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Dated: 25th October 2011

- (1) Horizon Nuclear Power Wylfa Limited**
- (2) Isle of Anglesey County Council**

Planning Performance Agreement made in relation to
development proposals at Wylfa, Cemaes Bay, Isle of Anglesey

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THIS PLANNING PERFORMANCE AGREEMENT made the 25th day of October 2011

BETWEEN:-

- (1) Horizon Nuclear Power Wylfa Limited (Company Number 6811987) whose Registered Office is at 5210 Valiant Court, Gloucester Business Park GL3 4FE ("**Horizon**"); and
- (2) Isle of Anglesey County Council of Council Offices, Llangefni, Ynys Mon LL77 7TW (the "**Council**")

1. Definitions and Interpretation

Acceptance Period shall have the meaning specified in clause 8.8;

Activity shall mean a defined piece of work as described in an Activity Order;

Activity Order shall mean the lowest level of scope schedule and cost and as otherwise referred to at clause 10 of this Agreement and a template of which is in Appendix 1;

Agreement shall mean this Planning Performance Agreement;

Associated Development shall mean those parts of the Development Proposal for which the Council has the power to grant planning consent;

Best Value shall mean the requirement under Section 3 of the Local Government Act 1999 for the Council to make arrangements to secure continuous improvement in the way their functions are discharged having regard to economy, efficiency and effectiveness;

Confirmation Date shall have the meaning specified in clause 8.10.1;

Council's Standing Orders shall mean the standing orders adopted by the Council for the time being under its constitution;

Developed IP shall have the meaning specified in clause 13.1;

Development Proposal shall mean the proposal by Horizon to build a new nuclear power station at Wylfa and the Associated Development including reactor buildings, station auxiliaries, cooling system and associated cooling infrastructure, interim on-site waste storage, transport facilities and links, worker accommodation, ancillary facilities and environmental mitigation measures. For the avoidance of doubt the Development Proposal shall not include National Grid connections which will be the subject of a separate application to the IPC by National Grid;

Development Consent Order (or DCO) shall mean the consent issued by the IPC in respect of the Development Proposal;

DCO Application shall mean a Development Consent Order application in respect of the Development Proposal;

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End Date shall have the meaning specified in clause 8.7;

EU Procurement Directives shall mean Directive 2004/18/EC of the European Parliament and the European Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public services contracts and Directive 2007/66/EC of the European Parliament and of the European Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts;

Financial Year shall mean 1st April to 31st March;

Infrastructure Planning Commission (or IPC) shall mean the body established under Section 1(1) of the Planning Act 2008 or its successor or other body appointed by government with the function of receiving and reporting on the DCO Application;

Intellectual Property shall mean all documents and materials including drawings, reports, manuals, specifications, plans, tables, lists, schedules, calculations, computer programmes and software (including source and object code and magnetic tapes), all data, flow charts, program listings, administrative and quality assurance files and internal correspondence, strategic plans, creative concepts and designs (whether in draft or in final format), all names, logos, devices and other marks and all Intellectual Property Rights therein whether in written, printed, electronic or any other format;

Intellectual Property Rights means patents, trade marks, service marks, rights in designs, trade names, copyrights and trade secrets (whether or not any of these rights is registered) and includes all applications for any such right, matter or thing or registration thereof and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these rights which may subsist anywhere in the world;

Licence shall have the meaning specified in clause 13.3;

Local Impact Report or LIR shall mean a report prepared for the purposes of Section 60(2) of the Planning Act 2008;

National Grid shall mean National Grid Electricity Transmission plc;

Nationally Significant Infrastructure Project or NSIP shall have the same meaning as given to the term in the Planning Act 2008;

Parties shall mean the Council and Horizon, and shall include their successors and assigns from time to time and **Party** shall be construed as either one of the Parties;

Planning Application shall mean a planning application in respect of any Associated Development;

PPA Schedule shall mean the PPA Schedule referred to at clause 7 of this Agreement, as updated by the WPSB from time to time;

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Project Costs shall mean the reasonable costs which are incurred by the Council under an Activity Order or Variation Order and payable by Horizon in accordance with the terms of this Agreement;

Project Programme shall have the meaning ascribed to it in clause 7.1 and 7.2 which shall be a high level programme which shall define the relevant key dates leading up to the submission of a DCO Application to the IPC and the determination of the Associated Development and will be in the form of a Gantt chart (or such other format as the Parties may agree from time to time) provided to the Council by Horizon;

Project Sponsor shall mean an individual nominated by each Party from time to time and “**Project Sponsors**” shall mean both of them;

Request shall have the meaning specified in clause 11.2;

Use shall have the meaning specified in clause 13.3;

Variation Order shall mean an order varying an Activity Order as referred to in clause 8 of this Agreement, a pro-forma of which is attached at Appendix 1 to this Agreement;

Withdrawal Notice shall have the meaning specified in clause 8.7;

Wylfa shall mean the land near the village of Cemaes in Anglesey and adjacent to the existing Wylfa Nuclear Power Station and identified as strategically suitable for new nuclear development within the National Policy Statement (EN6);

Wylfa Cooperative Working Arrangements Document shall mean the document of the same name the location of which is stated in clause 21 of this agreement.

Wylfa Strategic Project Board or **WSPB** shall mean the board referred to in clause 6.2, and whose membership and terms of reference are more particularly described at Appendices 2 and 3 of this Agreement.

In this Agreement: -

- i) Words importing one gender shall be construed as importing any other gender;
- ii) Words importing the singular shall be construed as importing the plural and vice versa;
- iii) Words importing persons shall be construed as importing a corporate body and/or a partnership and vice versa;
- iv) Any reference to a clause or a paragraph or a schedule is to a clause or a paragraph or a schedule in this Agreement so numbered;
- v) In the absence of any contrary provision any reference to a statute, regulation, order or instrument includes any statutory modification or re-enactment thereof and any and every

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order instrument regulation direction or plan made or issued under the statute or deriving validity from it; and

- vi) Any reference to “working days” means Monday to Friday excluding bank holidays in England and Wales.

2. Project Description

- 2.1 Wylfa lies wholly within the administrative boundary of the Council.
- 2.2 Wylfa has been identified in the National Policy Statement on Nuclear development (EN6) as a potential site for the delivery of a new nuclear power station.
- 2.3 Horizon proposes to build the Development Proposal at Wylfa.
- 2.4 The electricity transmission connection to and from the Development Site will be the subject of separate applications to be submitted by National Grid. These applications are not the subject of this Agreement.

3. Background

- 3.1 Under the planning regime for NSIPs introduced by the Planning Act 2008, the consent for the Development Proposal at Wylfa (excluding the Associated Development) shall be a DCO, examined by the IPC and determined by the Secretary of State. Whilst the IPC and Secretary of State will be the main examining and decision-making bodies, local authorities have an important role in the development of the various stages of a DCO Application prior to its submission and determination. The Council itself will determine the Planning Applications for the Associated Development.
- 3.2 Horizon proposes to submit the DCO Application to the IPC for a new nuclear power station at Wylfa. All relevant planning application fees associated with the Development Proposal shall be payable by Horizon.
- 3.3 Prior to the submission of an application for a DCO, applicants are advised to engage with the relevant local authorities (and other statutory bodies) throughout the development of a proposal. Horizon and the Council consider that this advice should be followed and will do so in accordance with the principles set out in the Wylfa Cooperative Working Arrangements Document.
- 3.4 The Council will undertake specific functions in relation to the Development Proposal at Wylfa prior to the determination of the DCO Application. These shall include (but are not limited to):
 - 3.4.1 Engaging with Horizon during the pre-application stage to advise on issues relating to the Development Proposal;
 - 3.4.2 Interpreting and responding to National Policy Statements;

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- 3.4.3 Advising on community consultation;
 - 3.4.4 Commenting on the draft Statement of Community Consultation ("SOCC") prepared for the purposes of Section 47 of the Planning Act 2008, and on the adequacy of the SOCC and Horizon's consultation;
 - 3.4.5 Determining its position regarding the Development Proposal and responding to consultations carried out pursuant to Section 42 of the Planning Act 2008;
 - 3.4.6 Producing a Local Impact Report for the purposes of Section 60(2) of the Planning Act 2008;
 - 3.4.7 Contributing to a Statement of Common Ground for submission to the IPC;
 - 3.4.8 Negotiating and entering into appropriate planning agreements or highways agreements, including any agreements required pursuant to Section 106 of the Town and Country Planning Act 1990 or Section 278 of the Highways Act 1980; and
 - 3.4.9 Determining Planning Applications that are related to the Associated Development.
- 3.5 In order to deliver the majority of the functions referred to in clause 3.4 above, it is agreed between the Parties that the Council and Horizon shall have an ongoing dialogue throughout the period up to the submission of the DCO Application and submission and determination of any Planning Application and beyond as agreed between the Parties from time to time.
- 3.6 It is recognised by the Parties that the Development Proposal at Wylfa represents a very large and complex project raising substantial planning, environmental and other socio-economic challenges and opportunities.
- 3.7 While the Council does not have the power to determine NSIP applications, the IPC will need to be satisfied that there has been appropriate pre-application input, engagement and assessment by the Council.
- 3.8 In order to ensure that the Council can properly discharge its various statutory and pre-application advisory functions in relation to the Development Proposal and its application and determination functions in respect of the Associated Development the Parties acknowledge that this will require significant resources that are beyond the Council's current capacity and are not covered by the DCO application fee payable to the IPC or fully covered by the Planning Application fees payable in respect of the Associated Development.
- 3.9 The Council has statutory duties to a range of stakeholders. In meeting the expectations of Horizon and the IPC in relation to the Development Proposal, the Council must ensure that its service provision to others is not materially compromised or diminished.

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- 3.10 The Parties have recognised that additional resources will be required in order to ensure that the Council can provide an appropriate level of independence and rigour in evaluating Horizon's applications in respect of the Development Proposal, while also continuing to discharge its other statutory and discretionary functions.
- 3.11 The Council has power under the Town and Country Planning Act 1990, the Planning Act 2008 and associated planning legislation, Section 111 of the Local Government Act 1972, and Section 93 of the Local Government Act 2003 to charge (at cost including overheads) for certain activities and services where such activities are not otherwise covered by application fees, or where such activities are of a discretionary nature.
- 3.12 The Parties recognise that due to the duration and complexity of the application and determination processes, the totality of the works required for the Development Proposal cannot be specified at the outset, and that this Agreement is therefore an appropriate mechanism for dealing with the overall terms and conditions within which discrete Activities can be agreed to enable the Council to continue to discharge their statutory functions in a timely, thorough and even-handed manner;
- 3.13 The Parties have agreed that Horizon will reimburse the Council its Project Costs. Prior to the end of each Financial Year the Council shall provide to Horizon details of the hourly rates to be charged by the Council in respect of individual costs in the forthcoming Financial Year.
- 3.14 The intention of this Agreement is to secure a joint working approach between the Parties, timely and efficient project governance of the application processes, the efficient use of resources and avoidance of duplication of effort, while allowing for an appropriate degree of rigour and due consideration by the Parties at each stage of the process.
- 3.15 This Agreement sets out the terms and conditions so as to provide a framework for the definition and resourcing of individual Activity Orders that will be required as part of the DCO Application to the IPC and any Planning Applications.
- 3.16 Nothing in this Agreement shall predetermine or prejudice the proper consideration and/or determination of any consent or application or override or fetter the statutory powers duties or responsibilities of either Party.

4 Purpose of the Agreement

The purpose of this Agreement is:

- 4.1 To provide a framework for the management of the additional demand for resources which will result from the Development Proposal. This Agreement will allow both Horizon and the Council to develop and agree a plan and programme works and resources to allow for the submission of the DCO Application to the IPC in accordance with the PPA Schedule and the submission of relevant Planning Applications for the Associated Development in accordance with the PPA Schedule.

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- 4.4 To set out governance arrangements for the management of this Agreement, and the processes that will inform the development of the DCO Application to the IPC and any Planning Applications to the Council.
- 4.5 To acknowledge that, when exercising its statutory duties including responses as statutory consultee and the determination of Planning Applications, the Council is not accountable to the Wylfa Strategic Project Board nor any other party and that the discharge by it of its statutory powers duties and responsibilities shall not be prejudiced or fettered by this Agreement in any way.
- 4.6 To facilitate effective ongoing engagement and consultation with the surrounding community, statutory consultees and other stakeholders with legitimate interests.
- 4.7 To acknowledge that, subject to clause 4.3, both parties are responsible for ensuring that the cost, quality and timescales of the PPA Schedule are managed in accordance with this Agreement and that the Activities are delivered within budget and to the quality and timescale agreed by the Parties in the relevant Activity Order, all of which shall be coordinated through the Wylfa Strategic Project Board.
- 4.8 To secure the appropriate additional internal and external resources required by the Council to provide the appropriate input into the Development Proposal so that impacts are assessed and minimised and appropriate community benefits to mitigate adverse impacts are secured, that the DCO Application submitted to the IPC and any Planning Application submitted to the Council is compliant and is accompanied by all relevant information necessary for the IPC or the Council (as the case may be) to consider the application, whilst also ensuring that there is no significant financial risk to the Council in undertaking these discretionary services.
- 4.9 To secure a charging mechanism for the work undertaken by the Council and payable by Horizon so as to enable the Council to undertake the majority of the functions set out in clause 3.4 above.
- 4.10 This Agreement is intended to provide an overarching structure and framework setting out the format and process for the specification and commissioning of individual Activity Orders that will be formulated over time.
- 4.11 The Parties agree that this Agreement will initially cover the work required up to and including the submission of the DCO Application to the IPC, the submission by the Council to the IPC of the LIR, and the submission and determination of all required Planning Applications. The Parties further agree that this Agreement can be extended by the written agreement of the Parties to include the post submission period including the examination, implementation and monitoring stages of any approval subsequently granted by the IPC for development of a nuclear power station at Wylfa.
- 4.12 Notwithstanding the generality of the foregoing the purpose of the Agreement is to secure the appropriate internal and independent external resources to enable the Council to efficiently and effectively undertake such activities as are deemed

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necessary by the Council and agreed by the WSPB in connection with the Development Proposal.

5 The Responsibilities of the Parties

- 5.1 Shared responsibilities of the Parties include (but are not limited to) the following:
- 5.1.1 To ensure that robust, transparent and clear governance and project management arrangements are established to deliver the Activity Orders and that these are maintained for the duration of this Agreement;
 - 5.1.2 To work co-operatively and creatively to ensure the timely robust and efficient execution and delivery of Activity Orders;
 - 5.1.3 To agree in advance individual Activity Orders required to meet the PPA Schedule and to ensure that the Activity Orders are appropriately resourced and funded;
 - 5.1.4 To ensure that workable response times and deadlines for comment or input are agreed in a timely manner;
 - 5.1.5 To set up and maintain a project team with a designated project manager;
 - 5.1.6 To ensure appropriate representation at meetings of the Wylfa Strategic Project Board and other fora established pursuant to the Wylfa Cooperative Working Arrangements Document;
 - 5.1.7 To ensure appropriate consultation (including, where appropriate bilingual consultation) with stakeholders and the community;
 - 5.1.8 To discharge statutory duties and not prejudice or fetter powers, duties and responsibilities, in respect of the Development Proposal or any other functions of either Party to this Agreement;
 - 5.1.9 To keep each other informed of issues which may result in changes to the PPA Schedule and to agree in advance any Variation Orders;
 - 5.1.10 To agree as far as reasonably practicable statutory agreements (including but not limited to) those pursuant to Section 106 of the Town and Country Planning Act 1990 and Section 278 of the Highways Act 1980 (as appropriate) in advance of the submission of the DCO Application to the IPC; and
 - 5.1.11 To comply as far as reasonably practicable with the communications protocol agreed by the WSPB (as amended from time to time).
- 5.2 The Parties agree that adopting a collaborative approach to the agreement of the methodologies for each specialist study area relevant to the scope of the Activity Orders will minimise the potential for disagreement between the Parties as to the

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outcomes of the specialist studies and will ensure efficient use of both Parties' resources. To that end Horizon shall (wherever reasonably and practicably possible) agree with the Council, and where the Council are carrying out specialist studies in relation to the Development Proposal they shall agree with Horizon, in advance the methodologies for each specialist study area relevant to the scope of the relevant Activity Order(s). Where this is not either reasonably or practicably possible Horizon, or the Council, shall inform the other Party in writing of the reasons they do not consider they are able to agree in advance the methodology or methodologies for the specific study.

5.3 Horizon's responsibilities shall include (but are not limited to) the following:

5.3.1 Subject to the Council's compliance with clause 8 of this Agreement, or unless otherwise agreed by the Parties, to reimburse the Council the reasonable Project Costs incurred by the Council in undertaking the work comprised in the Activity Orders or Variation Orders in accordance with the principles of recharging set out in this Agreement and /or the Activity Orders (as appropriate); and

5.3.2 To acknowledge as part of the PPA Schedule that adequate timescales are included within the PPA Schedule for the proper procurement and/or commissioning (if necessary) of external resources in accordance with the requirements of Best Value, EU Procurement Directives and the Council's Standing Orders, and to ensure adequate time is allowed in the PPA Schedule for the proper assessment and evaluation of submissions and the preparation of reports, in accordance with the relevant Activity Orders and Variation Orders, as well as to allow for full and proper community engagement in accordance with the agreed liaison arrangements.

5.4 The Council's responsibilities shall include (but are not limited to) the following:

5.4.1 Insofar as is possible, to be flexible to the needs of the Development Proposal and PPA Schedule and optimise resources and costs in response to fluctuations in work;

5.4.2 To comment on the draft SOCC prepared for the purposes of Section 47 of the Planning Act 2008 and on the adequacy of the SOCC and Horizon's consultation;

5.4.3 To assess and advise the IPC on the adequacy of consultation undertaken by Horizon;

5.4.4 To establish and thereafter maintain adequate capacity within the Council to deliver tasks as agreed in Activity Orders and Variation Orders, to monitor delivery and costs of agreed Activity Orders and Variation Orders and in so doing not to exceed agreed budget caps as set out in the relevant Activity Orders and Variation Orders without the prior approval of the Wylfa Strategic Project Board;

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- 5.4.5 To comment on and contribute, as appropriate, to the method statements for the evaluation of environmental, social and economic impacts as a result of the Development Proposal;
 - 5.4.6 To evaluate the local impacts and to provide pre-application advice to Horizon on the Development Proposal in order to minimise impacts to an appropriate level and to secure appropriate benefits;
 - 5.4.7 To provide input into and comment on the Statement of Common Ground for submission to the IPC;
 - 5.4.8 To prepare and submit to the IPC a Local Impact Report for the purposes of Section 60(2) of the Planning Act 2008;
 - 5.4.9 To determine its position regarding the Development Proposal and to respond to consultations carried out pursuant to Section 42 of the Planning Act 2008;
 - 5.4.10 To determine Planning Applications; and
 - 5.4.11 To comment on other relevant and related applications which are outside of the Council's jurisdiction but that are required to be secured by Horizon in association with the Development Proposal.
- 5.5 In implementing this Agreement, the Council will at all times act independently and impartially and in accordance with its planning policy and the Planning Act 2008.
 - 5.6 The signing of this Agreement or the provision of officer advice does not commit the Council to any future decision or recommendation in respect of the Development Proposal or any Associated Development.
 - 5.7 The Council in discharging its responsibilities as set out in this Agreement (but not otherwise) agrees to adopt an impartial but collaborative working relationship with Horizon, to support Horizon in the preparation and submission of a valid DCO Application to the IPC, such that the DCO Application submitted will meet the requirements of the IPC and can be accepted and taken forward into the pre-examination and examination stages of the IPC's decision making process.
 - 5.8 The Council will work with Horizon to provide the IPC with all necessary information it requires in order to enable the IPC to validate and determine the DCO Application submitted by Horizon in respect of the Development Proposal.

6 Governance Arrangements

- 6.1 The Parties agree that clear and transparent governance arrangements are vital to ensure the delivery of the objectives of this Agreement and to ensure that the appropriate delegation of decision making is in place.

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- 6.2 For matters relating to the management of Council's resources and operational requirements associated with the implementation of this Agreement, the following shall apply:
- 6.2.1 On the commencement of this Agreement the Parties shall agree to and thereafter establish the WSPB. The WSPB shall have responsibility for the overall project management and decision making associated with delivery of the Activity Order and any associated Variation Orders in accordance with this Agreement. The WSPB shall report to the respective Parties' Project Sponsors. Each Project Sponsor will in turn report to his/her respective organisations;
 - 6.2.2 The WSPB shall include representatives from both Horizon and the Council. The proposed terms of reference for the WSPB are set out in Appendix 3 to this Agreement;
 - 6.2.3 The WSPB shall agree and approve the Activity Orders and Variation Orders associated with the PPA Schedule (including key dates and assignment of activities associated with it); and
 - 6.2.4 The WSPB shall be responsible for the operation of this Agreement and will seek to ensure that the Council and Horizon deliver advice and information in accordance with the Activity Orders or Variation Orders to achieve delivery of the Vision and the PPA Schedule and that both Parties act in accordance with the terms of this Agreement.
- 6.3 It is acknowledged by both Parties that all formal responses of the Council regarding the Council's position in relation to the Development Proposal will be taken by the Council in accordance with its Constitution and by statutory and regulatory requirements. In formulating its view or recommendations the WSPB shall have regard to the Vision but the Council will not be bound by anything referred to in the Vision.

7. Project Programme and PPA Schedule

- 7.1 The Project Programme shall be prepared by Horizon and provided to the Council as soon as it is available. Horizon shall maintain the Project Programme and communicate any material amendments to it to the Council and report on such changes at the next meeting of the WSPB.
- 7.2 The Project Programme shall form the basis for the identification of tasks to be undertaken (by way of Activity Orders) in order to achieve the required milestones associated with the Development Proposal.
- 7.3 In light of the Project Programme, the Council will, in consultation with Horizon, define the PPA Schedule and the work that is required to be undertaken which the Council considers is necessary in order for the Council to fulfil its responsibilities as set out in clause 5 and to provide the information required by the IPC. The work will be made up of a series of Activity Orders to be undertaken by the Council.

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8. Activity Orders

- 8.1 Proposals for Activity Orders and variations thereto will be initiated by representatives of the Council, and reviewed and agreed by representatives from Horizon.
- 8.2 The Parties shall agree a brief for each Activity Order and the method of procuring the work (including the relevant terms and conditions) which will be referred to in the Activity Order. In agreeing the method of procurement Horizon acknowledges the Council's obligations to ensure that Best Value is secured. In agreeing the method of procurement Horizon acknowledges the Council's obligations to ensure Best Value is secured and to act in compliance with EU Procurement Directives and in accordance with the Council's Standing Orders.
- 8.3 The agreed Activity Orders (including details of the appropriate procurement arrangements) will be submitted to the WSPB for approval together with the completed Activity Order or Variation Order (if appropriate).
- 8.4 The Council will undertake the work defined in the approved Activity Orders using its own in-house experts at the rates specified in the relevant Activity Order or Variation Order which will be reimbursed by Horizon in accordance with the terms of this Agreement. In respect of Activity Orders that require work that is outside the scope of the Council's expertise or capacity, the Council will commission the work defined in such Activity Order in accordance with appropriate procurement procedures agreed in the Activity Order and the Council's Standing Orders.
- 8.5 The Council agrees that it shall not appoint or instruct an external consultant without an agreed and WSPB approved Activity Order or Variation Order.
- 8.6 When appointing any external consultant or engaging additional staff resources directly related to this Agreement, the Council will have regard to the need to ensure that any appointment is capable of being suspended or terminated on reasonable notice so that if the Parties agree that an Activity Order or Activity Orders are to be amended and/or are no longer relevant, or Horizon withdraws support for undertaking an Activity Order or Activity Orders, the Council shall be able to suspend or terminate the appointment and mitigate the extent of any Project Costs associated with such Activity Order(s) borne by Horizon.
- 8.7 In the event that Horizon decides to withdraw its support for or otherwise terminate an Activity Order or Activity Orders it shall give no less than 10 working days notice ("Withdrawal Notice") of its intention to do so to the Council's designated project manager and shall, in such notice, specify the end date ("End Date") following which it shall no longer be responsible for costs of any work incurred by the Council in connection with such Activity Order(s). In calculating the End Date Horizon shall take account of the notice period(s) specified in the relevant Activity Order(s) and shall ensure that the End Date specified in the Withdrawal Notice is not for a period shorter than that specified in the Activity Order (s). All Withdrawal Notices shall be served in accordance with clause 18.

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- 8.8 The Council shall, within 20 working days of receipt of the Withdrawal Notice (the "Acceptance Period"), give written notice specifying whether it intends to continue with the relevant Activity Order(s) notwithstanding Horizon's decision to withdraw.
- 8.9 In the event the Council notifies Horizon that it does not intend to continue with the Activity Order(s), Horizon shall be responsible for the costs of the work undertaken up to the End Date specified in clause 8.7 (provided such costs do not when aggregated with the other costs associated with the relevant Activity Order(s), exceed the budget cap specified in such Activity Order(s)). The Council shall be responsible for suspending or terminating the relevant appointment(s) promptly and shall use its best endeavours to mitigate costs and redeploy resources so as to minimise the amount of such costs.
- 8.10 In the event the Council notifies Horizon that it wishes to continue with the Activity Order, then:
- 8.10.1 Horizon shall be responsible for the costs incurred by the Council up to the date it receives notification from the Council (the "Confirmation Date") (provided such amount does not exceed the budget cap specified in such Activity Order(s)); and
- 8.10.2 The Council shall be responsible for the costs of continuing the relevant Activity Order(s) from the Confirmation Date.
- 8.11 Where the Council fails to provide any notification pursuant to clause 8.8 above, then Horizon shall be entitled to assume that the Council intends to continue with the Activity Orders and the Confirmation Date for the purposes of clause 8.10.1 and End Date for purposes of clause 8.7 above will be deemed to be the date that occurs on the expiry of the Acceptance Period.
- 8.12 No work in relation to an individual Activity Order shall be commenced until such time as an Activity Order or Variation Order has been completed and approved by the WSPB in accordance with its terms of governance. An agreed pro-forma Activity Order is attached as Appendix 1 of this Agreement.
- 8.13 Each Activity Order and Variation Order shall include a specified budget cap for the Activity Order and Variation Order and any such budget cap shall not be exceeded without the prior approval of the WSPB. For the avoidance of doubt, Horizon shall not be responsible for costs incurred by the Council in excess of the specified budget cap unless otherwise agreed in writing between Horizon and the Council.
- 8.14 Any variations to an agreed Activity Order shall be negotiated and agreed using the Variation Order pro forma. An agreed pro forma Variation Order is attached as Appendix 1 of this Agreement.
- 8.15 Activity Orders and Variation Orders shall be commissioned following the approval by the WSPB of the Activity Order or Variation Order unless otherwise agreed in writing between Horizon and the Council.

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8.16 In the event that the Council commissions work subject to an Activity Order or Variation Order either prior to the approval by the WSPB to the particular Activity Order or Variation Order as required by clause 8.15 above or without the express agreement of the Parties as required by clause 8.13 above, the Council shall be responsible for the full costs incurred in relation to the work undertaken until such time as either the WSPB approves the Activity Order or Variation Order, or the Parties agree to the commencement of the work defined in the Activity Order or Variation Order, whichever is the earlier.

9. Status of this Agreement

9.1 The Council has powers under the Town and Country Planning Act 1990, the Planning Act 2008 and associated planning legislation, Section 111 of the Local Government Act 1972 and Section 93 of the Local Government Act 2003 to charge for certain activities where such activities are not otherwise covered in full by application fees or where such activities are of a discretionary nature.

9.2 The Council and Horizon are duly authorised to enter into this Agreement.

9.3 This Agreement does not oblige Horizon to apply for any of the consents required for the Development Proposal or proceed with any aspects of the Development Proposal.

9.4 This Agreement does not fetter the Councils' discretion in respect of its duties to properly consider and determine any applications in relation to the Development Proposal.

10. Term

10.1 This Agreement is effective from the date of signing and shall terminate upon:

10.1.1 any date on which or from which the Wylfa Strategic Project Board agrees that no further work is required to be carried out under the provisions of this Agreement; or

10.1.2 save where otherwise agreed by the Parties in writing, the later of the date that the DCO Application is submitted to the IPC, the date that the Council submits the LIR to the IPC and the date of determination of the final Planning Application; or

10.1.3 the date specified in a notice served by Horizon on the Council that the Development Proposal will not be pursued, which shall not be less than 10 working days after the date of the notice; or

10.1.4 the date specified in a notice served by the Council on Horizon stating the Council's intention to withdraw from this Agreement, which shall not be less than 10 working days after the date of the notice; or

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10.1.5 as otherwise terminated in accordance with clause 12.

10.2 Any undischarged obligation (including an obligation to reimburse properly incurred costs) imposed by this Agreement on either Party to this Agreement shall remain in effect until discharged, notwithstanding the termination of the Agreement in accordance with this Agreement unless otherwise agreed by the Parties.

11. Freedom of Information

11.1 Horizon when submitting information to the Council shall use all reasonable endeavours to clearly identify with reasons information that it considers should not be disclosed by the Council pursuant to any requests under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004.

11.2 Where the Council receive any requests for information and/or environmental information under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 in relation to Horizon and/or the Development Proposal ("the Request"), they will:

11.2.1 consult Horizon prior to the release of any requested information; and

11.2.2 allow Horizon a reasonable period in which to make representations in respect of how the request should be dealt with; and

11.2.3 give full and proper consideration to such representations made by Horizon.

11.3 The Council shall not without the consent of Horizon disclose or permit or suffer to be disclosed whether under the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or otherwise any of the contents of or the existence of:

11.3.1 any of the documents agreed by the Parties as confidential pursuant to this Agreement;

11.3.2 information supplied under this Agreement at any time except to its professional advisers

save to the extent that disclosure may be required by law or by any regulatory or listing authority.

11.4 Horizon acknowledges that, notwithstanding the provisions of clauses 11.1, 11.2 and 11.3, the Council may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the Freedom of Information Act 2000, or the Environmental Information Regulations 1994 to disclose information relating to the Development Proposal following consultation with Horizon and having taken its views into account, provided that where clause 11.3.1 applies, the Council shall, in accordance with the recommendations of the Code, draw this to the attention of Horizon prior to any disclosure.

12. Termination of the PPA

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- 12.1 Horizon may at any time and at its absolute discretion terminate this Agreement by giving not less than 10 working days notice in writing to the Council of its intention to terminate this Agreement, subject to the provisions of clause 8.7 and sub-clauses 12.4 and 12.6.
- 12.2 The Council may at any time and at its absolute discretion terminate this Agreement by giving not less than 10 working days notice in writing to Horizon of its intention to terminate this Agreement, subject to the provisions of clause 8.10 and sub-clauses 12.4 and 12.5.
- 12.3 Horizon's obligation to pay extinguishes at termination for costs incurred after termination, save as provided for in clauses 8 and 12.6 or as otherwise agreed by the Parties.
- 12.4 Following service of a notice of termination, the Council shall not act or make any commitment which would have the effect of incurring further Project Costs. The Council shall use its best endeavours to mitigate costs and redeploy resources so as to minimise the amount of the Project Costs payable by Horizon in accordance with the terms of this Agreement.
- 12.5 Following service of a notice of termination by the Council under clause 12.2 the Wylfa Strategic Project Board shall forthwith meet to review the outstanding work and determine how it shall be terminated or at the discretion of the Council be continued at the Council's expense in accordance with clause 8.10.
- 12.6 Following service of a notice of termination by Horizon under clause 12.1, Horizon will pay all of the Project Costs in respect of approved Activity Orders or Variation Orders which relate to a period before the date of termination and which have been incurred in accordance with the provisions of this Agreement and any such Project Costs which relate to a period after the date of termination (in the event that it has not been possible to avoid these in accordance with clause 12.4) up to a maximum of:
 - 12.6.1 three months in the case of internal / in-house Project Costs (ie costs of Council staff / employees); and
 - 12.6.2 the period stipulated in the relevant Activity Order as the notice period for the consultants or external contractors that have been appointed under Activity Orders that are current at the time of termination of the Agreement.

13. Intellectual Property

- 13.1 All Intellectual Property created by or generated by the Council (including any of their consultants, employees or advisors) in the course of or as a result of the performance of any Activity Order or Variation Order (the "Developed IP") shall vest in and be the absolute property of the Council.

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- 13.2 All Intellectual Property created by or generated by Horizon (including by any of its consultants, employees or advisors) in the course of or as a result of the performance of any Activity Order or Variation Order shall vest in and be the absolute property of Horizon.
- 13.3 The Council shall provide or shall procure the provision to Horizon of all Developed IP and any Intellectual Property which Horizon requires in order to Use the Developed IP on the basis of a royalty free, non-exclusive, freely transferable licence in perpetuity on the terms and conditions set out in the remainder of this clause 13 (the "Licence"). For the purposes of clauses 13.3 and 13.4 "Use" means use, adapt, copy and / or modify and Horizon holds the benefit of each Licence for itself and for each entity referred to in this clause 13.3. Such Licence shall survive the termination or expiry of this Agreement.
- 13.4 The Licence shall permit the Use of and access to the Intellectual Property by any company or corporation in which Horizon or any of its affiliates (including RWE npower plc and E.ON UK plc and their respective affiliates) has not less than a twenty per cent (20%) equity interest and any third party providing services to any such entity provided that each such third party shall only be permitted to Use and have access to such Intellectual Property for the purposes of performing such services for such entity.
- 13.5 The Licence shall not restrict any of Horizon's rights and remedies under this Agreement in respect of the Intellectual Property.
- 13.6 The Licence shall be granted by the Council or the Council shall procure the grant of the Licence to Horizon on the date of first Use of such Intellectual Property in a Activity Order.
- 13.7 Horizon shall, upon request, provide or shall procure the provision to the Council of equivalent rights to those granted to Horizon under clauses 13.3, 13.4, 13.5 and 13.6 in respect of any Intellectual Property created under clause 13.2 of this Agreement except Horizon may in its absolute discretion refuse such request where such Use would break any law or for reasons of commercial confidentiality or public security and safety.
- 13.8 The Council or Horizon shall, upon request, confirm to any prospective licensee of Horizon or the Council the rights of Horizon or the Council under this clause 13.

14. Dispute Resolution

- 14.1 The Parties agree that they will seek to work together to secure the delivery of the objectives of this Agreement. The Parties shall first attempt in good faith to resolve any dispute themselves through negotiations between the designated project managers of the Parties who shall have authority to settle disputes.
- 14.2 If the project managers fail to resolve the dispute in accordance with clause 14.1 within 20 working days the following provisions of this clause shall apply:

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- 14.2.1 The dispute shall be referred to the WSPB by the project managers. The project managers shall present an agreed report to the WSPB setting out details of the issues in dispute between the Parties. The WSPB may request the presence at the meeting of any personnel involved in the dispute from either Party;
- 14.2.2 In the event the WSPB is unable to resolve the dispute the WSPB will refer the dispute to the Project Sponsors, in doing so the WSPB will set out the respective Parties views on how the dispute may be resolved; and
- 14.2.3 The Project Sponsors shall meet as soon as practicable to endeavour in good faith to resolve the dispute. The Project Sponsors shall be entitled to request the presence at the meeting of any personnel involved in the dispute from either Party. If the dispute is not resolved at the meeting, each Party will be required to set out in writing its final position in relation to the dispute and should outline their proposed way forward. Each party will need to consider the implications (if any) of this on their own roles and responsibilities, on outstanding Activity Orders or Variation Orders and on the PPA Schedule. Such matters will be referred back for discussion at the next WSPB.

14.3 Nothing in this Clause 14 shall prevent either Party exercising its right to terminate or withdraw its support for an Activity Order or Variation Order in accordance with clauses 8 and 12.6 notwithstanding that such Activity Order or Variation Order is the subject of or related to a dispute.

15. Assignment and Transfer Provisions

Horizon shall not be entitled to assign the benefit of this Agreement or any rights arising or any part thereof (save for a transfer to another company which is an affiliate (which shall include RWE npower plc and E.ON UK plc and their respective affiliates) without the prior written consent of the Council, such consent not to be unreasonably withheld or delayed.

16. Governing Law

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales and where there is a dispute between the two then the law of Wales shall prevail.

17. Contracts (Rights of Third Parties) Act 1999

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and no person other than the Parties (and any successors in title, assigns or successor bodies) shall have any rights under or be able to enforce the provisions of this Agreement.

18. Notices and Notification

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- 18.1 Any notice or notification under this Agreement shall be in writing and shall be served in accordance with the provisions of this clause.
- 18.2 Any notification or notice to terminate this Agreement or Activity Order or Variation Order shall be in writing and shall be served on the following persons at the address set out below, or such other person as may be notified to the other parties by the party:-

Party	Person to whom notice should be sent
The Council	
Horizon	

- 18.3 Unless specifically agreed by the Parties to this Agreement a notice terminating this Agreement or Activity Order or Variation Order may not be sent by e-mail or other electronic form of communication.

19. Review and Variation

- 19.1 The Parties may at any time review this Agreement and may amend or vary its terms. Any such amendment or variation must be in writing signed by an authorised representative of both Parties.
- 19.2 In the event of a change in the law affecting the operation of this Agreement, the Parties shall negotiate in good faith to amend the Agreement so as to preserve as far as possible the intentions of the Parties as evidenced by this Agreement.

20. Severability

If any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, or indications of this are received by either of the Parties from any relevant competent authority, the remaining provisions of this Agreement are to remain in full force and effect, subject to clause 19.

21. Reference Documents

- 21.1 The following reference documents can be found on the respective websites hosted by each Party:
- 21.1.1 Wylfa PPA Non Technical Summary
 - 21.1.2 Wylfa SPB Gating Diagram
 - 21.1.3 PPA Press & Communications Protocol
 - 21.1.4 Wylfa Co-operative Working Arrangements Document
 - 21.1.5 Invoicing & Payment

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This Agreement has been entered into on the date stated at the beginning of it.

Signed on behalf of Horizon Nuclear Power
Wylfa Limited

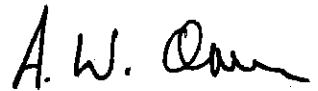


.....
Authorised Signatory



.....
Authorised Signatory

Signed on behalf of
Isle of Angelsey County Council



.....
Authorised Signatory

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~~-----ENDS-----~~

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APPENDIX 1a: WYLFA NNB PPA ACTIVITY ORDER

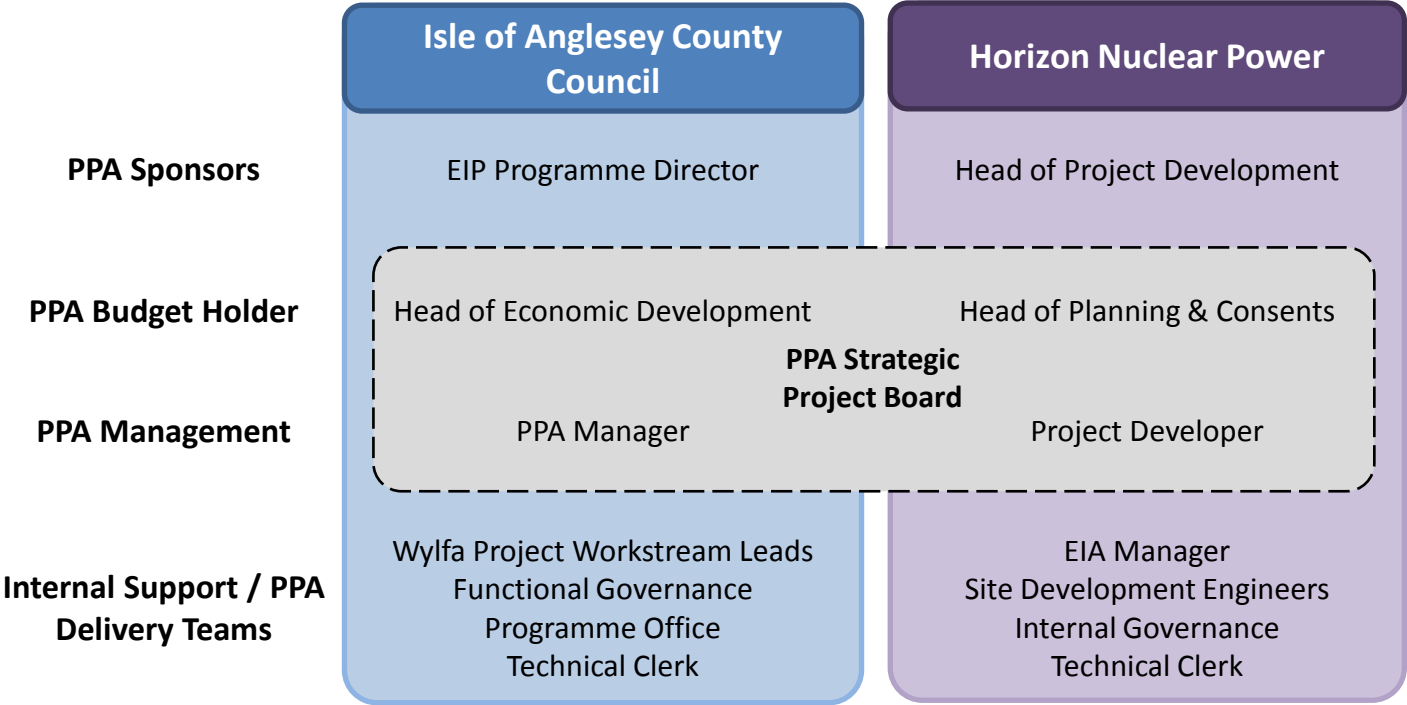
Activity Order Ref.	Title:		
Work Package Lead		approved budget (cap)	£
planned start date		scheduled completion date	
Justification:			
•			
Objectives:			
•			
Deliverables:			
•			
•			
How the Activity will be delivered:			
•			
•			
What is not included:			
•			
•			
Pricing Schedule:			
•			
•			
Resources/Procurement:			
Internal –			
External –			
Terms & Conditions: [General outline of key terms]			
•			
Notice Period for Termination:			
Milestones:			
•			
•			
Key Risks:			
•			
•			
Assumptions:			
•			
•			
Interdependencies:			
•			
•			
Comments:			

AOR Approval, for and on behalf of: Horizon Nuclear Power: Isle of Anglesey County Council:	Date:
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APPENDIX 1b: WYLFA NNB PPA VARIATION ORDER

Variation Order Ref.	Title:		
Type of Variation Required:	[Budget / Start date / Completion Date / Scope] delete as applicable		
Work Package Lead		original approved budget (cap)	£
		variation required (if applicable)	£
		revised budget	£
original planned start date		original scheduled completion date	
proposed planned start date (if applicable)		proposed scheduled completion date (if applicable)	
Description & Justification of Variation(s): • •			
Revised Pricing Schedule (if applicable): • •			
Additional Resources Required (if applicable) Internal – External –			
Revised Milestones: (if applicable) • •			
Revised Key Risks: (if applicable) • •			
Revised Assumptions: (if applicable) • •			
Revised Interdependencies: (if applicable) • •			
Comments:			
VOR Approval, for and on behalf of: Horizon Nuclear Power: Isle of Anglesey County Council:			Date:

APPENDIX 2 : Wylfa PPA Governance Arrangements: Wylfa Strategic Project Board (WSPB)



Appendix 3: Wylfa Strategic Project Board Terms of Reference

1. Wylfa Strategic Project Board (WSPB) Terms of Reference:

- a) The WSPB reports to the Project Sponsors as set out in Appendix 2. The Project Sponsors will attend the WSPB meetings on a 6 monthly basis or as otherwise agreed by the Parties
- b) Membership of the SPB shall be according to the WSPB Governance overview set out in Appendix 2 with alternate representation where agreed with the other members of the WSPB.
- c) Each Member of the WSPB or an alternate member appointed in accordance with clause 2.1 below shall be deemed by virtue of their appointment to the WSPB on behalf of their organisation to have full and unfettered authority to take binding decisions relating to the PPA work programme on behalf of their organisation.
- d) The WSPB will be chaired on a rotating basis, alternating between a representative of the Council and a representative of Horizon
- e) All decisions required to be taken by the WSPB must be unanimous in order to be passed, notwithstanding that either Party shall be entitled to note any reservations they have as to the adequacy or scope of such decision. In the event that a dispute cannot be resolved through negotiation between the Parties, clause [14] shall apply.

Additional governance provisions:

- 2.1 Each member of the WSPB shall, by notice to the WPSB, be entitled to appoint one alternate at any time to act on his/her behalf. Every person acting as an alternate member shall have one vote for each member for whom he/she acts as alternate, in addition to his/her own vote if he is also a member, and for the purpose of determining whether a quorum is present, he/she shall be counted for himself/herself and for each member for whom he/she acts as alternate. For the avoidance of doubt, a person may act as an alternate in respect of more than one member.
- 2.2 An alternate member shall be entitled to receive notice of all meetings of the WPSB, to attend and to vote at any such meeting at which the member appointing him/her is not personally present and at the meeting to exercise and discharge all the functions, powers and duties of his/her appointer as a member.
- 2.3 Where practical, at least 5 working days' notice of each WPSB meeting shall be given to each member (wherever he/she may be) unless in any particular case all the members otherwise agree to shorter or longer notice. The notice shall be accompanied by an agenda of all the business to be transacted at the meeting and reasonable supporting papers for each agenda item. Any matter not on the agenda may not be raised at the meeting unless all the members present at the meeting agree.
- 2.4
 - 2.4.1 A resolution which is signed or approved by all the members entitled to receive notice of a meeting of the WSPB shall be as valid and effectual as if it had been passed at a meeting of members duly called and constituted.
 - 2.4.2 The resolution referred in 1.4.1 may be contained in one document or in several documents in like form, each signed or approved by one or more of the members concerned; but a resolution signed or approved by an alternate

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member need not also be signed or approved by his/her appointer and, if it is signed or approved by a member who has appointed an alternate, it need not be signed or approved by the alternate member in that capacity.

- 2.4.3 For the purposes of 1.4, the approval of a member or alternate member may be given by letter, fax or e-mail.
- 2.5 A meeting of the WPSB may consist of a conference between members some or all of whom are in different places provided that each member who participates is able:
- (a) to hear each of the other participating members addressing the meeting; and
 - (b) if he/she so wishes, to address all of the other participating members simultaneously,
- whether directly, by conference telephone or by any other form of communications equipment (whether or not in use when this agreement was executed) or by a combination of those methods.
- 2.6 The WSPB shall be quorate provided that each Party is represented at a meeting by at least one representative authorised to and to act in accordance with clause 1 (c) above.
- 2.7 The responsibilities of the WSPB will include but not be limited to:
- Monitoring the progress and operation of the PPA, including:
 - The identification of key impacts and benefits of the Development Proposal;
 - Agreeing and updating the high level PPA Schedule;
 - Agreeing in advance Activity Orders and Variation Orders that secure delivery on the overall PPA Schedule;
 - Agreeing in advance the resourcing of task teams and/or commissioning of consultants to deliver on Activities, and payment and invoicing in accordance with the terms of the Activity Orders and Variation Orders;
 - Signing off the delivery of Activities against milestones for payment;
 - Meeting regularly in accordance with the needs of the PPA Schedule;
 - Managing the resolution of disputes and issues between the Parties
- 2.8 The WSPB shall report on a minimum of 3 monthly basis to the Project Sponsors, or at such time period meets the needs of the PPA and as is otherwise agreed between the WSPB and the Project Sponsors.
- 2.9 The first WSPB meeting shall take place following signature of the Wylfa PPA. At such time the WSPB may wish to discuss these terms of reference and agree on revisions if it is deemed necessary