defined in this deed shall have the same meaning as in the Lease.

2.2 The headings in this deed do not affect its interpretation.

**3. VARIATION**

3.1 The Lease is varied as set out in the Schedule.

3.2 Each of the variations takes effect from the date of this deed and the Lease is henceforth to be read and construed accordingly.

3.3 The parties agree that following the variations set out in this deed the form of the Lease will be as attached to this deed.

**4. NO SURRENDER**

This deed is not intended to and does not effect any surrender of the Lease or the grant of any new lease.

**5. REGISTRATION**

5.1 The Landlord must immediately apply to the Land Registry to register this deed on the registers of title numbers HS322076 and HS287034 and must supply to the Tenant official copies of the registers of such title numbers as soon as reasonably practicable after receiving confirmation from the Land Registry that the entries have been made.

5.2 The Landlord will submit with its application, an application to the Land Registrar to designate this deed as an exempt information document, in such form reasonably required by the Landlord.

**6. GENERAL**

A person who is not a party to this deed may not enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act and is without prejudice to the rights of any mortgagee for the time being of the Tenant.

**IN WITNESS** of which this deed has been executed and has been delivered on the date which appears first on page 1.

## SCHEDULE

### VARIATIONS TO THE LEASE

1. The following definitions shall be added to the Lease:

**Generating Facility Site** means the land demised by the Generating Facility Site Lease;

**Generating Facility Site Lease** means the lease dated 13 February 2002 between (1) the Landlord and (2) the Tenant as amended by the deed of surrender dated 20 September 2006 and the deeds of variation dated 5 June 2009 and 7 March 2012 each between the Landlord and the Tenant and any lease entered into by the Landlord and the Tenant to replace such lease;

**Project Lenders** means a lender who has been granted a charge over the Generating Facility Site Lease;

2. In the definition of **New Lease** in clause 8.11, sub-clauses (a) and (b) shall be deleted and replaced with the following:

"(a) the term shall be for a period commencing on the day following the expiry of the Term and expiring on 12 February 2037;

(b) the following wording shall be added as new sub-clauses 8.11.4 and 8.11.5:

"8.11.4 The grant of this Lease shall in no way operate as a waiver by either Party of any antecedent or continuing breach or breaches of the other Party (or any of its predecessors in title) of the covenants conditions or obligations contained in the lease of the Premises dated 16 February 2005 between Conoco Limited (1) and Immingham CHP LLP (2) as varied from time to time (the **Original Lease**) nor shall it waive any right of either Party to any payment from the other pursuant to any of the indemnities contained in the Original Lease.

8.11.5 All provisions in this Lease for remediation of contamination and for decommissioning shall where the context permits be construed and operate on the basis that the standard of remediation and decommissioning required shall be such as to return the Premises to the same state and condition they were in at the date of the agreement for the Original Lease."

and otherwise this clause 8.11 shall be included and shall apply to the New Lease so as to include a further option to take one further lease on the expiry of the term of the New Lease in accordance with the same provisions set out in clause 8.11.1 and 8.11.2 and subject to the satisfaction of the same conditions set out in clause 8.11.3 (a **Further New Lease**), but so that this option for a new lease is not included in the Further New Lease, and to affect this, the definition of "New Lease" in clause 8.11 of the New Lease shall be replaced with the following definition:

"**New Lease** means a lease between the Landlord and the Tenant:

(a) for a term of 10 years commencing on the day following the expiry of the term of this Lease and expiring on 12 February 2047;

(b) otherwise on terms identical to this Lease save that this clause 8.11 shall be deleted, so that no further option for a new lease is granted in the New Lease, and shall be replaced by the following:

“8.11.1 The grant of this Lease shall in no way operate as a waiver by either Party of any antecedent or continuing breach or breaches of the other Party (or any of its predecessors in title) of the covenants conditions or obligations contained in:

(a) the lease of the Premises dated 16 February 2005 between Conoco Limited (1) and Immingham CHP LLP (2) as varied from time to time (the **Original Lease**); and/or

(b) the lease of the Premises dated [*insert date of the New Lease granted pursuant to this clause 8*] between (1) [*landlord at the time the New Lease is granted*] and (2) [*tenant at the time the New Lease is granted*] (the **First Option Lease**),

nor shall it waive any right of either Party to any payment from the other pursuant to any of the indemnities contained in the Original Lease and/or the First Option Lease.

8.11.2 All provisions in this Lease for remediation of contamination and for decommissioning shall where the context permits be construed and operate on the basis that the standard of remediation and decommissioning required shall be such as to return the Premises to the same state and condition they were in at the date of the agreement for the Original Lease.”

3. Clause 8.11.1 shall be deleted and replaced by the following words:

"The Tenant may by giving not less than one year's prior notice in writing prior to the expiry of the Term require the Landlord to grant to the Tenant the New Lease."

4. In clause 8.11.2 the following words shall be added as a new paragraph at the end of clause 8.11.2:

"The Landlord and the Tenant acknowledge the Order of Newbury County Court dated 20 January 2005 whereby the parties agreed that the provisions of section 24 to 28 of the Landlord and Tenant Act 1954 be excluded and the Tenant further confirms that the Landlord served on the Tenant a notice dated 2 May 2013 in a form complying with the Order and that the Tenant or a person authorised by the Tenant made a statutory declaration in relation to such notice in a form complying with the requirements of Schedule 4 of the Order."

5. Clause 8.11.3 shall be deleted and replaced by the following words:

"8.11.3 In the event that an option to renew pursuant to clauses 8.11.1 or 8.11.2 above is exercised the Tenant will accept the grant of the New Lease in accordance with the following conditions of this clause 8.11.3:

(a) The conditions referred to in clause 8.11.1 are that:

(i) the Tenant has given at least one month's notice to the Landlord of its intention to exercise its option to renew and requesting that the Landlord serves a notice on the Tenant in



a form complying with the requirements of schedule 1 to the Order relating to the New Lease by a date not less than one month from the date of the Tenant's notice;

(ii) before the Tenant serves notice to renew under clause 8.11.1 (and therefore before the Tenant becomes contractually bound to take the New Lease):

(A) the Landlord has given to the Tenant a notice in a form complying with the requirements of schedule 1 to the Order relating to the New Lease; and

(B) the Tenant has made a declaration or statutory declaration (as required by the Order) relating to such lease in a form complying with schedule 2 to the Order;

or the Landlord has failed to serve a notice under paragraph 8.11.3(a)(ii)(A) within one month of the Tenant serving notice under paragraph 8.11.3(a)(i);

(iii) this Lease has not been assigned after the Landlord has given the Tenant the notice referred to in clause 8.11.3(a)(ii)(A);

(b) completion of the New Lease shall take place on the later of the date one calendar month prior to expiry of the Term or the fulfilment of all necessary requirements of clause 8.11.3(a) above.

(c) at the date the New Lease is granted the Generating Facility Site Lease has not determined.

(d) the Landlord shall be responsible for drafting and preparing engrossments of the New Lease.

(e) each party shall be responsible for their own costs incurred in connection with this clause 8.11."

6. The following clause shall be added as a new Clause 8.14 to the Lease

**"Termination of Generating Facility Site Lease**

8.14 The lease shall determine automatically on the termination howsoever occurring of the Generating Facility Site Lease (save in the event of a surrender and immediate regrant to the Tenant of a new lease of the Generating Facility Site) save that such determination shall be without prejudice to any claim either party to this lease may have against the other as to any antecedent breach of the obligations contained in this lease including any obligations expressed to be complied with before the end of the term."

SIGNATORIES

*M* EXECUTED as a deed by )  
PHILLIPS 66 LIMITED )  
acting by DAVID BLAKEMORE a director and )  
RUTH WHITE a ~~director~~/secretary )

[Redacted Signature].....  
Director

[Redacted Signature].....  
Director/Secretary

EXECUTED as a deed by )  
IMMINGHAM CHP LLP )  
acting by IMMINGHAM ENERGY LIMITED a member and )  
PHILLIPS 66 ICHP LIMITED a member )

[Redacted Signature] Member JOANIVA LEE, DULY AUTHORISED BY IMMINGHAM ENERGY LIMITED TO SIGN ON ITS BEHALF

[Redacted Signature].....  
Member KIRSTIE DOBSON, DULY AUTHORISED BY PHILLIPS 66 ICHP LIMITED TO SIGN ON ITS BEHALF

# Appendix 4



The Lease of the Existing VPI CHP Plant Site to VPI Immingham LLP dated 29 August 2013  
(the "CHP Lease")

DATED 29 August 2013

**PHILLIPS 66 LIMITED**

**VPI IMMINGHAM LLP**

---

**LEASE**  
**of land adjoining Rosper Road,**  
**South Killingholme, North Lincolnshire**

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**This lease is a new tenancy for the purposes of the  
Landlord and Tenant (Covenants) Act 1995.**

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**LR1 Date of lease**

29 August 2013

**LR2 Title number(s)**

**LR2.1 Landlord's title number(s)**

HS299802 and HS299803

**LR2.2 Other title numbers**

HS294686 and HS19809

**LR3 Parties to this lease**

**PHILLIPS 66 LIMITED** (Company No 529086) whose registered office is at Portman House, 2 Portman Street, London W1H 6DU (the *Landlord*); and

**VPI IMMINGHAM LLP** (Partnership No. OC300980) whose registered office is at 76 Buckingham Palace Road, London, SW1W 9TQ (the *Tenant*)

**LR4 Property**

The Premises as defined in Clause 1 of the Lease.

In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.

**LR5 Prescribed statements etc**

N/A

**LR6 Term for which the Property is leased**

The term is as follows: a term commencing on and including the date hereof and expiring on 12 February 2047.

**LR7 Premium**

£1.00 (one pound)

**LR8 Prohibitions or restrictions on disposing of this lease**

This lease contains a provision that prohibits or restricts dispositions.

**LR9 Rights of acquisition etc**

**LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land**

N/A

**LR9.2 Tenant's covenant to (or offer to) surrender this lease**

N/A

**LR9.3 Landlord's contractual rights to acquire this lease**

N/A

**LR10 Restrictive covenants given in this lease by the Landlord in respect of land other than the Property**

Paragraph 3 of Schedule 3

**LR11 Easements**

**LR11.1 Easements granted by this lease for the benefit of the Property**

Part D of Schedule 1

**LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property**

Part E of Schedule 1

**LR12 Estate rentcharge burdening the Property**

N/A

**LR13 Application for standard form of restriction**

N/A

**LR14 Declaration of trust where there is more than one person comprising the Tenant**

N/A



THIS LEASE made the 29 August 2013

**BETWEEN:**

**(1) the Landlord; and**

**(2) the Tenant**

**WITNESSES** as follows

**1. DEFINITIONS**

In this Lease the terms defined in the Land Registry prescribed clauses set out at the beginning of this Lease shall have effect and unless the context otherwise requires the following expressions shall have the following meanings:

*Abandonment* means any of the following events:

- (a) save in the case of destruction or damage to the Generating Facility (where paragraph (b) shall apply) the cessation of the construction (including design development relative to the progress of works at that stage) of the Generating Facility or any material part thereof (other than upon due completion thereof) or cessation of the operation for the Permitted Use of the Generating Facility or any material part thereof in either case for whatever reason (other than due to the act, omission or default of the Landlord or any Affiliate of the Landlord or due to Force Majeure) for a continuous period of 6 months or more at any time unless the Tenant can demonstrate to the reasonable satisfaction of the Landlord that it is acting as a Reasonable and Prudent Operator in endeavouring to have such construction or operation recommenced (and for the avoidance of doubt this shall include evidence that the Tenant is pursuing a claim under any policies of insurance which it holds in respect of the Construction Works and/or the Premises); or
- (b) the failure to proceed (after receipt of available insurance proceeds by the Tenant or the Project Lenders) with procuring works to construct, repair or rebuild or replace destruction or damage to all or any of the Generating Facility with other facilities having at least equivalent capabilities of those destroyed or damaged, which failure is likely to have a materially adverse effect on the operation for the Permitted Use of the Generating Facility or any material part thereof;

**Accessway** means the roadway to be constructed along a route identified by purple hatching on Plan D and forming part of the Car Park Site and which following construction will enable the passage of vehicles to and from and between the access road hatched blue on Plan A and the Undeveloped Land;

**Act of Insolvency** means, in respect of the Tenant, the Tenant:

- (a) is unable to pay its debts (within the meaning of Section 123(1) of the Insolvency Act 1986) or has any voluntary arrangement proposed in relation to it under Section 1 of that Act; or
- (b) enters into any scheme or arrangement (other than for the purpose of reconstruction or amalgamation upon terms and within such period as may previously have been approved in writing by the Landlord); or
- (c) has a receiver (which expression shall include an administrative receiver within the meaning of Section 251 of the Insolvency Act 1986) of the whole or any material part of its assets or undertaking appointed; or
- (d) has an administration order under Section 8 of the Insolvency Act 1986 made in relation to it; or
- (e) passes any resolution for winding-up other than a resolution previously approved in writing by the Landlord; or
- (f) becomes subject to an order for winding-up by a court of competent jurisdiction;

**Adjoining Premises** means any land or buildings neighbouring adjoining or adjacent to the Premises;

**Affiliate** means a subsidiary or holding company of a body corporate and any subsidiary or holding company of such holding company provided that references to Affiliates of a Party shall not, unless otherwise expressly specified to the contrary, include any other Party;

**Approved Credit Rating** has the same meaning as in the Common Terms Agreement;

**Base Rate** means the base rate of The Bank of England from time to time ruling or, if the same shall be incapable of determination, such reasonable comparable rate of interest as the Landlord may from time to time specify in substitution therefor;

**Buildings** means the buildings and facilities to be erected on the Premises by the Tenant and any other buildings or facilities from time to time on the Premises;

**Car Park Site** means the land edged blue on Plan D;

**Common Terms Agreement** means the common terms agreement dated 15 January 2002 made between the Landlord and the Tenant related to the Site, as amended by amendment agreements dated 22 December 2003, 28 December 2006, 9 October

2008, 7 March 2012 and 23 July 2013 each between the Landlord and the Tenant, and as further amended from time to time;

**Competent Authority** means any legislative, judicial, regulatory or administrative body or agency (or any subdivision of any of them) of the United Kingdom or of the European Union, or any supranational body which has rulemaking power or whose directives, decisions, instructions, rulings, laws or regulations are directly enforceable against the Landlord or the Tenant in England;

**Conducting Media** means drains, sewers, channels, pipes and pipelines, conduits, wires and cables, gutters, watercourses, telecommunications, laser optical fibres, electronic data or impulse transmission communication or reception systems or other conducting media;

**Consequential Loss** means, in relation to any Party, any indirect or consequential loss or any loss of production, loss of efficiency, loss of productivity, loss of use, loss of feedstock, loss of profit, loss of revenue, loss of contract, loss of goodwill, liability under other agreements or liability to third parties or any other similar losses or liabilities arising out of or in connection with the performance or non-performance of any obligation hereunder or arising from the negligence, breach of contract or otherwise of any other Party, regardless of whether or not the relevant Party knew, or ought to have known, that such loss or liability would be likely to be suffered;

**Construction Works** means the works of construction of the Generating Facility;

**Decommissioning Works** means the works required for the decommissioning of the Generating Facility on the Premises including without limitation the dismantling, demolition and safe removal of all structures and buildings, and related fixtures, fittings, plant, machinery and signage (other than the foundation or foundations of the Generating Facility) located on, under or in the Premises and the Easement Structures, removal, handling and disposal of all debris and materials and the remediation of any material contamination and the levelling and re-landscaping of the Premises;

**Decommissioning Works Completion Date** means the date on which the Landlord issues a certificate pursuant to paragraph 11.1 of Schedule 6 or the date on which an Independent Surveyor or Independent Environmental Consultant determines that the Decommissioning Works have been completed pursuant to paragraph 11.2 of Schedule 6;

**Easements** means those rights granted to or those rights reserved between the Parties referred to and described briefly in Part D and Part E of Schedule 1;

**Easement Structures** means any Conducting Media, plant, equipment or structures owned by the Landlord or the Tenant (or which would be so owned but for the law relating to fixtures) and used or useable by the Tenant in exercising any right or easement granted to the Tenant pursuant to Part D of Schedule 1;

**Electricity Generation** means an activity for which an exemption or licence is required under Sections 5 or 6 of the Electricity Act 1989 or involving the distribution of electricity insofar as it does not require a licence under Section 6 of that Act;

**Enactment** means every Act of Parliament and European Directive Regulation or Order now or hereafter to be enacted or made and any subordinate legislation direction regulation or order whatsoever deriving validity therefrom in each case to the extent directly enforceable in England and Wales and any reference in this Lease to an Enactment shall include a reference to Environmental Laws and Planning Acts;

**Environment** means all, or any, of the following media, namely the air, water and land and any living organisms (including man) or systems supported by such media;

**Environmental Laws** means any and all of the following each as is in force from time to time during the Term:

- (a) laws, by-laws, codes, common law or other laws or legislation made by a Competent Authority and all rules, regulations, ordinances, orders, notices, directives, practices guidance notes circulars and codes promulgated pursuant to the same (to the extent legally enforceable); and
- (b) all international, European Union, national or local treaties, concerning Environmental Matters which are applicable to the Premises and all regulations and subordinate legislation made thereunder which are in force at the date of this Lease; and
- (c) sections 78A - 78Y of the Environmental Protection Act 1990 as amended and sections 161 and 161A-D (as amended) of the Water Resources Act 1991; and
- (d) any authoritative judicial or legally effective administrative interpretation of each of the foregoing;

which have as a purpose or effect the protection of, and/or prevention of harm or damage to the Environment and/or the provision of remedies and/or compensation for harm or damage to the Environment or which relate to Environmental Matters;

**Environmental Matters** means:

- (a) the disposal, release, spillage, deposit, escape, discharge, leak or emission of, contact with, or exposure of any person in the workplace to, Hazardous Materials or Waste;
- (b) any noise, vibration, radiation, common law or statutory nuisance, or other adverse impact on the Environment;
- (c) any other matters relating to the condition, protection, maintenance, restoration or replacement of the Environment or any part of it arising directly or indirectly out of the manufacturing, processing, treatment, keeping, handling, use (including as a building material), possession, supply, receipt, sale, purchase, import, export, transportation or presence of Hazardous Materials or Waste or the operation of the Generating Facility;

**Environmental Report** means the report entitled "Soil and Groundwater Assessment, Immingham CHP Development", of EAG Environ dated November 2000 following a

review and investigation of the Premises and includes the "Summary of Analytical Data Sheets, Immingham CHP Development" dated January 2001 and any analytical data produced by, for or at the request of EAG Environ in connection with such review and investigation;

**Generating Facility** means the co-generating facility utilising gas turbine technology with waste heat boilers and auxiliary boilers together with any additional combined cycle gas turbine generation capacity and all associated facilities constructed or to be constructed by the Tenant and located on the Site including the Phase 2 Facility;

**Good Industry Practice** means the standards and practice which would reasonably and ordinarily be expected from a skilled and experienced owner or operator of a facility being used for the then Permitted Use (or such other use as the Landlord has approved in accordance with paragraph 11.1 of Schedule 2) in the United Kingdom;

**Guarantee** means a guarantee which conforms with the requirements set out in Clause 13.9.1 of the Common Terms Agreement (accompanied, for the avoidance of doubt, by a legal opinion in accordance with Clause 13.9.1 of the Common Terms Agreement);

**Hazardous Materials** means anything which alone, or in combination with other materials, is capable of causing harm or damage to property or to man or any other organism supported by the Environment including, without limitation, hazardous substances, pollutants, contaminants, petroleum, petroleum products and radioactive materials;

**holding company** means a holding company within the terms of Section 1159 of the Companies Act 2006;

**Humber ESA** means the agreement dated 15 January 2002 between the Tenant and the Landlord for the supply of electricity and steam to the Refinery, as amended from time to time;

**Independent Environmental Consultant** means an environmental consultant of not less than 10 years standing who is experienced in environmental consulting in respect of properties and operations similar to the Premises and the Generating Facility;

**Independent Surveyor** means a building surveyor of not less than ten years standing who is experienced in the construction of combined heat and power stations;

**Insured Risks** means the risks of fire storm tempest flood lightning explosion terrorism and in peacetime aircrafts and articles dropped therefrom earthquake riot civil commotion malicious damage impact plant and machinery cover overflowing of tanks and bursting of pipes (except always such risks as cannot reasonably be insured on satisfactory terms or at a reasonable premium or as the insurers or underwriters have refused to insure) and such other risks as the Tenant shall from time to time insure (subject in all cases to any excesses exclusions and limitations imposed by the insurers or underwriters);

**the Landlord** means Phillips 66 Limited and its successors in title from time to time the owners of the reversion immediately expectant on the Termination of the Term;

**Lease** means this Lease any written licence or consent granted pursuant hereto and any written variation hereof and any deed or instrument made supplemental hereto;

**Letter of Credit** has the meaning given to it in the Common Terms Agreement;

**Liabilities** means losses expenses proceedings costs (including legal and other professional fees and expenses reasonably incurred) claims damages demands fines penalties and any other liability (including any liability for claims from third parties or from any Competent Authority) or consequence;

**Lindsey** means Total Lindsey Oil Refinery Limited;

**Lindsey ESA** means the agreement dated 27 December 2001 between the Tenant and Lindsey for, inter alia, the sale of steam by the Tenant to Lindsey for use at LOR, as amended from time to time;

**LOR** means the Lindsey Oil Refinery on land adjacent to the Premises;

**LOR Supply Agreement** means any agreement between the Tenant and the owner or operator for the time being of LOR for the supply of substances by means of any one or more of the New Services and / or the construction and maintenance of Conducting Media therefor including the Lindsey ESA;

**NGC** means The National Grid Electricity Transmission plc or its successors in title or assigns;

**NGC Leases** means the leases details of which are set out in paragraph 1 and paragraph 4 of Part F of Schedule 1;

**New Services** means the passage and running of those substances referred to in Schedule 5 through Conducting Media to be constructed (as shown in Schedule 5 or as the Parties may otherwise agree) connecting between the Refinery and/or LOR and/or the Generating Facility in, on, under or over the Premises and/or LOR and/or the Refinery Site;

**Order** means the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003;

**Partnership** has the same meaning as in the Common Terms Agreement;

**Party** means a party to this Lease;

**Permitted Use** means:

- (a) use of the Premises as:
  - (i) a combined heat and power generating facility and other uses ancillary thereto approved by the Landlord (acting reasonably) from time to time

including for the avoidance of doubt the carrying out of the Construction Works, the subsequent development, operation and maintenance of additional combined cycle gas turbine generation capacity and the Decommissioning Works; or

- (ii) if and for so long as any of the circumstances set out in sub-clause (b) of this definition apply, a power generating facility (including for the avoidance of doubt a combined heat and power generating facility), and other ancillary uses thereto approved by the Landlord (acting reasonably) from time to time including for the avoidance of doubt the carrying out of the Construction Works and the Decommissioning Works.

(b) the circumstances referred to in sub-clause (a)(ii) above are:

- (i) for so long as the Landlord does not require steam from the Premises;
- (ii) where any Refinery Supply Agreement for the supply of steam has been terminated in accordance with its terms and not renewed;
- (iii) for so long as the Tenant acting as Reasonable and Prudent Operator is unable by reason of damage to or mechanical breakdown of the Generating Facility to produce steam from the Premises;

***Perpetuity Period*** means the period beginning on the date hereof and expiring on the sooner of eighty years from the date hereof and the Termination of the Term;

***Phase 2 Facility*** means the gas turbine and heat recovery steam generator and all associated facilities on the Site which form part of the Generating Facility;

***Pipebridge*** means the pipebridge owned by the Landlord adjoining (but not forming part of) the Premises and crossing the railway between the points X and Y on Plan A;

***Plan*** means any of the plans annexed hereto and Plan A, Plan B, Plan C and Plan D means any Plan so marked;

***Planning Acts*** means the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990, the Planning and Compensation Act 1991, the Local Government Planning and Land Act 1980, the Local Government (Miscellaneous Provisions) Act 1982, the Housing and Planning Act 1986 and any act for the time being in force of a similar nature and any other Enactments intended to control or regulate the construction, demolition, alteration or change of use of land or buildings or to preserve or protect the Environment or the national heritage;

***Premises*** means the land described in Part A of Schedule 1 and any part thereof together with all buildings now or hereafter during the Term constructed or erected thereon, all additions alterations and improvements thereto and the fixtures, fittings, plant and machinery therein (other than (a) tenant's and trade fixtures and fittings, (b)

any Conducting Media now or hereafter over under or through the Premises which do not exclusively serve the Premises and (c) any fixtures, fittings, plant, machinery and equipment belonging to or acknowledged by the Landlord as belonging to NGC);

**Previous Lease** means the lease dated 13 February 2002 and made between (1) the Landlord (then known as ConocoPhillips Limited) and (2) the Tenant, as varied by a deed of surrender dated 20 September 2006 between the same parties, a deed of variation dated 5 June 2009 between the Landlord and the Tenant and a deed of variation dated 7 March 2012 between the Landlord and the Tenant, and all deeds varying the lease and all licences and consents granted under the lease or under any deed of variation;

**Previous Lease Term** the term of the Previous Lease commencing on the 13 February 2002 and determined by surrender immediately prior to the commencement of this Lease;

**Project Lenders** means the various banks and financial institutions which may from time to time provide credit facilities, letters of credit, lease financing, hedging facilities, bond financing and/or guarantee facilities under the agreements between them and the Tenant;

**Public Authority** means any Secretary of State and any government department public local regulatory fire or any other authority or institution having functions which extend to the Premises or their use and occupation and any court of law and the companies or authorities responsible for the supply of water gas and electricity or any of them and any of their duly authorised officers;

**Reasonable and Prudent Operator** means a person seeking in good faith to perform its contractual obligations and 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 or conditions;

**Refinery** means the petroleum oil refinery complex owned by the Landlord on land adjacent to the Premises;

**Refinery Site** means the premises described in Part B of Schedule 1 (but excluding the Site, the land demised by the NGC Leases and excluding only for the term of any lease of the Car Park Site which may be entered into between the Landlord and the Tenant the land demised by that lease) together with all buildings now or hereafter during the Term constructed or erected thereon, all additions, alterations and improvements thereto and the fixtures, fittings, plant and machinery therein;

**Refinery Supply Agreement** means any agreement between the Tenant and the owner or operator for the time being of the Refinery for the supply of substances by means of any one or more of the New Services and / or the construction and maintenance of Conducting Media therefor including the Humber ESA;

**Rent** means:



- (a) from the date hereof until 31 December 2013 the clear yearly rent of £554,968 (five hundred and fifty-four thousand, nine hundred and sixty-eight pounds);
- (b) from and including 1 January 2014 until but excluding the Decommissioning Works Completion Date, the clear yearly rent ascertained from time to time pursuant to clause 9 and Part A of Schedule 7; and
- (c) from and including the Decommissioning Works Completion Date, the clear yearly rent ascertained from time to time pursuant to clause 9 and Parts B and C of Schedule 7;

**Rent Days** mean 25 March 24 June 29 September and 25 December in each year and **Relevant Rent Day** shall be construed accordingly;

**Representative** means in relation to paragraph 1.2(b) of Schedule 4:

- (a) the mortgagee or an Affiliate of the mortgagee; or
- (b) an administrative receiver, receiver or receiver and manager of the Tenant appointed pursuant to the relevant financial agreements between the mortgagee and the Tenant; or
- (c) an administrator of the Tenant; or
- (d) a person directly or indirectly owned or controlled by the mortgagee and or an Affiliate of the mortgagee; or
- (e) any other person approved by the Landlord in accordance with the provisions of paragraph 1.2(b)(v), (vi) and (vii) of Schedule 4;

**Required Period** means in respect of paragraph 1.2(b) of Schedule 4 the period starting on the date of a Termination Notice and ending on the earlier of:

- (a) 90 days from the date of such Termination Notice (or as extended by paragraph 1.2(b)(vii)(3) of Schedule 4);
- (b) the Step-In Date; and
- (c) the date the mortgagee gives written notice to the Landlord that it does not intend to exercise its right to appoint a Representative pursuant to paragraph 1.2(b)(v) of Schedule 4;

**Section 106 Agreement** means the Section 106 Agreement relating to the construction of the Generating Facility dated 15 August 2000 between the Landlord, Conoco Global Power Developments UK Limited (now Immingham Energy Limited), North Lincolnshire Council and North East Lincolnshire Borough Council;

**Services** means the passage and running of oil and petroleum products, gas, water, steam, electricity, surface and storm water, sewage, telecommunications, and other services now serving the Premises and other services now serving the Refinery Site

and third parties which flow through, in, on, under or over the Premises and/or the Refinery Site;

**Site** means the land described in Part A of Schedule 1 hereto;

**Step-In Covenants** means the covenants on the part of the Tenant in this Lease except for the covenant at paragraph 25 of Schedule 2;

**Step-In Date** has the meaning given to such term in paragraph 1.2(b)(ix) of Schedule 4;

**Step-Out Date** has the meaning given to such term in paragraph 1.2(c) of Schedule 4;

**Stipulated Rate** means a yearly rate three per cent above the Base Rate;

**subsidiary** means a subsidiary within the terms of Section 1159 of the Companies Act 2006;

**Supply Agreement** means a Refinery Supply Agreement or a LOR Supply Agreement and shall be construed accordingly;

**the Tenant** means VPI Immingham LLP and its successors in title and assigns;

**the Tenant's Covenants** means the covenants and conditions contained or referred to in Schedule 2;

**Termination of the Term** means the determination of the Term whether by effluxion of time re-entry or otherwise howsoever;

**Undeveloped Land** means the land hatched black on Plan D;

**VAT** means Value Added Tax and any other tax replacing or supplementing the same from time to time;

**Waste** means any waste substance including any unwanted or surplus substance, irrespective of whether it is capable of being recycled or recovered or has any value; and

**Work Out Period** means the period commencing on the Step-In Date and ending on the earliest of:

- (a) the date of a lawful assignment of this Lease in accordance with its terms;
- (b) there ceasing to be an Act of Insolvency of, by or in respect of the Tenant which would give rise (but for paragraph 1.2(b)) to a right of re-entry;
- (c) the Step-Out Date;
- (d) the date one year after the date of the Step-In Date; and
- (e) the expiry of the Lease.

## 2. INTERPRETATION

2.1 Words importing the singular include the plural and vice versa and words importing one gender include both genders.

2.2 Where a Party comprises more than one person covenants and obligations of that Party take effect as joint and several covenants and obligations.

2.3 A covenant by the Landlord or Tenant not to do (or omit) any act or thing also operates as a covenant not knowingly to permit or suffer it to be done (or omitted) and to use all reasonable endeavours to prevent (or as the case may be to require) it being done.

2.4 References in this Lease to:

2.4.1 any clause sub-clause schedule or paragraph is a reference to the relevant clause sub-clause schedule or paragraph of this Lease and clause and schedule headings shall not affect the construction of this Lease;

2.4.2 any right of (or covenant to permit) the Landlord to enter the Premises shall also be construed as entitling the Landlord or any superior landlord to remain on the Premises for such time as is reasonable with or without equipment and permitting such right to be exercised by all persons authorised in writing by the Landlord (or any superior landlord) and any right of (or covenant to permit) the Tenant to enter the Refinery Site shall also be construed as entitling the Tenant to remain on the Refinery Site for such time as is reasonable with or without equipment and permitting such right to be exercised by all persons authorised in writing by the Tenant;

2.4.3 any consent licence or approval of the Landlord (or any superior landlord) or words to similar effect mean a consent licence or other approval in writing signed by or on behalf of the Landlord (or any superior landlord);

2.4.4 the Premises and the Site (except in paragraph 12 of Schedule 2) shall be construed as extending where the context permits to any part of the Premises and the Site respectively;

2.4.5 a specific Enactment includes every statutory modification consolidation and re-enactment and statutory extension of it for the time being in force except in relation to the Town and Country Planning (Use Classes) Order 1987 which shall be interpreted exclusively by reference to the original provisions of Statutory Instrument 1987 No. 764 whether or not the same may at any time have been revoked or modified;

2.4.6 the last year of the Term includes the final year of the Term if it shall determine otherwise than by effluxion of time and references to the expiry of the Term include such other determination;

2.4.7 rent or other sums being due from the Tenant to the Landlord mean that they are exclusive of any VAT;

2.4.8 the words “including” “include” and “includes” shall be deemed to be followed by the words “without limitation;

2.4.9 clause and paragraph headings shall not affect the interpretation of this Lease;

2.4.10 the Tenant’s (or any undertenant’s) “employees, contractors or agents or any person acting expressly or impliedly with the Tenant’s (or undertenant’s) authority or permission” shall not include the Landlord;

2.4.11 the Landlord’s “employees, contractors or agents or any person acting expressly or impliedly with the Landlord’s authority or permission” shall not include the Tenant;

2.4.12 any indemnity right to be indemnified or obligation to indemnify shall be construed as being on an after tax basis.

2.5 Any rights easements and privileges reserved to the Landlord under this Lease and the benefit of all other provisions which may be exercised under this Lease by the Landlord shall also be for the benefit of and be exercisable by any superior landlord for the time being and any mortgagee of the Landlord and any provisions requiring the consent or approval of the Landlord shall be construed as being deemed to require also the consent or approval of any superior landlord or mortgagee where necessary and any indemnity given to the Landlord shall be deemed to extend to any superior landlord or mortgagee.

2.6 Neither the Landlord nor the Tenant shall be liable to the other for any losses which relate to any interruption or disruption to the respective businesses carried on by either Party, loss of profits or Consequential Loss arising from any indemnity or covenant or other obligation under this Lease.

### **3. DEMISE AND RENTS**

In consideration of the payment to the Landlord by the Tenant of a premium of £1.00 (one pound) (which the Landlord hereby acknowledges receipt of) and the rents hereby reserved and of the covenants on the part of the Tenant hereinafter contained the Landlord **DEMISES** with full title guarantee unto the Tenant the Site **TOGETHER WITH** the rights appurtenant to the Site (if any) and the easements and rights specified in Part D of Schedule 1 save that there shall be no access rights over the Refinery Site other than those specifically granted in Part D of Schedule 1 and in the case of the rights specified in paragraph 2 of Part D of Schedule 1 such rights are exercisable in common with the Landlord and all others with its authority or otherwise entitled thereto **EXCEPTING AND RESERVING** to the Landlord and all other persons authorised by it from time to time during the Term or otherwise from time to time entitled thereto the easements and rights specified in Part E of Schedule 1 **TO HOLD** the Site unto the Tenant **SUBJECT** to (and where relevant and applicable with the benefit of) all rights easements covenants stipulations and other matters affecting the same including the documents short particulars of which are set out in Schedule 1 Part F hereto for the Term.

**YIELDING AND PAYING** therefor

**FIRST** yearly during the Term the Rent which shall be paid whether or not demanded in advance by equal quarterly payments on each of the Rent Days (or a proportion thereof in respect of the period from the first Review Date to the next relevant Rent Day and the period from the last Rent Day to the Termination of the Term);

**SECONDLY** as additional rent all VAT for which the Landlord is or may become properly liable to account on the supply by the Landlord to the Tenant under or in connection with this Lease or the interest created by it such rent to be paid at the same time as the other rents or sums to which it relates;

**AND THIRDLY** as additional rent payable on demand interest at the Stipulated Rate on any sum owed by the Tenant to the Landlord pursuant to the Tenant's obligations, whether or not as rent, which is not received by the Landlord within seven days of the due date (or, in the case of money due only on demand, within 14 days after the date of demand), calculated for the period commencing on the due payment date and ending on the date the sum (and interest) is received by the Landlord.

#### **4. TENANT'S COVENANTS**

The Tenant covenants with the Landlord in the manner set out in Schedule 2.

#### **5. LANDLORD'S COVENANTS**

The Landlord covenants with the Tenant in the manner set out in Schedule 3.

#### **6. PROVISOS**

It is agreed and declared in the manner set out in Schedule 4.

#### **7. EXCLUSION AGREEMENT**

7.1 The Landlord and the Tenant agree to exclude the provisions of sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 in relation to the tenancy created by the Lease.

7.2 The Tenant confirms that:

- (a) the Landlord served on it a notice dated 2 May, 2013 (the **Notice**) in relation to the tenancy to be created by the Lease in a form complying with the requirements of Schedule 1 to the Order; and
- (b) the Tenant, or a person or persons duly authorised by the Tenant, made in relation to the relevant Notice served on the Tenant a statutory declaration (the **Declaration**) dated 7 May, 2013 in a form complying with the requirements of Schedule 2 of the Order; and
- (c) if the Declaration was made by a person other than the Tenant on whose behalf it was made, the declarant was duly authorised by the Tenant to make the Declaration on the Tenant's behalf.

7.3 The Landlord and the Tenant confirm that this Lease gives effect to an agreement for lease dated 7 May 2013.

**8. NEW TENANCY**

This lease is a new tenancy within the meaning of Section 1(3) of the Landlord and Tenant (Covenants) Act 1995.

**9. RENT REVIEW**

The rent shall be reviewed at the times and in the manner set out in Schedule 7.

**10. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a Party to this Lease shall have no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this Lease. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act and is without prejudice to the rights pursuant to Schedule 4 of Lindsey or of any mortgagee for the time being of the Tenant.

**DULY DELIVERED AS A DEED** on the date inserted on page 1.

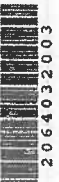
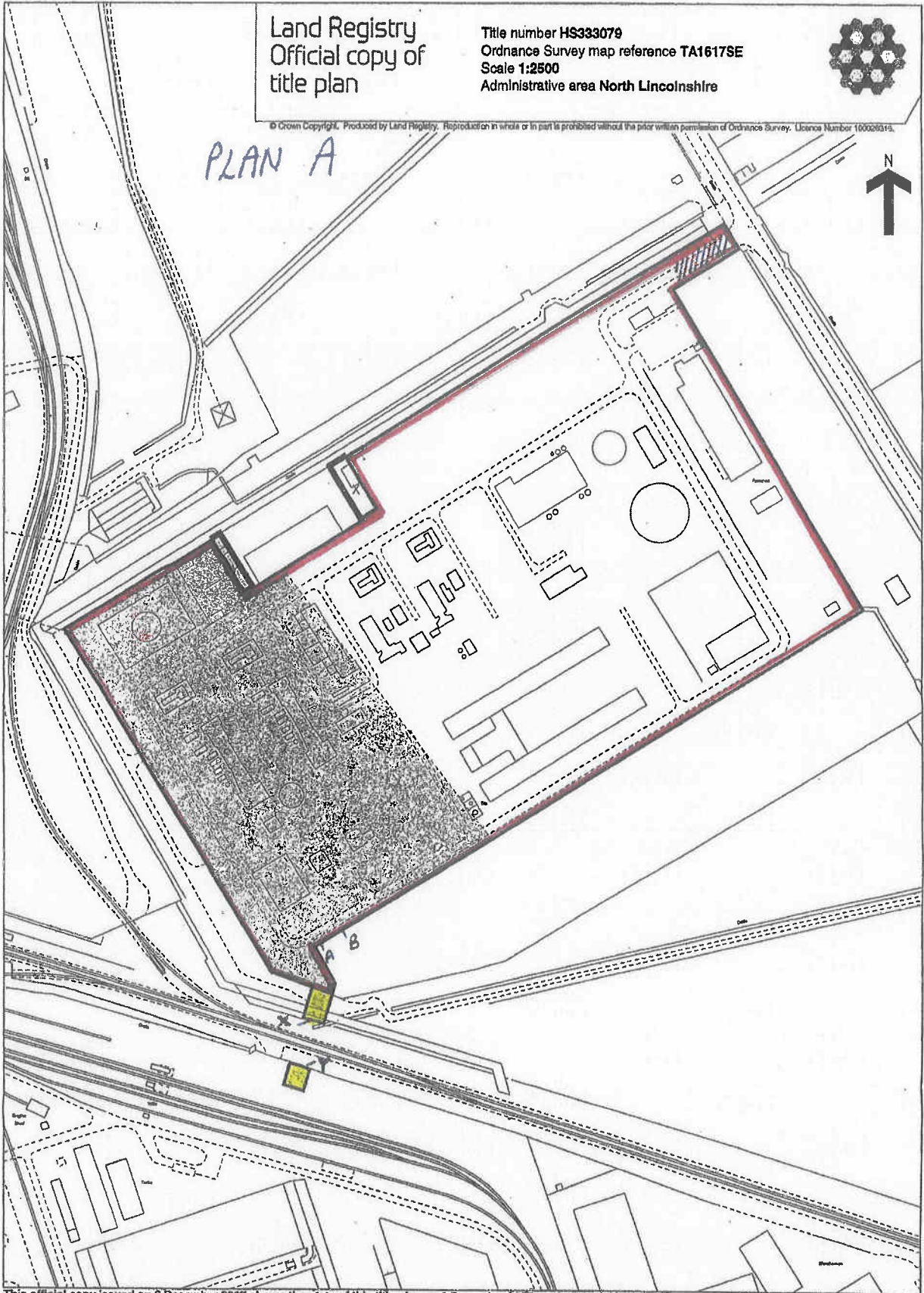
Land Registry  
Official copy of  
title plan

Title number **HS333079**  
Ordnance Survey map reference **TA1617SE**  
Scale **1:2500**  
Administrative area **North Lincolnshire**



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PLAN A



This official copy issued on 6 December 2007 shows the state of this title plan on 6 December 2007 at 10:07:22. It is admissible in evidence to the same extent as the original (s.67 Land Registration Act 2002).  
This title plan shows the general position, not the exact line, of the boundaries. It may be subject to distortions in scale. Measurements scaled from this plan may not match measurements between the same points on the ground. See Land Registry Public Guide 19 - Title Plans and Boundaries.  
This title is dealt with by Land Registry, Kingston upon Hull Office.

*Handwritten signature*





PLAN C

**NOTES**

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2. THE DESIGN AND CONSTRUCTION OF ANY WORK SHOWN ON THIS DRAWING IS THE RESPONSIBILITY OF THE CLIENT AND/OR CONTRACTOR. ON LINE DESIGN & ENGINEERING LTD. IS NOT RESPONSIBLE FOR ANY SUCH WORK.

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6. ANY WORK SHOWN ON THIS DRAWING IS TO BE IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE BRITISH STANDARDS INSTITUTION (BSI) STANDARDS.

7. ANY WORK SHOWN ON THIS DRAWING IS TO BE IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE BRITISH STANDARDS INSTITUTION (BSI) STANDARDS.

8. ANY WORK SHOWN ON THIS DRAWING IS TO BE IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE BRITISH STANDARDS INSTITUTION (BSI) STANDARDS.

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10. ANY WORK SHOWN ON THIS DRAWING IS TO BE IN ACCORDANCE WITH THE CURRENT EDITIONS OF THE BRITISH STANDARDS INSTITUTION (BSI) STANDARDS.

**KEY**

- [Red outline] PROPOSED PERIMETER OF PROPOSED BUILDING
- [Cross-hatch] EXISTING CONCRETE FOUNDATION AND WALLS TO BE DEMOLISHED AND RECONSTRUCTED
- [Diagonal lines] EXISTING CONCRETE FOUNDATION AND WALLS TO BE DEMOLISHED AND RECONSTRUCTED
- [Hatched] EXISTING CONCRETE FOUNDATION AND WALLS TO BE DEMOLISHED AND RECONSTRUCTED
- [Solid yellow] EXISTING CONCRETE FOUNDATION AND WALLS TO BE DEMOLISHED AND RECONSTRUCTED
- [Black outline] EXISTING CONCRETE FOUNDATION AND WALLS TO BE DEMOLISHED AND RECONSTRUCTED
- [Light yellow] EXISTING CONCRETE FOUNDATION AND WALLS TO BE DEMOLISHED AND RECONSTRUCTED

**References Drawings**

Equipment On Site Drawing

**ON LINE**  
Design & Engineering Ltd  
124.05

**CONOCD PHILLIPS**  
Humber Refinery

IMPHINGHAM CHP  
DEED OF VARIATION  
(PLAN C)

Scale: 1:200

Date: 12/09/2018

Rev No: 0

Scale: 1:200

Sheet No: 0



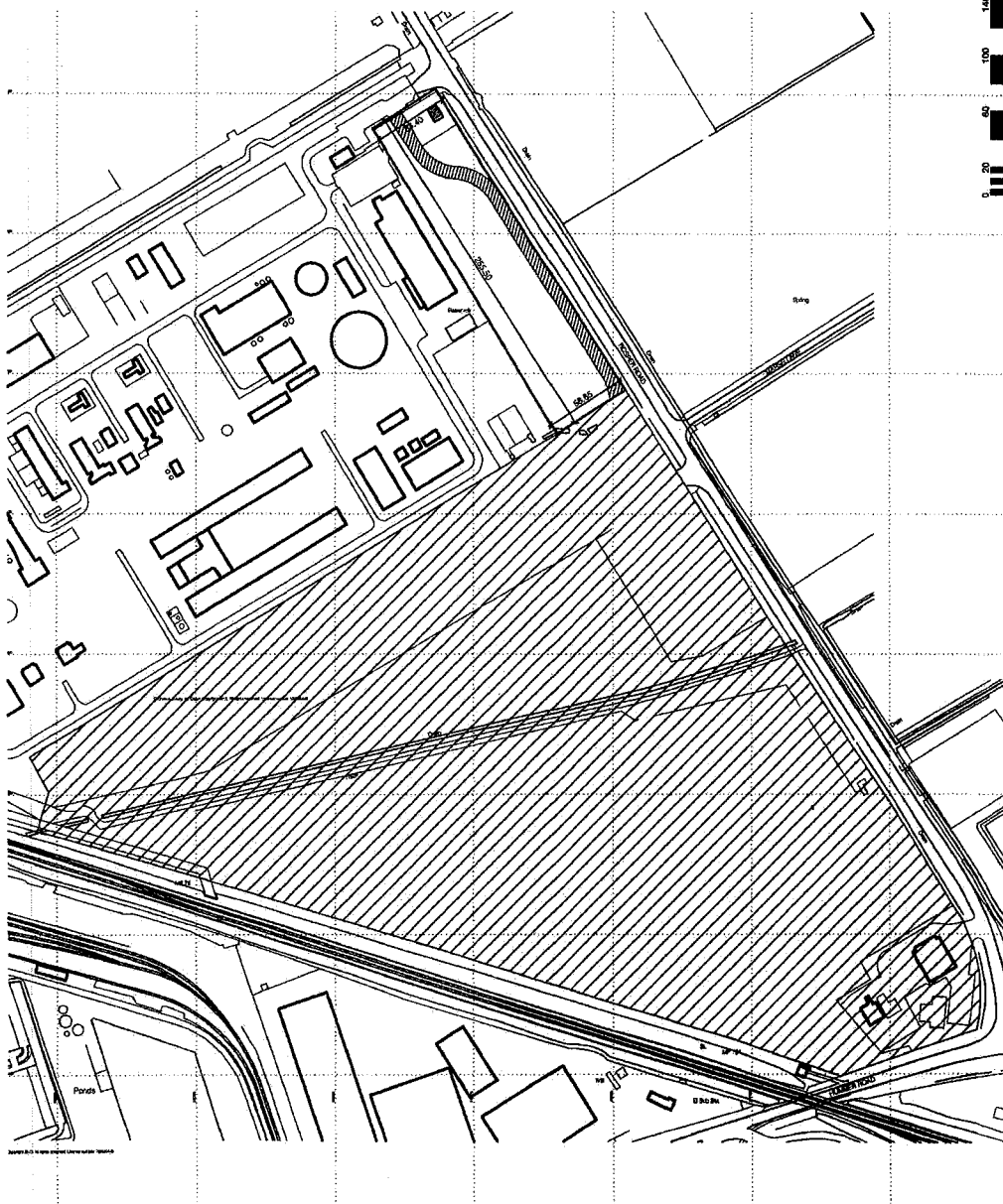
Ordnance Survey \*  
Superplan Data \*

*Handwritten initials/signature*

PLAN D



PROJECT NO.	12500003
DATE	01/07/12
SCALE	1:200
REV.	01
BY	D
CHECKED	
DATE	
PROJECT NAME	PHILIPS BUILDING
CLIENT	PHILIPS LTD
ARCHITECT	FRANK SHAW ASSOCIATES LIMITED



*Auth*

## **SCHEDULE 1**

### **Part A**

#### **The Site**

All those parcels of land shown edged red on Plan A and situated at and known as part of the land adjacent to Rosper Road, South Killingholme, North Lincolnshire and forming part of the Refinery Site.

### **Part B**

#### **Refinery Site**

All those parcels of land shown for the purposes of identification only edged red (including the land hatched and cross hatched red) and edged blue on Plan B being all that land registered at HM Land Registry with Title Numbers HS299802, HS299803, HS294686 and HS19809.

### **Part C**

#### **Not Used**

### **Part D**

#### **Easements and Rights Granted**

##### **Services**

The following rights:

1.1 to use all Services serving the Premises together with the right at any time on giving reasonable notice (except in emergency) to enter the relevant parts only of the Refinery Site to inspect clean maintain or renew any Conducting Media relating to such Services;

1.2 to use any of:

- (a) the New Services set out in Part A of Schedule 5;

- (b) the New Services set out in Parts B and D of Schedule 5 only if, to the extent that and for so long as there shall be extant and continuing in force a Refinery Supply Agreement relating thereto;
- (c) the New Services set out in Part C of Schedule 5 only if, to the extent that and for so long as there shall be extant and continuing in force a LOR Supply Agreement relating thereto; and
- (d) the Conducting Media referred to in paragraph 1.4(ii) below

constructed during the Perpetuity Period (pursuant to paragraph 1.4 hereof or otherwise) serving the Generating Facility or any other building plant and equipment located at the Premises through Conducting Media laid in, under or over, the Refinery Site or any other property across which the Landlord shall have rights to carry the same to and from the Premises together with the right (subject to the terms of any relevant Supply Agreement) at any time on giving reasonable notice (except in emergency) to enter the relevant parts only of the Refinery Site to inspect clean maintain repair test or renew such Conducting Media.

1.3 to exercise all the rights (insofar as they affect the Premises) granted to the Landlord under or by virtue of the documents listed in Part F of Schedule 1 other than the NGC Leases, subject to the performance by the Tenant of all the obligations on the part of the Landlord contained in such documents (insofar as they affect the Premises).

1.4 for the Tenant and its successors in title, lawful operators owners and occupiers for the time being of the Premises to enter on giving reasonable notice the relevant parts only of the Refinery Site and lay Conducting Media:

- (i) where required for the New Services in over or under the Refinery Site; and
- (ii) passing under the Car Park Site and between the Generating Facility or any other building plant and equipment located at the Premises and the public highway, provided the installation of the Conducting Media does not adversely affect the use of the Car Park Site by the Landlord or persons properly authorised by the Landlord and in particular (without limitation) does not adversely affect the use of the Accessway by the Landlord, or persons properly authorised by the Landlord (including without limitation persons authorised to use the Accessway for access to and from the Undeveloped Land) from time to time, save for any temporary interruption for works lawfully carried out by the Tenant upon the Car Park Site of which the Tenant (except in the case of emergency) has given the Landlord not less than fourteen days' prior written notice and Provided That:
  - (A) the Tenant shall use reasonable endeavours to ensure that any interruption is as short as reasonably practicable and if reasonably practicable a temporary alternative means of access is provided; and

- (B) except in the case of emergency, where the Landlord has previously given the Tenant notice of works to the Accessway that it intends to carry out, the Tenant may not give the Landlord notice of and require a temporary interruption to the Landlord's use of the Accessway during the period from the proposed commencement date of the Landlord's works until such time as the Landlord has completed such works

within the Perpetuity Period in such routes and positions as are approved by the Landlord (acting reasonably) and afterwards to use and maintain the Conducting Media so laid in accordance with the provisions of paragraph 1.2 above;

PROVIDED THAT the Tenant, in exercising such rights under this paragraph 1, shall:

- (a) do so as expeditiously as reasonably possible with all due diligence causing as little damage and inconvenience as reasonably possible and forthwith make good to the reasonable satisfaction of the Landlord or the owners and occupiers of the Refinery Site or other property and any plant, machinery, apparatus or equipment relating thereto (as the case may require) all damage or disturbance thereby occasioned;
- (b) not actually enter the Refinery Site without the consent (not to be unreasonably withheld) of the Landlord (except in an emergency) and provided the Landlord supervises such access (except in emergency or where the Landlord fails to provide such supervision within the later of (i) 5 days after consent to such entry being given by the Landlord or (ii) the proposed date for entry to be provided);
- (c) on each occasion of entry comply with all security, and health and safety requirements of the Landlord applicable at the time of entry;
- (d) enter only those parts of the Refinery Site reasonably necessary for the exercise of such rights; and
- (e) observe, perform and comply with all the terms, conditions and provisions of all Supply Agreements so far as any of them may be applicable and capable of taking effect in relation to anything done or proposed to be done in the exercise of such rights and for the purposes of this Lease any entry onto the Refinery Site or part of it in pursuance of the exercise of any right under any such Supply Agreement shall be deemed an exercise of the equivalent right pursuant to this Lease.

## **NGC Leases**

2. The right to exercise all rights reserved in Schedule 2 of the NGC Lease dated 20 September 2006 and in part II of Schedule 1 of the NGC Lease dated 6th November 2006 for the benefit of the Landlord subject to performance by the Tenant of all the obligations therein contained on the part of the Landlord (as defined in the NGC Leases).

## **Emergency Escape**

3. The right in case of emergency and on foot only to use such escape route across the Refinery Site as may from time to time be directed by the Landlord from the gate between the points marked A and B on Plan A to the nearest adopted highway.

## **Part E**

### **Rights Excepted and Reserved**

#### **Services**

The following rights:

1.1 To use all Services, all Conducting Media referred to in this paragraph 1.1 and any of:

- (a) the New Services set out in Part D of Schedule 5;
- (b) the New Services set out in Part B of Schedule 5 only if, to the extent that and for so long as there shall be extant and continuing in force a Refinery Supply Agreement relating thereto;

serving buildings and premises on the Refinery Site and other land, whether belonging to the Landlord or not, adjoining or near to the Premises through Conducting Media which are now or are to be constructed in over or under the Premises together with the right (but in the case of (a) and (b) above subject to the terms of any relevant Refinery Supply Agreement) at any time on giving reasonable notice (except in emergency) to enter the relevant parts only of the Premises to inspect and clean maintain repair test or renew such Conducting Media.

1.2 To enter upon the Premises for the purpose of carrying out all works, operations and acts and doing anything whatsoever comprised within the Landlord's obligations in respect of the Premises provided that the person or persons exercising such rights under this paragraph 1 shall:

- (a) do so as expeditiously as reasonably possible with all due diligence causing as little damage and inconvenience as reasonably possible and not interfering with any buildings, plant, machinery, apparatus or equipment erected on the Premises and forthwith making good to the reasonable satisfaction of the

Tenant or the owners and occupiers of the Premises or other property and any plant machinery apparatus or equipment relating thereto (as the case may require) all damage or disturbance thereby occasioned;

- (b) not actually enter the Premises without the consent (not to be unreasonably withheld) of the Tenant (except in emergency);
- (c) on each occasion of entry comply with security and health and safety requirements of the Tenant applicable at the time of entry.
- (d) enter only those parts of the Premises reasonably necessary for the exercise of such rights; and
- (e) be bound by and observe, perform and comply with the terms, conditions and provisions of the all Supply Agreements so far as any of them may be applicable and capable of taking effect in relation to anything done or proposed to be done in the exercise of such rights and for the purposes of this Lease entry onto the Premises or part thereof pursuant to the exercise of any right under any such Supply Agreement shall be deemed an exercise of the equivalent right pursuant to this Lease.

1.3 (a) To enter upon the Premises and pass over the access road hatched blue on Plan A on foot and with vehicles in order to provide access to Undeveloped Land.

(b) It is acknowledged by the Landlord that where it undertakes any substantial future development of all or part of the Undeveloped Land it will use reasonable endeavours to obtain planning permission for a separate vehicular access to and from the public highway from and to the Undeveloped Land that does not cross the Premises. To the extent that the Landlord, having used reasonable endeavours to obtain such a planning permission, is not able to develop such a separate access route, the Landlord shall be entitled to continue to exercise the right of access granted under paragraph 1.3(a) above, to access the Undeveloped Land following its redevelopment. Where the Landlord obtains such a planning permission and the Landlord undertakes a redevelopment of the Undeveloped Land, the Landlord shall proceed to construct such a separate vehicular access as soon as is reasonably practicable and following construction of such access the right of access granted under paragraph 1.3(a) above shall cease.

### **Environmental Audit**

2. To the extent required by law or to allow the Landlord to comply with any obligations imposed by law but not further or otherwise to enter and to permit entry onto the Premises to all Competent Authorities and persons authorised under any statute order byelaw or delegated legislation at reasonable times and upon reasonable written notice (save in case of emergency) with or without workmen, surveyors, consultants and all other persons lawfully authorised by the same together with all necessary vehicles, plant, machinery, appliances and materials for the purpose of environmental inspection and the carrying out of all tests, surveys and reports as the

same shall lawfully be permitted to carry out whether on or under the surface of the Premises and whether or not the same causes any damage to the Premises. In exercising the same such person shall insofar as such obligations can be imposed on him:

- (a) make good or procure the making good forthwith of any damage so caused;
- (b) cause as little disruption and interference as reasonably practicable to the business of the Tenant carried on upon the Premises;
- (c) comply with all reasonable regulations or instructions of the Tenant.

### **Refinery Site**

3.1 Subject always to paragraph 3 of Schedule 3 full right and liberty and at any time to alter, add to, vary, pull down or re-erect the Landlord's existing structures and Conducting Media on the Refinery Site, or to erect new structures and Conducting Media on the Refinery Site in such manner as the Landlord shall think fit, Provided that in so doing the Landlord shall cause as little inconvenience or disturbance to the Tenant as is reasonably practicable in the circumstances and shall not prohibit or interfere with or prevent or interrupt the use of the Premises for:

- (a) the Permitted Use; or
- (b) such other use as the Landlord has approved in accordance with paragraph 11.1 of Schedule 2,

or the exercise of the rights granted to the Tenant by this Lease and Provided further that where the exercise of this right shall render more expensive the exercise by the Tenant of any of its rights under Schedule 1 Part D paragraph 1 hereof (including the maintenance of any related Conducting Media) such increase in expense shall be borne by the Landlord together with the cost of any re-routing or alterations of the Services the New Services and/or their Conducting Media.

3.2 All rights of light air support protection and shelter and all other rights and easements which now or in future belong to or are enjoyed by any Adjoining Premises which are from time to time owned by the Landlord over or in respect of the Premises.

3.3 The right at reasonable times on reasonable prior notice (except in an emergency) to enter upon the Premises as often as may be necessary for all the purposes for which the Tenant covenants in this Lease to permit entry.

3.4 Subject to 3.1 above the right without obtaining consent from or making compensation to the Tenant to deal as the Landlord thinks fit with any Adjoining Premises and to carry out works thereon or thereto notwithstanding that the enjoyment of or the access of light and air to the Premises may be interfered with.

### **Other Documents**



4.1 All those matters affecting the Premises contained in or pursuant to the documents set out in Part F of this Schedule.

4.2 The right for the Landlord and all other persons authorised by him to enter the Premises at all times in case of emergency and otherwise at all reasonable times on giving reasonable notice for all purposes in connection with the exercise by the Landlord of any of the rights reserved to the Landlord under or pursuant to the documents set out in Part F of this Schedule the person or persons exercising such right doing so as expeditiously as reasonably possible with all due diligence causing as little damage and inconvenience as reasonably possible and not interfering with any buildings plant machinery apparatus or equipment erected on the Premises and forthwith making good to the reasonable satisfaction of the Tenant all damage or disturbance thereby occasioned.

### **Part F**

#### **Documents Referred to in Clause 3**

1. Lease dated 20 September 2006 made between ConocoPhillips Limited (1) and National Grid Electricity Transmission plc (2) as varied from time to time of the land shown coloured green on Plan D for identification only
2. Licence to Lay Air Pipeline dated 25 May 1995 made between Conoco Limited (1) and Air Products (BR) Limited (2)
3. Deed of Grant in respect of 10" nominal diameter high pressure pipeline dated 8 September 1999 made between Conoco Limited (1) and Fina plc (2)
4. Lease dated 6th November 2006 made between ConocoPhillips Limited (1) Immingham CHP LLP (2) and National Grid Electricity Transmission plc (3)

## **SCHEDULE 2**

### **The Tenant's Covenants**

#### **Rent**

1. To pay by such method as the Landlord may reasonably require the several rents reserved by this Lease on the days and in the manner set out in clause 3 without any deduction set off or counterclaim.

#### **VAT**

2. Wherever the Tenant is required to pay any amount to the Landlord hereunder by way of reimbursement or indemnity to pay to the Landlord in addition an amount equivalent to any VAT properly incurred by the Landlord save to the extent that the Landlord obtains credit for such VAT incurred by the Landlord whether pursuant to sections 24 25 and 26 Value Added Tax Act 1994 or any regulations made thereunder or otherwise.

#### **Outgoings**

3. To pay and indemnify the Landlord against all existing and future rates taxes duties charges assessments impositions and outgoings whatsoever (whether parliamentary parochial local or of any other description) now or hereafter assessed charged or imposed upon the Premises or upon their owner or occupier excluding any tax payable by the Landlord as a result of the ownership of or a dealing with the reversion or interest to the Premises or of the Landlord's receipt of income from the Premises.

#### **Comply with enactments**

4. To comply with the lawful requirements of all present and future Enactments and of every Public Authority (including the due and proper execution of any works) in respect of the Premises and their use and occupation and any work being carried out to them (whether the requirements are imposed upon the owner lessee or occupier) and not knowingly to do or omit anything by which the Landlord may become liable to make any payment or do anything under any Enactment or requirement of a Public Authority.

#### **Notices**

5. As soon as reasonably practicable after receipt of the same to give to the Landlord a copy of any notice permission direction requisition order or proposal made by any Public Authority in respect of the Premises and without delay (subject to any right of appeal to which the Tenant is entitled) to comply in all respects at the Tenant's cost with the provisions thereof.

## **Repair**

6. To maintain the Premises in accordance with Good Industry Practice, and to take all practicable precautions to ensure that no Hazardous Materials are unlawfully spilled, leaked, released emitted or deposited on to or from the Premises and to clean up or otherwise remedy any material contamination by Hazardous Materials at the Premises resulting from acts or omissions by the Tenant (or any undertenant), its or their employees, contractors or agents or any person acting expressly or impliedly with the Tenant's authority or permission during the Term and/or during the Previous Lease Term, save that the Tenant shall not be responsible in respect of Hazardous Materials present in, on or under the Premises as a result of any act or omission of the Landlord, its employees, contractors or agents or any person acting expressly or impliedly with the Landlord's authority or permission except to the extent that the presence in, on or under or in relation to the Premises or the escape or migration from the Premises or from the Refinery Site of Hazardous Materials is attributable to any physical works or operations, undertaken during the Term and/or during the Previous Lease Term, of the Tenant (or any undertenant), its or their employees, contractors or agents or any person acting expressly or impliedly with the Tenant's authority or permission.

## **To permit entry**

7.1 To permit the Landlord at reasonable times on at least 7 days prior written notice (except in an emergency) to enter the Premises where it is reasonable to do so in order to:

- (a) examine their state of repair or condition;
- (b) ascertain that the covenants and conditions of this Lease have been observed;
- (c) take any measurement or valuation or survey or conduct any investigation (whether above or below ground) of the Premises;
- (d) carry out any works of repair as are necessary to Adjoining Premises belonging to the Landlord from time to time in circumstances only where it is not reasonably practicable to do so by a means which would not involve effecting such entry;

and for any other proper purpose connected with the reversionary interest of the Landlord in the Premises

**PROVIDED ALWAYS THAT** the Landlord shall not exercise any right to enter the Premises for the purposes described in this paragraph 7 so as to prohibit or interfere with or prevent or interrupt the use of the Premises or the rights granted to the Tenant for the purpose of the business carried on by the Tenant and the Landlord shall cause as little inconvenience or disturbance as reasonably practicable and shall promptly at its own cost make good all damage to the Premises and any contents thereof caused by such entry and shall not actually enter the Generating Facility or any other building plant and equipment located at the Premises without the consent (not to be

unreasonably withheld) of the Tenant (except in case of emergency) and shall then comply with all security and health and safety requirements of the Tenant applicable at the time of any entry.

7.2 To permit the owners or operators from time to time of the Refinery and/or LOR and their respective agents, contractors and employees to enter any appropriate part of the Premises for the purpose of exercising any contractual rights (on terms which do not create the relationship of landlord and tenant or confer any security of tenure) to step in and operate any appropriate part of the Generating Facility or to repair, rebuild or reinstate any appropriate part of the Premises which shall have been granted to either or both of them by the Tenant. In relation to this paragraph 7.2:

- (a) the Parties acknowledge and agree that damages would not be an adequate remedy for any breach by the Tenant of the provisions of this paragraph 7.2;
- (b) the Landlord shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of the provisions of this paragraph 7.2; and
- (c) no proof of special damages shall be necessary for the enforcement of this paragraph 7.2.

#### **Compliance with notices**

8.1 To comply with any notice requiring the Tenant to remedy any breach of its covenants.

8.2 If the Tenant shall not within a reasonable time comply with any such notice to permit the Landlord and any person authorised by the Landlord to enter the Premises to remedy the breach at the Tenant's cost.

8.3 To pay to the Landlord within 14 days of demand all the costs and expenses properly incurred by the Landlord under the provisions of this paragraph.

#### **Encroachments**

9.1 To use all reasonable endeavours to preserve all rights of light and other easements belonging to the Premises and not to give any acknowledgement that they are enjoyed by consent.

9.2 Not knowingly to do or omit anything which might subject the Premises to the creation of any new easement save for those expressly created by or referred to in this Lease and to give notice to the Landlord as soon as reasonably practicable after becoming aware of any encroachment which might have that effect and at the cost of the Tenant to do such things as may be necessary for preventing any such new encroachment or easement being made or acquired and if the Tenant shall fail to do all such things as aforesaid the Landlord or its agents and workmen may enter the Premises to do the same and the proper costs and expenses so incurred shall be repaid by the Tenant to the Landlord within fourteen days of demand and if not so paid shall

be recoverable by the Landlord from the Tenant as liquidated damages or as rent in arrear.

### **Alterations**

10.1 Within a reasonable time (being not more than 2 months) following the completion of the Construction Works or any subsequent alterations to submit to the Landlord as-built plans and specifications thereof.

10.2 Not to erect any new buildings or structures on the Site or make any external alterations to the Generating Facility without the prior approval of the Landlord (such approval not to be unreasonably withheld or delayed) provided that the Landlord acknowledges it has consented to the construction of the Phase 2 Facility.

### **Use**

11.1 Not to use the Premises or any part thereof for any purpose except for the Permitted Use without the prior approval of the Landlord (such approval not to be unreasonably withheld or delayed), Provided That it shall not be reasonable for the Landlord to withhold consent where the proposed use:

(a) does not adversely affect the use or future use of the Refinery Site (including the Undeveloped Land) as a petroleum oil refinery complex and any use ancillary thereto; and

(b) does not create any additional risk (being a materially increased risk of physical damage or operational interruption when compared to the Permitted Use) to the Refinery Site (including the Undeveloped Land) in its use as a petroleum oil refinery complex and any use ancillary thereto.

11.2 Not to use the Premises or any part thereof or to exercise any of the rights granted in Part D of Schedule 1 in any way or for any purpose which may be or tend to become a nuisance, damage, or disturbance to or prejudice the Landlord as the owner and operator of the Refinery or the owners or occupiers of any premises adjoining or near the Premises or the neighbourhood and to use and operate the Premises in such manner as engenders and fosters good relations with the communities in the locality of the Premises and any representatives of such communities and in particular but without prejudice to the generality of the foregoing to ensure that all loads and other or wide goods vehicles having access to the Premises comply with all formal and informal agreements with such local communities and representatives including relating to the use of certain routes and restrictions at the time or days at which such routes can be used provided that the use in accordance with the above sub-paragraph 11.1 of this Schedule shall not of itself constitute a breach of this sub-paragraph.

### **Alienation**

12.1 Not to assign or charge the Premises in any part less than the whole.

12.2 Not to assign the whole of the Premises unless:

12.2.1 the proposed transferee (or, if it is proposed that any person guarantees the obligations of the proposed transferee, such guarantor) has the legal capacity power and authorisation to perform the Tenant's covenants and the conditions under this Lease;

12.2.2 the proposed transferee or any such guarantor has the technical and/or financial resources available to it to comply with the Tenant's covenants and the conditions under this Lease; and

12.2.3 the Landlord has been given at least one month's notice to enable it to serve a further notice as referred to in paragraph 8.2 of Schedule 4 on the transferee and then if it does so the transferee or a person authorised by the transferee makes and gives to the Landlord a declaration complying with the requirements of Schedule 4 of the Order.

12.3 Not to assign or transfer the whole of the Premises otherwise than in accordance with nor without in each and every such case first complying with the foregoing provisions and subject to having complied with them and subject to paragraph 12.4 of this Schedule not without obtaining the prior written consent of the Landlord which consent shall not be unreasonably withheld or delayed.

12.4 The Landlord and the Tenant agree that:

- (a) the Landlord may withhold its consent to an assignment if (such circumstance being specified for the purposes of section 19(1A) of the Landlord and Tenant Act 1927) the Landlord is not satisfied that:
  - (i) the proposed assignee has an Approved Credit Rating; or
  - (ii) is able to procure a Guarantee in favour of the Landlord; and
- (b) for the purposes of section 19(1A) of the Landlord and Tenant Act 1927 the Landlord may give its consent to an assignment subject to conditions that before the assignment:
  - (i) the Tenant obtains from the assignee a covenant by deed with the Landlord to pay the Rent and all other rents reserved by this Lease and to observe and perform all the covenants on the part of the Tenant and the conditions contained in this Lease from the date of the deed of transfer or deed of assignment of the Premises until such time as the assignee shall be released pursuant to the Landlord and Tenant (Covenants) Act 1995; and
  - (ii) the Tenant procures a Guarantee in favour of the Landlord if required by the Landlord to satisfy sub-paragraph 12.4(a) above.
  - (iii) the Tenant simultaneously assigns any lease and reversionary lease that it holds at the time of the assignment of the Car Park

Site to the same assignee in accordance with the terms of that lease(s).

12.5 Not to underlet the Premises or any part thereof without ensuring that there shall be excluded in relation to the tenancy to be created by such underlease the provisions of sections 24 to 28 inclusive of the Landlord and Tenant Act 1954 and without in any event ensuring that vacant possession of the whole of the Premises can be given at the Termination of the Term.

12.6 Not to underlet the whole or any part of the Premises otherwise than in accordance with nor without in each and every such case first complying with the foregoing provisions and subject thereto not without obtaining the prior written consent of the Landlord which consent shall not be unreasonably withheld or delayed.

12.7 Not to part with or share possession or occupation of the Premises or any part thereof other than in a manner permitted by any of the provisions of this paragraph 12 and otherwise not without:

- (a) first obtaining the consent of the Landlord which consent may not be unreasonably withheld or delayed; and
- (b) ensuring that vacant possession of the whole of the Premises can be given at the Termination of the Term

provided that the exercise by the owners or operators from time to time of the Refinery and/or LOR of any contractual rights (on terms which do not create the relationship of landlord and tenant or confer any security of tenure) to step in to the Premises and operate the Generating Facility which shall have been granted to either or both of them by the Tenant shall not require the Landlord's consent and shall not be a breach of the provisions of this paragraph 12.7.

12.8 Not to charge the Premises as a whole without the prior written consent of the Landlord (which may not be unreasonably withheld or delayed) save that the Tenant may assign or charge this lease by way of security to the Project Lenders without the prior written consent of the Landlord subject to the Tenant assigning or charging by way of security any lease and reversionary lease of the Car Park Site that it holds at that time to the same assignee or chargee by way of security in accordance with the terms of that lease(s). In the event the assignee or chargee by way of security enforces its security over this lease, it must simultaneously take the same steps to and accordingly enforce its security over any lease and reversionary lease of the Car Park Site charged at the time of such enforcement.

12.9 Subject to the Tenant giving not less than 14 days' prior written notice to the Landlord of the identity of the company and of the part of the Premises affected (if less than the whole) the Tenant may share occupation of the Premises or the relevant part thereof with a company within the same group of companies (within the meaning of section 42 of the Landlord and Tenant Act 1954) as the Tenant:

- (a) for so long only as such company shall remain within such group;

- (b) on terms whereby such company is not given exclusive occupation of the Premises or any part thereof and no relationship of landlord and tenant is created; and
- (c) provided that any rent or other payment received by the Landlord from any such company shall be deemed to have been paid by such company as agent for the Tenant.

12.10 Within one month of every transaction affecting the Premises or any devolution of the estate of the Tenant therein or this Lease, to give notice in writing with particulars thereof to the Landlord together with a certified copy thereof and in every case to pay to the Landlord a reasonable registration fee of not less than £25.00 plus Value Added Tax thereon.

**Payment of cost of notices consents etc.**

13.1 To pay within seven days of demand all proper expenses (including counsels' solicitors' surveyors' and bailiffs' fees) properly incurred by the Landlord in and incidental to:

- (a) the preparation and service of a notice under section 146 Law of Property Act 1925 or in any proceedings under sections 146 or 147 of that Act notwithstanding that forfeiture is avoided otherwise than by relief granted by the court; and
- (e) every step taken during or after the expiry of the Term in connection with the service or proposed service of schedules of dilapidations within three months of the expiration of the Term and relating only to dilapidations accruing during the Term;

13.2 To pay all reasonable and proper costs (including legal and surveyors' fees) incurred by the Landlord in relation to every application for consent licence or approval under this Lease even if the application is withdrawn or properly refused save where consent is unreasonably withheld or proffered subject to unreasonable conditions.

**Planning Acts and compensation**

14.1 Without prejudice to paragraph 22 of this Schedule to comply with the provisions and requirements of the Planning Acts relating to or affecting:

- (A) the Premises;
- (B) any operations works acts or things carried out executed done or omitted on the Premises;
- (C) the use of the Premises.

14.2 As often as occasion requires during the Term at the Tenant's expense to obtain and if appropriate renew all planning permissions (and serve all notices)



required under the Planning Acts in respect of the Premises whether for the carrying out by the Tenant of any operations or the institution or continuance by the Tenant of any use of the Premises or any part thereof or otherwise.

14.3 To comply with the conditions of any planning permission implemented by the Tenant in respect of the Premises, the use of the Premises, or any operations works acts or things carried out executed done or omitted on the Premises.

14.4 If the Tenant receives or is entitled to receive any statutory compensation under any Enactment in relation to its interest in the Premises the Tenant shall on any determination of its interest prior to the expiry of this Lease by effluxion of time forthwith make such provision as is just and equitable for the Landlord to receive its due benefit from such compensation.

14.5 Not to apply for any planning permission authorising a change of use of the Premises other than a Permitted Use (or such other use as the Landlord has approved in accordance with paragraph 11.1 of Schedule 2) without the Landlord's consent (not to be unreasonably withheld or delayed).

14.6 To notify the Landlord of any applications for planning permission which are made by the Tenant in respect of the Premises, the use of the Premises, or any operations works acts or things carried out executed done or omitted on the Premises.

### **Indemnity**

15.1 To pay and make good to the Landlord and to keep the Landlord indemnified against all Liabilities arising out or in respect of any breach of any of the Tenant's obligations, covenants and conditions under this Lease to the extent (but only to the extent) that such Liabilities relate directly or reasonably foreseeably to Environmental Matters.

15.2 To pay and make good to the Landlord and to keep the Landlord indemnified against all losses expenses proceedings costs (including legal and other professional fees and expenses reasonably and properly incurred) claims damages demands fines penalties and any other liability (including any liability for claims from third parties or from any Competent Authority) or consequence (including clean up, removal, abatement, remediation, treatment or containment costs or expenses) arising directly or reasonably foreseeably from, or in relation to, material contamination at, in, on, under or in relation to the Premises, or contamination (or in the case of the Refinery Site, material contamination) which has migrated or escaped from the Premises during the Term and/or during the Previous Lease Term in each case resulting from acts or omissions by the Tenant (or any undertenant), its or their employees, contractors or agents or any person acting expressly or impliedly with the Tenant's (or any undertenant's) authority or permission SAVE THAT the Tenant shall not be responsible in respect of Hazardous Materials present in, on or under the Premises or which have escaped or migrated from the Premises as result of any act or omission of the Landlord, its employees, contractors or agents or any person acting expressly or impliedly with the Landlord's authority or permission EXCEPT TO THE EXTENT THAT the presence in, on or under or in relation to the Premises or the escape or migration from the Premises or from the Refinery Site of Hazardous Materials is

attributable to any physical works or operations, undertaken during the Term and/or during the Previous Lease Term, of the Tenant (or any undertenant), its or their employees, contractors or agents or any person acting expressly or impliedly with the Tenant's authority or permission.

15.3 To pay and make good to the Landlord and to keep the Landlord indemnified against any Liabilities arising directly or reasonably foreseeably from claims from any Competent Authority or other third parties arising directly or reasonably foreseeably from any breach of any Enactment or from the carrying out of the Construction Works, operation of the Generating Facility, the Decommissioning Works and any other works by the Tenant, its employees, contractors or agents or any person acting expressly or impliedly with the Tenant's authority or permission.

15.4 The aforementioned indemnities in this paragraph 15 shall be subject always to the Landlord being under a duty to mitigate any such damages and losses provided that it can do so without unreasonable inconvenience or unreasonable cost and not to settle any matter which could give rise to a claim under this clause without the consent of the Tenant (such consent not to be unreasonably withheld or delayed). The Landlord's duty to mitigate shall not extend to remedying contamination resulting from acts or omissions by the Tenant (or any undertenant), its or their employees, contractors or agents or any person acting expressly or impliedly with the Tenant's authority or permission.

15.5 The Tenant shall not be liable under paragraph 15.2 unless:

- (a) a criminal, civil, judicial, regulatory or administrative proceeding, suit or action brought or taken under Environmental Laws (*Environmental Proceeding*) by a Competent Authority or other third party has occurred or been commenced or expressly threatened in writing in relation to such contamination PROVIDED THAT this sub-paragraph 15.5(a) shall not be satisfied where the Competent Authority inspects the Premises but does not take any further action involving the Tenant or the Landlord as a result of the inspection or review; or
- (b) the contamination is of such scope and magnitude as to pose a real and substantial impediment to the continued operation of the Generating Facility or the Refinery; or
- (c) the presence of contamination would be highly likely to result in Environmental Proceedings being instigated in respect of such contamination.

15.6 The Landlord shall not be able to recover any increase in losses to the extent that a claim under paragraph 15.2 arises from or is attributable to or is increased as a result of:

- (a) any investigative works carried out by or on behalf of the Landlord in relation to soil or groundwater contamination at or in relation to the Premises unless:
  - (i) (prior to such investigative works) there is specific and factual evidence that soil or groundwater contamination exists at the Premises

which is of such scope and magnitude as to satisfy paragraph 15.5(b) or is present in circumstances such as to satisfy paragraph 15.5(c); or

- (ii) such investigative works are required to be undertaken to satisfy a lawful requirement under Environmental Laws; or
- (b) any information concerning soil or groundwater contamination at or in relation to the Premises disclosed to any third party by the Landlord or its employees, contractors or agents or any person acting expressly or impliedly with the Landlord's authority or permission except where such disclosure is required by law.

### **Defective premises**

16.1 Forthwith upon becoming aware of the same, to give notice to the Landlord of any defect in the Premises which might give rise to:

- (a) an obligation on the Landlord to do or refrain from doing anything in relation to the Premises; or
- (b) any duty of care or the need to discharge such duty imposed by the Defective Premises Act 1972 or otherwise.

16.2 At all times to display and maintain all relevant notices which may from time to time be required to be displayed at the Premises in relation to their state of repair and condition.

### **Yield up**

17. To yield up the Premises unto the Landlord at the Termination of the Term in accordance with the covenants and conditions contained in or imposed by virtue of this Lease and to remove any Hazardous Materials and to clean up or otherwise remedy any material contamination by Hazardous Materials at, in, on or under the Premises resulting from acts or omissions, arising during the Term and/or during the Previous Lease Term, by the Tenant, its employees, contractors or agents or any person acting expressly or impliedly with the Tenant's authority or permission SAVE THAT the Tenant shall not be responsible in respect of Hazardous Materials present in, on or under the Premises as result of any act or omission of the Landlord, its employees, contractors or agents or any person acting expressly or impliedly with the Landlord's authority or permission EXCEPT TO THE EXTENT THAT the presence in, on or under or in relation to the Premises or the escape or migration from the Premises or from the Refinery Site of Hazardous Materials is attributable to any physical works or operations of the Tenant (or any undertenant), its or their employees, contractors or agents or any person acting expressly or impliedly with the Tenant's authority or permission.

### **Decommissioning**

18.1 Subject to the rights of Lindsey under paragraphs 1.3 and 1.4 of Schedule 4 and subject to the rights of the Landlord under paragraph 1.5 of Schedule 4 (but

without prejudice to the continuance in full force and effect of this paragraph after, and its operation upon, cessation of such rights), the Tenant must carry out the Decommissioning Works in accordance with Schedule 6 of this Lease and by no later than the Termination of the Term and commence forthwith and proceed with due expedition and without unreasonable delay and complete as soon as reasonably practicable all works, acts and things necessary to be done to decommission the Generating Facility and any related plant, machinery and apparatus at the Premises and demolish and remove from the Premises all buildings, plant, machinery, fixtures, fittings, pipes, wires and other conducting media and other matters relating to the generation, transmission or distribution of electricity which may, if retained, give rise to any danger or liability and in so doing to comply with all requirements of Enactments (including Environmental Laws) and the reasonable requirements of the Health and Safety Executive and/or any other Competent Authority as required under Schedule 6 hereto SAVE THAT the Tenant shall not be responsible in respect of Hazardous Materials present in, on or under the Premises as result of any act or omission of the Landlord, its employees, contractors or agents or any person acting expressly or impliedly with the Landlord's authority or permission EXCEPT TO THE EXTENT THAT the presence in, on or under or in relation to the Premises or the escape or migration from the Premises or from the Refinery Site of Hazardous Materials is attributable to any physical works or operations, undertaken during the Term and/or during the Previous Lease Term, of the Tenant (or any undertenant), its or their employees, contractors or agents or any person acting expressly or impliedly with the Tenant's authority or permission.

18.2 If at the Termination of the Term the Tenant shall not have completed all works required under paragraphs 17 and 18.1 above, the Tenant shall continue to pay a sum equivalent to the Rent for the period from the Termination of the Term until such works have been completed and during such period shall occupy the Premises as tenant at will only. If in the reasonable opinion of the Landlord the Tenant has not commenced and is not diligently proceeding with such works the Landlord may serve written notice on the Tenant and if the Tenant has not within 2 months thereof commenced and/or is not diligently proceeding with such works the Landlord shall have the right (but no obligation) to enter the Premises and carry out such works at the cost of the Tenant and the Tenant shall reimburse the Landlord in respect of all costs and expenses reasonably incurred by the Landlord (together with interest thereon at the Stipulated Rate from the respective date of expenditure by the Landlord to the date of reimbursement which amount shall be a debt from the Tenant to the Landlord and recoverable at the option of the Landlord by action or as rent in arrears) in carrying out the same.

18.3 On or before 12 March 2017 an independent expert will be appointed by the Landlord and the Tenant (or in default of agreement by the President for the time being of the Institute of Civil Engineers on the application of either Party) who will at the joint cost of the Parties appraise and report on the estimated cost of carrying out the Decommissioning Works in the light of any anticipated occurrence of the date of Abandonment. Following receipt of the report and in any event prior to 12 March 2022 the Tenant shall provide and, thereafter until the Decommissioning Works Completion Date, maintain security or other evidence reasonably satisfactory to the Landlord that it will be able to comply with its obligations under this paragraph 18

and Schedule 6, Provided That a Letter of Credit or a Guarantee provided by the Tenant in accordance with clause 13.9.1 of the Common Terms Agreement shall satisfy the Tenant's obligation in this paragraph 18.3 to provide such security.

### **Insurance and Reinstatement**

19.1 To insure the Generating Facility or any other buildings plant or equipment located at the Premises to their full reinstatement cost as reasonably determined by the Tenant with an insurance company with a Standard & Poor's (or equivalent) credit rating of A- or greater against loss or damage or destruction by the Insured Risks.

19.2 Annually to produce at the request of the Landlord a complete copy of the then current policy of insurance.

19.3 To take out adequate insurance with an insurance company or underwriters with a Standard & Poor's (or equivalent) credit rating of A- or greater approved by the Landlord (such approval not to be unreasonably withheld) against third party and public liability with a limit of liability as is customary for a Reasonable and Prudent Operator.

19.4 The Tenant shall not do or omit to do anything which could cause any policy of insurance covering the Premises to become wholly or partly void or voidable.

19.5 The Tenant shall procure that the Landlord is named as an additional insured on the insurances referred to in this paragraph 19 and that subrogation rights are waived against the Landlord in respect of such insurances.

### **Boundary Structures**

20. To erect (in such location as shall be agreed from time to time between the Landlord and the Tenant each acting reasonably) and maintain in a proper state of repair and condition fences or other boundary structures around or on the Premises to the reasonable satisfaction of the Landlord, such structures being of such a nature as to keep the Generating Facility fully secured and, where necessary, such boundary structures complying with any requirement of any statutory or other body or pursuant to any statutory or other obligation.

### **Non-objection to building or works on other land**

21.1 Not to object under the provisions of the Building Act 1984 or any other statutory enactment for the time being in force to the erection of a building or buildings of any height on any other lands in the ownership or control of the Landlord notwithstanding the loss thereby of light or air to the Premises unless the erection of such building or buildings or works would prejudice or interfere with the operation of the Generating Facility or other buildings or structures at the Premises or the exercise of the rights granted by Part D of Schedule 1 but provided that nothing in this paragraph shall limit the exercise by the Landlord of the rights reserved in Part E of Schedule 1.

21.2 Without prejudice to the generality of paragraph 21.1 of this Schedule 2, not to object or make an adverse representation in respect of any planning application made

by or with the consent of the Landlord in respect of the Undeveloped Land, notwithstanding the loss thereby of light or air to the Premises unless the proposal under the planning application would materially prejudice or interfere with the:

(a) Permitted Use; or

(b) such other use (as the Landlord has approved in accordance with paragraph 11.1 of Schedule 2),

of the Premises or the exercise of the rights granted pursuant to Part D of Schedule 1 of this Lease, but provided that nothing in this paragraph shall limit the exercise by the Landlord of the rights reserved in Part E of Schedule 1.

### **Statutory Requirements**

22.1 At the expense of the Tenant to comply with all Environmental Laws, Planning Acts and the Electricity Act 1989 and any other applicable Enactments relating to the Premises or the use thereof and to comply with any notices, directions or requirements of the Health and Safety Executive and/or any other Competent Authority in relation to the Premises and or the operation of the Generating Facility during the Term. For the avoidance of doubt the Tenant shall not be responsible for the costs of complying with such notices, directions or requirements to the extent that they are the proper responsibility of the Landlord except as otherwise provided under this Lease.

22.2 Not during the Term to do, omit or permit on or about the Premises any act or thing by reason of which the Landlord may under any such Environmental Laws, Planning Acts and/or the Electricity Act 1989 and/or any other Enactment incur or have imposed upon it or become liable to pay any demand, claim, levy, fine, penalty, damages, compensation, costs, charges, expenses or other liability.

22.3 To obtain all authorisations, approvals, licences, permissions and consents and to execute and do all works and things and to bear and pay all costs and expenses required or imposed by any such Environmental Laws, Planning Acts and the Electricity Act 1989 and/or any other Enactment in respect of any works carried out by the Tenant on or in relation to the Premises or of any user thereof during the Term.

22.4 In particular but without prejudice to the foregoing, to comply with any lawful direction or stipulation of the Director General of Gas and Electricity Markets (and/or such other regulator figure with jurisdiction in respect of the Generating Facility from time to time) during the Term.

### **Comply with title matters**

23.1 By way of indemnity but not further or otherwise to perform and observe all covenants, conditions and provisions binding upon the Premises at the date hereof (if any) and all the covenants on the part of the Landlord contained in the documents referred to in Schedule 1 Part F.

23.2 Without prejudice to the generality of paragraph 23.1, to permit NGC having an interest or right in relation to any part of the Premises or the Refinery Site (whether directly or otherwise) to exercise all rights pursuant to and in accordance with the NGC Leases.

23.3 Not in the exercise of any of the Tenant's rights or in the performance of any of the obligations on its part contained in this Lease to do omit or permit to be done any act or thing which would as a direct or indirect consequence place the Landlord in breach of its obligations under any of the documents listed in Schedule 1 Part F.

**Comply with Section 106 Agreement**

24 To comply with the conditions imposed upon and the covenants on the part of Conoco Global Power Developments UK Limited under the Section 106 Agreement and to indemnify the Landlord against any losses, claims, damages or expenses arising out of any failure to comply with any such conditions or covenants.

**Common Terms Agreement**

25 To comply with the conditions imposed upon and the covenants on the part of the Partnership in clause 13.9 of the Common Terms Agreement.

## **SCHEDULE 3**

### **Landlord's Covenants**

#### **Quiet enjoyment**

1. The Tenant paying the Rent and other rents and charges payable under this Lease and performing and observing the several covenants and stipulations on the part of the Tenant contained in this Lease may peaceably and quietly hold and enjoy the Premises during the Term without any lawful interruption or disturbance from or by the Landlord or any person rightfully claiming under or in trust for it or by title paramount **PROVIDED THAT** the Landlord shall not be liable under the terms of this paragraph where interference arises as a result of a breach by the Tenant of any of its obligations in this Lease.

#### **Indemnify the Tenant**

2.1 To pay and make good to the Tenant and to keep the Tenant indemnified against all losses expenses proceedings costs (including legal and other professional fees and expenses reasonably and properly incurred) claims damages demands fines penalties and any other liability (including any liability for claims from third parties or from any Competent Authority) or consequence (including clean up, removal, abatement, remediation, treatment or containment costs or expenses) arising directly or reasonably foreseeably from, or in relation to, material contamination at, in, on, under or in relation to the Premises or which has migrated or escaped from the Refinery Site to the Premises in each case resulting from acts or omissions by the Landlord or its employees, contractors or agents or any person acting expressly or impliedly with the Landlord's authority or permission **SAVE THAT** the Landlord shall not be responsible in respect of Hazardous Materials present in, on or under the Premises or which have escaped or migrated from the Refinery Site to the Premises as result of any act or omission, arising during the Term and/or during the Previous Lease Term, of the Tenant (or any undertenant), its or their employees, contractors or agents or any person acting expressly or impliedly with the Tenant's authority or permission **EXCEPT TO THE EXTENT THAT** the presence in, on or under or in relation to the Premises or the escape or migration from the Refinery Site of Hazardous Materials is attributable to any physical works or operations of the Landlord or its employees, contractors or agents or any person acting expressly or impliedly with the Landlord's authority or permission. For the purposes of this paragraph 2.1 the "Refinery Site" shall include in addition the areas shown hatched green on Plan C (being the demise of the lease referred to in paragraph 4 of Part F of Schedule 1) and coloured green on Plan D (being the demise of the lease referred to in paragraph 1 of Part F of Schedule 1).

2.2 To indemnify the Tenant against any liability for claims from third parties or from any Competent Authority arising directly from any breach of any Enactment by the Landlord during the Term.



2.3 To pay and make good to the Tenant and to keep the Tenant indemnified against any Liabilities arising directly or reasonably foreseeably as a consequence of or in connection with any breach, non-performance or non-observance of any of the covenants and conditions on the part of the Landlord contained or implied in this Lease.

2.4 The aforementioned indemnities in this paragraph 2 shall be subject always to the Tenant being under a duty to mitigate any such damages and losses provided that it can do so without unreasonable inconvenience or unreasonable cost and not to settle any matter which could give rise to a claim under this clause without the consent of the Landlord (such consent not to be unreasonably withheld or delayed). The Tenant's duty to mitigate shall not extend to remedying contamination resulting from acts or omissions by the Landlord or its employees, contractors or agents or any person acting expressly or impliedly with the Landlord's authority or permission.

2.5 The Landlord shall not be liable under paragraph 2.1 unless:

- (a) a criminal, civil, judicial, regulatory or administrative proceeding, suit or action brought or taken under Environmental Laws (Environmental Proceeding) by a Competent Authority or other third party has occurred or been commenced or expressly threatened in writing in relation to such contamination PROVIDED THAT this paragraph 2.5(a) shall not be satisfied where the Competent Authority inspects the Premises but does not take any further action involving the Tenant or the Landlord as a result of the inspection or review; or
- (b) the contamination is of such scope and magnitude as to pose a real and substantial impediment to the continued operation of the Generating Facility; or
- (c) the circumstances in which the contamination is present would be highly likely to result in Environmental Proceedings being instigated in respect of such contamination.

2.6 The Tenant shall not be able to recover any increase in losses to the extent that a claim under paragraph 2.1 arises from or is attributable to or is increased as a result of:

- (a) any investigative works carried out by or on behalf of the Tenant in relation to soil or groundwater contamination at or in relation to the Premises unless:
  - (i) (prior to such investigative works) there is specific and factual evidence that soil or groundwater contamination exists at the Premises which is of such scope and magnitude as to satisfy paragraph 2.5(b) or is present in circumstances such as to satisfy paragraph 2.5(c); or
  - (ii) such investigative works are required to be undertaken to satisfy a lawful requirement under Environmental Laws; or

- (b) any information concerning soil or groundwater contamination at or in relation to the Premises disclosed to any third party by the Tenant (or any undertenant), its or their employees, contractors or agents or any person acting expressly or impliedly with the Tenant's authority or permission except where such disclosure is required by law.

#### **Nuisance**

3. Not to use the Refinery Site or any part thereof in any way for any purpose which may adversely affect the Permitted Use (or such other use as the Landlord has approved in accordance with paragraph 11.1 of Schedule 2) of the Premises by the Tenant and to ensure that all loads and other vehicles having access to the Refinery Site comply with all formal and informal agreements with the communities in the locality of the Refinery Site and their representatives including relating to the use of certain routes and restrictions at the time or days at which such routes can be used Provided that use of the Refinery Site as a petroleum oil refinery complex and any use ancillary thereto shall not of itself constitute a breach of this paragraph 3.

#### **NGC Leases**

4. At the request and cost of the Tenant, to use reasonable endeavours to enforce the obligations on the part of NGC contained in the NGC Leases.

#### **Planning**

5. To allow the Tenant to fulfil the conditions of any planning permission granted in respect of the Permitted Use (or such other use as the Landlord has approved in accordance with paragraph 11.1 of Schedule 2) of the Premises, or any operations works acts or things carried out executed done or omitted on the Premises in relation to the Permitted Use (or such other use as the Landlord has approved in accordance with paragraph 11.1 of Schedule 2), Provided that the use of the Refinery Site as a petroleum oil refinery complex and any use ancillary thereto shall not in any way be limited by or constitute a breach of the covenants in this paragraph 5.

#### **Additional Expenditure**

6. To pay (or where appropriate reimburse) to the Tenant all additional expenditure which may be incurred by the Tenant pursuant to paragraph 3.1 of Part E of Schedule 1.

## SCHEDULE 4

### Provisos agreements and declarations

Provided always and it is hereby agreed and declared that:

#### **Forfeiture and re-entry**

1.1 Without prejudice to any other remedies and powers contained in this Lease or otherwise available to the Landlord if:

- (a) any of the several rents reserved by this Lease set out in clause 3 (save where it is a peppercorn) is unpaid for twenty-one days after becoming payable (whether formally demanded or not);
- (b) there is an Act of Insolvency of, by or in respect of the Tenant and, in the case of sub-paragraph (a) of the definition of Act of Insolvency, upon receipt of a notice from the Landlord;
- (c) the Tenant fails to comply with the provisions of paragraph 12 of Schedule 2;
- (d) the Tenant fails to comply with the provisions of paragraph 18.3 of Schedule 2;
- (e) the Tenant fails to proceed (after receipt of available insurance proceeds by the Tenant or the Project Lenders and in any event within one year of the event resulting in destruction or damage to all or any part of the Generating Facility) with procuring works to construct, repair or rebuild or replace the destruction or damage to all or any part of the Generating Facility with other facilities having at least equivalent capabilities of those destroyed or damaged, which failure is likely to have a materially adverse effect on the operation for the Permitted Use of the Generating Facility or any material part thereof; or
- (f) the Tenant fails to comply with the provisions of paragraph 25 of Schedule 2,

the Landlord may without the consent of any third party (including Lindsey) except as provided in paragraph 1.2 below at any time thereafter (and notwithstanding the waiver of any previous right of re-entry) forfeit this Lease by re-entry whereupon this Lease shall absolutely determine but without prejudice to either Party's right of action in respect of any antecedent breach of the other Party's covenants in this Lease or rights to claim relief from forfeiture.

1.2 Before exercising any right of entry pursuant to paragraph 1.1 (a) (b) (c) (d) or (f) the Landlord shall give written notice of its intention to the Tenant and during any period where there is a bona fide third party mortgagee of the Tenant securing the

financing or the refinancing of the Generating Facility (or any other facility on the Premises after the completion of the Decommissioning Works) of whom the Landlord has prior written notice, before exercising any right of re-entry pursuant to paragraph 1.1 the Landlord shall give written notice (a "**Termination Notice**") thereof to any such mortgagee of the Tenant of whom it has prior written notice and:

- (a) with the exception of the event referred to in paragraph 1.1(b) which is dealt with in paragraph 1.2(b) below, the Landlord will not exercise such right of re-entry if:
    - (i) the Tenant or the mortgagee remedies the relevant event referred to in paragraph 1.1 within 42 days of the service of the Termination Notice; or
    - (ii) in circumstances where given the nature of the breach the relevant event is not reasonably capable of remedy within 42 days of the service of the Termination Notice, the Tenant or the mortgagee commences to remedy the breach within 42 days of the service of the Termination Notice and thereafter diligently continues and completes the remediation of the breach as soon as reasonably practicable and in any event within 90 days of the Termination Notice; and
  - (b) if the right of re-entry has arisen owing to an Act of Insolvency pursuant to paragraph 1.1(b) of this Schedule 4 then:
    - (i) the Landlord shall not be entitled to re-enter during the Required Period;
    - (ii) not later than the date falling 10 working days after the date of receipt by the mortgagee of the Termination Notice the Landlord shall give to the mortgagee a notice (a "**Liabilities Notice**") containing reasonable details of:
      - (A) any amount owed by the Tenant to the Landlord and any other existing liabilities or unperformed obligations of the Tenant to the Landlord of which the Landlord is aware (having made due and reasonable enquiry) under this Lease as at the date of the Termination Notice; and
      - (B) any amount of which the Landlord is aware which will fall due to be paid under this Lease during the Required Period,
- and in each case to the extent relevant to and comprised within the Step-In Covenants;

(iii) within 10 working days of the end of each calendar month throughout the Required Period (except the month in which the Liabilities Notice served under sub-paragraph 1.2(b)(ii) above is given), or within 5 working days of the Landlord becoming aware that any information in a Liabilities Notice (or an Updated Liabilities Notice) is materially untrue and/or materially inaccurate, the Landlord shall give to the mortgagee a notice (an “**Updated Liabilities Notice**”) updating the Liabilities Notice or any previous Updated Liabilities Notice:

(A) correcting any information contained in a Liabilities Notice or any previous Updated Liabilities Notice that the Landlord is aware is untrue and/or inaccurate; or

(B) specifying any further amounts owed by the Tenant to the Landlord and/or of any other liabilities or unperformed obligations of the Tenant to the Landlord,

in each case to the extent relevant to and comprised within the Step-In Covenants, and the Landlord may provide a final Updated Liabilities Notice at any time before the Step-In Date, Provided Always that the Landlord shall not be entitled to give any such notice after the Step-In Date (as defined in paragraph 1.2(b)(ix) of this Schedule 4) has occurred and Provided further that the Landlord’s failure to comply with the provisions of this sub-clause (iii) shall not prevent the Landlord from exercising its right of re-entry in accordance with this paragraph 1 of Schedule 4);

(iv) the mortgagee may (acting reasonably) instruct the Landlord to verify the information set out in any Liabilities Notice (including any Updated Liabilities Notice) and shall pay the Landlord's reasonable and proper costs incurred in respect of such verification (save where such verification reveals that the information contained in a Liabilities Notice (or an Updated Liabilities Notice) is materially untrue and/or materially inaccurate and a revision to such notice is therefore required, in which event the Landlord shall bear its own costs in respect of such verification);

(v) the Landlord shall use reasonable endeavours to deliver a copy of any Termination Notice, Liabilities Notice and/or Updated Liabilities Notice sent to the mortgagee to the Tenant at the same time or as soon as reasonably practicable after such notice is served on the mortgagee;

(vi) the Landlord acknowledges that at any time during the Required Period the mortgagee may give notice to the Landlord that a Representative shall be appointed to assume jointly and severally with the Tenant all of the Tenant's rights liabilities

and obligations under the Step-In Covenants ("**the Appointed Representative**") and the Landlord agrees to the appointment of the Appointed Representative, subject only to any challenge by the Landlord in accordance with paragraph 1.2(b)(vii) below;

(vii) the Landlord may only object to the identity of the Appointed Representative if:

- (A) the person proposed does not fall within limbs (a) to (d) of the definition of Representative; and
- (B) the Landlord's objection is reasonable; and
- (C) the Landlord's objection is notified to the mortgagee or the Landlord (acting reasonably) requests further information from the mortgagee within fifteen working days of receipt of a notice from the mortgagee pursuant to paragraph 1.2(b)(vi) above,

in which case:

- (1) in the event that the Landlord requests further information the Landlord may notify its objection to the mortgagee within ten working days of the provision of such further information (for the avoidance of doubt the provisions of paragraph 1.2(b)(vii)(B) shall continue to apply);
- (2) the mortgagee shall be entitled to give notice to the Landlord of an alternative Appointed Representative and the process for the appointment and approval of that Appointed Representative shall be in accordance with paragraph 1.2(b)(vi), subject to the Landlord receiving such notice prior to the expiry of the Required Period;
- (3) should the Landlord object to an Appointed Representative or request additional information the Required Period shall (if required) be extended to expire on the date ten working days after receipt by the mortgagee of the Landlord's notice of such objection (or the Landlord's request for additional information), Provided That the Required Period shall be so extended following an objection by the Landlord on not more than one occasion in accordance with this sub-paragraph (3); and

- (4) the Required Period shall (if required) be extended to expire five working days after the Landlord either approves any Appointed Representative (where the Landlord's approval is required) or an Appointed Representative is deemed to have been appointed pursuant to paragraphs 1.2(b)(vii) and (viii) without further right for the Landlord to validly challenge such appointment;
  - (5) the Required Period shall (if required) be extended to expire on the expiry of any period during which the Landlord has a right to object to the identity of any Appointed Representative;
  - (6) where there is any extension to the Required Period under sub-paragraph (5) and the Landlord objects to a proposed Appointed Representative, resulting in a further extension to the Required Period pursuant to sub-paragraph (3), the mortgagee may only then propose an Appointed Representative which is a person within limbs (a) to (d) of the definition of Representative;
- (viii) for the purposes of paragraph 1.2(b)(vii)(B), the Landlord's objection will not be deemed reasonable if the Appointed Representative:
- (A) satisfies the specified requirements of paragraphs 12.2.1 and 12.2.2 of Schedule 2 for a 'proposed transferee'; and
  - (B) has an Approved Credit Rating;
- (ix) within five working days of an Appointed Representative being appointed or deemed to be appointed pursuant to paragraphs 1.2(b)(vii) and (viii) without further right for the Landlord validly to challenge such appointment the mortgagee shall procure a deed of covenant to the Landlord from the Appointed Representative pursuant to which the Appointed Representative shall covenant to comply, during the Work Out Period, with (I) the Step-In Covenants; and (II) any unperformed or unobserved covenants and obligations (including any payment obligations not satisfied by payment of sums due under sub-paragraph 1.2(b)(ix)(B) below) which have been notified to the mortgagee in a Liabilities Notice or an Updated Liabilities Notice and the "**Step-In Date**" shall be the later of:
- (A) the date on which such deed of covenant is provided to the Landlord; and

- (B) the date of payment to the Landlord of any rents referred to in clause 3 of this Lease which have become due and which have been notified to the mortgagee in a Liabilities Notice or an Updated Liabilities Notice;
- (x) during the Work Out Period the Appointed Representative shall be entitled to exercise the rights of the Tenant under the Lease (and is irrevocably authorised and entitled to act on behalf of, and to bind, the Tenant under and pursuant to the Lease). The Landlord agrees that payment to it by the Appointed Representative of any sums due under the Lease or performance by the Appointed Representative of any other of the Tenant's obligations under the Lease comprises good discharge of the Tenant's payment obligations and other obligations under the Lease; and
- (xi) during the Work Out Period, the Landlord shall be entitled to exercise its right of entry pursuant to paragraph 1.1(b) of this Schedule 4 only by written notice to the Tenant, the mortgagee and the Appointed Representative, if:
  - (A) any event referred to in sub-paragraphs 1.1(a), (c), (d) or (e); or
  - (B) a breach of the covenant to repair the Premises pursuant to paragraph 6 of Schedule 2 so far as this relates to keeping the Generating Facility in safe condition,  
  
has not been remedied 28 days after written notification of breach from the Landlord to the Appointed Representative (or such longer period where such liabilities or unperformed obligations are not reasonably capable of remedy within 28 days, provided that the Appointed Representative has commenced to remedy the breach within 28 days of the written notice and thereafter diligently continues and completes the remediation of the breach as soon as reasonably practicable).
- (c) The Appointed Representative or the mortgagee may give the Landlord not less than fourteen days' prior written notice of the date on which the Appointed Representative will step out (the "**Step Out Date**") and the Appointed Representative's right to step out will be subject to the prior payment by the Appointed Representative to the Landlord of all amounts demanded by the Landlord and due under clause 3 of this Lease and other payment obligations under this Lease arising prior to the Step Out Date. Upon the Step-Out Date:
  - (i) the Appointed Representative will be released from all obligations and



liabilities to the Landlord under this Lease which may arise from circumstances arising or continuing after the Step Out Date; and

- (ii) the Landlord shall be entitled to exercise the right of re-entry pursuant to paragraph 1.1(b) of this Schedule 4.
  
- (d) Where the Work Out Period expires prior to the Step Out Date, the Appointed Representative will remain liable to the Landlord after the expiry of the Work Out Period for all amounts demanded by the Landlord and due under clause 3 of this Lease and other payment obligations under this Lease that become due to the Landlord during the Work Out Period and remain unpaid on the expiry of the Work Out Period.

1.3 Without prejudice to paragraphs 1.1, 1.2 and 9 of this Schedule 4 the Landlord will not demolish nor render incapable of operation one auxiliary boiler and its associated equipment to be available for the supply of steam from the Premises to LOR (**LOR Steam Equipment**) until the earliest of:

- (a) three years after the date of written notice of a right of re-entry being given by the Landlord to the Tenant and/or any mortgagee;
- (b) the date upon which the Lindsey ESA terminates or expires; and
- (c) the date upon which Lindsey has installed, commissioned and successfully tested sufficient steam generation capacity to produce, in replacement for the LOR Steam Equipment, the quantities of steam which are the subject of the Lindsey ESA.

Subject to paragraph 1.4 of this schedule the Parties acknowledge and agree that Lindsey shall be entitled during the period ending with the earliest of 1.3 (a) (b) and (c) above to occupy as licensee the said auxiliary boiler and such parts of the Premises as are reasonably necessary for the operation and maintenance of the LOR Steam Equipment upon terms to be agreed between Lindsey and the Parties (each acting reasonably) in conjunction with the development of procedures for access to the Premises to be undertaken pursuant to Clause 14.8 of the Lindsey ESA. Such terms shall relate to the nature and terms of such occupation only and be without prejudice to the commercial terms for the use of the LOR Steam Equipment and to the exercise by Lindsey of its rights pursuant to clause 14.8 of the Lindsey ESA (which shall continue in accordance with the terms of the Lindsey ESA applicable as at the date hereof) and shall include the following:-

if and for so long as Lindsey shall not be receiving by third party supply (and for this purpose the Landlord may be deemed to be a third party) the quantities of steam nominated by Lindsey in accordance with the terms of the Lindsey ESA on the same commercial terms, subject to the same performance criteria and in all respects in accordance with the terms of the Lindsey ESA, the right for Lindsey to enter upon the relevant parts only of the Premises as licensee but without payment of a licence fee or other consideration for such grant or occupation (pursuant to which no relationship of landlord and tenant or security of tenure shall be created) to:-

- (i) operate, maintain, repair rebuild and (where necessary) reinstate the LOR Steam Equipment and all associated facilities necessary for the proper utilisation and maintenance of the same;
- (ii) exercise the rights acknowledged by Schedule 2 paragraph 7.2 to this Lease; and
- (iii) have the use and benefit of the rights granted to the Tenant by Schedule 1 Part D paragraphs 1.1, 1.2, 1.4 and 3 so far as necessary for the operation of the LOR Steam Equipment (but not further or otherwise);

subject to Lindsey acting as a Reasonable and Prudent Operator and the Landlord will co-operate with Lindsey and (at the cost of Lindsey) render reasonable assistance in order to secure the supply of steam to LOR in connection with the operation by Lindsey of the provisions of clause 14.8 of the Lindsey ESA.

1.4 If either:

- (a) the Tenant is able to demonstrate to LOR's reasonable satisfaction that it has the additional resources necessary to comply with its obligations to supply steam under the Lindsey ESA; or
- (b) the Tenant or representatives of the Tenant (including any agent or trustee of any bona fide third party mortgagee including the Project Lenders) appoints a third party to operate the Generating Facility during the exercise by Lindsey of its rights in paragraph 1.3 and Lindsey's prior consent is obtained (which shall not be unreasonably withheld or delayed if the third party has sufficient financial and technical resources to undertake such operation and has undertaken to comply with the provisions of the Lindsey ESA regarding the supply of steam to Lindsey);

then the access rights of Lindsey or its appointed third party shall cease and all personnel and equipment of those parties removed from the Generating Facility but without prejudice to such rights in respect of any subsequent event of default under the Lindsey ESA.

1.5 In the event the Landlord exercises its rights of forfeiture and re-entry pursuant to paragraph 1.1 of this Schedule 4:

- (a) the Landlord may, prior to commencement by the Tenant of Decommissioning Works pursuant to paragraph 18 of Schedule 2, notify the Tenant that it requires the Tenant to postpone decommissioning of certain equipment (other than the LOR Steam Equipment) until the date upon which the Landlord has installed, commissioned and successfully tested sufficient steam and/or electricity generation capacity to produce, in replacement for the Generating Facility, the quantities of steam and electricity which were the subject of the Humber ESA; and

(b) the Parties acknowledge and agree that the Landlord shall be entitled during the period commencing with the Landlord's notice pursuant to paragraph 1.5(a) and ending with the earliest of:

- (i) the date upon which the Humber ESA terminates or expires;  
and
- (ii) the date upon which the Landlord has installed, commissioned and successfully tested sufficient steam generation capacity to produce, in replacement for the HOR Steam Equipment, the quantities of steam which are the subject of the Humber ESA;

to operate, maintain, repair, rebuild and (where necessary) reinstate those parts of the Generating Facility (other than the LOR Steam Equipment) required to generate the quantities of steam and electricity which were the subject of the Humber ESA.

### **Service of notices**

2.1 All notices (other than any notice to be served pursuant to Sections 8, 10 or 17 of the Landlord and Tenant (Covenants) Act 1995) to be given under this Lease shall be in writing and Section 196 of the Law of Property Act 1925 as amended by the Recorded Delivery Service Act 1962 shall apply to the service of all such notices and in case of any notice to be served on the Tenant such notice shall also be duly served if delivered to the Tenant at the Premises or sent to the last known address of the Tenant.

2.2 Notices in connection with this Lease to be served pursuant to Sections 8, 10 or 17 of the Landlord and Tenant (Covenants) Act 1995 shall be served in accordance with that Act and consequently Section 23 of the Landlord and Tenant Act 1927 shall apply to such notices.

### **No warranty as to use**

3. Nothing contained in this Lease shall constitute or be deemed to constitute a warranty by the Landlord that the Premises are authorised under the Planning Acts to be used or are otherwise fit for any specific purpose.

### **Construction (Design and Management) Regulations 1994**

4.1 In this paragraph:

(a) the expression "**Regulations**" means the Construction (Design and Management) Regulations 1994 and any expressions appearing in this paragraph which are defined in the Regulations have the same meaning; and

(b) the expression "**relevant work**" means any construction work which is undertaken by the Tenant or by a person claiming under it pursuant to an obligation or a right (whether or not requiring the Landlord's consent) under this Lease and for the purposes of the Regulations the Tenant irrevocably

acknowledges that it, and not the Landlord, arranges the design, carrying out and construction of relevant work.

4.2 The Tenant irrevocably acknowledges that the Landlord will not be the client in respect of any relevant work.

4.3 Before any relevant work is commenced in respect of which the Tenant may act as agent on behalf of the Landlord the Tenant shall make a declaration in accordance with Regulation 4(4) and shall forthwith serve it on the Health and Safety Executive and a copy of it on the Landlord.

4.4 Where appropriate the Tenant shall comply with its obligations as client in respect of any relevant work.

4.5 The Tenant shall promptly provide to the Landlord a full and complete copy of the health and safety file for all relevant work and (upon the expiry or sooner determination of this Lease) the original health and safety file.

4.6 The provisions of this paragraph shall apply notwithstanding that any consent issued by the Landlord in respect of any relevant work does not refer to the said provisions.

#### **Effect of waiver**

5. Each of the Tenant's Covenants shall remain in full force both in law and in equity notwithstanding that the Landlord shall have waived or released temporarily any such covenant or waived or released temporarily or permanently revocably or irrevocably a similar covenant or similar covenants affecting Adjoining Property belonging to the Landlord, save that the Landlord may not waive, release temporarily or revoke such covenants which would result in prejudice to the Tenant's operation of the Generating Facility.

#### **Contamination**

6.1 The Landlord and the Tenant agree that the Environmental Report substantially establishes the condition of the Premises as at November 2000.

6.2 It is agreed that in the case of an act or omission during the Term by a person or party other than the Landlord or Tenant (*the Third Party*) on land outside the Premises which results in contamination on the Premises, the Tenant will use its reasonable endeavours to mitigate any environmental or other damage or losses arising from such contamination and to ensure that the Third Party bears responsibility for the contamination and carries out any works at or outside the Premises which are necessary to remedy any contamination or discharge any order served by a Competent Authority.

[Clause 7 - not used]

[Clause 8 – not used]

### **Ownership of Fixtures and Fittings**

9.1 The Tenant shall at all times retain legal and beneficial ownership of and title to any plant machinery and equipment (*Plant and Machinery*) that may be installed at the Premises by or on behalf of the Tenant. The Landlord acknowledges and agrees that notwithstanding any Plant and Machinery may be installed in or attached or affixed to the Premises by the Tenant in such a way as might otherwise raise the presumption that the same be a fixture thereto there is no intention that any of the Plant and Machinery should become affixed to or merged with any land or buildings structures or erections at the Premises, but the Tenant shall retain absolute and unencumbered title to the Plant and Machinery. The Tenant and/or any bona fide third party mortgagee of the Tenant securing the financing or re-financing of the Generating Facility (or any facility on the Premises after the completion of the Decommissioning Works) shall be entitled to remove, subject to the rights of Lindsey under paragraphs 1.3 and 1.4 of this Schedule 4 and the rights of the Landlord under paragraph 1.5 of this Schedule 4 in respect of the LOR Steam Equipment and only for so long as such rights subsist, any Plant and Machinery at any time during the Term without consent of the Landlord or payment to the Landlord of any sum by way of compensation for that Plant and Machinery and without prejudice to the terms of all then current Refinery Supply Agreements. The Landlord irrevocably agrees not to exercise and hereby waives any rights or claims over the Plant and Machinery which the Landlord may have now or in the future by reason of the Landlord's interest in the Premises.

9.2 Upon any termination or expiry of this Lease the Tenant and/or any bona fide third party mortgagee of the Tenant securing the financing or re-financing of the Generating Facility (or any facility on the Premises after the completion of the Decommissioning Works) of whom the Landlord has received written notice and/or their nominated contractors shall be entitled to have access to the Premises as licensee to inspect the Plant and Machinery and thereafter to remove, subject to the rights of Lindsey under paragraphs 1.3 and 1.4 of this Schedule 4 and the rights of the Landlord under paragraphs 1.5 of this Schedule 4 only for so long as such rights subsist, all or any of the Plant and Machinery from the Premises without payment to the Landlord of any sum by way of compensation or otherwise provided that the Tenant or such mortgagee has given notice to Landlord within three months after the termination or expiry of this Lease of its intention to remove such Plant and Machinery.

9.3 Any such removal shall be completed within the period of twelve (12) months following the termination or expiry of this Lease, or, in respect of the LOR Steam Equipment, within a period of twelve (12) months following the expiry of the period specified in paragraph 1.3 of Schedule 4 or, in respect of the equipment necessary to supply steam and electricity to the Landlord, within a period of twelve (12) months following the expiry of the period specified in paragraph 1.5 of Schedule 4. Any Plant and Machinery remaining on the Premises after the period during which the

Tenant and/or any mortgagee of the Tenant is entitled to remove the same shall become the property of the Landlord, without any warranty or liability as to the title or otherwise of the Tenant in respect of such Plant and Machinery.

### **Jurisdiction**

10. The High Court of Justice in England shall have non-exclusive jurisdiction to entertain any action or proceedings whatsoever in respect of this Lease or any provision thereof or any matter or thing arising under or by virtue or consequent upon this Lease.

### **Recovery**

11 Where any claim or remedy available to either the Landlord or the Tenant concerns (in whole or in part) loss or damage which is addressed in the terms of the Common Terms Agreement then neither the Landlord nor the Tenant shall be entitled to pursue any claim or remedy under this Lease to the extent that such loss or damage which would be the subject matter of the claim or remedy is addressed in the Common Terms Agreement.

## SCHEDULE 5

### New Services

Service	Route	Description
<b>PART A</b>		
Raw Water	Via underground pipeline	from Anglian Water Ltd via the Refinery Site and LOR
<b>PART B</b>		
Refinery Off-Gas	Via Pipebridge	from the Refinery to the Generating Facility
Liquid Fuel	Via Pipebridge	from the Refinery to the Generating Facility
Waste Water	Via Pipebridge	from the Refinery to the Generating Facility
Hot Raw Water	Via Pipebridge	from the Refinery to the Generating Facility
Steam Condensate and De-Mineralised Water	Via Pipebridge	from the Refinery to the Generating Facility (Steam Condensate) / from the Generating Facility to the Refinery (De-Mineralised Water)
Steam	Via Pipebridge	from the Generating Facility to the Refinery
<b>PART C</b>		
Steam	Via overground pipeline	from Generating Facility to LOR
Steam Condensate	Via overground pipeline	From LOR to Generating Facility
<b>PART D</b>		
Electricity	Via the Pipebridge or underground and/or overground cables	from the Generating Facility to the Refinery and possibly via LOR

## SCHEDULE 6

### Decommissioning Arrangements

1. The Decommissioning Works will at all times be carried out in such a manner as will not result in a breach of the PPC permit BJ8022 dated 16 August 2001 and any amendments or variations thereto (the *Permit*).
2. Prior to commencement of the Decommissioning Works, the Tenant shall obtain all necessary licences, permissions, approvals, authorisations and consents for the Decommissioning Works and thereafter comply with any conditions thereof.
3. The Tenant shall throughout the duration of the Decommissioning Works, carry out the Decommissioning Works in accordance with, and comply in all respects with, all applicable Enactments (including Environmental Laws), legislation, rules and regulations, notices and other requirements of any Competent Authority (including but without prejudice to the generality of the foregoing, the Health and Safety Executive), codes of practice and guidance notes, Good Industry Practice, and provisions of the documents under which the Easement Structures are held by the Landlord or the Tenant.
4. Where any provisions of Schedule 6 of this Lease would result in a breach of the conditions of the Permit or any necessary licences, permissions and consents for the Decommissioning Works the conditions of the Permit or any necessary licences, permissions and consents for the Decommissioning Works shall prevail.
5. As soon as practicable after the date of Abandonment but subject to the rights of Lindsey under paragraphs 1.3 and 1.4 of Schedule 4 and the rights of the Landlord under paragraphs 1.5 of Schedule 4 (but without prejudice to the continuance in full force and effect of this paragraph after, and its operation upon, cessation of such rights), the Tenant shall ensure that all the electrical connections (if any) and all electrical equipment (if any) comprised on, under or in the Premises and, if any, the Easement Structures are made electrically and mechanically safe and the Tenant shall comply with any matters or obligations imposed or required by NGC in relation thereto and shall complete such works not later than 2 months after the date of Abandonment.
6. As soon as practicable and in any event within 12 months of the date of Abandonment, but subject to the rights of Lindsey under paragraphs 1.3 and 1.4 of Schedule 4 and the rights of the Landlord under paragraphs 1.5 of Schedule 4 (but without prejudice to the continuance in full force and effect of this paragraph after, and its operation upon, cessation of such rights), the Tenant shall commence and thereafter diligently proceed in a good and workmanlike manner at its own costs with the dismantling, demolition and safe removal of all structures and buildings (other than the foundation or foundations of the Generating Facility) located on, under or in



the Premises and the Easement Structures, removal, handling and disposal of all debris and materials and Waste (including, but without prejudice to the generality of the foregoing, all asbestos and asbestos dust, if any and all other Hazardous Materials) and with the clean up, removal and remediation of any material contamination on, under or in the Premises resulting from acts or omissions by the Tenant, its employees, contractors or agents or any person acting expressly or impliedly with the Tenant's authority or permission and where requested by the Landlord levelling and re-landscaping the same in accordance with the provisions of this Schedule and shall complete the Decommissioning Works (subject to the rights of Lindsey under paragraphs 1.3 and 1.4 of Schedule 4 and the rights of the Landlord under paragraphs 1.5 of Schedule 4 only for so long as such rights subsist) as soon as practicable and in any event (subject as aforesaid) within 3 years of the date of Abandonment.

7. The Tenant shall procure that all materials containing or comprised of asbestos in whatever form shall be removed from the Premises by a specialist contractor, using appropriate equipment and clothing, by safe and suitable means, ensuring no contamination of surrounding media, including drainage systems, water supplies, streams or rivers, and taken to an authorised asbestos tip and disposed of in accordance with all applicable Environmental Laws.

8. The Tenant and all contractors carrying out the Decommissioning Works shall be in possession (if required) of a licence in force and granted by the Health and Safety Executive under the Asbestos (Licensing) Regulations 1983 or any subsequent amendment or re-enactment thereof and the Tenant shall ensure that it and any of its contractors shall execute the Decommissioning Works in accordance with the Control of Asbestos at Work Regulations 1987 and all other applicable Environmental Laws. Where structures or buildings contain asbestos, the Tenant shall monitor the Environment within and adjacent to the demolition site for the existence of asbestos and take all necessary action during the Decommissioning Works to prevent the escape thereof.

9. The Tenant shall be solely responsible at its own cost for the transportation off site and safe disposal of all materials resulting from and comprised in the Decommissioning Works in compliance with Environmental Laws and all other statutory and regulatory requirements SAVE THAT the Tenant shall not be responsible for any such materials present in, on or under the Premises as result of any act or omission of the Landlord, its employees, contractors or agents or any person acting expressly or impliedly with the Landlord's authority or permission EXCEPT TO THE EXTENT THAT the presence in, on or under or in relation to the Premises or the escape or migration from the Premises or from the Refinery Site of such materials is attributable to any physical works or operations, undertaken during the Term and/or during the Previous Term, of the Tenant (or any undertenant), its or their employees, contractors or agents or any person acting expressly or impliedly with the Tenant's authority or permission.

10. The Tenant shall notify the Landlord not less than two weeks prior to commencement of the Decommissioning Works and shall grant to a representative of the Landlord (but so that the Landlord shall have no obligation to appoint the same) access to observe the Decommissioning Works and to attend all progress meetings

etc. in respect of the same. The Tenant acknowledges that such access does not in any way impose on the Landlord or imply any supervisory role or any liability in connection with performance or non-performance of the Decommissioning Works but the Tenant will have due regard to all observations and representations made on behalf of the Landlord and will comply with them if reasonable and proper to do so.

11.1 When the Tenant considers that the whole of the Decommissioning Works have been completed in accordance with this Schedule the Tenant shall give notice to that effect to the Landlord. Such notice shall be in writing and shall be deemed to be a request by the Tenant for the Landlord to issue a certificate that the Decommissioning Works have been completed satisfactorily. Following receipt of such request the Landlord shall within one month:

- (a) issue such a certificate stating the date on which in its reasonable opinion the Decommissioning Works were completed satisfactorily; or
- (b) give notice in writing to the Tenant that it does not consider that the Decommissioning Works have been completed or completed satisfactorily specifying to the extent practicable those elements of the Decommissioning Works which in the Landlord's reasonable opinion need to be completed or otherwise remain to be carried out before the issue of such a certificate.

11.2 Following the date upon which either the Landlord gives notice to the Tenant pursuant to paragraph 11.1(b) or the Landlord fails to issue a certificate pursuant to paragraph 11.1(a) of this Schedule either Party may refer the question of whether the Decommissioning Works have been satisfactorily completed to an Independent Surveyor or an Independent Environmental Consultant whose decision shall be final and binding. The Parties shall provide all such information and co-operation to the Independent Surveyor or Independent Environmental Consultant as he shall require. If the Independent Surveyor or Independent Environmental Consultant shall not have given his determination within 3 months of the date of his appointment or if for any reason it becomes apparent that he will be unable to do so within such period the Landlord and the Tenant may agree upon, or either of them may apply for, a new Independent Surveyor or Independent Environmental Consultant to be appointed in his place (which procedure may be repeated as many times as may be necessary). The Independent Surveyor's or Independent Environmental Consultant's fees and charges (including the costs of his appointment) shall be borne between the Landlord and the Tenant in such proportions as the Independent Surveyor or Independent Environmental Consultant shall determine or, in the event that no notice of determination is given, equally between the Landlord and the Tenant.

12. In performing its obligations pursuant to this Schedule, the Tenant shall not at any time do, omit or permit on or about the Premises any act or thing by reason of which the Landlord may under any Enactments (including Environmental Laws and the Electricity Act 1989) or any other legislation incur or have imposed upon it or become liable to pay any levy, penalty, fine, damages, compensation, costs, charges, expenses or any other liability and shall keep the Landlord indemnified against all levies, penalties, fines, damages, compensation, costs, charges, expenses or any other liabilities whatsoever arising from or in connection with the Decommissioning Works

to the extent they relate to damage to the Environment SAVE WHERE such liabilities result from the presence of any Hazardous Materials at, in, on or under the Premises as result of any act or omission of the Landlord, its employees, contractors or agents or any person acting expressly or impliedly with the Landlord's authority or permission EXCEPT TO THE EXTENT THAT the presence at, in, on or under or in relation to the Premises or the escape or migration from the Premises or from the Refinery Site of Hazardous Materials is attributable to any physical works or operations, undertaken during the Term and/or during the Previous Term, of the Tenant (or any undertenant), its or their employees, contractors or agents or any person acting expressly or impliedly with the Tenant's authority or permission.

13. For the avoidance of doubt the Tenant shall be entitled to carry out its obligations under this Schedule by way of the use of contractors, in which event they shall be specialist demolition contractors experienced in the demolition and decommissioning of substantial structures, similar in size and made of similar materials to the Generating Facility but the use of such contractors shall not in any way absolve the Tenant from its obligations under this Lease. The appointment of such contractors shall be subject to the approval of the Landlord (such approval not to be unreasonably withheld or delayed) and the contractors will give a collateral warranty to the Landlord in respect of the obligations under the relevant contracts in the form that the Landlord will reasonably approve such approval not to be unreasonably delayed.

## SCHEDULE 7

### Part A

#### Rent Review

##### Definitions

1. For the purposes of Part A of this Seventh Schedule the following words shall have the following meanings:

**Accountant** means an independent chartered accountant of not less than ten years' standing;

**Index** means the index of producer prices (reference index number of input and output prices – Net Sector Output – Output of Manufactured Products 'JVZ7') published each month by the Office of National Statistics in the "Statistical Bulletin: Producer Price Inflation" on-line publication or, if such index is no longer published, or is not published at any time relevant to the application of the provisions of this Schedule, or if there is a change on the basis of such index, such index or basis of objective determination of production price changes as may be agreed by the Parties and **Index Figure** shall mean the value of the Index from time to time.

**Review Date** means 1 January 2014 and each anniversary of such date during the Term;

**Review Period** means the period of one year between one Review Date and the next.

##### Calculation of Rent

2. The Rent shall be revised automatically on and with effect from each Review Date so that the Rent for the Review Period following each Rent Review Date shall be the greater of :

- (i) the amount of the Rent payable under this Lease immediately prior to the relevant Review Date; and
- (ii) the amount (rounded up to the nearest whole pound) calculated by application of the following formula:

$$X \times \frac{Y}{Z} \text{ where:-}$$

**X** is the amount of the Rent payable under this Lease immediately prior to the relevant Review Date (or in the case of the first Review Date five hundred and fifty-four thousand, nine hundred and sixty-eight pounds (£554,968.00));

**Y** is the Index Figure for the month immediately preceding the month in which the relevant Review Date falls; and

Z is the Index Figure for the month immediately preceding the month in which the previous Review Date fell (or in the case of the first Review Date shall be July 2013).

#### **Notice of Rent payable**

3. The Landlord shall as soon as reasonably practicable in respect of each relevant Review Date, give notice to the Tenant of the amount of the Rent for the next Review Period and include details of the calculation.

#### **Late publication of Index Figure**

4. In the event that at any Review Date the relevant Index Figure has not been published (other than where the relevant index itself has ceased to be published) so as to enable the revised rent to be calculated the Tenant shall continue to pay rent at the rate applicable prior to that Review Date and upon the relevant Index Figure being published the Rent shall be calculated using such Index Figure and within seven days of the notification by the Landlord to the Tenant of such publication and of any additional rent due the Tenant shall pay to the Landlord any underpayment of Rent together with interest thereon at Base Rate from the relevant Review Date to the date of the balancing payment.

#### **Memoranda of review**

5. Whenever the Rent has been revised in accordance with this Schedule the Landlord and the Tenant shall sign a memorandum to that effect and each Party shall annex such memorandum to its part of the Lease each Party bearing its own costs in connection therewith

#### **Changes in the Index**

6. If the reference base used to compile the Index changes after the date of this Lease the figure taken to be shown in the Index after the change is to be the figure that would have been shown in the Index if the reference base current at the date of this Lease had been retained and making an adjustment (where necessary) for the proportionate increase of the Index as compared to the original reference base and the new reference base (so that the appropriate increases in Index are equivalent when using the new and old reference bases).

#### **Resolution of problems**

7. If it becomes impossible to calculate the Rent for any Review Period by reference to the Index because of any change in the methods used to compile the Index after the date of this Lease or for any other reason whatever, or if any dispute or question whatever arises between the Parties as to the amount of the Rent for any review period or the construction or effect of this Schedule, then the Rent for that review period or the disputed matter is to be determined by the Accountant acting as an expert and the following provisions shall have effect:

- (a) the Accountant shall be appointed by the Landlord and the Tenant or in default of agreement on such appointment by the President (or other the acting Chief Officer or delegate) for the time being of the Institute of Chartered Accountants of England and Wales on the written application of the Landlord or the Tenant
- (b) the Accountant shall invite the Landlord and the Tenant to submit to him within such time limits as he shall consider appropriate such written representations and cross representations as to the amount of the Rent for a Review Period or the means by which the Rent should be calculated with such supporting evidence as they may respectively wish
- (c) The Accountant is to have full power to determine, on such dates as he considers appropriate, what the increase in the Index would have been had it continued on the basis assumed for the operation of this rent review and in view of the information assumed to be available for it. If that determination is also impossible, the Accountant must determine a reasonable rent for the Premises on such dates as he considers appropriate, having regard to the purposes and intent of the provisions in this Lease for the review of the Rent
- (d) the Accountant will as soon as reasonably possible (but no longer than one month) after his appointment or within such extended period as the Parties shall agree (acting reasonably) give to the Landlord and the Tenant written notice of his determination which shall be final and binding on the Parties to this Lease
- (e) if the Accountant shall not have given notice of his determination within the period and in manner aforesaid or if for any reason it becomes apparent that he will be unable to do so within such period the Landlord and the Tenant may agree upon or either of them may apply for a new Accountant to be appointed in his place (which procedure may be repeated as many times as may be necessary) provided always that any such determination given by the Accountant outside such time limit but prior to the appointment of a new Accountant shall be valid and effective but if given thereafter shall be null and void
- (f) the Accountant's fees or charges (including the costs of his appointment) shall be borne by the Tenant and the Landlord in such proportion as the Accountant shall determine.

## **PART B**

1. For the purposes of Part B of this Seventh Schedule the following words shall have the following meanings:

**New Review Date** means each anniversary of the Decommissioning Works Completion Date during the Term;

**Open Market Rent** means the amount agreed between the Landlord and the Tenant or determined by the Surveyor as being the yearly rent at which the Premises could reasonably be let as a whole:

- (a) with vacant possession;
- (b) at the Decommissioning Works Completion Date;
- (c) by a willing landlord to a willing tenant in the open market;
- (d) without taking a fine or premium;
- (e) for a term equal to the residue of the Term commencing on the Decommissioning Works Completion Date and with revision of the rent at the same intervals as in this Lease and in accordance with the provisions in this Lease for rent review on each New Review Date;
- (f) subject to and with the benefit of all other terms of this Lease apart from the amount of the rent payable;

and on the assumption that:

- (g) the Decommissioning Works Completion Date has occurred and the Tenant has fully complied with its covenants and conditions in this Lease including (without limitation):
  - (i) the obligations on the part of the Tenant in paragraph 18.1 of Schedule 2 and Schedule 6 in relation to the Decommissioning Works; and
  - (ii) the obligations on the part of the Tenant in relation to Hazardous Materials;
- (h) if the Premises have been damaged or destroyed they have been fully restored;
- (i) the permitted use of the Premises by the willing tenant is the Permitted Use or such other use as the Landlord has approved on or prior to the Decommissioning Works Completion Date in accordance with paragraph 11.1 of Schedule 2;
- (j) no work has been carried out to the Premises which has diminished the rental value of the Premises; and
- (k) there is not in operation any statute, order or instrument which has the effect of regulating or restricting the amount of rent which might otherwise be payable;

but disregarding any effect on rental value attributable to:

- (l) any works or alterations to the Premises carried out by or on behalf of the Tenant or any permitted undertenant or occupier of the Premises either before or after the date of this Lease with the consent of the Landlord save (in the case of improvements) to the extent that the same were carried out at the

Landlord's expense or in pursuance of any obligation to the Landlord whether under the provisions of this Lease or otherwise;

- (m) any tenant's fixtures and fittings in the Premises;
- (n) any goodwill attaching to the Premises by reason of the business carried on there by the Tenant or any permitted undertenant or occupier; and
- (o) the previous occupation of the Premises by the Tenant or any permitted undertenant or occupier; and

**Surveyor** means an independent surveyor being a partner in or a director of a leading firm or company of chartered surveyors who is experienced in the rental valuation of premises of the type and nature of and in the locality of the Premises to be nominated in default of agreement by the Landlord and the Tenant by the President for the time being of the Royal Institution of Chartered Surveyors on the application of the Landlord or the Tenant not made before the Decommissioning Works Completion Date.

2. The Surveyor shall act as an independent valuer (acting as an expert and not as an arbitrator) whose determination of the Option Market Rent review will be binding on the Landlord and the Tenant, but must afford the Landlord and the Tenant an opportunity to make representations to him and an opportunity to comment upon such matters and other evidence prior to making his determination of the Open Market Rent.
3. If the Surveyor shall die or be unable or unwilling to accept his appointment or to carry out his functions then either the Landlord or the Tenant may apply to the President for the time being of the Royal Institution of Chartered Surveyors for a replacement to be appointed in his stead, and this procedure may be repeated as often as necessary.
4. The fees and costs of the Surveyor and the parties' costs of the reference to him shall lie in his award but, in the absence of such award, the Landlord and Tenant shall each bear their own costs and one half of the Surveyor's fees and costs. One party may pay the fees and costs required to be borne by another party if they remain unpaid for more than 14 days after they become due, and then recover these and any incidental expenses incurred from that other party on demand.
5. Time is not of the essence in relation to any matter contained in this Part B of Schedule 7.
6. From and including the Decommissioning Works Completion Date the Rent shall be the Open Market Rent.
7. If the Open Market Rent has not been ascertained by the Decommissioning Works Completion Date, then the yearly rent shall be payable by the Tenant in the amount of the Rent payable under this Lease immediately prior to the



Decommissioning Works Completion Date (the "Old Rent") until such time as the Open Market Rent has been ascertained.

8. Once the Open Market Rent has been ascertained:
  - (a) the Tenant shall on demand pay the Landlord a sum equal to the amount (if any) by which the Open Market Rent exceeds the Old Rent for the period from the Decommissioning Works Completion Date until the next Rent Day following the date of such demand; or
  - (b) the Landlord shall on demand pay the Tenant a sum equal to the amount (if any) by which Old Rent exceeds the Open Market Rent for the period from the Decommissioning Works Completion Date until the next Rent Day following the date of such demand.
9. When the Open Market Rent has been ascertained the Landlord and the Tenant shall sign a memorandum to that effect and each Party shall annex such memorandum to its part of the Lease each Party bearing its own costs in connection therewith.
10. The Rent shall be revised automatically on and with effect from each New Review Date and the provisions of paragraphs 2 to 7 of Part A of Schedule 7 shall apply *mutatis mutandis* Provided That for the purposes of the formula in paragraph 2 of Part A of Schedule 7:

**X** is the amount of the Rent payable under this Lease immediately prior to the relevant New Review Date (or in the case of the first New Review Date the Open Market Rent);

**Y** is the Index Figure for the month immediately preceding the month in which the relevant New Review Date falls; and

**Z** is the Index Figure for the month immediately preceding the month in which the previous New Review Date fell (or in the case of the first New Review Date shall be the month immediately preceding the month in which the Decommissioning Works Completion Date fell).

### PART C

1. In the event that the Tenant applies to the Landlord for consent to use the Premises for a purpose other than the Permitted Use and the Landlord withholds consent to such use, the Tenant may by giving written notice to the Landlord within six months of the date of receipt of the Landlord's objection require a further review of the Rent and the date of such Tenant's notice shall be the "Elected Review Date".
2. From and including the Elected Review Date the Rent shall be the Open Market Rent.
3. The provision of Part B of this Schedule 7 shall apply to the determination of the Open Market Rent on the Elected Review Date *mutatis mutandis* and:

(a) an additional assumption shall be made that the proposed use to which the Landlord has objected is expressly prohibited by the lease;

(b) the Open Market Rent shall be the yearly rent at which the Premises could reasonably be let at the Elected Review Date for a term equal to the residue of the Term commencing on the Elected Review Date; and

(c) for the purposes of this Part C of Schedule 7 New Review Date shall mean each anniversary of the Elected Review Date during the Term.

4. The Rent shall be revised automatically on and with effect from each New Review Date and the provisions of paragraphs 2 to 7 of Part A of Schedule 7 shall apply *mutatis mutandis* Provided That for the purposes of the formula in paragraph 2 of Part A of Schedule 7:

**X** is the amount of the Rent payable under this Lease immediately prior to the relevant New Review Date (or in the case of the first New Review Date the Open Market Rent);

**Y** is the Index Figure for the month immediately preceding the month in which the relevant New Review Date falls; and

**Z** is the Index Figure for the month immediately preceding the month in which the previous New Review Date fell (or in the case of the first New Review Date shall be the month immediately preceding the month in which the Elected Review Date fell).

[On Original]

EXECUTED as a deed by )

PHILLIPS 66 LIMITED )

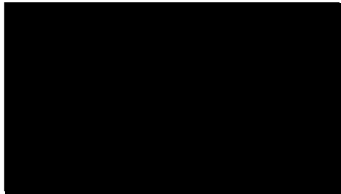
acting by *DAVID BLAKEMORE* )  
a director

in the presence of:

Witness's Signature: )

Name: *MICHAEL DUNN* )

Address: *2 FORPMAN STREET* )  
*COMMON*  
*WILLOW*

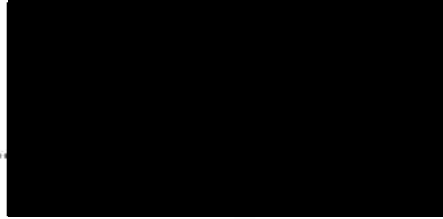


[On Counterpart]

EXECUTED as a deed by VPI  
IMMINGHAM LLP acting by

)

[NAME OF DULY AUTHORISED  
PERSON],  
MAGDALENA K. BUJNOWSKA



duly authorised by IMMINGHAM  
ENERGY LIMITED and VPI ICHP  
LIMITED to sign on their behalf as the  
members of VPI IMMINGHAM LLP

) On behalf of the members

in the presence of:

Witness's Signature:



Name: JAY GLEACHER )

Address: 76 Buckingham Palace Rd  
London SW1W 9TQ  
UK

# Appendix 5



## P66's proposed protective provisions

## PART 4

### FOR THE PROTECTION OF PHILLIPS 66 LIMITED

#### **Benefit of protective provisions**

**34.**—(1) The following provisions of this Part of this Schedule have effect for the benefit of any owner of the protected land and any owner or operator of a pipeline within the pipeline corridor, unless otherwise agreed between the undertaker and the said owner or operator.

#### **Interpretation**

**35.** In this Part of this Schedule—

“affected assets” means

apparatus on or above ground which would be physically affected by the relevant works;

“apparatus” means pipelines and cables and includes—

- (a) any structure existing at the time when a particular action is to be taken under this Part of this Schedule in which apparatus is or is to be lodged or which will give access to apparatus;
- (b) any cathodic protection, coating or special wrapping of the apparatus; and
- (c) all ancillary apparatus properly appurtenant to the pipelines, that would be treated as being associated with a pipe or systems of pipes under section 65(2) of the Pipe-Lines Act 1962(a), as if the pipelines were a “pipe-line” in section 65(1) of that Act;

“construction access plan” means a plan identifying how access will be maintained to pipelines and the protected crossings during the proposed construction or maintenance work including—

- (a) any restrictions on general access by owners of the protected land and operators of the pipelines, including the timing of restrictions;
- (b) details of how the needs and requirements of owners of the protected land and operators of the pipelines have been taken into account in preparing the plan;
- (c) details of how uninterrupted and unimpeded emergency access with or without vehicles will be provided at all times for owners of the protected land and operators of the pipelines; and
- (d) details of how reasonable access with or without vehicles will be retained or an alternative provided for owners of the protected land and operators of the pipelines to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the pipelines and protected crossings;

“construction or maintenance works” means any works to construct, maintain, or decommission the authorised development;

“damage” includes all damage including in relation to a pipeline leakage and the weakening of the mechanical strength of a pipeline;

“engineer” means an engineer appointed by an owner or operator of a pipeline for the purposes of this Order;

“operator” means any person who is responsible for the construction, operation, use, maintenance or renewal of any pipeline;

“owner” means

any person

- (i) with an interest in a pipeline in the protected land;

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(a) 1962 c. 58. Section 65 was amended by section 89(1) of, and paragraphs 1 and 2 of Schedule 2 to, the Energy Act 2011 (c.16), S.I. 2000/1937 and S.I. 2011/2305.

(ii) with rights in, on, under or over the protected land

“P66” means Phillips 66 Limited (Company number 00529086);

“pipelines” means 3 pipelines located in the pipeline corridor crossing the Order limits owned and operated by P66 used at various times for the passage of multi-purpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) of the Pipe-lines Act 1962(a);

“pipeline corridor” means the corridor shown coloured [ ] on the pipeline corridor plans;

“pipeline corridor plans” means the plans certified by the Secretary of State as the pipeline corridor plans for the purposes of this Order;

“protected land” means such parts of the Order land as fall within the pipeline corridor;

“relevant work” means a work which may have an effect on the operation, maintenance, abandonment of or access to any pipeline;

“works details” means the following—

- (a) a description of the proposed works together with plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned or their location;
- (b) of any pipelines affected by the oversailing provisions in paragraph 4.1, including details of the proposed clearance;
- (c) details of the undertaker and their principal contractors’ management of change procedures;
- (d) details of the traffic management plan, which plan must include details of vehicle access routes for construction and operational traffic and which must assess the risk from vehicle movements and include safeguards to address identified risks;
- (e) details of the electrical design of the authorised works in sufficient detail to allow an independent specialist to assess whether AC interference from the authorised development may cause damage to any pipeline;
- (f) details of the means by which the pipeline can be properly inspected and if necessary repaired during the construction and operation of the authorised development;
- (g) details of the emergency response plan as prepared in consultation with local emergency services and the pipeline operators;
- (h) details of the assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to any pipeline cathodic protection system and the proposed remedial works; and
- (i) any further particulars provided in accordance with paragraph 36(2).

### **Authorisation of works details affecting pipelines or protected crossings**

**36.—**(1) Before commencing any part of a relevant work the undertaker must submit to the owners and any operators of any affected asset the works details and obtain a written acknowledgement of receipt of those works details from them in relation to the affected asset concerned.

(2) The undertaker must as soon as reasonably practicable provide such further particulars as the owner or operator of any affected asset may, within 45 days from the receipt of the works details under sub-paragraph (1), reasonably require.

**37.** No part of a relevant work is to be commenced until one of the following conditions has been satisfied—

- (a) the works details supplied in respect of that relevant work under paragraph 36 have been authorised by the owner and operator of all the affected assets; or
- (b) the works details supplied in respect of that relevant work under paragraph 36 have been authorised by an expert under paragraph 39(3); or

(c) authorisation is deemed to have been given in accordance with paragraph 39(1).

**38.—(1)** Any authorisation by the owner or operator of an affected asset required under paragraph 37(a) must not be unreasonably withheld but may be given subject to such reasonable conditions as the owner or operator of the affected asset may require to be made for—

- (a) the continuing safety and operation or viability of the affected asset; and
- (b) the requirement for the owner and operator of the affected asset to have—
  - (i) uninterrupted and unimpeded emergency access with or without vehicles to the affected asset at all times; and
  - (ii) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the affected asset.

(2) Where the owner or operator of the pipelines can reasonably demonstrate that the authorised development will significantly adversely affect the safety of the pipelines the owner or operator is entitled to withhold their authorisation until the undertaker can demonstrate to the reasonable satisfaction of the owner or operator that the authorised development will not significantly adversely affect the safety of the pipelines.

(3) The authorised development must be carried out in accordance with the works details authorised under paragraph 37 and any conditions imposed on the authorisation under paragraph 38(1).

(4) Where there has been a reference to an expert in accordance with paragraph 39(2) and the expert gives authorisation, the authorised development must be carried out in accordance with the authorisation and conditions contained in the award of the expert under paragraph 39(3).

**39.—(1)** In the event that—

- (a) no response has been received to the submission of the works details under paragraph 37 within 45 days of the undertaker obtaining a written acknowledgment of receipt from a specified person under paragraph 36(1) and no further particulars have been requested under paragraph 36(2); or
- (b) authorisation has not been given within 30 days of the undertaker obtaining a written acknowledgment of receipt from a specified person of the further particulars supplied under paragraph 36(2),

approval of the works details is to be deemed to be given and the relevant works may commence.

(2) In the event that—

- (a) the undertaker considers that the owner or operator has unreasonably withheld its authorisation under paragraph 38(1); or
- (b) the undertaker considers that an owner or operator has given its authorisation under paragraph 38(1) subject to unreasonable conditions,

the undertaker may refer the matter to an expert for determination under paragraph 55.

(3) Where the matter is referred to an expert under paragraph 39(2) the expert is to determine whether or not authorisation should be given and, if so, the conditions which should reasonably be attached to the authorisation under sub-paragraphs (a) and (b) of paragraph 38(1).

(4) Where the undertaker considers that the owner or operator of the pipelines has unreasonably withheld its authorisation under paragraph 38(2) then the matter may be referred to an expert on the application of either party (after giving notice in writing to each other) appointed by the secretary of the United Kingdom Onshore Pipeline Association for determination under paragraph 55.

## **Notice of works**

**40.** The undertaker must provide to the owner and operator of an affected asset a minimum of 28 days' notice prior to commencing any relevant work in order that an engineer can be made available to observe the relevant works and, when required, advise on the necessary safety precautions.



### **Further provisions about works**

**41.**—(1) Before carrying out a relevant work the undertaker must—

- (a) provide the owners and any operators of any affected asset with baseline data for any existing cathodic protection of the asset; and
- (b) carry out a pipeline settlement and stress analysis to demonstrate any potential pipeline movement will not present an integrity risk to the affected asset.

**42.**—(1) A minimum clearance of 1500 millimetres must be maintained between any part of the authorised development and any affected asset unless otherwise agreed with the owner and operator of the affected asset.

### **Monitoring for damage to pipelines**

**43.**—(1) When carrying out the relevant work the undertaker must monitor the relevant affected assets to establish whether damage has occurred.

(2) Where any damage occurs to an affected asset as a result of the relevant work, the undertaker must immediately cease all work in the vicinity of the damage and must notify the owner and operator of the affected asset to enable repairs to be carried out to the reasonable satisfaction of the owner and operator of the affected asset.

(3) If damage has occurred to an affected asset as a result of relevant work the undertaker will, at the request and election of the owner or operator of the affected asset—

- (a) afford the owner or operator of the affected asset all reasonable facilities to enable it to fully and properly repair and test the affected asset and pay to the owner or operator its costs incurred in doing so including the costs of testing the effectiveness of the repairs and cathodic protection and any further works or testing shown by that testing to be reasonably necessary; or
- (b) fully and properly repair the affected asset as soon as reasonably practicable, in which case the repairs must be properly tested by the undertaker and be shown to the satisfaction of the owner or operator of the affected asset to have effectively repaired the affected asset before any backfilling takes place.

(4) Where testing has taken place under sub-paragraph (3)(b), the undertaker must (except where an owner or operator of the affected asset agrees otherwise in writing) provide it with a copy of the results of such testing prior to any backfilling.

(5) Following the completion of a relevant work if damage is found to have occurred to an affected asset as a result of the relevant work, sub-paragraphs (2) to (4) of this paragraph apply to that damage.

(6) In relation to the approved assessment and monitoring work to be undertaken both prior to the construction of the authorised development and during the operation of the authorised development to ascertain any change or damage to any pipeline cathodic protection system, the undertaker must undertake any necessary remedial work.

(7) In the event that the undertaker does not carry out necessary remedial work in a timely manner then the affected owner is entitled, but not obliged, to undertake the necessary remedial work and recover the cost of doing so from the undertaker.

**44.**—(1) If any damage occurs to a pipeline causing a leakage or escape from a pipeline, all work in the vicinity must cease and the owner and operator of the pipeline must be notified immediately.

(2) Where there is leakage or escape of gas, the undertaker must immediately—

- (a) remove all personnel from the immediate vicinity of the leak;
- (b) inform the owner and operator of the relevant pipeline;
- (c) prevent any approach by the public, extinguish all naked flames and other sources of ignition for at least 350 metres from the leakage; and
- (d) assist emergency services as may be requested.

## **Compliance with requirements, etc. applying to the protected land**

**45.**—(1) Subject to sub-paragraph (2), in undertaking any works in relation to the protected land or exercising any rights relating to or affecting owners of the protected land, the undertaker must comply with such conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the protected land.

(2) The undertaker is not bound by any condition, requirement or regulation that is—

- (a) introduced after the date on which notice of the works was given under paragraph 40 ; or
- (b) determined by the expert following a determination under paragraph 55 to unreasonably—
  - (i) create significant engineering, technical or programming difficulties; or
  - (ii) materially increase the cost of carrying out the works.

(3) Sub-paragraph (2) does not apply if the condition, requirement or regulation was introduced by way of legislation, direction or policy of the government, a relevant government agency, a local authority (exercising its public functions) or the police.

## **Restriction on exercising powers**

**46.**—(1) The undertaker must not in the exercise of the powers conferred by this Order acquire, appropriate, extinguish, suspend or override any rights in the protected land if the authorised development can reasonably and practicably be carried out without such acquisition, appropriation, extinguishment, suspension or override.

(2) The undertaker must in the exercise of the powers conferred by this Order at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on owners of the protected land and operators of the pipelines, including any disruption to access and supplies of utilities and other services that are required by them in order to carry out their operations.

## **Insurance**

**47.**—(1) Before carrying out any part of the authorised development on the protected land, the undertaker must put in place a policy of insurance with a reputable insurer against its liabilities under paragraph 49 in accordance with the terms and level of cover notified under sub-paragraph (2) or, in the case of dispute, in accordance with the terms and level of cover determined by an expert under paragraph 55, and evidence of that insurance must be provided on request to owners of the protected land and operators of pipelines.

(2) Not less than 30 days before carrying out any part of the authorised development on the protected land or before proposing to change the terms of the insurance policy, the undertaker must notify the owners of the protected land and operators of pipelines of details of the terms of the insurance policy that it proposes to put in place, including the proposed level of the cover to be provided.

(3) The undertaker must maintain insurance in relation to the authorised development affecting owners of the protected land and operators of pipelines during the construction, operation, maintenance, repair and decommissioning of the authorised development in the terms and at the level of cover specified in sub-paragraph (2) or at such level as may otherwise be determined by an expert under paragraph 55.

**48.**—(1) If an owner of the protected land or operator of a pipeline has a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 47—

- (a) the owner of the protected land or operator of a pipeline may refer the matter to an expert for determination under paragraph 55; and
- (b) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the authorised development at its own risk whilst the determination under paragraph 55 is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

## Costs

49.—(1) The undertaker must repay to owners of the protected land and operators of the pipelines all reasonable fees, costs, charges and expenses reasonably incurred by them in relation to these protective provisions in respect of—

- (a) authorisation of works details submitted by the undertaker under paragraph 36 and the imposition of conditions under paragraph 38;
- (b) the engagement of an engineer and their observation of the authorised works affecting the pipelines and the provision of safety advice under paragraph 40;
- (c) the repair and testing of a pipeline or protected crossing under paragraph 43; and
- (d) considering the adequacy of the terms and level of cover of any insurance policy proposed or put in place by the undertaker under paragraph 47,

including the reasonable costs incurred by owners and operators in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary to allow the owner or operator to carry out its functions under these protective provisions.

(2) The undertaker must indemnify and keep the owners of the protected land and operators of the pipelines indemnified against all reasonable costs, charges, damages and expenses, and against consequential loss and damage, which may be occasioned or reasonably incurred by the owners and operators—

- (a) by reason of the construction, operation, maintenance, repair and decommissioning of the authorised development or the failure of it; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the construction, operation, maintenance, repair and decommissioning of the authorised development,

and the fact that any act or thing may have been done by the owner of protected land or operator of a pipeline on behalf of the undertaker or in accordance with plans approved by or on behalf of the owner or operator or in accordance with any requirement of the engineer appointed by the owner or operator or under his supervision does not (if it was done without negligence on the part of the owner or operator or of any person in their employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(3) An owner or operator must give the undertaker reasonable notice of any claim or demand under sub-paragraph (2) and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(4) An owner or operator must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part of this Schedule.

(5) In the assessment of any sums payable to an owner or operator under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by, or any agreement entered into by, the owner or operator if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

## Further protection in relation to the exercise of powers under the Order

50. The undertaker must give written notice to the owners of the protected land and the operators of pipelines of the terms and level of cover of any guarantee or alternative form of security put in place and any such notice must be given no later than 28 days before any such guarantee or alternative form of security is put in place specifying the date when the guarantee or alternative form of security comes into force.

51. The undertaker must give written notice to the owners of the protected land and the operators of pipelines if any application is proposed to be made by the undertaker for the Secretary of State's

consent under article 7 (consent to transfer benefit of Order), and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

**52.** The undertaker must, when requested to do so by an owner of the protected land or an operator of a pipeline, provide it with a complete set of the documents submitted to and certified by the Secretary of State in accordance with article 39 (certification of plans etc.) in the form of a computer disc with read only memory.

**53.** The authorised development must be carried out in accordance with the methods and measures set out in the relevant constructability notes.

**54.** Prior to the commencement of the authorised development the undertaker must prepare an emergency response plan following consultation with the local emergency services and provide a copy of that plan to the owners of the protected land and the operators of the pipelines.

### **Expert determination**

**55.—**(1) Except as provided in sub-paragraph (7), article 42 (arbitration) does not apply to this Part of this Schedule.

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the nature of any operation or development undertaken or proposed to be undertaken by any party other than the undertaker;
- (e) the ability of any party other than the undertaker to undertake a relevant operation or development in a timely and cost-effective manner, while giving consideration to any restriction or limitation which might be caused to the ability of any party to carry out their statutory or regulatory duties, requirements or obligations;

- (f) the effects of the undertaker's proposals on any party other than the undertaker and the effects of any operation or development undertaken by any party other than the undertaker;
- (g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on any party other than the undertaker;
- (h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
- (i) the constructability notes; and
- (j) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 42.

# Appendix 6



This appendix repeats the contents of the Applicant's Statement of Reasons, Table 6.1, page 28, in so far as it purports to provide an account of negotiations with P66.

The additional underlined and italicised text below comprises P66's commentary on that account.

1. 8/3/2018 – quarterly update meeting, principally discussing the ESA, and P66 were brought up to date with VPI's potential power development aspirations.

2. 17/7/2018 – meeting with P66 to provide an update on VPI's proposed projects.

18.05.2018 Refinery manager confirmed he had no objections to the proposals 'in principle' –. Commercial terms relating to the price the Applicant would pay for the rights sought were not discussed.

3. 29/08/2019 – initial draft easement document was sent to P66 by email for consideration, covering the connections required between the development site on TLOR and the Existing VPI CHP Plant Site. The documentation was received on 29/08/2018. The draft easement was unsuitable as it provided significantly less protection than the Existing Arrangements. No commercial terms for the value of the rights sought were proposed by the Applicant.

4. 24/09/18 – provided updated draft easement and option for easement to P66 by email, for consideration. Plans and commercial terms still absent. Terms of easement remained unrealistic.

5. 6/10/2018 – P66 confirmed by email that its legal department had reviewed the easement and provided comments internally, and that a further internal discussion was planned for the week commencing 8 October.

6. 8/10/18 – P66 requested plans showing the location of the proposed easement and confirmation that VPI would cover its professional fees of considering these matters, by email.

19/10/2018 - P66 chased for response to costs proposal and requested plans.

7. 19/10/18 – VPI provided the drawings relevant to the requested easement, confirmed the likely approximate design height of the bridge for the connections, and confirmed that P66's fee proposal was acceptable, by email. The plans provided did not correspond to definitions in the draft easement. Email indicated that the exact placement of the bridge would be optimised in final design when the option was exercised and the plan only showed one likely location. Together the easement and plans failed to provide the necessary information identified by P66. The protections in the easements offered continued to be insufficient in terms of P66's ongoing operations at the HOR. In particular they failed to provide the same level of protection as those provided in the Existing Arrangements.

8. 13/12/18 – quarterly update meeting with P66.

9. 14/3/19 – quarterly update meeting. It was agreed that the parties would meet in April 2019 to discuss the easements further. P66 chased again for appropriate commercial terms for the easement sought to be provided.

Meeting held in May when updated project details were provided by the Applicant. At this stage complete and accurate plans were eventually provided. The Applicant confirmed it was proceeding by way of the proposed DCO which would include CPO powers over P66 land. P66 confirmed again they had no objections to proceeding by way of agreement providing their concerns over the continued provision of steam and power under its existing arrangements with the CHP plant were dealt with as part of the commercial deal and that they retained appropriate covenant

security. P66 requested commercial terms to be provided as soon as possible to enable P66 to review the Applicant's proposals.

Following updated project details P66's first pass comments on the Applicant's proposal of May 3019 sent 28 June 2019.

Meeting held on 2 July to discuss further. P66 pushed further for the Applicant to confirm the commercial position; what was the Applicant prepared to pay for the rights it sought by compulsory acquisition. P66 confirmed no objection to proposed structure provided the original covenants from VPI Immingham LLP (the party with the benefit of the Existing Arrangements) remained in place. The Applicant indicated they did not see this as an issue but would revert on that point.

Meeting of 13 August - no commercial terms proposed. The Applicant was unable to confirm the covenants from VPI Immingham LLP under the Existing Arrangements would remain in place to guarantee the new easements. The Applicant indicated that variation to the existing steam and power supply arrangements was not suitable consideration for an option agreement which may never be exercised to use the proposed OCGT Power Station. The Applicant agreed to provide an update to P66 in August following its internal meeting to discuss steam and power supply arrangements.