



# Keuper Gas Storage Project

Section 106 Agreement  
DRAFT

April 2016

Application Reference No:  
EN030002

DRAFT

# **KEUPER GAS STORAGE PROJECT**

**Section 106 Agreement  
DRAFT**

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<b>Regulation No:</b>	<b>5(2)(q)</b>
<b>Document Ref:</b>	<b>10.7</b>
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<b>Date:</b>	<b>29 April 2016</b>
<b>Version:</b>	<b>Draft 3.1</b>

**TOWN AND COUNTRY PLANNING ACT 1990**

**PLANNING ACT 2008**

**LEGAL AGREEMENT**

**BETWEEN:**

- (1) CHESHIRE WEST AND CHESTER COUNCIL
- (2) CHESHIRE EAST COUNCIL
- (3) KEUPER GAS STORAGE LIMITED
- (4) INEOS ENTERPRISES GROUP LIMITED
- (5) INOVYN ENTERPRISES LIMITED

**IN RESPECT OF:**

DEVELOPMENT OF 19 UNDERGROUND CAVITIES FOR THE STORAGE OF NATURAL GAS AND  
CONSTRUCTION OF A GAS PROCESSING PLANT, ON LAND ADJACENT TO HOLFORD  
BRINEFIELD, CHESHIRE

Zyda Law  
60 Cygnet Court  
Timothy's Bridge Road  
Stratford upon Avon  
CV37 9DE

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**THIS DEED** is made on            day of                            2016

**BETWEEN:**

- (1)        **CHESHIRE WEST AND CHESTER COUNCIL** of HQ, Nicholas Street, Chester, CH1 2NP (“**CWCC**”);
- (2)        **CHESHIRE EAST COUNCIL** of Westfields, Middlewich Road, Sandbach, CW11 1HZ (“**CEC**”);
- (3)        **KEUPER GAS STORAGE LIMITED** (company number 08850140) whose registered office is at Runcorn Site HQ, South Parade, PO Box 9, Runcorn, Cheshire, WA7 4JE (“**KGSL**”);
- (4)        **INEOS ENTERPRISES GROUP LIMITED** (company number 04687714) whose registered office is at Runcorn Site HQ, South Parade, PO Box 9, Runcorn, Cheshire, WA7 4JE (“**IEGL**”); and
- (5)        **INOVYN ENTERPRISES LIMITED** (company number 04651437) whose registered office is at Runcorn Site HQ, South Parade, Runcorn, Cheshire, WA7 4JE (“**IEL**”).

**RECITALS:**

- A        CWCC is the Local Planning Authority and Local Highway Authority for the purposes of the 1990 Act for the area within which the Project is situated.
- B        CEC is the Local Planning Authority and Local Highway Authority for the purposes of the 1990 Act for the area within Cheshire East Council’s boundary that is affected by the Highways Routing Obligation.
- C        KGSL submitted the Application on [24 November 2015] to obtain authorisation in the form of the DCO for the Project and the Application was accepted by the Planning Inspectorate under section 55 of the 2008 Act on [24 December 2015].
- D        KGSL has a leasehold interest of more than 15 years unexpired of part of the DCO S.106 Site. IEGL is the owner of a long leasehold interest in part of the S.106 Site. IEL is the freehold owner of the S.106 Site.
- E        CWCC, CEC, IEL, IEGL and KGSL have agreed to enter into this Agreement as a development consent obligation under the 1990 Act and 2008 Act in connection with the Application for the DCO in order to secure the planning obligations contained in this Agreement.

## NOW THIS DEED WITNESSES AS FOLLOWS:

### 1. Definitions and Interpretation

#### 1.1. Definitions

In this deed where the context so requires or admits the following expressions shall have the following meanings:

**'1972 Act'** means the Local Government Act 1972.

**'1990 Act'** means the Town and Country Planning Act 1990.

**'1999 Act'** means the Contracts (Rights of Third Parties) Act 1999.

**'2008 Act'** means the Planning Act 2008.

**'Application'** means the application for the DCO to authorise the Project on the Application Site made under section 37 of the 2008 Act by KGSL to the Planning Inspectorate to which it allocated reference number EN030002.

**'Application Site'** means the land at Holford Brinefields, Cheshire which is subject to the DCO described in Schedule 1 and shown for identification purposes only edged red on Plan 1.

**'Approved Route'** means the highlighted routes as shown for identification purposes only by solid bold coloured lines on the Routing Plan.

**'DCO'** means the development consent order to be made under the 2008 Act pursuant to the Application in the form proposed by KGSL in the course of the examination of the Application.

**'Decommissioning Notice'** means written notice from KGSL to CWCC and CEC that the operational life of the Project has come to an end.

**'HGV'** means Heavy Goods Vehicle.

**'HGV Routing Obligation'** means the HGV Routing Obligation detailed at Schedule 3 to this Agreement.

**'Implementation'** means the carrying out of any material operation within the meaning of section 155 of the 2008 Act on the Application Site of the works authorised by the DCO comprised in the Project as specified in Schedule 1 to the DCO save that for the avoidance of doubt the carrying out of demolition work, the laying, removal or diversion of services, the temporary diversion of highways, site preparation (including clearance), investigation works, archaeological investigations,

environmental site investigations, investigations for the purpose of assessing ground and geological conditions, remedial work in respect of any contamination or other adverse ground conditions, the erection of fencing or hoardings, the provision of security measures or lighting, the erection of temporary buildings or structures associated with the Project, the provision of construction compounds, piling works or works and operations to enable any of the foregoing to take place shall not constitute a material operation and consequently shall not individually or together constitute implementation for the purposes of this Agreement and “Implement” and “Implemented” shall be construed accordingly.

**‘Local Liaison Group’** means the group to be established by the Owners, pursuant to Schedule 3 for the purposes of promoting consultation with the local community.

**‘Obstruction’** means any temporary or permanent authorised or unauthorised interference with the use by an HGV on a Relevant Journey which prevents access to the Approved Route.

**‘Order’** means the DCO in the form as may ultimately be made by the Secretary of State if he is minded to issue development consent pursuant to the Application.

**‘Owners’** means together IEL, IEGL and KGSL.

**‘Plan 1’** means the plan numbered 13-03-01/HOL/24/415 Rev B1 annexed to this Agreement at Annex 1.

**‘Plan 2’** means the plan numbered 13-03-01/HOL/24/400 Rev B1 annexed to this Agreement at Annex 2.

**‘Project’** means the Nationally Significant Infrastructure Project described in Schedule 2.

**‘Relevant Journey’** means an HGV journey to or from the Project in connection with the construction of the Project.

**‘Requirement’** means a requirement imposed by the DCO pursuant to section 120(1) of the 2008 Act and contained in Schedule 2 of the DCO.

**‘Routing Plan’** means the plan numbered 13-03-01/HOL/24/405 Rev B1 entitled “Routing Plan” annexed to this Agreement at Annex 3 and shall include any amendments to that routing plan approved in writing by CWCC and CEC.

**‘S.106 Site’** means that part of the Application Site shown for identification purposes only edged red on Plan 2.



## 1.2. Interpretation

- (a) All references to CWCC and CEC shall include any successors in relation to the functions of local planning authority.
- (b) The expression 'Owners' shall include their successors in title and assigns and any persons corporate or otherwise claiming through or under it an interest or estate in any part or parts of the S.106 Site as if such persons had also been original covenanting parties in respect of the interest or estate for the time being held by them.
- (c) References to any Recital, Clause, Schedule, Paragraph or Appendix (or any part of them) shall unless the context otherwise requires be references to a recital, clause, schedule, paragraph or appendix (or any part of them) of this deed.
- (d) Titles and headings to the Clauses and Paragraphs in this deed and its Schedules and Appendices are for convenience only and shall not be construed in or affect the interpretation of this deed.
- (e) References to a particular statute or statutory instrument include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force and references to a statute include statutory instruments and regulations made pursuant to it.
- (f) References in this Agreement to particular provisions in the DCO shall also refer to identical provisions in the Order (including any amendments made by the Secretary of State to those provisions).
- (g) Unless the context otherwise requires references to the singular shall include the plural and vice versa.
- (h) Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- (i) Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enhanced against all of them jointly and severally unless there is an express provision otherwise.

## 2. **Statutory Powers**

2.1. This deed is made pursuant to Section 106 of the 1990 Act and the covenants given by the Owners to CWCC and CEC:

- (a) Are planning obligations for the purposes of Section 106 of the 1990 Act;
- (b) Relate to the Application Site;

- (c) Are entered into by the Owners so as to bind their freehold interests in the S.106 Site;
- (d) Are enforceable by CWCC and CEC.

2.2. The covenants given by the Owners to CWCC and CEC in Clause 4 and the covenants given by CWCC and CEC to the Owners in Clauses 5 and 6 are made and are enforceable pursuant to Section 111 of the 1972 Act.

2.3. Nothing in this deed shall prejudice or affect the powers, duties and obligations of CWCC and CEC in the exercise of their statutory functions.

### **3. Commencement**

3.1. The obligations in this Agreement are conditional upon:

3.1.1. The Order having been made; and

3.1.2. Implementation of the Order by the Owners or a person authorised by them.

### **4. Covenants by the Owners**

4.1. The Owners covenant with CWCC and CEC that they will observe and perform the covenants on their part contained in Schedule 3 and where otherwise contained in this Agreement.

### **5. Covenants by CWCC**

5.1. CWCC covenants with the Owners that it will observe and perform the covenants on its part contained in Schedule 4 and where otherwise contained in this Agreement.

### **6. Covenants by CEC**

6.1. CEC covenants with the Owners that it will observe and perform the covenants on its part contained in Schedule 5 and where otherwise contained in this Agreement.

### **7. Release and Lapse**

7.1. No person shall be liable for a breach of any of its obligations under this Agreement or obligations relating to any part of the S.106 Site after it shall have parted with all of its interests in the S.106 Site or the part in respect of which the breach arises (as the case may be) save in either case for antecedent breaches.

7.2. It is further agreed that this Agreement shall lapse and be of no further effect if:

7.2.1. The Order shall lapse without having been Implemented; or

- 7.2.2. The Order shall be varied or revoked otherwise than with the consent of the Owners;  
or
- 7.2.3. The Order shall be cancelled or revoked; or
- 7.2.4. The Order is quashed following a successful legal challenge
- 7.3. Nothing in this Agreement shall prohibit or limit the right to develop any part of the Application Site in accordance with a planning permission or consent (other than the Order) granted (whether or not on appeal or by any other means) after the date of this Agreement.
- 7.4. Further changes to this Agreement shall be made at the Owners' cost.

## **8. Compliance**

- 8.1. Following the performance, discharge or other fulfilment of the obligations (or any of them) of the Owners pursuant to the terms of this Agreement, CWCC and CEC will, upon written request, certify compliance with the particular obligation and if required by the Owners, will execute a deed of release from the relevant obligation of this Agreement and will apply to the appropriate Registrar of Local Land Charges for a note thereof to be entered on the Local Land Charges Register.

## **9. Local Land Charge**

- 9.1. It is hereby agreed that this Agreement shall forthwith be registered as a local land charge for the purposes of the Local Land Charges Act 1975.
- 9.2. Upon the satisfaction of the terms of this Agreement, CWCC and CEC shall at the request of the Owners procure that all entries in the register of local land charges relating to them shall be removed or marked as discharged as soon as is reasonably practicable.

## **10. No Fetter on Discretion**

- 10.1. Nothing in this Agreement shall be taken to be or shall operate so as to fetter or prejudice CWCC and CEC's statutory rights, powers, discretions and responsibilities (save where legally permitted).

## **11. Severability**

- 11.1. It is agreed that if any part of this Agreement shall be declared unlawful or invalid by a Court of competent jurisdiction then (to the extent possible) the offending provisions will be severed from the Agreement and the remainder of this Agreement shall continue in full force and effect.

## **12. Enforceability and Successors in Title**

- 12.1. The provisions of this Agreement which are stated to relate to the Application Site shall be enforceable against the Owners and against any persons for the time being deriving title to the S.106 Site from the Owners but neither the Owners nor any persons deriving title to the S.106 Site shall have any liability under such provisions of this Agreement (but without prejudice to the rights of CWCC and CEC in respect of any antecedent breach) in respect of any period during which the Owners (or as the case may be such other persons) no longer have an interest in the S.106 Site.

## **13. Arbitration**

- 13.1. In the event of any dispute or difference arising out of this Agreement other than a dispute or difference relating to a question of law or upon the interpretation of this Agreement the same shall be referred to a sole arbitrator to be agreed between the parties to the dispute or difference and being a member of the Royal Institution of Chartered Surveyors or on the application of any such party appointed by the President for the time being of the Royal Institution of Chartered Surveyors and in this respect these presents shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996.

## **14. Consequential variations to requirements**

- 14.1. If the Secretary of State makes a change to the Order pursuant to Schedule 6 of the 2008 Act resulting in any addition, alteration or removal of any requirement contained in the Order, then CWCC and CEC, if requested so to do by any person against whom this Agreement is at that time enforceable, shall enter into an agreement with such person or persons to modify or discharge the planning obligations herein to the like intent as or corresponding to any such requirement before such variation or release so as to be to the like intent as or to correspond to the requirement as altered or to make the same cease to apply in the case of a requirement which is removed as the case may be and this Agreement shall upon the satisfaction of Clause 3 in relation to such new requirement apply to the new requirement.

## **15. Service of Notices**

- 15.1. Any notice, consent or approval required to be given under this Agreement shall be in writing and shall be delivered personally or sent by pre-paid first class or recorded delivery post or through any document exchange of which the intended recipient is a member.
- 15.2. The address for service of any such notice, consent or approval as aforesaid shall be the address given in this Agreement for each of the parties hereto or such other address for service as shall have been previously notified in writing by the intended recipient to the party desiring to effect service.

15.3. A notice, consent or approval under this Agreement shall be deemed to have been served as follows:

- (a) Is personally delivered at the time of delivery; and
- (b) If posted at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom.

And in proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice, consent or approval was properly addressed and delivered into the custody of the postal authority in a pre-paid first class or recorded delivery envelope (as appropriate).

## **16. VAT**

16.1. All consideration set out in this Agreement is exclusive of VAT.

16.2. If VAT is, or becomes, properly chargeable on any supply made pursuant to this Agreement, the recipient of that supply shall pay to the supplier an amount equal to such VAT in addition to the consideration for that supply, against receipt of a valid VAT invoice. The recipient of any such supply shall pay to the supplier an amount equal to any VAT which is chargeable in respect of the supply in question on the later of:

- (a) The day on which the consideration for the supply is paid or given; and
- (b) Production of a proper VAT invoice.

16.3. Where a person (the “payer”) has paid an amount to any other person (the “payee”) on the basis that the payee was entitled to that amount under Clause 16.2 above, but the payee was not properly entitled to the whole or part of that amount under that Clause, then:

- (a) If the payee has not accounted for such amount (or such part thereof) to HMRC, the payee shall forthwith repay such amount (or such part thereof) to the payer and issue an appropriate credit note to the payer; or
- (b) If the payee has accounted for such amount (or such part thereof) to HMRC, the payee shall, if, when and to the extent that it receives repayment or credit for such amount from HMRC, repay such amount (or such part thereof) to the payer and issue an appropriate credit note to the payer.

**17. Costs**

- 17.1. CWCC hereby acknowledge receipt of a payment of £1,000 by the Owners as a contribution towards its legal and other costs incurred in the preparation and execution of this Agreement.
- 17.2. CEC hereby acknowledge receipt of a payment of £250 (plus VAT) by the Owners as a contribution towards its legal and other costs incurred in the preparation and execution of this Agreement.

**18. Severance**

- 18.1. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be deemed thereby to be affected or impaired.

**19. Contracts (Rights of Third Parties) Act 1999**

- 19.1. Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 no part of this Agreement shall be enforceable by a third party who is not a party to the Agreement and for the avoidance of any doubt the terms of the Agreement may be varied by agreement between the parties without the consent of any third party being required.

**20. Community Infrastructure Levy**

- 20.1. If after the date of this Agreement there shall be enacted any "tax" related to the grant of planning permission (whether the community infrastructure levy or otherwise) and the terms of such tax mean that any obligations under this Agreement or under any condition attached to the Order change or that the Owners must pay a sum to any person (whether HM Government or to WBC or otherwise) which would duplicate, add to or overlap with any obligation of a party under this Agreement then the parties agree that the terms of this Agreement may at the election of the party affected be modified to such extent (if any) as is necessary to provide terms which are financially and practically no less advantageous and no more onerous than the terms of this Agreement as at the date that they are entered into.

**IN WITNESS** whereof this deed has been executed by the parties hereto and is intended to be and is hereby delivered on the date first above written.

The common seal of **CHESHIRE WEST AND CHESTER COUNCIL**)

Was hereunto affixed and this document thereby executed )  
As a deed in the presence of: )

.....  
Authorised Signatory

The common seal of **CHESHIRE EAST CHESTER COUNCIL** )  
Was hereunto affixed and this document thereby executed )  
As a deed in the presence of: )

.....  
Authorised Signatory

Executed as a deed by **KEUPER GAS STORAGE LIMITED** )  
Acting by: )

.....  
Director

.....  
Director/Secretary

Executed as a deed by **INEOS ENTERPRISES GROUP LIMITED** )  
Acting by: )

.....  
Director

.....  
Director/Secretary

Executed as a deed by **INOVYN ENTERPRISES LIMITED** )  
Acting by: )

.....  
Director

.....  
Director/Secretary

## **Schedule 1**

### **Application Site**

1. Land as shown for identification purposes only edged in red on Plan 1.

### **S.106 Site**

2. Land as shown for identification purposes only edged in red on Plan 2 and being registered at HM Land Registry under the Title Reference Numbers:

- 2.1 CH506147
- 2.2 CH507364
- 2.3 CH509074

## **Schedule 2**

### **The Project**

1. The Project comprises the construction and use of an Underground Gas Storage facility under and on land on the Application Site. The Project is a Nationally Significant Infrastructure Project by virtue of:
  - Sections 14(1)(c) and 17(1) of the 2008 Act; the Project is in England and has a working capacity of at least 43 Million Standard Cubic Metres; and
  - Sections 14(1)(g) and 21(1) of the 2008 Act, as the system of pipes that form part of the Project and are required to convey Brine, nitrogen and natural gas are cross-country pipe-lines that would, but for s.33(1) of the Act, require authorisation under s.1(1) of the Pipe-lines Act 1962 (being in excess of 16.093 kilometres in total aggregate length), and begin and end in England.
2. The Project includes development of 19 gas storage cavities constructed at a depth of between 450 and 850 metres below ground surface level, formed by controlled Solution Mining; 19 gated access wellhead compound areas, a network of water, gas, nitrogen and brine pipelines, solution mining compound, a network of power, communication and fibre optic cables, site access road network, connection to the NTS, a gas processing plant, an office control and maintenance building, construction laydown areas, car parking spaces, sewer pipelines, two gas marshalling compounds, electrical compounds, substation compounds and supply cables, diversion of existing overhead cables, a series of precise level points, and further works falling within the scope of the Environmental Impact Assessment.

## **Schedule 3**

### **Owners' Covenants**



## **1. Local Liaison Group**

- 1.1. The Owners shall not Implement the Order until they have submitted to CWCC and CEC a scheme detailing the proposed establishment membership and frequency of a Local Liaison Group and CWCC and CEC have approved in writing the said scheme (such approval not to be unreasonably withheld or delayed).
- 1.2. The Owner's shall carry out the scheme in accordance with CWCC's and CEC's approval unless otherwise agreed in writing with CWCC and CEC until the date of the Decommissioning Notice or a date agreed in writing with CWCC and CEC for the closure of the Local Liaison Group whichever shall be the later.
- 1.3. The Owners shall circulate copies of the minutes of the Local Liaison Group's meetings to CWCC and CEC.

## **2. HGV Routing Obligation**

- 2.1. The Owners shall not commence construction of the Project until they have submitted to CWCC and CEC for their written approval (such approval not to be unreasonably withheld or delayed) details of the written instructions and means of communication of the Routing Plan the Owners propose to use to inform KGSL employees, agents, contractors and suppliers as to the Approved Route to be observed by an HGV on a Relevant Journey.
- 2.2. The Owners shall inform KGSL employees, agents, contractors and suppliers as to the Approved Route to be observed by an HGV on a Relevant Journey in accordance with CWCC's and CEC's written approval.
- 2.3. The Owners shall maintain a record detailing non-compliance with the Approved Route by any employees, agents, contractors and suppliers and to take sanctions against non-compliance by such employees, agents, contractors and suppliers (including the prohibition of a specified driver from accessing or egressing the Application Site on a Relevant Journey who has committed 3 breaches of the HGV Routing Obligation within a period of 365 days).
- 2.4. In consultation with CWCC and CEC (in their capacity of Local Highway Authority) the Owners shall determine the need and shall provide at their own cost for the erection of highway signage to direct HGVs accessing and egressing the Application Site on a Relevant Journey to the Approved Routes.

**1. Acting Reasonably and Deemed Approvals**

- 1.1. Where in this Agreement it is stated that CWCC's consent, approval or agreement is not to be unreasonably withheld or delayed, CWCC agrees to confirm its approval or otherwise of submitted schemes within 35 days of the date of receipt of such schemes, or such longer period as may be agreed in writing between the Owners and CWCC, and in the event of it failing to respond within the said 35 days that the Owners may proceed with the Implementation of the Project on the basis that such scheme has been approved by CWCC.

**Schedule 5  
CEC's Covenants**

**1. Acting Reasonably and Deemed Approvals**

- 1.1. Where in this Agreement it is stated that CEC's consent, approval or agreement is not to be unreasonably withheld or delayed, CEC agrees to confirm its approval or otherwise of submitted schemes within 35 days of the date of receipt of such schemes, or such longer period as may be agreed in writing between the Owners and CEC, and in the event of it failing to respond within the said 35 days that the Owners may proceed with the Implementation of the Project on the basis that such scheme has been approved by CEC.

# Application Site Plan

## Annex 2

### s.106 Plan

## Annex 3

### Routing Plan

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