

DATED _____ **201●**

HER MAJESTY THE QUEEN (1)

and

THE CROWN ESTATE COMMISSIONERS (2)

and

[] (3)

and

[] (4)

AGREEMENT FOR LEASE

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

Estates Ref: ●

Legal Ref: ●

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BETWEEN:

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

WHEREAS

1. Within the Territorial Seas the Commissioners have exclusive rights to store Carbon Dioxide in and under the seabed which forms part of The Crown Estate.
2. By virtue of section 1 of the Energy Act the right to store Carbon Dioxide in offshore areas outside of the Territorial Seas of the United Kingdom is vested in Her Majesty.
3. By virtue of section 17 of the Energy Act, no person may carry out any of the activities set out in section 17(2) of the Energy Act within a controlled place (as defined in the Energy Act) without first obtaining a Storage Licence.
4. By virtue of section 18 of the Energy Act, the controlled place to which such Storage Licence relates may be determined by reference to a Crown Lease.
5. The Tenant wishes to store certain volumes of Carbon Dioxide in the Carbon Storage Site on a commercial scale and a long term basis and thereafter operate and manage the same as operator.
6. The Tenant wishes to undertake appraisal and exploration activities in a controlled place with a view to ascertaining the suitability of the controlled place for Carbon Dioxide storage and therefore the Parties have agreed to enter this Agreement.
7. The Guarantor has agreed to guarantee the Tenant’s obligations under this Agreement.
8. This Agreement is a Crown lease, as defined in the Energy Act.

NOW IT IS HEREBY AGREED as follows:

1. INTERPRETATION

- 1.1 In this Agreement unless the context otherwise requires:
 - 1.1.1 words importing one gender include other genders;
 - 1.1.2 words importing the singular include the plural and vice versa;
 - 1.1.3 references to persons include bodies corporate and vice versa;

- 1.1.4 references to clauses, schedules and annexures are references to the relevant clauses in or schedules or annexures to this Agreement and references to paragraphs are to the relevant paragraphs in schedules to this Agreement;
 - 1.1.5 the clause headings do not affect the construction of this Agreement;
 - 1.1.6 reference to any statute, directive or regulation or other item of legislation includes any amendment, modification, extension, consolidation or re-enactment of it and includes any statutory instrument, regulation or order made under it for the time being in force;
 - 1.1.7 any obligation on the Tenant not to do or omit to do something shall be construed as including an obligation not to permit or knowingly to suffer it to be done by any other person;
 - 1.1.8 references to the Commissioners where the context admits includes their successors or assigns and references to the Tenant includes its successors and/or assigns;
 - 1.1.9 a consent or approval to be given by the Commissioners is not effective for the purposes of this Agreement unless it is in writing and signed by or on behalf of the Commissioners; and
 - 1.1.10 references to the word “include” or “including” shall be construed without limitation.
- 1.2 Any covenant by (or implied to be made by) Her Majesty pursuant to the terms of this Agreement is made (or implied to be made) by the Commissioners acting in exercise of the powers conferred by the Crown Estate Act 1961. No covenants, agreements or obligations are given by Her Majesty or anyone who reigns after Her. No liability is imposed on Her Majesty or anyone who reigns after Her nor on the Commissioners in any personal or private capacity.
- 1.3 In this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings:
- “**Acceptable Guarantor**” means:
- (a) in relation to any Tenant or, if the case, proposed assignee which is a wholly owned subsidiary of a parent company which satisfies the Credit Condition, that parent company; and
 - (b) in relation to any Tenant or, if the case, proposed assignee which is not a wholly owned subsidiary of a parent company which satisfies the Credit Condition, a (mediate or immediate) parent company of that entity which satisfies the Credit Condition;
- “**Affiliate**” in respect of any entity means any company (wherever registered) which at the time in question is directly or indirectly affiliated with that entity, where:

- (a) a company is directly affiliated with another company or companies if the latter is beneficial owner of shares (or their equivalent) controlling fifty percent (50%) or more of votes exercisable at a general meeting (or its equivalent) of such company; and
- (b) a company is indirectly affiliated with a company or companies (the parent or parents) if a series of companies can be specified beginning with the parent(s) and ending with the particular company, so related that each company or companies except the parent(s) is directly affiliated with one or more companies in the series;

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

“**Appraisal Term**” means the appraisal term or initial term (in each case as referred to in the Regulations) to be specified in the Storage Licence as amended or extended from time to time by the Minister;

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

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

“**CCS Project**” means the project to capture Carbon Dioxide, to have the same transported to [] and thereafter to have the same transported offshore and stored in the Carbon Storage Site;¹

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

“**Carbon Dioxide**” means the flow of carbon dioxide resulting from the process of carbon dioxide capture processes and shall include any other substance and in such quantities or from such other sources for testing purposes in each case as may be permitted to be included by the Storage Licence from time to time;

“**Carbon Storage Infrastructure**” means the Relevant Works, Wells, platforms and all associated infrastructure to be constructed by, and other equipment to be used by, the Tenant in accordance with the terms of the Lease [and any Retained Infrastructure] and any Exploration Works which are to be retained following the grant of the Lease;

“**Carbon Storage Rights**” means, in respect of those parts of the Lease Option Area located outside of the Territorial Seas, those rights vested in Her Majesty

1 It is TCE’s intention with this drafting and the definition of “Funding Agreement” to ensure that a Lease is only granted where there is full funding in place for the development of the storage facility and sufficient evidence to demonstrate that there are commercial arrangements in place between the storage operator, capture plant operator and CO2 pipeline operator for the CCS Project. This is to prevent giving storage rights to a project that will not be developed and consequential land banking issues.

pursuant to section 1 of the Energy Act, and in respect of those parts of the Lease Option Area located within the Territorial Seas, the Commissioners' rights, in each case in respect of the permanent storage of Carbon Dioxide;

"Carbon Storage Site" means the natural formations beneath the seabed and within the boundaries of the Lease Option Area into which Carbon Dioxide is to be injected and permanently stored with a view to its permanent disposal in accordance with the terms of the Lease, the Storage Licence and the Storage Permit and to be described in the Specification;

"Change in Control" of the Tenant shall occur whenever a person has control of the Tenant who did not have control of the Tenant when this Agreement was entered into (or, if there has been an assignment of the benefit of this Agreement under Clause 15, when that assignment took place) and sub-sections (2), (4), (5) and (6) of Section 416 of the Income and Corporation Taxes Act 1988 (c.1) shall be applied for the purpose of determining whether for the purposes of this definition a person has or had control of the Tenant subject to the following modifications:

- (a) for the words "greater part" wherever they occur in Section 416 (2) substitute "one third or more"; and
- (b) in Section 416 (6) for the word "may" substitute "shall";

and where two or more entities are comprised in the Tenant a Change in Control of the Tenant shall also occur when there is a change of control of any entity included among the entities who together constitute the Tenant;

"Commissioner's Confidential Information" means all information disclosed by the Commissioners relating to this Agreement and to the affairs and business of the Commissioners and anyone deriving rights or title through or under them;

"Completion Date" means the date calculated pursuant to the provisions of Clause 10.3 of this Agreement;

"Credit Condition" in relation to any entity means that its senior debt is rated by any internationally recognised credit rating agency and the rating assigned to such debt is greater than or equal to "BBB+" by Standard & Poor's (if rated by Standard & Poor's) or its equivalent (if rated by any other such rating agency).

"Data" means all data (including seismic or well data) obtained by the Tenant during or by virtue of the exploration or appraisal of the Carbon Storage Site and any arising from any Exploration Works or for the purposes of the Monitoring Plan;

"Development" means the [] carbon storage project comprising the Carbon Storage Site, any Exploration Works and the Carbon Storage Infrastructure;

"Energy Act" means the Energy Act 2008 (c.32);

"EU Directive" means Directive 2009/31/EC of the European Parliament and of the Council on the geological storage of Carbon Dioxide;

“Exclusion Zone” means, in respect of the surface of the seabed within the Lease Option Area:

- (a) the area within 500 metres from any platform or other installation constructed [or installed forming part of the Retained Infrastructure,] other than any Pipeline, on the seabed[; and
- (b) any area within 200 metres from any Pipeline forming part of the Retained Infrastructure,

in both cases], of which the location has been notified to the Commissioners in writing;

“Exploration Works” means those tests, investigations and works (including any Wells) set out in the Work Programme or otherwise approved by the Minister under the Storage Licence and to be carried out during the Appraisal Term;

“Facilities Specification” means the specification of the Carbon Storage Infrastructure and any pipelines to be included in the Lease Area, to be prepared pursuant to this Agreement and attached to the Lease in its final agreed form;

“Funding Agreement” means the funding provided by a UK or EU public body through a competitive process in support of the CCS Project and any additional or substituted financial arrangements for the purposes of the Development approved by the Landlord in writing (whether pursuant to Clause 12.1.5 or otherwise), such approval not to be unreasonably withheld or delayed;

“Good Industry Practice” means:

- (a) using standards, practices, methods and procedures conforming in all material respects to all applicable laws and international treaties, and incorporating in all material respects all relevant guidelines, specifications, codes of practice and recommendations which are generally accepted and followed by the relevant industry sector in the United Kingdom and/or the United Kingdom continental shelf and elsewhere in the world offshore (as applicable); and
- (b) the exercise of that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator having experience of carrying out projects and activities of a similar nature, scope, value and complexity as those authorised by or under a Storage Licence;

“Guarantor” includes any party who enters into covenants with the Commissioners pursuant to Clause 15.4.3 or 16;

“Independent Expert” means an independent engineer or geoscientist of recognised standing with experience of the offshore UK oil and gas or gas storage industry and so far as reasonably practicable offshore Carbon Dioxide storage industry, agreed by the Commissioners and the Tenant or, in default of agreement, nominated by the President or other acting chief officer for the time being of the Society of Petroleum Engineers in the United Kingdom on the written application of the Tenant;

“**Insolvent**” means that a Party:

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

- (h) causes, or is subject to, any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (g) (inclusive) of this definition; or
- (i) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts,

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

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

“**Key Milestones**” means the milestones set out in Schedule 5;

“**Lease**” means the lease of the Lease Area to be granted by the Commissioners and accepted by the Tenant and the Guarantor, which shall be substantially in the form attached at Schedule 1, subject to any alterations made pursuant to this Agreement;

“**Lease Area**” means the area to be the subject of the Lease determined in accordance with Clause 8;

“**Lease Option Area**” means the area within which the Tenant may exercise the Rights as more particularly described and set out in Schedule 2 as may be supplemented pursuant to Clause 6.3;

“**Long Stop Date**” means [];

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

“**Monitoring Plan**” has the meaning given to that expression in the Lease;

“**Necessary Consents**” means all consents, licences, permissions, orders exemptions and approvals (including, inter alia, the Storage Licence and any Pipeline Lease, any Pipelines Works Authorisation and any abandonment programme prepared pursuant to Part IV of the Petroleum Act 1998 in relation to the Carbon Storage Infrastructure, and any consent or permission under any of them) required from any Authority in relation to any works in relation to the Development to be carried out pursuant this Agreement and the Exploration Works and shall include, for the avoidance of doubt, all assessments that may be required to be undertaken before the issue of any of the foregoing;

“**Oil and Gas Works**” means any pipelines, platforms, wellheads or other works for the exploration for or exploitation of oil and gas in respect of which the consents of the Minister required under a licence issued pursuant to the Petroleum Act 1998 have been given;

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

“**Option Fee**” means £[] per annum, payable in accordance with Clause 9.2;

“**Option Notice**” means a written notice served by the Tenant on the Commissioners pursuant to Clause 9, requiring the grant of the Lease, to be in the form set out in Schedule 7 to this Agreement;

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

“**Option Period**” means the period from the date of this Agreement until the earliest of:

- (a) the expiry of the Appraisal Term;
- (b) the Long Stop Date; or
- (c) the termination of this Agreement;

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

“**Permitted Mineral Extraction**” means the process of extracting of minerals and mineral substances from the Lease Option Area as is reasonably necessary for the construction, operation, maintenance, repair, testing, decommissioning, renewal, reinstatement and use of the Exploration Works permitted under this Agreement;

“**Pipeline**” means the pipelines from the offshore platform forming part of the Carbon Storage Infrastructure to and all other pipelines and ancillary electricity and telecommunications cables and all necessary wrappings, sleeves, slabs and other protective materials required as part of the Development;

“**Pipeline Corridor**” means, in respect of each Pipeline (which for these purposes may comprise more than one pipeline following the same route together), the corridor of 500 metres of seabed (having the Pipeline as its centre line) running from the Carbon Storage Site to the United Kingdom shore to be determined in accordance with Clause 8;

“**Pipeline Lease**” means a lease to be granted by the Commissioners to the Tenant in respect of the Pipeline Corridor insofar as it lies within the Territorial Seas on such terms and in such form as shall be adopted from time to time by the Commissioners (acting reasonably) for the purposes of pipelines laid within Territorial Seas;

“**Pipeline Works Authorisation**” means an authorisation granted by the Minister in respect of that part of any pipeline which lies in "controlled waters" (as such terms defined by the Petroleum Act 1998);

“Pollution” means any release into or presence in the environment after the date of this Agreement of any substance which is capable of causing harm to the health of man or other living organisms supported by the environment or other interference with the ecological systems of which they form part where that release or presence was made from or in the Lease Option Area, or from elsewhere as a result of an act or omission of the Tenant or its contractors but so that it affects the Lease Option Area, but shall not include any such release or presence after the grant of the Lease insofar as it occurs in any part of the Lease Option Area which is not also part of the Lease Area unless due to or caused by the Tenant’s prior occupation or use of the Lease Option Area under this Agreement;

[**“Production Licence”** means production licence number [] awarded by the Minister for the development of and production of petroleum from the [] field, part of which field will form part of the Carbon Storage Site];

“Regulations” means The Storage of Carbon Dioxide (Licensing etc.) Regulations 2010;

“Relevant Operations” means the injection and storage of Carbon Dioxide with a view to its permanent disposal within s17(2)(a) of the Energy Act;

“Relevant Works” means the establishment or maintenance of permanent and non-permanent installations for the purposes of the Relevant Operations;

[**“Retained Infrastructure”** means any Wells, platforms, pipelines and associated installations and infrastructure in the Lease Option Area owned or controlled by the Tenant, in existence prior to the date of this Agreement and to be retained by the Tenant for the purposes of the Development;]

“Rights” means the right to enter into the Lease Option Area and carry out the Exploration Works and the rights to [(i) maintain Retained Infrastructure and (ii)] erect, install, operate, maintain and remove equipment and to carry out tests and investigations relating to the implementation of the Development in part of the Lease Option Area;

“Specification” means the three dimensional specification of the Carbon Storage Site and the area of seabed comprised in the Lease Area to be prepared pursuant to this Agreement and attached to the Lease in its final agreed form;

“Standard & Poor’s” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies;

“Storage Licence” means a licence to inject into, and permanently store Carbon Dioxide in the Carbon Storage Site, to be granted by the Minister in favour of the Tenant pursuant to the Energy Act and includes any document varying, supplementing or otherwise affecting the Storage Licence;

“Storage Permit” means a storage permit issued by the Minister pursuant to the Storage Licence (following review the by European Commission pursuant to Article 10 of the EU Directive);

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

- (a) the location and depth of the upper, lower and lateral boundaries of the Carbon Storage Site;
- (b) the location and layout of the Carbon Storage Infrastructure;
- (c) the location and boundaries of the Lease Option Area;
- (d) the location and boundaries of the area of surface of the seabed comprised within the Lease Area; and
- (e) a description of the components of the Carbon Storage Infrastructure;

“**Term**” means the period starting on the date of this Agreement and terminating in accordance with Clause 4.16 or on the grant of the Lease or the date of any determination in accordance with the terms and conditions of this Agreement;

“**Territorial Seas**” means the area extending 12 nautical miles from the baseline or mean low water mark of the United Kingdom;

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

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

“**Well**” means a well or a borehole; and

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

2. TERM

This Agreement shall be effective from the date set out above and shall continue in full force and effect as between the Parties until the date upon which the Lease is granted to the Tenant in accordance with the terms of this Agreement, unless this Agreement is otherwise determined in accordance with its terms and conditions.

3. CONDITIONAL AGREEMENT

3.1 This Agreement is conditional upon the Tenant having obtained the Storage Licence within twenty Business Days of the date of this Agreement.

3.2 The Tenant shall use all reasonable endeavours to satisfy the condition set out in Clause 3.1 as soon as is reasonably practicable and by no later than the date referred to therein.

- 3.3 In the event that the condition set out in Clause 3.1 has not been satisfied by the date referred to therein, then the Commissioners may at any time thereafter (but not if such condition has been subsequently satisfied) determine this Agreement on thirty (30) days' notice by serving written notice on the Tenant to that effect.
- 3.4 Upon service of a notice to determine this Agreement in accordance with Clause 3.3, this Agreement shall absolutely determine and shall be of no further effect, provided that such determination of this Agreement shall not affect the rights or liabilities of the Commissioners, the Tenant or the Guarantor against the respective other Parties in respect of any breach of this Agreement occurring prior to such determination.
- 3.5 In the event that this Agreement is determined pursuant to Clause 3.4, the provisions of Clause 12.5 will apply to any such determination.

4. TENANT'S EXPLORATION RIGHTS

- 4.1 Subject to the terms and conditions of this Agreement, and throughout the Term, the Commissioners hereby grant to the Tenant on an exclusive basis the Rights.
- 4.2 The Tenant shall be responsible for all acts, omissions, defaults or neglect by any agent or sub-contractors of the Tenant and hereby guarantees the performance of such parties in accordance with the terms and conditions of this Agreement.
- 4.3 The Rights are granted subject to:
- 4.3.1 all public rights of navigation and fishing;
 - 4.3.2 the rights of third states or their nationals under rules of international law;
 - 4.3.3 the rights, easements and quasi-easements referred to in the documents described in Schedule 3;
 - 4.3.4 all other rights, easements and quasi easements currently exercisable over the Lease Option Area; and
 - 4.3.5 any other such rights granted by the Commissioners pursuant to Clause 14.1.
- 4.4 The Tenant shall not:
- 4.4.1 exercise the Rights (including without limitation commencing or carrying out the Exploration Works) without first obtaining all Necessary Consents that are required for such purpose; or
 - 4.4.2 carry out any Exploration Works comprising the test injection of any Carbon Dioxide beneath the surface of the seabed;
- 4.5 The Tenant shall, at all times, comply with the terms of the Necessary Consents, applicable law and Good Industry Practice as the same may be amended from time to time.
- 4.6 To the extent that they are located in an area which is on the seaward side of the mean low water mark of the United Kingdom the Tenant shall permit any person

or persons authorised by the Commissioners at all reasonable times but subject to any reasonable operational constraints to enter into and upon any platform [comprising part of the Retained Infrastructure] used or to be used in connection with the Development to inspect the Lease Option Area and the Exploration Works subject to such persons complying with any reasonable health and safety requirements of the Tenant and the Tenant will use all reasonable endeavours to ensure that an appropriately qualified representative of the Tenant is present at any such inspection. The Tenant will provide a seat on an existing scheduled helicopter flight for conveyance to and from any installation or equipment for such purpose and will bear all costs of such flight provided that Tenant shall not be obliged to bear the cost of any inspection carried out more than once in any 3 year period, save where the Landlord reasonably believes that the Tenant is in material breach of its obligations under this Agreement.

- 4.7 The Tenant will keep detailed and accurate records in accordance with the terms of the Necessary Consents and applicable law and will maintain copies of all such records at a permanent residence in the United Kingdom or, if stored electronically, to ensure that all stored data and relevant servers are located in a jurisdiction that recognises the judgements of the courts of England and Wales. The Tenant shall permit any person or persons authorised by the Commissioners at all reasonable times to access such records for the purpose of examining, taking notes from and copying the same.
- 4.8 At the written request of the Commissioners, the Tenant will provide all information relating to the Necessary Consents as the Commissioners may reasonably request, including any reports or notices that it delivers pursuant to applicable law and/or the terms of each of the Necessary Consents.
- 4.9 The Tenant (being the original Tenant or any permitted successor or assignee of this Agreement as the case may be) agrees that it will be from the date of the grant of the Storage Licence, and will remain throughout the Term, the Operator.
- 4.10 The Tenant shall maintain the insurances set out in Schedule 4 and any notified to the Tenant pursuant to Clauses 4.11 and/or 4.13:
- 4.10.1 with effect from the commencement of any operations in respect of which such insurances are required to be maintained, or, in respect of insurance against physical damage or destruction, with effect from the time that the Tenant shall first carry the insurance risk of, or have an insurable interest in, the subject matter of such insurance;
 - 4.10.2 with a limit of indemnity of not less than the corresponding sums set against each required policy; and
 - 4.10.3 on terms and covering risks which a reasonable and prudent owner and/or operator of the Exploration Works [and the Retained Infrastructure] would require subject to the same being available in the market on terms which are reasonably commercially acceptable.

The Tenant shall also ensure that any agent or sub-contractor occupying the Lease Option Area in accordance with Clause 4.2 shall maintain all appropriate insurances as would be expected in accordance with Good Industry Practice in

relation to the activities being undertaken by such agent or sub-contractor within the Lease Option Area.

- 4.11 The Tenant shall produce to the Commissioners documentary evidence that the insurances which the Tenant is obliged to maintain in accordance with this Agreement have been obtained and are being properly maintained whenever so required by the Commissioners and the Commissioners shall be named as co-insured parties where stipulated in Schedule 4.
- 4.12 The Tenant shall observe and perform the terms of any insurance policy effected pursuant to Clause 4.10 and all requirements from time to time of the insurers and not knowingly to do or fail to do anything which shall or may cause any such policy to be void or voidable or any monies payable under it to be irrecoverable.
- 4.13 The Commissioners will review the insurances listed in Schedule 4 and required to be held by the Tenant pursuant to Clause 4.10 every 3 years following the date of this Agreement and will consult with the Tenant before notifying the Tenant of the Commissioner's reasonable additional or changed requirements in relation to the holding of the insurances, and subsequently any additions or amendments that are required to the insurances listed in Schedule 4 which may be reasonably required as a matter of Good Industry Practice.
- 4.14 The Tenant shall provide an annual written report to the Commissioners detailing every claim made against the insurance policies required under Clause 4.10 for that annual period in excess of the deductible under any such policy. The detail of each claim or event in the report shall include the name of the claimant, the date of notification, the alleged value or potential alleged value of the claim or event above such deductible, if known to the Tenant, the nature of the claim or event and whether or not the claim was settled.
- 4.15 If the Tenant at any time fails to maintain the insurances in accordance with its obligations under this Agreement the Commissioners may effect and maintain the insurance and any money the Commissioners expend for that purpose must be repaid by the Tenant on demand and may be recovered by action.
- 4.16 The grant of Rights under Clause 4.1 shall determine on the earliest of:
 - 4.16.1 the expiry of the Option Period;
 - 4.16.2 the Completion Date;
 - 4.16.3 the termination, revocation or withdrawal of the Storage Licence;
 - 4.16.4 determination of this Agreement in accordance with the terms set out herein;
 - 4.16.5 the Long Stop Date; or
 - 4.16.6 the fourth anniversary of the date of this Agreement unless prior to that date the Tenant shall have produced to the Commissioners a copy of a valid and binding Funding Agreement entered into by the Tenant providing for the funding of the Development.

- 4.17 The Tenant shall notify the Commissioners promptly in writing of any amendment to the Appraisal Term requested by the Tenant of the Minister and the outcome of any such request, or of any variation to the Appraisal Term for any other reason.
- 4.18 The Tenant shall, in the event that this Agreement is determined, as soon as reasonably practicable decommission and remove all Carbon Storage Infrastructure and restore the seabed to a safe and proper condition in accordance with the requirements (if any) of any Necessary Consents. . If the Necessary Consents do not specify a safe and proper condition to which the seabed should be returned, then the Tenant shall so notify the Commissioners and at the Commissioners' request the Tenant will procure a report from an Independent Expert (who shall be appointed by the Tenant but whom the Tenant shall procure shall owe a duty of care to the Commissioners in respect of such report) which shall specify the state and condition to which, in the opinion of such Independent Expert, the seabed should be returned in order to be left in a safe and proper condition having regard to the requirements of any relevant Authority, all applicable laws and Good Industry Practice then prevailing, and the Tenant shall if required by the Commissioners restore the seabed to the state and condition as specified in such report.
- 4.19 If there are any inconsistencies between the Tenant's obligations as set out in this Agreement and the Tenant's obligations as licensee or the terms and conditions under the Storage Licence, the Parties agree that the Storage Licence shall prevail.

5. NECESSARY CONSENTS

- 5.1 The Tenant shall apply for all Necessary Consents required to undertake the Development in a timely manner and shall comply with all requirements of the Authority or other person to which each application is made to enable it to determine that application.
- 5.2 In respect of any application for a Necessary Consent (or variations or modifications thereto) that includes plans showing the layout and location of the Exploration Works, the Relevant Works or any other works that the Tenant intends to carry out or Carbon Storage Infrastructure that the Tenant intends to install within the Lease Option Area, or Lease Area or the delineation of the Carbon Storage Site, copies of the plans annexed to such Necessary Consent shall first be approved in writing by the Commissioners (such approval not to be unreasonably withheld or delayed) before such plans are submitted with any relevant application for a Necessary Consent.
- 5.3 The Tenant shall provide such information as the Commissioners shall reasonably require from time to time in respect of the progress of any applications for Necessary Consents and shall forward a copy of any decision notice to the Commissioners within fifteen (15) Business Days of receipt by the Tenant.
- 5.4 The Tenant shall use all reasonable endeavours to procure that each Necessary Consent which does not automatically enure for the benefit of the land to which it relates is granted on terms which permit that Necessary Consent (or the rights granted under it) to be transferred, insofar as it is transferable, without the consent of any Authority to any person to whom an agreement for lease or a lease is

granted by the Commissioners in respect of the specific area to which such Necessary Consent relates.

- 5.5 The Tenant shall not wilfully do or wilfully omit to do anything which may cause any Necessary Consent to be varied, modified to any material degree or revoked (save for making a formal application for a variation, modification or amendment to such Necessary Consent) without the consent of the Commissioners (such consent not to be unreasonably withheld or delayed).

6. EXPLORATION WORKS

- 6.1 The Exploration Works shall be conducted in accordance with:

6.1.1 the Work Programme, including achieving the identified milestones by the corresponding dates set out therein;

6.1.2 all Necessary Consents relating to the same; and

6.1.3 in accordance with all applicable laws.

- 6.2 The Tenant shall:

6.2.1 undertake the Exploration Works in a good and workmanlike manner, at all times acting in accordance with Good Industry Practice;

6.2.2 keep the Lease Option Area and the Exploration Works in good and safe repair and condition acting in accordance with Good Industry Practice (save that the Tenant shall not be liable for the state of repair and condition of the Lease Option Area where it can reasonably demonstrate that any disrepair or unsafe condition was in existence prior to the date of this Agreement or has been caused by an act of nature or of any person other than the Tenant, anyone deriving title through or under the Tenant or any agent or sub-contractor engaged by the Tenant for the purpose of exercising the Rights); and

6.2.3 keep [all Retained Infrastructure and] any Carbon Storage Infrastructure installed for the purposes of the Exploration Works properly maintained.

- 6.3 If the Tenant proposes to conduct any Exploration Works outside the Lease Option Area, the Tenant shall first apply to the Commissioners for an amendment to the Lease Option Area to include the areas where such works will take place and shall submit a plan to the Commissioners showing the revised boundaries of the Lease Option Area. The Commissioners shall not unreasonably withhold their consent for an application under this Clause 6.3 and shall provide the Tenant with a decision, giving reasons, within sixty (60) Business Days of receipt. If the Commissioners consent (in whole or in part) to an amendment to the Lease Option Area then the Lease Option Area shall take effect from the date of such consent as the area specified or permitted in such consent and the parties shall, at the request and cost of the Tenant, take such steps and agree to document the amendment to the Lease Option Area as shall be reasonably necessary to ensure that this Agreement will be valid and binding in respect of the Lease Option Area as amended. Any works carried out by the Tenant outside the Lease Option Area in relation to the preparation of the baseline monitoring required for the Monitoring

Plan will not require an extension to the Lease Option Area if such works do not involve penetration of the seabed to a depth of greater than 350 metres or the establishment of any permanent installation, and this Agreement does not purport to grant the Tenant any rights for it to do so.

- 6.4 The Tenant will comply with the provisions of Clauses 4.4 and 4.5 in respect of any renewal or replacement of the Exploration Works or any alteration or addition to the Exploration Works in so far as applicable.
- 6.5 On notice from the Commissioners, the Tenant will remove as soon as reasonably practicable, any alteration or addition to the Exploration Works made in contravention of Clause 4.4 or 4.5 or 6.3 and will restore the seabed to a safe and proper condition in accordance with the requirements of the Necessary Consents.
- 6.6 To the extent that the CDM Regulations are applicable to the Exploration Works:
 - 6.6.1 the Tenant warrants that it has the competence to perform the duties imposed on a client by the CDM Regulations and that it will comply with the provisions of the CDM Regulations in respect of the Exploration Works, including without limitation all requirements relating to the provision and maintenance of a health and safety file and to provide on request to the Commissioners a copy of the health and safety file and any documents within it;
 - 6.6.2 the Tenant covenants on receipt of written request from the Commissioners to supply all information to the Commissioners that the Commissioners reasonably require to comply with the Commissioners' obligations (if any) under the CDM Regulations; and
 - 6.6.3 prior to commencing any Exploration Works, the Tenant will make a written election that it is to be treated as the only client for the purposes of the CDM Regulations in respect of the Exploration Works and to provide a copy to the Commissioners of the election (and the Commissioners agree to the election to the extent that the Tenant actually is a client in respect of the Exploration Works).
- 6.7 In undertaking the Exploration Works, the Tenant will not:
 - 6.7.1 dig, extract or remove any minerals or mineral substances from the Lease Option Area other than in the process of Permitted Mineral Extraction; and
 - 6.7.2 cause, waste, spoil or destruct any minerals or mineral substances in or on the Lease Option Area other than in the process of the Exploration Works or any Permitted Mineral Extraction and in accordance with any applicable Necessary Consents and any applicable law.
- 6.8 As soon as reasonably practicable following any disturbance of the seabed within the Lease Option Area pursuant to undertaking the Exploration Works, the Tenant will restore the same to a safe and proper condition as determined in accordance with Clause 4.18.

- 6.9 The Tenant will not perform any act, allow any substance or article to remain on, in, under or over the Lease Option Area or exercise any right under this Agreement in a manner which:
- 6.9.1 may be, becomes or may cause a danger, nuisance, damage or injury to the Commissioners or any other person or premises; or
- 6.9.2 may cause Pollution.
- 6.10 In the event that a nuisance occurs in contravention of Clause 6.9, the Tenant shall as soon as reasonably practicable take all necessary steps to abate such nuisance.
- 6.11 The Tenant will give written notice to the Commissioners on a timely basis of the substantial completion of each of the Key Milestones.
- 6.12 At the written request of the Commissioners made at any time but at reasonable intervals the Tenant will provide to the Commissioners all Data obtained by the Tenant in a format reasonably required by the Commissioners.

7. INDEMNITY

- 7.1 The Tenant hereby indemnifies and will keep the Commissioners indemnified against all actions, proceedings, claims and demands brought or made and all proper costs and expenses and all losses, damages and liabilities incurred suffered or arising directly or indirectly in respect of or otherwise in connection with the exercise or purported exercise of the Rights arising under this Agreement (including, without limitation, the occupation and use of the Lease Option Area, the construction, operation or existence of the Exploration Works, any alterations or additions to the Exploration Works or the Lease Option Area, or the existence of the Development), any Pollution occurring to the extent arising from the Tenant's occupation of the Lease Area or the carrying out of Relevant Operations and any breach of any covenant or other provision of this Agreement to be observed and performed by the Tenant, in each case whether arising through any act, neglect or default of the Tenant or anyone deriving title or rights through or under the Tenant or anyone present in the Lease Option Area or exercising the Rights under this Agreement with the express or implied authority of any such person.
- 7.2 Clause 7.1 shall not apply to the extent that any such actions, proceedings, claims and demands are brought or made or any losses, damages, costs, expenses and liabilities are incurred or suffered as a consequence of the breach by the Commissioners of their obligations under this Agreement.
- 7.3 The Commissioners shall not make any admission of liability nor compromise or settle any actions, proceedings, claims and demands in respect of which they claim an indemnity under Clause 7.1 without first notifying the Tenant and having due regard to the Tenant's timely representations.
- 7.4 This Clause 7 shall remain in full force and effect notwithstanding the expiry of the Term of this Agreement or the earlier determination in accordance with the terms and conditions of this Agreement.

7.5 The Commissioners acknowledge that the exercise of the Rights under this Agreement carries an inherent risk that the Carbon Storage Site may be damaged in such a manner to wholly or partially prevent further use of the Carbon Storage Site for the purpose of Carbon Dioxide storage or any other use. The Commissioners therefore release the Tenant (and anyone deriving title or rights through or under the Tenant) from any and all claims the Commissioners may have against the Tenant under this Agreement, in tort or otherwise at law in respect of loss or damage to the Carbon Storage Site and any use or uses that could be made of such Carbon Storage Site provided that nothing in this Clause 7.5 shall operate to prevent the Commissioners from claiming against the Tenant for an amount equal to the Option Fee that would have been payable from the date of such loss or damage until the end of the Term where the Carbon Storage Site has become damaged in such a manner as to wholly or partially prevent further use of the Carbon Storage Site for the purpose of a Carbon Dioxide storage reservoir due to the Tenant's failure to act in accordance with Good Industry Practice.

8. CARBON STORAGE INFRASTRUCTURE, PIPELINES AND LEASE AREA

8.1 [The Tenant will within six (6) months of the date of this Agreement provide to the Commissioners the information required under Clause 8.3 in respect of the Retained Infrastructure.]

8.2 The Tenant shall before serving any Option Notice submit to the Commissioners for approval a proposed Facilities Specification, a proposed Specification and a plan showing the proposed location of the Pipeline Corridor.

8.3 The proposed Facilities Specification shall comprise:

8.3.1 plans showing the location and layout of the Carbon Storage Infrastructure;

8.3.2 a description of the components of the Carbon Storage Infrastructure to a level of detail reasonably required by the Commissioners to enable them to describe this infrastructure within its spatial planning systems and in general terms to third parties; and

8.3.3 such other documents and information which the Commissioners may reasonably require in order to satisfy themselves with regard to the Carbon Storage Infrastructure and any pipelines to be included in the Lease Area.

8.4 The proposed Specification shall comprise:

8.4.1 plans showing the location, depth of the upper, lower and lateral boundaries of the proposed Carbon Storage Site, a description of the Carbon Storage Site, and illustrative geologic cross section drawings of the Carbon Storage Site;

8.4.2 a plan showing the location and boundaries of the proposed area of surface of the seabed to be comprised within the Lease Area;

8.4.3 a table of 3 dimensional co-ordinates of the subsurface volume containing the Carbon Storage Site; and

- 8.4.4 such other documents and information which the Commissioners may reasonably require in order to satisfy themselves with regard to the Carbon Storage Site and the seabed to be comprised within the Lease Area.
- 8.5 All plans, drawings, cross-sections and descriptions to be supplied to the Commissioners shall be to the same level of detail as the plans submitted by the Tenant to obtain the Necessary Consents, save where Commissioners reasonably require greater detail in order to populate their spatial planning systems and to manage potential spatial planning conflicts, in which case the Tenant shall provide plans to the greater level of detail required, at the request of the Commissioners but at the Tenant's own cost.
- 8.6 The Tenant shall notify the Commissioners when it has provided to the Commissioners all information which it proposes to supply in connection with the Specification, the Facilities Specification and the Pipeline Corridor.
- 8.7 The Commissioners shall notify the Tenant, within twenty (20) Business Days of receipt of the last piece of information comprising the Specification, the Facilities Specification and the Pipeline Corridor, of whether or not the Specification, the Facilities Specification and the Pipeline Corridor are approved. If the Specification, the Facilities Specification and the Pipeline Corridor are not approved the Commissioners shall at the same time as such notification inform the Tenant of the reason or reasons why the Specification and the Facilities Specification are not approved.
- 8.8 The Commissioners shall not be required to approve the Facilities Specification without the simultaneous approval of the Specification and the Pipeline Corridor, and *vice versa*.
- 8.9 Subject to the provisions of this Clause 8, the Commissioners' approval to the Facilities Specification, the Specification and the Pipeline Corridor is not to be unreasonably withheld or delayed and is not to be withheld on any grounds other than that:
- 8.9.1 the information provided by the Tenant is incomplete or insufficient to enable the Commissioners to make a reasoned decision; or
- 8.9.2 the information provided by the Tenant is materially different to any information provided by the Tenant to any relevant authority in connection with an application for any Necessary Consent; or
- 8.9.3 any part of the proposed Lease Area conflicts with any actual or intended use of the seabed or the space beneath the seabed over which the Commissioners have the right to exercise control.

9. OPTION

- 9.1 Subject to Clause 3 and the remainder of this Clause 9, in consideration of payment of the Option Fee in accordance with Clause 9.2, the Commissioners will grant to the Tenant the exclusive option and right to require the Commissioners to grant to the Tenant the Lease and a Pipeline Lease in accordance with the terms of this Agreement.

- 9.2 The Tenant shall pay the Option Fee to the Commissioners in advance for each year of the Option Period, on the date of this Agreement and upon each anniversary thereof, for the period prior to any termination pursuant to Clause 12.5. Payment shall be made by way of wire transfer in cleared funds to the account notified by the Commissioners to the Tenant from time to time.
- 9.3 For the avoidance of doubt, the Option Fee shall not form part of or be deductible from any rent payable under the Lease.
- 9.4 The Commissioners and the Tenant agree that if the Option Notice is served in accordance with this Clause 9 the Commissioners shall grant and the Tenant shall accept the Lease and the Pipeline Lease in accordance with the terms of this Agreement.
- 9.5 The exercise of a valid Option Notice pursuant to this Agreement is conditional upon the satisfaction of the following conditions:
- 9.5.1 the Tenant having maintained the Storage Licence in full force and effect and having complied with its terms;
- 9.5.2 in the event that there is a Work Programme the Tenant having obtained written confirmation from the Minister that the Work Programme has been carried out to his satisfaction;
- 9.5.3 by the Option Notice Date:
- (a) the Tenant having obtained and maintained all other Necessary Consents required to have been obtained by such date;
 - (b) the Tenant having completed all Key Milestones;
 - (c) the Specification and the Facilities Specification have been agreed or determined;
 - (d) to the extent that Relevant Works or Relevant Operations are to be performed, or the Pipeline Corridor is located, within 150 metres (or, if relevant, such greater distance as may have been granted by the Commissioners under any arrangement entered into of the type referred to in Clause 14.1) of any of the property of existing rights holders listed in Schedule 3 or any other right holder in which any rights are vested by the Commissioners pursuant to Clause 14.1, a proximity agreement or pipeline crossing agreement being entered into with the relevant right holder;
 - (e) [either the Production Licence having terminated or the Tenant and the holders of the Production Licence having entered into a binding agreement under which the Production Licence is surrendered;]
 - (f) [either title to the Retained Infrastructure having transferred to the Tenant or the Tenant having entered into binding arrangements entitling them to acquire or otherwise use the same;]

- 9.5.4 a Storage Permit having been issued and being in force in respect of the Carbon Storage Site;
 - 9.5.5 the Specification matching the description and extent of the Carbon Storage Site permitted under the Storage Permit;
 - 9.5.6 the Tenant having entered into a valid and binding Funding Agreement providing for the funding of the Development;
 - 9.5.7 by the Option Notice Date the Tenant having provided evidence satisfactory to the Commissioners of the satisfaction of those items listed in Clauses 9.5.1 to 9.5.5 (inclusive).
- 9.6 The Option Notice shall only be valid if it:
- 9.6.1 is served after or contemporaneously with the satisfaction of the conditions set out in Clause 9.5.
 - 9.6.2 is served upon the Commissioners at the address set out at Clause 20; and
 - 9.6.3 is received by the Commissioners within the Option Period.
- 9.7 In the event that a valid Option Notice is not served in accordance with Clause 9.6, then the Commissioners may, at any time after the expiry of the Option Period determine this Agreement by serving written notice on the Tenant to that effect and on service of such notice Clause 12.5 shall apply.

10. GRANT OF THE LEASE

- 10.1 This Clause 10 shall take effect upon the service of a valid Option Notice in accordance with Clause 9.
- 10.2 The Commissioners shall procure that its solicitors prepare the engrossment version of the Lease and the counterpart of it and deliver the counterpart Lease to the Tenant or its solicitors for execution.
- 10.3 The Commissioners will grant and the Tenant will accept and execute and the Guarantor (if any) will execute a counterpart of the Lease on the date which is thirty (30) Business Days after the Option Notice is validly served in accordance with Clause 9.
- 10.4 Completion of the grant of the Lease shall take place at the offices of the Commissioners' solicitors or at such other place as the Commissioners shall reasonably require and notify to the Tenant in writing.
- 10.5 For the purposes of engrossing the Lease the following provisions shall be dealt with as follows:
 - 10.5.1 the Specification to be attached to the Lease shall be the Specification prepared by the Tenant and approved by the Commissioners in accordance with the provisions of this Agreement;

- 10.5.2 the Facilities Specification to be attached to the Lease shall be the Facilities Specification prepared by the Tenant and approved by the Commissioners in accordance with the provisions of this Agreement; and
- 10.5.3 the dates of documents which have been entered into following the date of this Agreement shall be duly inserted where appropriate.

11. TITLE

- 11.1 The Parties acknowledge that The Crown Estate has the Carbon Storage Rights in the Lease Option Area set out in the Energy Act and such rights form part of The Crown Estate.
- 11.2 No title to the rights set out in Clause 11.1 will be shown to the Tenant.
- 11.3 The Tenant shall accept, without requisition or enquiry, The Crown Estate's title to the Lease Area and no title guarantee will be given.

12. DETERMINATION

- 12.1 In addition to the Commissioners' rights of determination set out in other Clauses of this Agreement, the Commissioners may determine this Agreement by written notice to the Tenant if:
- 12.1.1 the Tenant has failed to pay any instalment of the Option Fee within ten (10) Business Days following service by the Commissioners on the Tenant of a written notice specifying that the Tenant has failed to pay the Option Fee on the due date pursuant to Clause 9.2;
- 12.1.2 the Tenant materially fails to perform or observe any of its obligations in this Agreement and such failure or event is:
- (a) incapable of remedy; or
 - (b) or capable of remedy and the Commissioners have served on the Tenant written notice specifying the failure or event, requiring it to be remedied within a reasonable time (to be specified in the notice and taking into account the nature of the obligation in question) and the Tenant has failed to remedy the failure or event accordingly;
- 12.1.3 the Tenant or the Guarantor becomes Insolvent and in the event that the Guarantor has become insolvent a substitute Acceptable Guarantor has not been provided by the Tenant in accordance with Clause 16 within twenty-five (25) Business Days;
- 12.1.4 there is a Change in Control of the Tenant without the prior written approval of the Commissioners (such consent not to be unreasonably withheld or delayed and in considering such Change in Control the Commissioners shall have regard to any decision of the Minister or the relevant Authority in respect of the Storage Licence);

- 12.1.5 any Funding Agreement, having been obtained by the Tenant, is terminated and the Tenant fails to provide evidence reasonably satisfactory to the Landlord of acceptable alternative funding arrangements for the Tenant for the purposes of the Development within twelve (12) months;
 - 12.1.6 the Guarantor (or if there is no Guarantor, the Tenant) ceases to satisfy the Credit Condition and the Tenant fails to substitute (or, if the case, introduce) an Acceptable Guarantor in accordance with Clause 16.3 within twenty-five (25) Business Days; or
 - 12.1.7 the Long Stop Date occurs.
- 12.2 The Tenant shall indemnify and keep the Commissioners indemnified against all actions, proceedings, claims and demands brought or made and all proper costs and expenses and all losses, damage and liabilities incurred suffered or arising directly or indirectly in connection with any event set out in Clause 12.1, except to the extent that any such actions, proceedings, claims and demands are brought or made or losses, damages, costs, expenses and liabilities are incurred or suffered as a result of the default or negligence of the Commissioners in respect of their obligations under this Agreement.
- 12.3 The Tenant may determine this Agreement at any time prior to service of an Option Notice by giving thirty (30) Business Days written notice to the Commissioners, provided that the Tenant has first demonstrated to the satisfaction of the Commissioners whose written approval shall be required (not to be unreasonably withheld or delayed) that the Tenant has fully discharged all outstanding obligations under:
- 12.3.1 the Work Programme;
 - 12.3.2 this Agreement; and
 - 12.3.3 all Necessary Consents.
- 12.4 This Agreement shall determine automatically and immediately if the Storage Licence is terminated, revoked or withdrawn for any reason.
- 12.5 If this Agreement is determined in accordance with the terms set out herein:
- 12.5.1 subject to Clauses 12.5.2 and 12.6, this Agreement shall cease to have effect;
 - 12.5.2 such determination will not affect the rights or liabilities of any Party that have accrued in respect of this Agreement prior to such determination;
 - 12.5.3 if so required by the Commissioners at any time, the Tenant shall use its best endeavours (subject to reimbursement of its reasonable costs of so doing but without requiring the Tenant to take on any ongoing obligations after such proposed transfer or to pay any amounts to any third parties which are not reimbursed by the Commissioners) to procure that any Necessary Consent for the Development and its operation and use (which does not automatically enure for the benefit of the land) is transferred (in

so far as it is transferable) to or reissued or amended so as to be in favour of any person to whom a lease or agreement for lease is granted or intended to be granted by the Commissioners in respect of the Lease Option Area or any part.

12.6 The rights and obligations contained in Clauses 4.19, 5.4, 5.5, 6.8, 6.12, 7, this Clause 12, 15.7, 17, 18, 19, 20 and 21 and those in Schedule 6 shall survive any determination of this Agreement.

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

13. COMMISSIONERS' RIGHT OF DETERMINATION FOR OIL AND GAS WORKS

13.1 The Commissioners may at any time and from time to time determine this Agreement in respect of the Lease Option Area or any part or parts of it by giving reasonable prior written notice to the Tenant specifying the Lease Option Area or the part or the parts of it in respect of which the notice is given.

13.2 The Commissioners shall not give notice under Clause 13.1 unless the Minister for the purposes of the Petroleum Act 1998 has given notice in writing to the Commissioners:

13.2.1 to determine this Agreement in respect of the Lease Option Area or the part or parts of it specified in the notice because the Lease Option Area or the part or parts of it specified in the notice are required for Oil and Gas Works or rights are required over the Lease Option Area or the part or parts of it specified in the notice in connection with Oil and Gas Works,

13.2.2 that such notice is given in accordance with the requirements of any laws or regulations so enabling the Minister, or of any processes or procedures laid down by the policies promulgated from time to time by Her Majesty's Government in the United Kingdom; and

13.2.3 where any compensation is payable to the Tenant in accordance with the requirements of any such laws or regulations or of such policies, that the amount of and liability for such compensation has been determined in accordance with such requirements or otherwise agreed or determined between the Tenant and the proposed recipient of the notified licence or other consent in relation to the notified Oil and Gas Works.

13.3 If notice is given under Clause 13.1 in respect of the whole Lease Option Area then upon the expiry of that notice this Agreement shall determine but without prejudice to the rights and remedies of the Commissioners in respect of any antecedent breach by the Tenant of its obligations under this Agreement.

13.4 If notice is given under Clause 13.1 in respect of a part or parts of the Lease Area then upon expiry of that notice:

13.4.1 this Agreement shall determine in respect of the part or parts of the Lease Option Area specified in the notice;

13.4.2 this Agreement shall from that date take effect as if the part or parts of the Lease Option Area specified in the notice were no longer part of the Lease Option Area; and

13.4.3 such determination shall be without prejudice to:

(a) the rights and remedies of the Commissioners in respect of any antecedent breach by the Tenant of its obligations under this Agreement in respect of the part or parts of the Lease Option Area specified in the notice; and

(b) the continuing operation of this Agreement in respect of the remainder of the Lease Option Area.

13.5 The Tenant shall comply with the obligations under Clause 4.19 in respect of the Lease Option Area or such part or parts of it as are specified in a notice given under clause 13.1 prior to the expiry of that notice.

13.6 Determination under this Clause 13 does not give rise to any abatement of the Option Fee or liability of the Commissioners to pay compensation to the Tenant for such determination.

13.7 The Tenant shall enter into such deeds and documents as the Commissioners may reasonably require to give effect to any notice given under Clause 13.1.

14. DEALINGS AFFECTING LEASE OPTION AREA

14.1 The Commissioners are entitled, acting in their absolute discretion, to grant leases, licences and/or other consents for works and activities to be conducted in, on, over or under the Lease Option Area (other than the Exclusion Zone) at any time prior to service of a valid Option Notice and, to the extent relevant, the Tenant shall take the Lease subject to all such leases, licences and/or other consents provided that the written consent of the Tenant is obtained to any works and activities to be conducted within the Exclusion Zone. [The Commissioners shall not be liable for any breach of this Clause 14.1 to the extent that the Tenant has failed to give the Commissioners accurate information regarding the location of any Retained Infrastructure.] For the avoidance of doubt such other leases, licences and/or other consents shall not include any granted for the use of the storage or possible storage of Carbon Dioxide.

14.2 Details of all leases, licences and other consents for works on, in, over or under the Lease Option Area granted by the Commissioners as at the date of this Agreement are set out in Schedule 3. No representation or warranty is made or given by the Commissioners as to the accuracy of any information as to the as-laid position of works referred to in Schedule 3 or as to whether there are any leases, licences or other consents granted which are not contained in Schedule 3.

14.3 The Commissioners shall at the request of the Tenant made at any time (but not more than once in any period of 6 months) disclose to the Tenant details of any amendment to any lease, licence or other consent for work in, over or under the Lease Option Area granted by the Commissioners after the date of this Agreement.

15. ALIENATION

- 15.1 The Tenant shall not assign, mortgage, charge, novate or otherwise transfer its rights or obligations arising under this Agreement, except as provided in Clause 15.2.
- 15.2 The Tenant may assign the whole benefit of this Agreement prior to the service of an Option Notice provided that it has obtained the Commissioners' prior written consent, such consent not to be unreasonably withheld or delayed and provided that:
- 15.2.1 the Commissioners shall not be regarded as unreasonably withholding their consent if they withhold it on the ground of any of the circumstances (which are specified for the purposes of section 19(1A) of the Landlord & Tenant Act 1927) set out in Clause 15.3;
 - 15.2.2 the Commissioners shall not be regarded as giving their consent subject to unreasonable conditions if they give their consent subject to any of the conditions (which are specified for the purposes of Section 19(1A) of the Landlord & Tenant Act 1927) set out in Clause 15.4;
 - 15.2.3 the provisos in Clauses 15.2.1 and 15.2.2 shall operate without prejudice to the entitlement of the Commissioners to withhold their consent on any other grounds where such withholding of consent would not be unreasonable or to impose any further or subsequent conditions upon the grant of consent where the imposition of such condition or conditions would not be unreasonable.
- 15.3 The circumstances referred to in Clause 15.2.1 are:
- 15.3.1 where in the reasonable opinion of the Commissioners the proposed assignee is not of sufficient financial standing to enable it to comply with the Tenant's obligations under this Agreement and under the Lease; or
 - 15.3.2 the proposed assignee is not resident in either the United Kingdom or a jurisdiction where reciprocal enforcement of judgments exists.
- 15.4 The conditions referred to in Clause 15.2.2 are:
- 15.4.1 prior to the assignment the Tenant pays all arrears of sums made payable under this Agreement;
 - 15.4.2 the proposed assignee executes and delivers a covenant by deed with the Commissioners in such form as the Commissioners may reasonably require to observe and perform the obligations of the Tenant under this Agreement from the date of such assignment until released by operation of law;
 - 15.4.3 the proposed assignee procures the execution a delivery to the Commissioners of a deed of guarantee of the performance and observance by the proposed assignee of the obligations of the Tenant under this Agreement from an Acceptable Guarantor, if required, such deed to

contain the terms set out in Clause 16 and Schedule 6 and otherwise in such form as the Commissioners may reasonably require;

- 15.4.4 where the proposed assignee and/or the Acceptable Guarantor is not incorporated in England or Wales the proposed assignee and/or the Acceptable Guarantor procures a legal opinion letter which complies with the requirements of Schedule 8 addressed to and approved by the Commissioners (acting reasonably) and provides to the Commissioners an irrevocable address for service in England or Wales for notices under this Agreement and the Lease and proceedings with solicitors or other agents approved by the Commissioners (acting reasonably);
 - 15.4.5 that any Necessary Consents which have been granted are, to the extent they are granted to the Tenant in its name, transferred or granted to the proposed assignee on or before completion of the proposed assignment;
 - 15.4.6 prior to the assignment the Tenant and the proposed assignee take such steps and agree to make such variations to this Agreement as, in the reasonable opinion of the Commissioners, are necessary to ensure that this Agreement will be valid and binding notwithstanding the assignment;
 - 15.4.7 that simultaneously with the assignment of the benefit of this Agreement the Storage Licence is transferred to the proposed assignee or, where the licensee under the Storage Licence will after the date of such transfer comprise two or more persons, to the assignee and any other persons comprising the licensee; and
 - 15.4.8 that the assignee of the benefit of this Agreement is the Operator under the Storage Licence.
- 15.5 An outgoing Tenant will be released from its future obligations under this Agreement with effect from the date of a lawful assignment permitted under the terms of this Agreement without prejudice to the rights and remedies of the Commissioners in respect of any antecedent breach by that Tenant of its obligations under this Agreement.
- 15.6 Within one month from their respective dates to lodge in the Commissioners' office for registration all orders of court, assignments of this Agreement and other instruments affecting devolution of this Agreement or the Term and all mortgages and charges of them and on demand to pay the Commissioners' reasonable registration fee.
- 15.7 Without prejudice to this Clause 15 the Tenant shall inform the Commissioners of the identity of those persons holding an interest in the Storage Licence and shall notify the Commissioners whenever there is a change in the identity of the joint holders of the Storage Licence, such notification to be provided in writing to the Commissioners within thirty (30) Business Days of such change.

16. GUARANTEE

16.1 If:

- 16.1.1 the Tenant wishes to substitute the Guarantor; or

16.1.2 the Guarantor ceases to satisfy the Credit Condition;

then the Tenant shall give notice of this to the Commissioners and shall propose a substitute guarantor. Subject to the prior written approval of the Commissioners to the proposed substitute guarantor (which shall not be unreasonably withheld where the substitute Guarantor is an Acceptable Guarantor) then on receipt of an executed deed in such form as the Commissioners shall reasonably require (and which shall include the provisions of Schedule 6) the Commissioners shall accept the proposed substitute guarantor as the Guarantor under this Agreement.

17. GOVERNING LAW AND JURISDICTION

17.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the Lease Option Area is, for the purpose of all English laws applicable to this Agreement, to be regarded as if it was incorporated in the body of a county of England and Wales.

17.2 The Tenant irrevocably agrees, for the exclusive benefit of the Commissioners, that the courts of England and Wales shall have jurisdiction over any claim or matter arising under or in connection with this Agreement and that, accordingly, any proceedings in respect of any such claim or matter may be brought in such courts. Nothing in this Clause 17.2 shall limit the right of the Commissioners to take proceedings against the Tenant in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdiction or jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction or jurisdictions.

18. EXCLUSION OF SECURITY OF TENURE

18.1 The Commissioners and the Tenant confirm that:

18.1.1 [not less than 14 days] before the Tenant entered into this Agreement the Commissioners served on the Tenant a notice dated [●] 2011 substantially in the form set out in Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 and which relates to the tenancy to be created by the Lease (a copy of which is annexed); and

18.1.2 before the Tenant entered into this Agreement the Tenant or someone acting on its behalf made a [statutory] declaration dated [●] 2011 substantially in the form set out in Schedule 2 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (a copy of which is annexed).

18.2 The Tenant confirms that the declaration referred to in Clause 18.1.2 was made by a person duly authorised to make the declaration on the Tenant's behalf.

19. CONFIDENTIALITY

19.1 Tenant's duty of confidentiality

19.1.1 Subject to this Clause 19.1 the Tenant shall keep strictly confidential, not disclose to any third party (except to the extent necessary to permit it to

satisfy its obligations and execute its rights hereunder) and use only for purposes of this Agreement, the Commissioners' Confidential Information.

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

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

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

19.1.4 The Tenant may communicate any Commissioners' Confidential Information to:

- (a) its officers, directors, employees, financiers, lawyers and other advisors or consultants; or
- (b) any intended assignee of an interest in the Development or the Tenant; or
- (c) any co-licensee under a Storage Licence ; or
- (d) any contractor employed by the Tenant,

provided in each case that such person or entity is informed of the confidential nature of such information and agrees to be bound by the restrictions contained in this Clause 19.1.

19.1.5 Where the Tenant discloses, or has disclosed, Commissioners' Confidential Information as permitted under Clauses 19.1.3 and 19.1.4, the Tenant shall notify the person to whom the information is disclosed of the confidentiality of the information and shall take all reasonable steps to ensure that such person observes the restrictions on disclosure in this Clause 19.1.

19.2 Commissioner's duty of confidentiality

19.2.1 Subject to this Clause 19.2 the Commissioners shall keep strictly confidential, not disclose to any third party (except to the extent necessary to permit it to satisfy its obligations and execute its rights hereunder) and

use only for purposes of this Agreement the Tenant's Confidential Information.

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

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

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

19.2.4 The Commissioners may communicate the Tenant's Confidential Information to its officers, directors, employees, financiers, lawyers and other advisors or consultants or any intended assignee of The Crown Estate's interest in the Development, provided that such person or entity is informed of the confidential nature of such information and agrees to be bound by the restrictions contained in this Clause 19.2.

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

- (a) to national repositories for data, provided that any such repository does not publish or distribute the disclosed part of the Tenant's Confidential Information in its entirety or only uses the Tenant's Confidential Information in aggregation with other data for the production of charts and other materials, or for the purposes of research, and keeps the source of the Tenant's Confidential Information confidential; and
- (b) where, in the absolute discretion of the Landlord, disclosure is required under the Freedom of Information Act 2000 ("FOIA"), or the Environmental Information Regulations 2004 ("EIRs") and the Tenant acknowledges and agrees that the Commissioners may, acting in accordance with the codes of practice issued and revised from time to time under Section 45 of the FOIA and regulation 16 of the EIRs, (the "Codes") disclose the Tenant's Confidential Information either in circumstances described in the Codes without consulting the Tenant, or following consultation with the Tenant and taking its views into account in accordance with the

Codes. Notwithstanding the foregoing the Commissioners shall use all reasonable endeavours to consult with and take into account any representation made by the Tenant in relation to the proposed release of such Tenant's Confidential Information.

19.2.6 Where the Commissioners disclose, or have disclosed, Tenant's Confidential Information as permitted under Clauses 19.2.3 to 19.2.5 (inclusive), the Commissioners shall notify the person to whom the information is disclosed of the confidentiality of the information and shall take all reasonable steps to ensure that such person observes the restrictions on disclosure in this Clause 19.2.

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

20. NOTICES

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

20.1.1 if to the Commissioners, at:

Address: 16 New Burlington Place, London W1S 2HX

Attention: Legal Director

Fax No: 020 7851 5125

20.1.2

Address:

Attention:

Fax No:

20.1.3 if to the Guarantor, at:

Address:

Attention:

Fax No:

or to such other addresses or facsimile numbers provided to the other Party or Parties in accordance with the terms of this Clause 20.

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

21. MISCELLANEOUS

21.1 The Commissioners do not warrant that the Lease Area may lawfully be used or is otherwise suitable for any purpose authorised under this Agreement, and the Tenant acknowledges that it accepts all risk associated with the Development and the exercise of the Rights and has carried out, or will carry out, all investigations, surveys and exploratory work necessary to satisfy itself as to the suitability of the Lease Option Area or the Lease Area for the purposes of carrying out and conducting the Exploration Works, the Relevant Works and the Relevant Operations. The Commissioners shall bear no responsibility for the suitability or otherwise of any part of the Lease Option Area or the Lease Area for any purpose to be authorised by the Lease, including without limitation as a consequence of fluctuations in pressure or the available volume for Carbon Dioxide storage.

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

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

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

21.5 The Tenant shall, subject to receipt of a valid Value Added Tax invoice, pay to the Commissioners Value Added Tax at the appropriate rate on all payments due to the Commissioners under this Agreement.

21.6 This Agreement incorporates the entire contract between the Parties and the Tenant acknowledges that it has not entered into this Agreement in reliance upon any statement or representations made to the Tenant by or on behalf of the Commissioners.

21.7 Except as otherwise provided herein, this Agreement may not be amended except by a written agreement executed by each Party.

21.8 Any instalment of the Option Fee or any other sum due from the Tenant to the Commissioners under this Agreement, which is not paid when it is due (or within any period specifically allowed by this Agreement), shall bear interest at the rate of []% per annum or, if greater, []% per annum above the base rate of Barclays Bank plc for the period from (but not including) the date when it fell due to the date of payment.

21.9 Any provision of, or the application of any provision of, this Agreement which is void, illegal or unenforceable shall not affect the validity, legality or

enforceability of the remaining provisions of this Agreement and if such a provision is found to be void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions of this Agreement.

21.10 It is not intended that any third party shall be entitled to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

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

SCHEDULE 1
LEASE

**SCHEDULE 2
LEASE OPTION AREA**

The Lease Option Area is defined by reference to the following co-ordinates, as shown for identification purposes only edged [red] on the attached plan:

SCHEDULE 3
EXISTING RIGHTS

SCHEDULE 4

INSURANCES

Nature of insurance	Commissioners as co-insured	Level of cover
Third party and public liability		
[Physical damage (full reinstatement or estimated maximum loss) to Retained Infrastructure]		

- 1 Subject to paragraph 2, all insurances shall be placed with a reputable insurance office or underwriters in London in each case approved in writing by the Commissioners (such approval not to be unreasonably withheld or delayed).
- 2 The Tenant may insure through a captive insurer for so long as such captive insurer satisfies the test set out the definition of "Credit Condition" in this Agreement.

SCHEDULE 5

KEY MILESTONES

- 1 Submission by the Tenant of a formal application for Storage Permit;
- 2 Provisional grant of Storage Permit by the Minister;
- 3 Final opinion on Storage Permit from the European Commission pursuant to the EU Directive;
- 4 Final grant of Storage Permit by the Minister;
- 5 [other]

SCHEDULE 6

GUARANTEE

1. GUARANTEE

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

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

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

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

2. LIABILITY UNCONDITIONAL

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

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

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

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

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

2.1.5 the Agreement being terminated by any means;

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

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

3. CONTINUITY AND DISCHARGE OF THE GUARANTEE

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

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

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

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

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

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

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

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

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

4. REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

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

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

5. PAYMENT UNDER THE GUARANTEE

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

6. INTEREST

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

SCHEDULE 7
OPTION NOTICE

The Crown Estate Commissioners
16 New Burlington Place,
London W1S 2HX

For the attention of the Legal Director

[Date]

Dear Sirs

Re: Agreement for lease (the “Agreement for Lease”) dated [] 2011 and made between Her Majesty the Queen (1) the Commissioners (2) the Tenant (3) [and the Guarantor (4)] relating to the Carbon Capture Site at the []

We refer to the Agreement for Lease. Capitalised terms used in this notice shall have the meaning given to them in the Agreement for Lease.

In accordance with the provisions of clause 9 of the Agreement for Lease we give notice to you of the exercise of our option to take the Lease and the Pipeline Lease. In doing so we warrant to you that we have:

- (a) complied with the conditions set out in clause 9.5 of the Agreement for Lease; and
- (b) on or prior to the date of this notice provided evidence satisfactory to the Commissioners of the satisfaction of those items listed in Clauses 9.5.1 to 9.5.5 (inclusive) of the Agreement for Lease.

Yours faithfully

Director duly authorised on behalf of []

SCHEDULE 8

OPINION REQUIREMENTS

- 1 For the purposes of Clause 3.9.4(c) a qualifying legal opinion shall be required to fulfil the following criteria:
 - 1.1 The opinion shall be in writing and be given by a firm which is qualified to act as a legal adviser in the jurisdiction in which the proposed assignee and/or the Guarantor (as appropriate) (the "**Relevant Entity**") is incorporated (the "**Relevant Jurisdiction**") and which is approved by the Commissioners (not to be unreasonably withheld);
 - 1.2 The opinion shall confirm that, in the opinion of the relevant law firm:
 - 1.2.1 the Relevant Entity is duly incorporated and validly existing under the laws of the Relevant Jurisdiction and is not the subject of any insolvency process or procedure;
 - 1.2.2 the Relevant Entity has the corporate power and capacity to enter into and perform its obligations under the Agreement and any relevant deed of covenant or relevant deed of guarantee and has taken the necessary corporate action to authorise the due execution and performance of its obligations under the same;
 - 1.2.3 no regulatory consents are required for the lawful execution of, or performance of the obligations under, the Agreement and any relevant deed of covenant or relevant deed of guarantee by the Relevant Entity;
 - 1.2.4 the execution by the Relevant Entity of, and the performance of its obligations under, the Agreement and any relevant deed of covenant or relevant deed of guarantee does not result in any breach of its constitution or any law or regulation of general application in the Relevant Jurisdiction;
 - 1.2.5 the obligations assumed by the Relevant Entity in the Agreement and any relevant deed of covenant or relevant deed of guarantee constitute legal, valid, binding and enforceable obligations of the Relevant Entity;
 - 1.2.6 it is not necessary to ensure the legality, validity, enforceability or admissibility in evidence of the Agreement, any relevant deed of covenant or relevant deed of guarantee that it be filed, recorded or registered at any governmental, administrative or other authority or court in the Relevant Jurisdiction (save where that law firm undertakes to carry out any necessary filing, recording or registration);
 - 1.2.7 either there is no registration fee, stamp duty or other documentary charge required to be paid in the Relevant Jurisdiction in relation to the Agreement and any relevant deed of covenant or relevant deed of guarantee, or stating the amount and frequency of payment required for any such fee or charge;
 - 1.2.8 the choice of English law to govern the Agreement and any relevant deed of covenant or relevant deed of guarantee is valid and English law will be applied by the courts in the Relevant Jurisdiction;

- 1.2.9** if any final and conclusive judgment under which a sum of money is payable were obtained in a superior court in England and Wales against the Relevant Entity , that judgment would be recognised and enforced by the courts in the Relevant Jurisdiction without reconsidering its merits; and
- 1.2.10** any address within any part of England and Wales agreed by the Relevant Entity as an address for service of process will be valid and binding on the Relevant Entity.
- 1.3** The opinion shall be subject only to such assumptions and limitations as are (in the Commissioners' reasonable opinion) appropriate and usual for such an opinion at the time the opinion is given.

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

SIGNED AS A DEED by)
[TENANT] acting by:-)

Director

In the presence of :

Witness name
Address

Occupation

SIGNED AS A DEED by)
[GUARANTOR] acting by:-)

Director

In the presence of :

Witness name
Address

Occupation