

# **WYLFA NEWYDD DEED OF COVENANT**

in relation to

**A DEED OF DEVELOPMENT CONSENT OBLIGATIONS  
ENTERED INTO PURSUANT TO THE TOWN AND COUNTRY  
PLANNING ACT 1990 RELATING TO THE WYLFA NEWYDD  
PROJECT**

ISLE OF ANGLESEY COUNTY COUNCIL (1)

WELSH AMBULANCE SERVICE NHS TRUST (2)

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**THIS DEED OF COVENANT** is made on the                      day of                      201[ ]

**BETWEEN:**

- (1) **ISLE OF ANGLESEY COUNTY COUNCIL** of Council Offices, Llangefni LL77 7TW (the “**Council**”)
- (2) **WELSH AMBULANCE SERVICE NHS TRUST**                      of                      Vantage Point House, Vantage Point Business Park, Ty Coch Way, Cwmbran NP44 7HF (“**Recipient**”).

**WHEREAS:**

- (A) On [date] the Developer and the Council entered into the Principal Agreement pursuant to which the Developer committed to make one or more payments to the Council.
- (B) Under the terms of the Principal Agreement the Council has covenanted with the Developer to pay the Contribution to the Recipient subject to the Council receiving the Contribution from the Developer and the Recipient entering into this Deed with the Council
- (C) The Recipient wishes to secure the payment to it of the Contribution from the Council and this Deed of Covenant is entered into for the purposes of the Council paying the Contribution to the Recipient and ensuring that the Recipient applies the Contribution in accordance with the terms of the Principal Deed and this Deed of Covenant.
- (D) Deed of Covenant is also entered into for the purposes of the Recipient providing monitoring returns and participating in engagement groups, to the extent relevant to the Recipient in accordance with the Principal Agreement.

**NOW THIS DEED WITNESSES** as follows:

**1 DEFINITIONS AND INTERPRETATION**

- 1.1 In this Agreement the following expressions shall have the meanings set out below unless the context otherwise requires:

“**Contribution**” means the amount(s) expressed to be payable to the Recipient by the Council pursuant to paragraph[s] 1.2.1 to 1.2.11                      of Schedules9to the Principal Deed and as set out in Appendix 1 to this Deed;

“**Developer**” means Horizon Nuclear Power Wylfa Limited whose registered office is at Sunrise House, 1402 Charlton Court, Gloucester Business Park, Gloucestershire, GL3 4AE (Company Number [ ]) or any successor company who shall become the developer of the Site as defined in the Principal Agreement.

**“Principal Agreement”** means the agreement made on [date] pursuant to section 106 of the Town and Country Planning Act 1990 in relation to the Development Consent Order between (1) Horizon and (2) Isle of Anglesey County Council.

- 1.2 In this Deed unless a contrary intention is shown all definitions expressions and phrases used shall have the meanings ascribed to them in the Principal Deed.

## **2 RECIPIENT’S COVENANTS**

- 2.1 The Recipient covenants that it shall on receipt of the Contribution comply with the provisions of clauses 4 to 6 of this Deed.

## **3 COUNCIL’S COVENANT**

- 3.1 The Council covenants with the Recipient that on receipt of such Contribution from the Developer it shall pay the Contribution to the Recipient in accordance with the terms of the Principal Agreement within [five] Working Days of receiving the Contribution.

## **4 RECEIPT OF THE CONTRIBUTIONS**

- 4.1 The Recipient covenants with the Council that as soon as reasonably practicable upon receipt of any Contribution it shall hold such Contributions such that they can be separately identified within the Recipients accounting system.
- 4.2 Any interest which accrues to the Contribution shall also be separately identified and shall only be applied in accordance with the provisions of this Deed for the same purposes as for the Contribution to which the interest relates.
- 4.3 Subject to compliance with relevant laws and its own constitutional and internal financial rules, the Recipient shall provide the Council with copies of relevant accounting information confirming the above within fourteen (14) working days of a written request from the Council.

## **5 APPLICATION OF CONTRIBUTIONS**

- 5.1 The Recipient covenants with the Council that in respect of the Contribution that
- (a) it shall apply it for the purposes for which it was paid as specified in the Principal Agreement [and as appears in Appendix 2 to this Deed]; and
  - (b) it shall not spend the Contribution other than for the purposes specified in the Principal Agreement [and as appears in Appendix 2 to this Deed] ; and
  - (c) it shall repay the Contribution in accordance with clause 6.1.

- 5.2 The Recipient shall t r until the total sum of the Contribution has been spent provide the Council with an annual statement setting out details of the purposes to which the monies have been applied.
- 5.3 Notwithstanding clause 5.2, and subject to data protection laws, the Council shall have the right (at its own expense) to audit all expenditure funded from the Contribution and the Recipient covenants with the Council that it shall provide access to all such information and evidence as may reasonably be necessary to enable the Council to carry out any such audit upon receipt of one (1) month's prior written notice subject to the Council agreeing the frequency and scope of such audits in advance with the Recipient and **PROVIDED THAT** in default of such an agreement there shall be no more than e one audit in any twelve (12) month period.
- 5.4 In the event that the annual statement provided to the Council by the Recipient in accordance with clause 5.2 or the audit undertaken by the Council in accordance with clause 5.3 demonstrate that the Recipient is not in the reasonable opinion of the Council spending the Contribution in accordance with the terms set out in the Principal Agreement (as set out in Appendix 2) then the Council shall issue a written notice to the Recipient (the "Dispute Notice") specifying the actions that the Recipient must undertake in order to ensure that the terms of the Principal Agreement are being complied with by the Recipient and where the Council reasonably considers that the Recipient has failed to comply with the actions specified in the Dispute Notice the Council shall notify the Recipient in writing accordingly and subject to the provisions of clause 8 of this deed the Recipient shall return such part of the Contribution (together with any interest accrued thereon) which has not been spent in accordance with the Principal Agreement (as set out in Appendix 2) to the Council within[ten Working Days] of such written notification or within [ten Working Days} of the written notification of the Expert's decision to the Recipient that such part of the Contribution as he shall have determined shall be returned to the Council as the case may be..

## **6 UNSPENT CONTRIBUTIONS**

- 6.1 The Recipient covenants with the Council that should any part of the Contribution paid to the Recipient under the Principal Deed by the Council remain unspent within nine years and eleven months of the date that the Contribution or part thereof was paid by the Council to the Recipient, the Recipient shall repay that Contribution or such part thereof which is unspent to the Council together any interest accrued thereon such payment to be made by the Recipient to the Council within [ten] Working Days of the end of the nine year and eleven month period.

## **7 RIGHTS OF THIRD PARTIES**

It is not intended that any person who is not a party to this Deed shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

## **8 DISPUTES**

8.1 In the event of any dispute or difference arising between the Parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in Wales with such matters as may be in dispute and such person shall act as an expert (the "Expert") whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties in equal shares.

8.2 In the absence of agreement as to the appointment or suitability of the person to be appointed as the Expert pursuant to Clause [8.1] or as to the appropriateness of the professional body then such question may be referred by either Party to the president for the time being of the Law Society for the president to appoint a solicitor to determine the dispute such solicitor acting as the Expert and his decision shall be final and binding on the Parties in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the Parties in equal shares.

8.3 Any Expert howsoever appointed shall be subject to the express requirement to reach a decision and communicate it to the Parties within the minimum practicable period allowing for the nature and complexity of the dispute and in any event not more than twenty-eight Working Days after the conclusion of any hearing that takes place or twenty-eight Working Days after he has received any file or written representation.

8.4 The Expert shall be required to give notice to each of the Parties requiring them to submit to him within ten working days of notification of his appointment written submissions and supporting material and the other party shall be entitled to make a counter written submission within a further ten Working Days.

8.5 Following the submission of written submissions and/or supporting materials to the expert the Expert may set a hearing to discuss the dispute and shall give the Parties at least [ten] Working Days written notice of the date and time when such a hearing is to take place.

8.6 It is agreed between the Parties that this clause shall not apply to disputes in relation to matters of law or the construction or interpretation of this Deed which shall be subject to the jurisdiction of the Courts.

## **9 JURISDICTION**

9.1 This Deed including its construction, validity, performance and enforcement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales as it applies in Wales

9.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

**IN WITNESS** whereof the parties hereto have executed this Deed on the day and year first before written

**THE COMMON SEAL** of )  
**ISLE OF ANGLESEY COUNTY COUNCIL** )  
was hereunto affixed )  
in the presence of: )

*[RECIPIENT]*

*[EXECUTION BLOCK]*

EXECUTED as a DEED by WELSH )  
AMBULANCE SERVICE NHS TRUST )  
] )  
acting by [Name of Director] in the )  
presence of:

.....  
Signature of Director

.....  
[SIGNATURE OF WITNESS]

[NAME OF WITNESS]



**Appendix 1**

The Contributions

1. A payment of £581 (Indexed) prior to Implementation
2. A payment of £1,631 (Indexed) on the first anniversary of Implementation
3. A payment of £12,458 (Indexed) on the second anniversary of Implementation
4. A payment of £37,755 (Indexed) on the third anniversary of Implementation
5. A payment of £91,494 (Indexed) on the fourth anniversary of Implementation
6. A payment of £155,387 (Indexed) on the fifth anniversary of Implementation
7. A payment of £226,695 (Indexed) on the sixth anniversary of Implementation
8. A payment of £232,329 (Indexed) on the seventh anniversary of Implementation
9. A payment of £157,342 (Indexed) on the eighth anniversary of Implementation
10. A payment of £16,523 (Indexed) on the ninth anniversary of Implementation
11. A payment of £3,669 (Indexed) on the tenth anniversary of Implementation

## Appendix 2 (Purposes for the Contribution)

### Patient Transport

#### Ambulance Provision

A determination will be made regarding the number of emergency vehicles required on site required for the performance of the Services. The current plan is for 2-3 ambulances including at least one 4x4 off-road for the outer earthworks areas and at least one road ambulance for transferring non-critical cases to hospital in Bangor. The distance would mean it would be gone two hours plus, so a second may be required. This will be dependent upon any agreements that may be reached with the Welsh Ambulance Service NHS Trust.

Emergency vehicles shall be standard Advanced Life Support (ALS) vehicles and be appropriately equipped with Advanced Cardiac Life Support (ACLS) equipment and emergency medications. Adequate oxygen supply for at least 6 hours must be available.