

DATED

31st August

2012

NORTH NORFOLK DISTRICT COUNCIL (1)
BROADLAND DISTRICT COUNCIL (2)
THE SECRETARY OF STATE FOR JUSTICE (3)

DEED OF VARIATION
VARYING THE PROVISIONS OF AN AGREEMENT
UNDER SECTION 106
OF THE TOWN AND COUNTRY PLANNING ACT 1990
relating to
LAND AT THE FORMER RAF COLTISHALL

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THIS DEED OF VARIATION is made this

31st

day of August 2012

BETWEEN:

- (1) **NORTH NORFOLK DISTRICT COUNCIL** of Council Offices Holt Road Cromer NR27 9JA ("North Norfolk")
- (2) **BROADLAND DISTRICT COUNCIL** of Thorpe Lodge 1 Yarmouth Road Thorpe St Andrew Norwich NR7 0DU ("Broadland") and
- (3) **THE SECRETARY OF STATE FOR JUSTICE** ("the Developer")

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed of Variation words and expressions used in the First Deed and the Second Deed and not defined in this Deed shall have the same meaning in this Deed unless the contrary intention appears and the following expressions shall where the context so admits have the following meanings

"the Community Woodland site" shall mean that part of the Access land located at the northern boundary of the former airfield shown edged in yellow on the plan marked Land Registration Plan 1 annexed to this Deed

"the First Deed" shall mean the Deed of Planning Agreement dated 9 February 2009 and made between North Norfolk of the one part Broadland of the second part the Developer of the third part and Arqiva Limited of the fourth part in respect of the development permitted by the First Planning Permission and the Second Planning Permission

"the First Planning Permission" shall mean the First Planning Permission as defined in the First Deed relating to the construction of a prison now known as HMP Bure on the Site at the former RAF Coltishall

"the Parties" shall mean the parties to this Deed and shall be construed accordingly

"the Second Deed" shall mean the Deed of Planning Agreement dated 20 May 2011 and made between North Norfolk of the one part and the Developer of the other part in respect of the development permitted by the Third Planning Permission

"the Second Planning Permission" shall mean the Second Planning Permission as defined in the First Deed relating to the construction of a prison now known as HMP Bure on the Site at the former RAF Coltishall

"the Third Planning Permission" shall mean the Planning Permission as defined in the Second Deed relating to a New Accommodation Block A9 at the prison now known as HMP Bure on the Site at the former RAF Coltishall

"the Fourth Planning Permission" shall mean the Planning Permission referenced PF/11/0495 to be issued by North Norfolk for the use of land at Church Road, Scottow as a community woodland following completion of this Deed of Variation

- 1.2 Where in this Deed reference is made to a clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 1.3 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 1.4 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 1.5 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it is done and words placing a party under a restriction include an obligation not to cause permit or suffer any infringement of the restriction
- 1.6 Headings contained in this Deed are for reference purposes only and are not incorporated into the Deed and shall not be deemed to be an indication of the meaning of the parts of this Deed to which they relate

2 RECITALS

- 2.1 On 9 February 2009 the parties hereto (together with Arqiva Limited) entered into the First Deed in respect of the development permitted by the First Planning Permission and the Second Planning Permission
- 2.2 By a Deed of Surrender dated 1 day of November 2010 made by Arqiva Limited (1) and the Developer (2) Arqiva Limited surrendered to the Developer its interest in the Land under a Lease dated 25 July 2003 and made between the Secretary of State for Defence (1) and National Transcommunications Limited (2) which was previously registered under Title Number NK379336
- 2.3 This Deed is supplemental to the First Deed and the Second Deed and is entered into by the parties hereto as a deed and is made pursuant to Section 106 of the 1990 Act and all other relevant powers so enabling and both the positive and restrictive covenants on the part of the Developer in this Deed are planning obligations for the purposes of Section 106 of the 1990 Act so as to bind the Land
- 2.4 In accordance with the provisions of the First Deed and the Report the Developer submitted to North Norfolk on 2 March 2009 a written strategy for a Wind Turbine to be placed within either the Site the Access Land or other lands situate within the District of North Norfolk District Council of sufficient capacity to generate electricity at least equal to 10% of the predicted energy demands of the prison which has been erected as the Development and such written strategy was subsequently varied by the Developer and North Norfolk on 12 May 2010 Having regard to this strategy as amended North Norfolk have now agreed that the Wind Turbine may be placed on lands situate within the District of North Norfolk District Council but need not be placed on either the Site or the Access Land
- 2.5 Whilst the Developer entered into a Lease with EDF Energy Networks (EPN) plc on 19 April 2010 and such Lease is now registered under title NK384398 in respect of the land shown coloured pink on the plan numbered 400404357-Substation Plan-Issue B annexed hereto (such land being called the "Leasehold Land") North Norfolk Broadland and the Developer have agreed that the Leasehold Land shall be excluded from the lands comprised in the First Deed and the First Planning Permissions

Female

- 2.6 The Developer intends part of the Development permitted by the First Planning Permission will not be undertaken and the Parties have agreed to vary the provisions of the First Deed and to enter into this Deed in the manner hereafter appearing

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3 OPERATIVE PROVISIONS

- 3.1 The provisions of the First Deed shall be amended as follows:

- 3.1.1 The provisions set out in Schedule 3 Part 1 of the First Deed shall be deleted and be replaced by the provisions set out in the First Schedule Part 1 of this Deed and henceforth Schedule 3 Part 1 of the First Deed shall be read and construed accordingly
- 3.1.2 The provisions set out in Schedule 3 Part 2 of the First Deed shall be deleted and be replaced by the provisions set out in the First Schedule Part 2 of this Deed and henceforth Schedule 3 Part 2 of the First Deed shall be read and construed accordingly
- 3.1.3 The provisions set out in Schedule 3 Part 3 of the First Deed shall be deleted and be replaced by the provisions set out in the First Schedule Part 3 of this Deed and henceforth Schedule 3 Part 3 of the First Deed shall be read and construed accordingly
- 3.1.4 The provisions of Schedule 4 Part 2 of the First Deed shall be deleted and be replaced by the provisions set out in the Second Schedule to this Deed and henceforth Schedule 4 Part 2 of the First Deed shall be read and construed accordingly
- 3.1.5 The definition of "Alternative Site Costs" in the First Deed shall henceforth read "means the sum specified in paragraph 1.8 of Part 1 of Schedule 3"

- 3.2 North Norfolk hereby release the Developer from

- 3.2.1 all obligations contained in the First Deed in respect of that part of the Access Land adjoining Filby Road shown edged in brown within the red edging on the plan numbered 882-000-A-TPA-49 annexed to the First Deed as lies immediately to the south of the secure area of the proposed prison (such land being more particularly shown edged brown on the plan numbered 882-000-A-TPA-46 annexed to the First Deed) and that part of the Access Land located at the northern boundary of the former airfield shown edged in orange on the plan numbered 882-000-A-TPA-49 annexed to the First Deed (such land being more particularly shown edged orange on the plan numbered 882-000-A-TPA-48 annexed to the First Deed) and
- 3.2.2 all obligations in respect of the landscaping schemes referred to in Condition 13 of the First Planning Permission in so far as such landscaping schemes relate to the First Transfer Land as defined in the First Deed

- 3.3 In accordance with the provisions of

- 3.3.1 Condition 10 of the First Planning Permission
- 3.3.2 Condition 11 of the Second Planning Permission

3.3.3 Condition 8 of the Third Planning Permission

an Approved Full Travel Plan for HMP Bure had to be submitted by the Developer but no provision for the payment of the costs incurred by Norfolk County Council to monitor such Approved Full Travel Plan was made. At the request of North Norfolk the Developer hereby covenants with North Norfolk that when requested so to do by North Norfolk the Developer will pay the sum of £3,000 to Norfolk County Council to cover the costs incurred by Norfolk County Council of monitoring the Approved Full Travel Plan pursuant to the Conditions hereinbefore specified.

- 3.4 Broadland hereby release the Developer from all obligation in respect of the Second Transfer Land as defined in the First Deed
- 3.5 The covenants, restrictions and requirements imposed upon the Developer under this Deed create planning obligations pursuant to Section 106 and Section 106A of the 1990 Act and shall be binding on the Site and are enforceable by North Norfolk and Broadland as local planning authority not only against the Developer but also against any person deriving title from the Developer in respect of the Site as provided by Section 106 and Section 106A of the Act and any persons claiming through or under it.

4 LOCAL LAND CHARGE

- 4.1 This Deed is registerable as a local land charge under the Land Charges Act 1972 and shall be registered as such by the Council on the completion of this Supplemental Deed.

5 LEGAL COSTS

- 5.1 It is agreed that the Developer shall pay North Norfolk and Broadland their respective reasonable legal costs in connection with the negotiation, preparation and execution of this Deed

THE FIRST SCHEDULE

PART 1

THE DEVELOPER'S COVENANTS WITH NORTH NORFOLK

- 1 The Developer covenants with North Norfolk as follows:
 - 1.1 during the period commencing on the date of this Deed and expiring on such date as shall be two years after the date of this Deed or such extended period as North Norfolk may agree in writing the Developer shall carry out or procure the carrying out of all appropriate and necessary surveys and investigations to ascertain whether a site situated within the District of North Norfolk District Council is suitable for the erection of a Wind Turbine thereon for the generation of electricity. The result of such surveys and investigations together with all supporting reports and other material shall be supplied by the Developer to North Norfolk;
 - 1.2 if during the period commencing on the date of this Deed and expiring on such date as shall be two years after the date of this Deed or such extended period as North Norfolk may agree in writing it is established to the reasonable satisfaction of North Norfolk that a Wind Turbine is feasible on such site as aforesaid as is situated within the District of North Norfolk District Council and North Norfolk confirms this in writing then within six months of such confirmation the Developer shall submit or procure the submission of a planning application for the Wind Turbine on such site as aforesaid;
 - 1.3 if planning permission for a Wind Turbine is granted for such site as aforesaid as is situated within the District of North Norfolk District Council then the Developer will within 3 years of being granted such permission carry out or procure:
 - 1.3.1 the erection of the Wind Turbine;
 - 1.3.2 the connection of the Wind Turbine to the National Grid; and
 - 1.3.3 that the Wind Turbine is operating to its full capacity; andthe Developer will submit to North Norfolk or procure the submission of annual records of the amount of electricity generated by the Wind Turbine and supplied to the National Grid;
 - 1.4 in the event of it being established that a Wind Turbine is not feasible on such site as aforesaid as is situated within the District of North Norfolk District Council (the Developer and North Norfolk having taken all steps necessary to ensure that a Wind Turbine is not feasible on such site as aforesaid as is situate within the District of North Norfolk) or the planning application referred to in paragraph 1.3 above is refused then within a period of six months following the date that it is established that a Wind Turbine is not feasible on such site as aforesaid as is situated within the District of North Norfolk District Council or if the planning application is refused or within six months of the final determination of any appeal made by the Developer then in substitution for any obligation on the part of the Developer to erect or procure the erection of a Wind Turbine on such site as aforesaid as is situated within the District of North Norfolk District Council the Developer shall commence

investigations for the provisions of alternative sources of renewable energy equivalent to at least ten percent of the energy needs of the prison known as HMP Bure erected on the Site in the manner hereinafter specified in clauses 1.5 to 1.7 hereof

- 1.5 during the period commencing on the date that the Developer commences his investigation of alternative sources of renewable energy in accordance with clause 1.4 hereof and expiring on such date as shall be two years after the commencement of such investigation or such extended period as North Norfolk may agree in writing the Developer shall carry out or procure the carrying out of all appropriate and necessary surveys and investigations to ascertain whether a site situated within the District of North Norfolk District Council is suitable for the erection of alternative sources of renewable energy equivalent to at least ten percent of the energy needs of the prison known as HMP Bure for the generation of electricity. The result of such surveys and investigations together with all supporting reports and other material shall be supplied by the Developer to North Norfolk;
- 1.6 if during the period commencing on the date that the Developer commences his investigation of alternative sources of renewable energy in accordance with clause 1.4 hereof and expiring on such date as shall be two years after the commencement of such investigation or such extended period as North Norfolk may agree in writing it is established to the reasonable satisfaction of North Norfolk that alternative sources of renewable energy equivalent to at least ten percent of the energy needs of the prison known as HMP Bure is feasible on such site as aforesaid as is situated within the District of North Norfolk District Council and North Norfolk confirms this in writing then within six months of such confirmation the Developer shall submit or procure the submission of a planning application for alternative sources of renewable energy equivalent to at least ten percent of the energy needs of the prison known as HMP Bure on such site as aforesaid;
- 1.7 if planning permission for alternative sources of renewable energy equivalent to at least ten percent of the energy needs of the prison known as HMP Bure is granted for such site as aforesaid as is situated within the District of North Norfolk District Council then the Developer will within 3 years of being granted such permission carry out or procure:
 - 1.7.1 the erection of alternative sources of renewable energy equivalent to at least ten percent of the energy needs of the prison known as HMP Bure ;
 - 1.7.2 the connection of the said alternative sources of renewable energy equivalent to at least ten percent of the energy needs of the prison known as HMP Bure to the National Grid; and
 - 1.7.3 that the said alternative sources of renewable energy equivalent to at least ten percent of the energy needs of the prison known as HMP Bure is operating to its full capacity; and

the Developer will submit to North Norfolk or procure the submission of annual records of the amount of electricity generated by the said alternative sources of renewable energy and supplied to the National Grid;

- 1.8 If following the investigation by the Developer hereinbefore specified it is not possible to provide alternative sources of renewable energy equivalent to at least ten percent of the energy needs of the prison known as HMP Bure on a site situate within the District of North Norfolk District Council as aforesaid the Developer shall pay to North

Norfolk such sum of money as shall be agreed between the Developer and North Norfolk (or determined under the provisions of clause 8 of the First Deed in the event of their failure to agree) as being reasonable to represent the costs that will be incurred by North Norfolk in erecting or procuring the erection of a Wind Turbine or an alternative renewable energy source on such site as aforesaid as is a suitable site within the District of the North Norfolk District Council. Such costs shall be determined by North Norfolk and the Developer within two months of a written request to so determine the same from the Developer and if the parties fail to agree on the amount of such costs within the two month period the same shall be referred to the Expert for determination under the provisions of Clause 8 of the First Deed. The sum agreed between the parties or determined by the Expert under the provisions of this paragraph 1.8 is the Alternative Site Costs. The Developer agrees that North Norfolk can use the sum received from the Developer as the Alternative Site Costs either toward the provision of a Wind Turbine or an alternative renewable energy source elsewhere in the District of North Norfolk or towards the cost of another source of renewable energy of equivalent generating capacity to the Wind Turbine originally proposed for the site as aforesaid to serve HMP Bure;

- 1.9 In undertaking the obligations under paragraphs 1.1 to 1.8 hereof the Developer will be proceeding on the basis (with the agreement of North Norfolk) that it will be endeavouring to show that a Wind Turbine or an alternative renewable energy source can be provided on a site within the District of North Norfolk and the provisions of such Wind Turbine or an alternative renewable energy source will be undertaken by the Developer or its contractor of such alternative site until the position is reached whereby it is clearly shown that it is not feasible to provide a Wind Turbine or an alternative renewable energy source on a site within the District of North Norfolk and it is only then that the Alternative Site Costs will become payable by the Developer to North Norfolk
- 2 The Developer further covenants with North Norfolk that the Developer shall not use the prison erected on the Site other than as one for prisoners who cannot be trusted in open conditions but who do not have the resources and will to make a determined escape attempt
- 3 The Developer further covenants with North Norfolk that the Developer shall in respect of the Community Woodland site carry out the landscaping scheme to be approved by North Norfolk pursuant to the Fourth Planning Permission ("the approved Woodland scheme") required on such land. Following completion of the carrying out of the approved Woodland Scheme to the reasonable satisfaction of North Norfolk and the submission of the Final Report to North Norfolk the Developer will offer to transfer the freehold interest in all the lands described in this paragraph 3 above (such lands being the Community Woodland site) to North Norfolk to be held by North Norfolk for use as public open space subject to the occupations by any statutory undertakers in accordance with the provisions of paragraph 5 below
- 4.1 The Community Woodland site shall be offered to North Norfolk in consideration of the payment of the sum of £1 and the Developer shall pay its own legal and other reasonable costs;
- 4.2 from the date of the Developer's offer to North Norfolk under paragraph 5.1 above such offer shall remain open for 28 days for North Norfolk to accept the same and upon North Norfolk deciding to accept the offer the transfer of the Community Woodland site to North Norfolk shall be completed within three months of the date of such acceptance;

- 4.3 the Community Woodland site will be unencumbered by any financial charges but will otherwise be subject to all encumbrances affecting such title as specified in the Charges Register of the Title Numbers NK298374 and NK383148 on the date of transfer as affect the Community Woodland site and to the occupation of any statutory undertakers and the Developer will at his own cost following the date of this Deed and at any time prior to completion of the Transfer provided for in this paragraph on the reasonable request of North Norfolk deduce or verify title to the Community Woodland site;
- 4.4 the transfer to North Norfolk will incorporate covenants by North Norfolk restrictive of the use and development of the Community Woodland site providing for its use to be limited to open space (as that expression is defined in Section 336 (1) of the 1990 Act) and to be incapable of development (within the meaning of section 55 of the 1990 Act);
- 4.5 the transfer to North Norfolk of the Community Woodland site shall be accompanied by a collateral warranty from the Developer's contractor in respect of the Final Report together with a sum equal to fifteen times the annual maintenance costs for the Community Woodland site such costs to be agreed between the Developer and North Norfolk so as to represent fifteen times the annual costs of carrying out the approved Woodland Scheme that are expected to be incurred by North Norfolk maintaining those parts of the Community Woodland site that have been included in the Transfer to North Norfolk. If the sum payable by the Developer to North Norfolk under this paragraph has not been expended by North Norfolk on maintaining the Community Woodland site any unexpended part of the sum shall be refunded by North Norfolk to the Developer on such date as shall be fifteen years after the date that the sum was first paid to North Norfolk together with such interest as North Norfolk may have earned on such unexpended sum
- 5 In the event that North Norfolk declines to accept a transfer of the freehold interest in respect of any part of the Community Woodland site then in respect of such land or lands not transferred to North Norfolk a management plan based on the approved Woodland Scheme shall be submitted to North Norfolk within three months of North Norfolk's decision to decline the said offer for approval (such approval not to be unreasonably withheld or delayed) and thenceforth such land or lands will be maintained by the Developer in accordance with such substitute approved management plan and will thereafter be used as community woodland and public open space subject to occupation by any statutory undertakers
- 6 In the event of any dispute or disagreement arising between the Developer and North Norfolk with respect to the terms of this Part 1 of Schedule 3 the form of Transfer or the management plan the matter in dispute will be determined in accordance with the dispute resolution procedure contained in Clause 8 of this Deed

THE FIRST SCHEDULE

PART 2

THE DEVELOPER COVENANTS WITH BROADLAND

Subject to the provisions of Schedule 5 of the First Deed the Developer covenants with Broadland that the Developer shall in respect of the Broadland Site other than for the Access Road:

- 1.1 that the Developer shall in respect of the Broadland Site other than for the Access Road carry out the approved landscaping scheme required to such land under the Conditions annexed to the First Planning Permissions
- 1.2 that in respect of the Broadland Site other than for the Access Road the use of such land shall be limited to use as public open space being laid out as a public garden for the purposes of public recreation and shall be available to members of the public to access in perpetuity **PROVIDED THAT** nothing herein contained shall prevent such land being used for the placing thereon or thereunder of all types of utility services and the maintenance repair renewal replacement and use of such utility services.

THE FIRST SCHEDULE

PART 3

COVENANTS BY THE DEVELOPER WITH NORTH NORFOLK AND BROADLAND

NONE

THE SECOND SCHEDULE

BROADLAND COVENANTS WITH THE DEVELOPER

1 DISCHARGE OF OBLIGATIONS

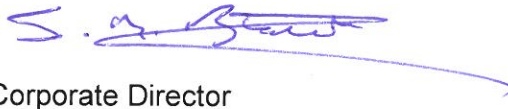
Upon request Broadland shall provide written confirmation of the discharge of the obligations contained in this Deed when satisfied that such obligations have been performed

IN WITNESS whereof these presents have been executed by the parties hereto as a Deed and delivered on the day and year first before written

THE COMMON SEAL of)

NORTH NORFOLK DISTRICT COUNCIL)

was hereunto affixed in the presence of:)


Corporate Director


Corporate Director



THE COMMON SEAL of)

BROADLAND DISTRICT COUNCIL)

was hereunto affixed in the presence of)





THE CORPORATE SEAL OF

)

THE SECRETARY STATE FOR JUSTICE

)

hereunto affixed is authenticated by

)

A. C. Sloan

A C SLOAN

Authorised by the Secretary of State

