

CO2 Confidentiality Policy Guidelines

These Confidentiality Guidelines (the “**Guidelines**” or the “**CO2 Confidentiality Guidelines**”) set out the measures put in place within the Kemira GrowHow/Terra JV in the UK in order to prevent the exchange of Confidential Information between personnel involved in production, marketing and/or sale of liquid carbon dioxide at Billingham or Severnside and personnel involved in the marketing and/or sale of CO2 at Ince and in the production of liquid CO2 at the CO2 Liquefaction Plant at Ince. These Guidelines give effect to paragraph 7.1 of the undertakings given by the Parties under section 82 of the Enterprise Act 2002 for the purpose of remedying the SLC and the adverse effects identified in the Competition Commission’s final report into the proposed Kemira GrowHow/Terra JV.¹

1 Definitions

For the purpose of these Guidelines:

‘**Aggregated**’ means provided at a level where it is not possible for the recipient to distinguish prices, volumes, individual customers, output and costs from different JV production sites;

‘**AL**’ means Air Liquide UK Limited (formerly known as Messer UK Limited);

‘**AL Agreement**’ means the Operating, Management, Maintenance and Supply Agreement between Kemira GrowHow UK Limited and Messer UK Limited (now Air Liquide UK Limited) in relation to the supply of CO2 from Ince and the operation of the CO2 Liquefaction Plant;

‘**Ammonia Plant**’ means the ammonia production plant owned and operated by the JV on the Ince site (and for the avoidance of doubt any future or replacement ammonia production plant owned and operated by the JV on the Ince site), which provides the by-product raw CO2 gas to be processed by the CO2 Liquefaction Plant;

‘**Billingham**’ means the JV’s fertiliser site located at Billingham and, unless stated otherwise in these Guidelines, the JV’s fertiliser site at Severnside;

‘**Billingham CO2 Team**’ means the team of JV employees involved in the production, marketing and/or sale of liquid CO2 produced at Billingham and Severnside as detailed in Schedule 1 from time to time;

‘**Billingham Confidential Information**’ means the information detailed in section 3.1 of these Guidelines;

‘**CO2**’ means carbon dioxide;

‘**CO2 Liquefaction Plant**’ means Air Liquide’s liquid CO2 plant at Kemira GrowHow UK Limited’s site at Ince, including its associated equipment and the liquid CO2 storage and road tanker loading facilities;

‘**Compliance Officer**’ means the individual appointed by the board of the JV to supervise compliance with these Guidelines, as detailed in Schedule 2 from time to time;

‘**Confidential Information**’ means Billingham Confidential Information and Ince Confidential Information;

¹ Please see the report published by the CC on 11 July 2007 entitled “*Kemira Growhow Oyj and Terra Industries Inc merger inquiry - a report on the anticipated joint venture between Kemira GrowHow Oyj and Terra Industries Inc*”.

'Head of the Billingham CO2 Team' means the person within the Billingham CO2 Team responsible for approving and agreeing amendments to existing and new contracts for the supply of liquid CO2 at Billingham and Severnside, as detailed in Schedule 1 from time to time;

'Head of the Ince CO2 Team' means the person within the Ince CO2 Team responsible for approving and agreeing amendments to the AL Agreement and any new contracts regarding the supply of CO2 at Ince, as detailed in Schedule 3 from time to time;

'Ince' means the JV's fertiliser production site located at Ince, Chester, Cheshire CH2 4LB, United Kingdom;

'Ince CO2 Team' means the team of JV employees involved in the marketing and/or sale of CO2 produced at the Ammonia Plant and liquid CO2 production at the CO2 Liquefaction Plant as detailed in Schedule 3 from time to time;

'Ince Confidential Information' means the information detailed in section 3.2 of these Guidelines;

'IT' means information technology;

'JV' means GrowHow UK Limited, which is the Joint Venture between Terra Industries Inc and Kemira GrowHow Oyj regarding their UK operations;

'OFT' means the Office of Fair Trading;

The **'Parties'** means any or all of Kemira GrowHow Oyj and its subsidiaries or affiliates; Terra and its subsidiaries or affiliates; and the JV and its subsidiaries or affiliates (as the case may be);

'Raw CO2' means the crude CO2 by-product of ammonia production;

'Severnside' means the JV's fertiliser production site located at Severnside Works, Hallen, Bristol, Avon BS10 7SJ.

'Utilities' means the supply of water, steam, electricity, nitrogen gas and/or site-related services (such as road maintenance, drains maintenance, effluent management and site security services) to third parties from any of the JV's production sites.

2 Duration

- 2.1** These Guidelines shall be applicable from the date they are approved by the Competition Commission and shall continue in force until such time as either (i) the JV has divested the CO2 liquefaction plant at Billingham and has also permanently ceased production of raw CO2 at Severnside; or (ii) following an application by the Parties, the OFT notifies the Parties in writing that the Guidelines are no longer necessary. During this period, Growhow agrees to apply the Guidelines in good faith.

3 Confidential Information

- 3.1** Billingham Confidential Information means any and all oral, written, printed, electronic or other information in connection with:
- (a) the operating costs of the CO2 liquefaction plants at Billingham and/or Severnside, as the case may be;

- (b) the timing and volume of liquid CO₂ supplied from Billingham and/or Severnside, as the case may be, including details on timing and volumes singularised by customer;
- (c) all contractual terms governing the supply of liquid CO₂ to customers, including (but not limited to) the identity of the customer, the start and end dates of contracts, provisions concerning the renewal of a contract (including options to renew), volumes, prices, and any compensation provisions for supply failure;
- (d) all discussions and contact with potential customers for the supply of liquid CO₂ and/or all discussions and contact with existing customers concerning re-negotiation or renewal of existing terms for the supply of liquid CO₂;
- (e) liquid CO₂ production output, scheduling and targets (except for information relating to planned plant production outages at Billingham and/or Severnside);
- (f) liquid CO₂ budgets and marketing strategies; and
- (g) any other information which the Compliance Officer has identified as Confidential Information relating to any of the CO₂ liquefaction plants or the supply of liquid CO₂ in a written notice to some or all (as appropriate) of the persons who have given undertakings in accordance with paragraph 5.2 pending amendment of these Guidelines.

But excluding:

- (h) any information which is in the public domain through no fault of the JV or the Parties; and
- (i) any Aggregated information regarding production, marketing and/or sale of liquid CO₂ at Billingham.

3.2 Ince Confidential Information means any and all oral, written, printed, electronic or other information in connection with:

- (a) the operating costs of the CO₂ Liquefaction Plant;
- (b) the timing and volume of raw and liquid CO₂ supplied from Ince;
- (c) all contractual terms governing the supply of CO₂ to AL, including (but not limited to) the start and end dates of the AL Agreement, volumes, prices, and any compensation provisions for supply failure;
- (d) all discussions and contact with AL for the supply of CO₂ and/or all discussions concerning re-negotiation of existing terms for the supply of CO₂;
- (e) raw and liquid CO₂ production output, scheduling and targets (except for information relating to planned plant production outages at Ince);
- (f) CO₂ budgets and marketing strategies; and
- (g) any other information which the Compliance Officer has identified as Confidential Information relating to any of the CO₂ liquefaction plants or the supply of liquid CO₂ in a written notice to some or all (as appropriate) of the persons who have given undertakings in accordance with paragraph 5.2 pending amendment of these Guidelines.

But excluding:

- (h) any information which is in the public domain through no fault of the JV or the Parties; and
- (i) any Aggregated information regarding marketing and/or sale of CO₂ at Ince and production of liquid CO₂ at Ince.

4 Structural arrangements

- 4.1** The JV will establish separate teams for marketing and/or sale of CO₂ and production of liquid CO₂ at Ince and production, marketing and/or sale of liquid CO₂ at Billingham.
- 4.2** The AL Agreement will be managed by the Ince CO₂ Team, which will comprise of the individuals listed in Schedule 3 from time to time.
- 4.3** The JV shall designate an employee in its Finance Department to manage the financial aspects of the day-to-day relationship with AL at Ince, including issuing invoices for product and operating costs and payment of any compensation claims under the AL Agreement. The Finance Department shall not be involved in any way in the production, marketing and/or sale of CO₂ either at Billingham or Ince.
- 4.4** All matters relating to the marketing and/or sale of CO₂ and the production of liquid CO₂ at Ince, including any future re-negotiation of the AL Agreement, shall be handled exclusively by the Ince CO₂ Team as listed in Schedule 3 from time to time.
- 4.5** All matters relating to the production, marketing and/or sale of liquid CO₂ at Billingham shall be handled exclusively by the Billingham CO₂ Team as listed in Schedule 1 from time to time.
- 4.6** For the avoidance of doubt, members of the Billingham CO₂ Team are not restricted from sharing with members of the Ince CO₂ Team information in relation to the JV's other industrial chemicals businesses which are not subject to these Guidelines.
- 4.7** The Ince CO₂ Team will be physically separated from the Billingham CO₂ Team.
- 4.8** The JV shall ensure that all cabinets where Ince Confidential Information or Billingham Confidential Information is stored are locked and that access to electronic folders where Confidential Information is stored is restricted to members of the Ince CO₂ Team, the Billingham CO₂ Team or the Finance Department, as the case may be (see section 9 below).
- 4.9** The JV will follow the Guidelines on "Transfer of personnel between CO₂ Teams" (section 8 below) when appointing new members to the Billingham CO₂ Team or the Ince CO₂ Team who will have to sign the undertaking referred to in section 5.3 of these Guidelines.
- 4.10** The JV will establish separate management reporting lines regarding Confidential Information as follows:
 - 4.10.1** all members of the Ince CO₂ Team will report on any matters relating to production, marketing and sale of CO₂ at Ince, including any matters relating to the AL Agreement only to the Head of the Ince CO₂ Team or to the Ammonia Plant Production Manager;
 - 4.10.2** the Head of the Ince CO₂ Team will not report to the JV Board on any matters relating to production, marketing and sale of CO₂ at Ince, including any matters relating to the AL Agreement, except in accordance with the provisions in section 5;

- 4.10.3 all members of the Billingham CO2 Team will report on any matters relating to the production, marketing and sale of CO2 at Billingham only to the Head of the Billingham CO2 Team;
- 4.10.4 the Head of the Billingham CO2 Team will not report to the JV Board on any matters relating to production, marketing and sale of CO2 at Billingham except in accordance with the provisions in section 5.

5 Restrictions on information flows regarding Confidential Information

5.1 No Ince Confidential Information may be disclosed by a member of the Ince CO2 Team or the Finance Department to a JV employee or contractor outside the Ince CO2 Team or to another third party and no Billingham Confidential Information may be disclosed by a member of the Billingham CO2 Team or the Finance Department to a JV employee or contractor outside the Billingham CO2 Team or to another third party except as follows:

5.1.1 To the extent the disclosure is necessary for: (a) complying with internal reporting procedures; (b) monitoring the performance of the CO2 businesses at either Billingham or Ince; (c) assessing possible investments which affect the JV's CO2 liquefaction plants; (d) invoicing; or (e) compliance or legal/regulatory requirements; Ince or Billingham Confidential Information may be disclosed to specified senior JV employees up the reporting line, as follows:

- (i) members of the JV Board, only at an Aggregated level;
- (ii) members of the JV Finance Department; and/or
- (iii) the Compliance Officer.

5.1.2 Ince or Billingham Confidential Information which relates specifically to plant output or plant efficiency may be disclosed to personnel involved in the operation and/or maintenance of the JV's ammonia and CO2 liquefaction plants to the extent that such disclosure is necessary in order to enable them to carry out repair and/or maintenance activities.

5.2 A diagram illustrating the flow of information relating to the JV's CO2 businesses is set out in Schedule 4.

5.3 All members of the Finance Department, of the Ince CO2 Team and the Billingham CO2 Team shall sign an Undertaking to the Compliance Officer that they understand these Guidelines and will comply with them. Such Undertaking will have the form in Schedule 5. Any new member of the Ince CO2 Team, Billingham CO2 Team or the Finance Department shall sign the Undertaking referred to in this paragraph.

6 Financial information

6.1 The Finance Department shall prepare the JV's Management Accounts in relation to CO2 in an Aggregated form in accordance with the following aggregation principles:

6.1.1 The revenue, costs and net income for the JV's CO2 business at Billingham shall be aggregated with the corresponding revenue, costs and net income for the JV's Utilities businesses at Billingham and shall be reported as a single figure;

- 6.1.2 The revenue, cost and net income for the JV's CO2 business at Ince shall be aggregated with the corresponding revenue, costs and net income for the JV's other business at Ince and shall be reported as a single figure;
 - 6.1.3 The revenue, cost and net income for the JV's CO2 business at Severnside shall be aggregated with the corresponding revenue, costs and net income for the JV's other business at Severnside and shall be reported as a single figure;
 - 6.1.4 the accounts shall not provide singularised details of CO2 volumes or prices at either Billingham, Severnside or Ince.
- 6.2 In the event that [DELETED], the JV shall propose new financial aggregation principles for approval by the OFT.

7 Investment and strategic decisions regarding the JV's liquefaction and ammonia plants

- 7.1 Nothing in these Guidelines shall prevent the Head of the Ince CO2 Team, the Head of the Billingham CO2 Team, any member of the JV's Finance Department or any senior management from being involved in strategic decisions regarding investments in the JV's ammonia plants at Billingham, Severnside or Ince or regarding shutdown of the JV's ammonia plants, provided such involvement does not entail a disclosure in breach of the provisions in section 5 above.

8 Transfer of personnel between CO2 Teams

- 8.1 Any member of the Ince CO2 Team shall not be transferred or seconded to the Billingham CO2 Team until after one year of ceasing his/her role within the Ince CO2 Team.
- 8.2 Any member of the Billingham CO2 Team shall not be transferred or seconded to the Ince CO2 Team until after one year of ceasing his/her role within the Billingham CO2 Team.
- 8.3 Any employee who is transferred to the Ince CO2 Team or the Billingham CO2 Team shall sign the Undertaking referred to in 5.3 above again and shall not disclose Confidential Information that he/she may have accessed as part of his or her previous roles within the JV.

9 IT systems

- 9.1 Once the JV IT integrated systems are set up, measures and firewalls will be put in place in order to ensure that Ince Confidential Information is only accessible to the Ince CO2 Team and the Finance Department and Billingham Confidential Information is only accessible to the Billingham CO2 Team and the Finance Department. The rest of the JV's employees (including management) shall be barred access to Ince Confidential Information and Billingham Confidential Information within the JV's integrated IT systems.

10 Compliance

- 10.1 The JV Board will designate an employee as Compliance Officer who will be responsible for monitoring compliance with these Guidelines by the JV's employees. The Compliance Officer may have other tasks and functions within the JV but will not be a member of the Ince CO2 Team or the Billingham CO2 Team or, without the consent of the OFT, a member of the Finance Department.

- 10.2** The Compliance Officer will be responsible for carrying out the necessary internal audits to ensure compliance with these Guidelines and will send a copy of any written notice issued pursuant to sections 3.1(g) or 3.2(g) of these Guidelines to the OFT.
- 10.3** The Compliance Officer will be responsible for providing guidance on the application of these Guidelines.
- 10.4** The Compliance Officer will be responsible for (a) maintaining Schedules 1 and 3 to this Agreement with details of the current team members; and (b) maintaining a register of all undertakings provided pursuant to paragraph 5.2
- 10.5** By 28 August of each year or the next working day each member of the Billingham CO2 Team, the Ince CO2 Team and the Finance Department shall provide the Compliance Officer with a compliance certificate certifying that they have complied with these Guidelines during the year ending 30 June, in the form set out in Schedules 6, 7 and 8, as the case may be.
- 10.6** The Compliance Officer shall submit an annual statement to the OFT by 11 September of each year or the next working day to confirm that the Parties, their subsidiaries and affiliates and their corresponding employees have fully complied with their obligations under these Guidelines. Such statement will take the form in Schedule 9.
- 10.7** The annual statement submitted to the OFT will provide:
- 10.7.1** details of members of the Ince CO2 Team and the Billingham CO2 Team during the previous year;
 - 10.7.2** confirmation that the Compliance Officer has received compliance certificates from each member of the Ince CO2 Team and the Billingham CO2 Team, and/or indicating any actual or suspected breaches of this requirement;
 - 10.7.3** details of the appointment of any new Compliance Officer;
 - 10.7.4** confirmation that the Compliance Officer is satisfied that the JV has complied with these Guidelines, and/or indicating any actual or suspected breaches of the Guidelines.
- 10.8** The Compliance Officer shall keep copies of all certificates provided by individuals and annual statements concerning compliance with these Guidelines.

11 Modification to Guidelines

- 11.1** These Guidelines shall not be modified without the prior approval from the OFT save for the contents in Schedules 1, 2 or 3 which the JV may vary from time to time subject always to the provisions of section 8 of these Guidelines. Details of any amendments to Schedules 1, 2 or 3 shall be provided in the annual statement submitted to the OFT pursuant to section 10.6 of these Guidelines.

Schedule 1

Members of the Billingham CO2 Team

- [DELETED] – Commercial Operations Manager – Head of Billingham CO2 Team
- Members of the JV's Customer Service Unit involved in CO2 marketing and sales at Billingham/Sevenside
- [DELETED]
- [DELETED]
- The following individuals, who are involved in the production of liquid CO2 at Billingham/Sevenside:
 - [DELETED]
 - [DELETED]
 - [DELETED]
 - [DELETED]
 - [DELETED]
 - [DELETED]

Schedule 2

Compliance Officer

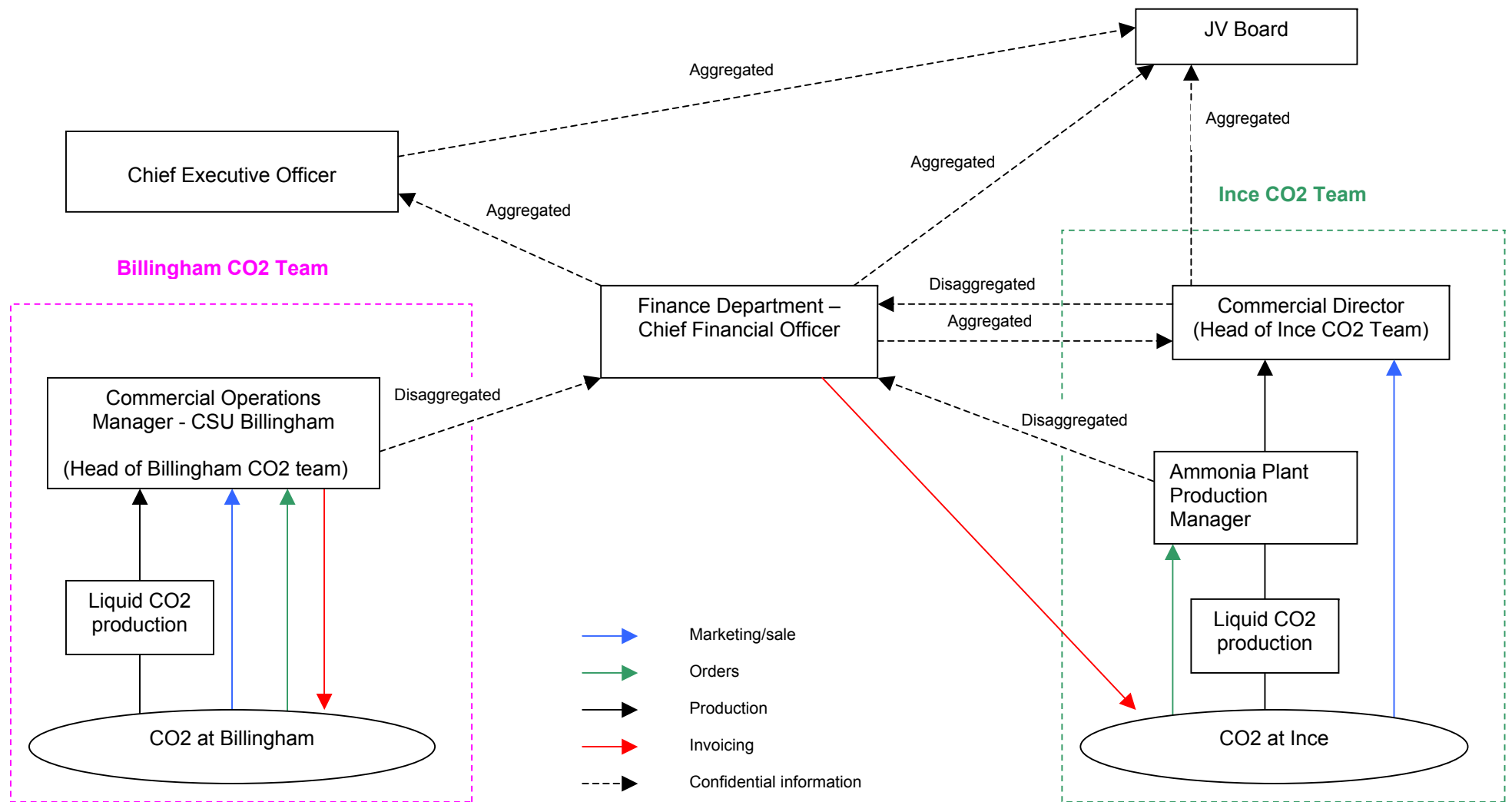
The Board of the JV has designated [DELETED] as Compliance Officer in relation to the CO2 Confidentiality Guidelines.

Schedule 3

Members of the Ince CO2 Team

- [DELETED] – Head of Ince CO2 Team - JV Commercial Director
- [DELETED] – Ammonia Plant Production Manager
- The following individuals, who are involved in the production of Liquid CO2 at Ince:
 - [DELETED]
 - [DELETED]
 - [DELETED]
 - [DELETED]

Schedule 4 – CO2 Information flows within the Joint Venture



Schedule 5

Undertaking

“I have received a copy of the CO2 Confidentiality Guidelines and I undertake to be bound by the provisions in such Guidelines to the extent that they relate to Confidential Information which I may receive or to which I may be granted access in connection with the operations of the Joint Venture between Terra Industries Inc and Kemira GrowHow Oyj in the UK.

I undertake to provide to the Compliance Officer full details of any actual or suspected breach of which I become aware as soon as reasonably practicable of becoming aware of such details.”

Signed:

[Name]

Dated:

Schedule 6

Compliance Certificate to be filled in by each member of the Ince CO2 Team

Further to the CO2 Confidentiality Guidelines (the "**Guidelines**") concerning Confidential Information available to the Ince CO2 Team of which I am a member, I hereby certify that:

- I have used all Ince Confidential Information only for the purposes of carrying out my functions within the Ince CO2 Team as required under the Guidelines;
- [I have not been given access to or received Billingham Confidential Information;]

OR

[I have been given access to or received Billingham Confidential Information and have provided full details thereof to the Compliance Officer;]

- [I have not disclosed Ince Confidential Information to any person within the JV other than in accordance with section 5 of the Guidelines.]

OR

[I have disclosed Ince Confidential Information to a person not within the Ince CO2 Team other than in accordance with section 5 of the Guidelines and have provided full details thereof to the Compliance Officer.]

Signed:

Name

Dated:

Schedule 7

**Compliance Certificate to be filled in by each member of the Billingham
CO2 Team**

Further to the CO2 Confidentiality Guidelines (the "**Guidelines**") concerning Confidential Information available to the Billingham CO2 Team of which I am a member, I hereby certify that:

- I have used all Billingham Confidential Information only for the purposes of carrying out my functions within the Billingham CO2 Team as required under the Guidelines;
- [I have not been given access to or received Ince Confidential Information;]

OR

[I have been given access to or received Ince Confidential Information and have provided full details thereof to the Compliance Officer;]

- [I have not disclosed Billingham Confidential Information to any person within the JV other than in accordance with section 5 of the Guidelines.]

OR

[I have disclosed Billingham Confidential Information to a person not within the Billingham CO2 Team other than in accordance with section 5 of the Guidelines and have provided full details thereof to the Compliance Officer.]

Signed:

Name

Dated:

Schedule 8

**Compliance Certificate to be filled in by each member of
the Finance Department**

Further to the CO2 Confidentiality Guidelines (the "**Guidelines**") concerning Confidential Information available to the Finance Department of which I am a member, I hereby certify that:

- I have used all Ince Confidential Information and/or Billingham Confidential Information only for the purposes of carrying out my functions within the Finance Department as required under the Guidelines;
- [I have not disclosed Ince Confidential Information and/or Billingham Confidential Information to any person other than in accordance with section 5 of the Guidelines.]

OR

[I have disclosed Ince Confidential Information and/or Billingham Confidential Information to a person other than in accordance with section 5 of the Guidelines and have provided full details thereof to the Compliance Officer.]

Signed:

Name

Dated:

Schedule 9

Annual Statement from the Compliance Officer to the OFT

Further to the CO2 Confidentiality Guidelines (the “**Guidelines**”) I hereby certify that:

- I have carried out a year-end audit of Confidential Information accessed by the Ince CO2 Team and the Billingham CO2 Team and have collected individual Compliance Certificates from each member of the Ince CO2 Team, the Billingham CO2 Team and the Finance Department;
- Schedules [●] of the Guidelines have been amended and new versions have been attached to this Statement;
- The following individuals have signed the Undertaking in Schedule 5 of the Guidelines: ***[list individuals]***;
- The following breaches of the Confidentiality Guidelines occurred: ***[give details of the incident, including date, parties involved & the information disclosed]***
- The following action has been taken in respect of the breach: ***[give details]***
- [As a result of the above] **OR** [Save as regards the breaches noted above], I am satisfied that the JV has complied with the Guidelines during ***[insert relevant period]***.

Signed:

Name [Compliance Officer]

Dated: