

DATED _____ **20●**

HER MAJESTY THE QUEEN (1)
THE CROWN ESTATE COMMISSIONERS (2)
[PARTY THREE] (3)

AGREEMENT

relating to

[Licence] [Lease] of [] [Pipeline]
[Cable[s]] [coming onshore at []]

Estates Ref: ●
Purchase Order: ●
BP Ref: ●

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DATE

20[]

PARTIES

- (1) HER MAJESTY THE QUEEN;
- (2) THE CROWN ESTATE COMMISSIONERS on behalf of Her Majesty acting in exercise of the powers conferred by the Crown Estate Act 1961 (the "Commissioners"); [and]
- (3) [PARTY THREE] [(company number []) [of] [whose registered office is at] [] (the ["Tenant"] ["Licensee"])].

OPERATIVE PROVISIONS

1 Definitions

In this agreement the following expressions have the following meanings:

Agreement	this agreement
[Cable[s]]	[take definition from main document]
Commissioners	this includes any other person who takes over managing The Crown Estate
Interest Rate	3% a year above Barclays Bank Plc's base rate from time to time [check against main document]
[Lease	the Lease to be granted by the Commissioners and accepted by the Tenant in the form of the attached agreed draft subject to any amendments made pursuant to this agreement]
[Licence	the Licence to be offered by the Commissioners and accepted by the Licensee in the form of the attached agreed draft subject to any amendments made pursuant to this agreement]
Necessary Consents	any licence authorisation consent permit or approval for the [laying of the Pipeline] [laying of the Cable[s]] [laying of the Cable System] [including Other Consents] (as defined in the [Lease] [Licence]) required of any statutory public legal or European [or other] authority or agency or required in consequence of any of the matters referred to in [Schedule 2 of the Lease] [the Schedule to the Licence]
Option Fee	the sum of [£] per annum
Option Notice	written notice served by the [Tenant] [Licensee] on the Commissioners within the Option Period requiring the grant of the [Lease] [Licence] to take place
Option Period	the period of [3] years from and including the date of this Option subject to extension in accordance with clause [4]
[Pipeline]	[take definition from main document]

Working Day	any day except Saturday Sunday and bank or other public holidays in England
VAT	value added tax or a similar tax that replaces it or is charged in addition to it

2 Interpreting this agreement

- 2.1 The headings in this agreement are for reference only. They are not to be used to interpret the text beneath.
- 2.2 The Schedule and Annexes to this agreement are part of this agreement. References to the parties, Schedule, Annexes and clauses mean those in this agreement.
- 2.3 References to persons include bodies corporate, unincorporated associations and partnerships, in each case whether or not they have a separate legal identity.
- 2.4 Unless the context specifically requires otherwise:
- 2.4.1 words relating to one gender are treated as meaning any gender;
 - 2.4.2 words relating to individuals are treated as also meaning corporations and vice versa;
 - 2.4.3 words in the singular are treated as also meaning the plural and vice versa; and
 - 2.4.4 words relating to the whole are treated as including any part of the whole.
- 2.5 All agreements and obligations by a party in this agreement (whether or not expressed as covenants) are to be read as covenants by that party.
- 2.6 If a condition or covenant in this agreement requires a party not to do something, it is a breach of the condition or covenant to allow somebody else to do it.
- 2.7 References to statutory provisions, acts or EC Directives include (except where expressly stated to the contrary) references to:
- 2.7.1 any changes to them including any extension, consolidation, replacement or re-enactment (before or after the date of this agreement);
 - 2.7.2 any previous statutory provisions, acts or EC Directives that they have replaced or changed; and
 - 2.7.3 any regulation, instrument or order or other subordinate legislation made under them.
- 2.8 If a party consists of more than one person, the covenants and obligations which that party undertakes can be enforced against them all jointly or against each individually.
- 2.9 If any provision of this agreement is held to be invalid or unenforceable by any court or other competent authority, all its other provisions will remain in full force.
- 2.10 This agreement does not confer on any person or party (except the parties to it) rights under the Contracts (Rights of Third Parties) Act 1999.
- 2.11 The words "include" and "including" are deemed to be followed by the words "but not limited to".

3 Option Fee

- 3.1 The [Tenant] [Licensee] shall pay the Option Fee to the Commissioners on the date of this agreement and on each anniversary of that date (save on the third anniversary where the Option Fee has been paid as set out in clause 4 (for the avoidance of doubt the Option Fee will be payable on the fourth anniversary as above)).
- 3.2 The Option Fee does not form part of and is not deductible from any [rent] [licence fee] payable under the [Lease] [Licence].

4 Extension of Option Period

- 4.1 The Option Period will be extended by [2] years so that in aggregate the Option Period is a period of [5] years from and including the date of this agreement if:-
- 4.1.1 the [Tenant] [Licensee] gives written notice to the Commissioners invoking the provisions of this clause 4 at least three months prior to the third anniversary of the date of this agreement; and
- 4.1.2 the [Tenant] [Licensee] pays the Option Fee to the Commissioners in cleared funds within 5 Working Days after notice is given under clause 4.1.1.

5 Grant of the [Lease] [Licence]

- 5.1 The Commissioners and the [Tenant] [Licensee] agree that if the Option Notice is served in accordance with this clause 5 the Commissioners shall grant and the [Tenant] [Licensee] shall accept the Lease on the terms of this agreement.
- 5.2 The Option Notice will only be valid if it is:-
- 5.2.1 served after the [Tenant] [Licensee] has:-
- (a) obtained the Necessary Consents relating to [the Foreshore and Seabed below the] [the entire] [Pipeline (as defined in the Lease)] [Cable System (as defined in the Licence)] [**Note: it is expected that consents in all jurisdictions will be needed if dealing goes outside English/Welsh waters**]; and
- (b) complied with any Conditions contained in those Necessary Consents in so far as they are capable of being completed before the exercise of the Rights (as defined in the [Lease] [Licence])
- 5.2.2 served upon the Commissioners at the address stipulated in clause 13;
- 5.2.3 served with evidence that the [Tenant] [Licensee] has an Acceptable Covenant (as defined in the [Lease] [Licence]); and
- 5.2.4 received by the Commissioners within the Option Period (time being of the essence) and in that connection the Option Notice shall be deemed to have been received two Working Days after it has been sent by recorded or guaranteed delivery to the address specified in clause 13.

- 5.3 The [Tenant] [Licensee] shall provide such evidence as the Commissioners may reasonably require that the Necessary Consents have been obtained.

6 Completion

- 6.1 This clause 6 shall take effect upon valid service of the Option Notice.
- 6.2 The Commissioners shall procure that their solicitors prepare the engrossments of the [Lease] [Licence] and the counterpart of it and deliver the counterpart [Lease]

[Licence] to the [Tenant] [Licensee] or its solicitors within 7 Working Days after the Option Notice is served.

- 6.3 The Commissioners will grant and the [Tenant] [Licensee] will accept and execute a counterpart of the [Lease] [Licence] on the date which is 10 Working Days after the Option Notice is served.
- 6.4 [Completion shall take place at the offices of the Commissioners' solicitors or at such other place as they shall reasonably require.

[Note for Pipeline Lease]

6.5 The blank spaces in the Lease shall be completed as follows:-

- 6.5.1 the Commencement Date shall be the date of service of the Option Notice;
- 6.5.2 the [Long Stop Operational Date] will be [];
- 6.5.3 in clause 20 and 22.2 the Basic Rent shall be [£][]
- 6.5.4 in clause 20 and 22.2. the Additional Rent shall be [£][]
- 6.5.5 the [Principal Rent] [shall be made up of the Additional Rent and the Basic Rent] [shall be the greater of [£] per annum or the amount calculated in accordance with the following formula:

$$[\text{Principal Rent}] = \text{£}[] \times \frac{\text{Latest Index Figure}}{\text{Initial Index Figure}}$$

Where

"Latest Index Figure" means the Index of Producer Prices for Output of Manufactured Products (Code PLLU) (published by the Office for National Statistics or any other agency ministry department or other body with the responsibility for the time being for publishing that index) for the month which falls two months before the Commencement Date

"Initial Index Figure" means [] the Index of Producer Prices for Output of Manufactured Products (Code PLLU) figure for []

- 6.5.6 the Rent Payment Dates shall be "[Commencement Date]"
- 6.5.7 the [Pre-Operational Fee] shall be [%] of the [Principal Rent]
- 6.5.8 the Term shall be "the term of [] years beginning on the Commencement Date and ending on []"
- 6.5.9 in clause 20 the Index Review Date shall be each 3rd anniversary of the Commencement Date
- 6.5.10 in clause 20 the OM Review Date shall be the 31 December 2019 and each 10th anniversary]

[Note for Cables Licence]

6.6 [The blank spaces in the Licence shall be completed as follows:-

- 6.6.1 the [Long Stop Operational Date] will be [];
- 6.6.2 the Licence Start Date will be the date of service of the Option Notice;
- 6.6.3 the Non Operational Fee will be **[Note either insert figure or mechanism for calculation based on 6.5.5 above];**

- 6.6.4 the Operational Fee will be **[Note either insert figure or mechanism for calculation based on 6.5.5 above];**
 - 6.6.5 the Out of Service Fee will be **[Note either insert figure or mechanism for calculation based on 6.5.5 above];**
 - 6.6.6 the Payment Dates will be [the Licence Start Date] and the [] **[Note date 6 months later];**
 - 6.6.7 in clause 24.1 the Index Review Date will be the next 2 January following the Licence Start Date]
- 6.7 The route of the [Pipeline] [Cable[s]] will be that shown on the plan and list of co-ordinates annexed or such other route as the Commissioners may approve (such approval not to be unreasonably withheld) prior to service of the Option Notice and prior to the second anniversary of the date of this agreement

7 No Restriction

- 7.1 [For the avoidance of doubt the provisions of clause [33 – Landlord’s covenants] [16 – [Licence]] of the [Lease] [Licence] shall not take effect until the [Commencement Date (as ascertained under clause 6)] [Licence Start Date]
- 7.2 The Commissioners are entitled to carry out or grant licences, leases or consents for dredging or removal of minerals or the construction of works within the No Dredging Zone and Works Restriction Zone (as defined in the [Lease] [Licence]) in their absolute discretion during the subsistence of this agreement (but prior to the [Commencement Date] [Licence Start Date]) provided that written notice is given to the [Tenant] [Licensee] of any such licence, lease or consent as soon as reasonably practicable after it is granted and provided that any such licence, lease or consent relating to dredging is terminated by the [Commencement Date] [Licence Start Date] in so far as it affects the No Dredging Zone

8 Determination and Lapse of Option

- 8.1 The Commissioners may determine this agreement by written notice to the [Tenant] [Licensee] if:
 - 8.1.1 the [Tenant] [Licensee] has not paid the Option Fee to the Commissioners in accordance with clause 3 of this agreement
 - 8.1.2 the [Tenant] [Licensee] materially fails to perform or observe any of its obligations in this agreement and such failure or event is incapable of remedy or it is capable of remedy and the Commissioners have served on the [Tenant] [Licensee] written notice specifying the failure or event and requiring it to be remedied within a reasonable time (to be specified in the notice) and the [Tenant] [Licensee] has failed so to do; or
 - 8.1.3 the [Tenant] [Licensee] becomes Insolvent
- 8.2 In clause 8.1 "Insolvent" means the [Tenant] [Licensee]:-
 - 8.2.1 is the subject of a petition presented or an order made or a resolution passed or analogous proceedings taken for winding up such company (save for the purpose of and followed within four months by an amalgamation or reconstruction which does not involve or arise out of insolvency or give rise to a reduction in capital and which is on terms previously approved by the Landlord); or
 - 8.2.2 an encumbrancer takes possession or exercises or attempts to exercise any power of sale or a receiver is appointed of the whole or any part of the undertaking property assets or revenues of such company; or

- 8.2.3 is the subject of an administration order or an application for an administration order or the giving of any notice of intention to appoint an administrator or the filing at court of the prescribed documents in connection with the appointment of an administrator; or
 - 8.2.4 stops payment or its directors take steps to obtain a moratorium or becomes or is deemed to be insolvent or unable to pay its debts within the meaning of section 123 Insolvency Act 1986; or
 - 8.2.5 without the prior consent in writing of the Landlord ceases or threatens to cease to carry on its business in the normal course; or
 - 8.2.6 any event occurs or proceedings taken in any jurisdiction which has an effect equivalent or similar to any of the events or proceedings set out in this clause 8.2
- 8.3 If the Option Notice is not validly served within the Option Period (time being of the essence) or if this agreement is determined under clause 8.1 then this agreement shall cease to have effect but without prejudice to the rights and remedies in respect of any antecedent breach by either party of this agreement
- 8.4 If this agreement is determined or ceases to have effect the Commissioners shall not be liable to refund the Option Fee or any part of it

9 Assignment

- 9.1 The [Tenant] [Licensee] shall not assign or in any way deal or part with this agreement or any interest under it provided
- 9.1.1 this agreement may be charged or assigned by way of security to a reputable and substantial financial institution provided that notice of that charge or assignment is provided to the Licensor within 21 days and
 - 9.1.2 any chargee or assignee by way of security exercising a power of sale (or otherwise dealing with this agreement) shall be subject to the same terms and conditions relating to assignment and dealing with this agreement as are contained in this clause 9

10 [Tenant's] [Licensee's] Obligations

- 10.1 The [Tenant's] [Licensee's] obligations under this agreement shall continue notwithstanding the grant of the [Lease] [Licence] insofar as they remain to be performed and observed.

11 Payments

- 11.1 The [Tenant] [Licensee] shall pay to the Commissioners Value Added Tax at the appropriate rate on all payments due to the Commissioners under this agreement on the production of a valid Value Added Tax invoice.
- 11.2 Any sum due from the [Tenant] [Licensee] 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 Interest Rate for the period from the date when it fell due to the date of payment.

12 Legal and Surveyors' Charges

- 12.1 On exchange of this agreement the [Tenant] [Licensee] shall pay the Commissioners' solicitors' and surveyors' costs and expenses including VAT in connection with the negotiation preparation and completion of this agreement and the Commissioners' costs of preparing the annexed plan.
- 12.2 On completion of the [Lease][Licence] the [Tenant] [Licensee] shall pay the Commissioners' solicitors' and surveyors' costs and expenses including VAT in

connection with the negotiation (if amendments are requested to the documents and plan) preparation and completion of the signature copies of the [Lease] [Licence] and the Commissioners' costs of preparing any amended plan.

13 Notices

13.1 Any notice to be given under this agreement must be in writing and signed by the person giving it or some person authorised by them. It will be duly served:

13.1.1 48 hours after being sent by registered or recorded delivery post to the registered office of the recipient or to the Commissioners at their office at 16 New Burlington Place London W1S 2HX (or such address as is notified in writing to the other party from time to time); or

13.1.2 (if earlier) when delivered to the recipient.

13.2 Notices may not be served by facsimile or by electronic mail.

14 Entire agreement

14.1 The Commissioners and the [Tenant] [Licensee] each acknowledge that the terms and conditions set out and incorporated in this agreement form the entire contract and arrangement between them and the Tenant acknowledges that it has not entered into this agreement in reliance on any statement or representations made to the [Tenant] [Licensee] by or on behalf of the Commissioners.

15 Contracts (Rights of Third Parties) Act 1999

15.1 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

16 Governing law and jurisdiction

English law applies to this agreement. The parties irrevocably agree that the Courts of England and Wales have exclusive jurisdiction to settle any disputes arising out of or in connection with this agreement.

This agreement is entered into by the parties on the date at the beginning of this agreement.

Signed by

.....
[signature]

.....
[print name of signatory]

for and on behalf of The Crown Estate Commissioners

Signed by:

.....
[signature]

.....
[print name of signatory]

for and on behalf of [NAME OF COMPANY]