

**DATED** \_\_\_\_\_ **20[ ]**

**HER MAJESTY THE QUEEN** (1)  
**THE CROWN ESTATE COMMISSIONERS** (2)  
**[PARTY THREE]** (3)  
**[PARTY FOUR]** (4)

---

LICENCE

relating to  
[submarine electronic  
communications][electricity interconnector]  
[electricity transmission] cable known as [  
] landing at [ ]

---

**[Note: this document is only used for  
electricity cables that are interconnectors or  
transmission cables]**

Commences: [ ]  
Licence Period: [ ] years  
Expires: [ ]

Estates Ref: [ ]  
PO Number: [ ]  
Bond Pearce Ref: [ ]

## CONTENTS

Clause	Page
OPERATIVE PROVISIONS .....	1
PART ONE: DEFINITIONS AND INTERPRETATION .....	1
1 Definitions .....	1
2 Interpreting this Licence .....	7
PART TWO: LICENCE AND LICENCE FEE .....	8
3 Licence .....	8
4 Licence Fee .....	9
PART THREE: LICENSEE'S OBLIGATIONS (OTHER THAN LICENCE FEE) .....	11
5 Outgoings .....	11
6 Laying and Maintenance of the Cable[s] .....	11
7 User .....	12
8 Diversion .....	13
9 Alienation .....	13
Assignment .....	13
Charges .....	14
Sub-Licences .....	14
Registration .....	14
Form of Consent .....	14
10 Legal Obligations .....	14
11 Inspection .....	15
12 Costs .....	15
13 Interest .....	16
14 Indemnity .....	16
15 Insurance .....	17
PART FOUR: LICENSOR'S OBLIGATIONS .....	17
16 Works and Dredging Restrictions .....	17
PART FIVE: DECOMMISSIONING .....	18
17 Definitions .....	18
18 Initial Decommissioning Plan .....	19
19 Final Decommissioning Plan .....	19
20 Costs and additional surveys etc .....	19
21 Decommissioning .....	19
22 Residues of the Cable[s] .....	20
23 Termination following decommissioning .....	20
PART SIX: REVIEW OF LICENCE FEE .....	20
24 Definitions .....	20
25 Index Review of Licence Fee .....	22
26 Index .....	22
27 Open Market Review .....	22
28 Determination by Valuation Office .....	23
29 Delayed Review .....	24
30 Restrictions .....	24
PART SEVEN: TERMINATION .....	24
31 Termination .....	24
[PART EIGHT: GUARANTEE .....	25
32 Guarantor's covenant .....	25
33 Guarantee on assignment .....	26
34 New Guarantor .....	26
PART [NINE]: MISCELLANEOUS PROVISIONS .....	27
35 Disputes .....	27
36 User .....	27
37 Acceptable Covenant .....	27
38 Liability .....	28
39 Data Protection Act 1998 .....	28
40 Notices .....	28
41 Jurisdiction .....	28
Schedule .....	30

DATE

20[ ]

PARTIES

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

OPERATIVE PROVISIONS

PART ONE: DEFINITIONS AND INTERPRETATION

**1 Definitions**

In this Licence the following expressions have the following meanings:

**1986 Act** the Insolvency Act 1986

**Acceptable Covenant** Net Assets of at least £[ ] as such sum shall be increased (only and not decreased) annually on each anniversary of the Licence Start Date by being multiplied by:-

$$1 + \frac{(R - V)}{V}$$

Where

Index has the meaning given in clause 24.1

R = the value of the Index for the month that is two months before the relevant anniversary of the Licence Start Date

V = the value of the Index for the month that is two months before the Licence Start Date

**Accommodation Works** any temporary works and structures on the Seabed reasonably required by the Licensee to lay and commission the Cable[s]

**Authority** a statutory, public, local, European, international or other competent authority, secretary of state, minister or any agency or body owned or sponsored by the government or devolved administrations or any court or tribunal of competent jurisdiction

**Cable[s]** the section of the Cable System consisting of:

- (a) [a][number of] cable[s] as described in the attached specification in the approximate position shown by the red line and the co-ordinates on the Plan and extending from mean [high] [low] water to the Territorial Limit;

- **Check co-ordinates do not extend beyond green line**

(b) the cable joint and safety apparatus permanently attached to that cable and required for the operation of it; and

(c) any repairs in accordance with clause 6.12

**Cable System** the [submarine electronic communications][electricity interconnector] cable known as [ ] joining the shore at [ ] in [ ] and having [ ] in [ ] as its destination

**CDM Regulations** the Construction (Design and Management) Regulations 2007

**Centre Line** the centre line of Cables based on the Plan until such time as the as-laid position of the Cable[s] and the UKCS Cable Section has [have] been notified by the Licensee to the Licensor under clause 6.5 **[NOTE: amend if Cable already laid]**

**Commissioners** this includes any other person who takes over managing The Crown Estate

**Conduit** a conduit, pipe, drain, gully, sewer, channel, culvert, gutter, flue, duct, wire, cable, main, optic fibre or other medium for the passage or transmission of any organic or inorganic matter whether solid, liquid or gas (including air, smoke, steam, water, sewage, waste and petroleum) or electricity, light, power, sound, communications, impulses, information, data or other energy, wave or force (even if incorporeal or intangible), and all related structures and equipment

**End of this Licence** the end of this Licence by expiry, notice or otherwise

**[Guarantor** this includes, in the case of an individual, his personal representatives]

**Good Industry Practice** the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected at such time from a skilled and experienced contractor seeking in good faith to comply with its contractual obligations, complying with all applicable laws and engaged in the same type of undertaking and under the same or similar circumstances and conditions

**Insolvent** (a) if a party is a company or a limited liability partnership or other corporation, it is insolvent if any of the following apply:

- (i) it is deemed unable to pay its debts as defined in section 123 1986 Act;
- (ii) a proposal is made for a voluntary arrangement under part I 1986 Act;

- (iii) it enters into any arrangement, scheme, compromise, moratorium or composition with any of its creditors under the 1986 Act or otherwise;
  - (iv) it is the subject of an administration order (whether an interim order or otherwise) made under part II 1986 Act; or is subject to a resolution passed by the directors or shareholders, members, managers or other officers (or a determination of a limited liability partnership) for the presentation of an application for such an order; or has an application for such an order presented against it; or if a notice of intention to appoint an administrator or a notice of appointment of an administrator is filed with the court; or if a resolution is passed by the directors, shareholders, members, managers or other officers (or a determination of a limited liability partnership) for the filing of either such notice;
  - (v) a receiver (including an administrative receiver) or manager is appointed whether under part II 1986 Act or otherwise;
  - (vi) a provisional liquidator is appointed under section 135 1986 Act;
  - (vii) it goes into liquidation as defined in section 247(2) 1986 Act (except a voluntary winding-up solely for the purpose of amalgamation or reconstruction while solvent which has the Licensor's prior written approval); or
  - (viii) it makes or resolves to make an application to the court under sections 895 – 901 Companies Act 2006;
- (b) if a party is an individual, it is insolvent if any of the following apply:
- (i) an application is made for an interim order or a proposal is made for a voluntary arrangement under part VIII 1986 Act;
  - (ii) a bankruptcy petition is presented to the court or his circumstances would enable a bankruptcy petition to be presented under part IX 1986 Act;
  - (iii) he enters into a deed of arrangement; or
  - (iv) a receiver or manager is appointed over any of his assets

<b>Interest</b>	interest (both before and after any judgment) calculated on a daily basis from and including the date that interest becomes chargeable on any payment under this Licence to and including the day before the date that such payment is made
<b>Interest Rate</b>	3% a year above Barclays Bank Plc's base lending rate from time to time (or of another bank nominated by the Licensor at any time) or, if those base rates are not available at any time, another comparable rate of interest specified by the Licensor having regard to interest rates at that time
<b>Legal Obligation</b>	<p>an obligation, requirement or restriction imposed by or under:</p> <p>(a) any present or future law including present or future statute, statutory instrument, statutory guidance or byelaw or common law;</p> <p>(b) any regulation, law or directive made or issued by or with the authority of the European Commission and/or the Council of Ministers;</p> <p>(c) any present or future judgment, injunction, regulation, order, direction, requirement, notice, guidance or code of practice of any Authority;</p> <p>(d) any binding international law or obligation;</p> <p>(e) [the matters referred to in the Schedule;] or</p> <p>(f) any condition of a Necessary Consent,</p> <p>as far as it relates to the Cable[s] or the exercise of the Rights, no matter on whom the obligation is imposed</p>
<b>this Licence</b>	this Licence and any document that is supplemental or collateral to it whether or not it is expressly stated to be so
<b>Licence Fee</b>	the Operational Fee the Non Operational Fee and the Out of Service Fee
<b>Licence Period</b>	<p>the period of [            ] years beginning on the Licence Start Date and ending on [            20[ ] ]</p> <p>• <b>Complete with reference to clause 2.12</b></p>
<b>Licence Start Date</b>	[            20[ ] ] [the date of this Licence]
<b>Licensee</b>	this includes the Licensee's successors in title
<b>Licensor</b>	the Commissioners
<b>Longstop Operational Date</b>	[            ]

<b>Necessary Consent</b>	<p>(a) a consent, licence, permission, order, exemption, approval of or registration with any Authority which may be relevant in the context (and which shall for the avoidance of doubt all assessments which may be required to be undertaken before the grant of any of the foregoing);</p> <p>(b) [a consent, licence or permission referred to in the Schedule]</p>
<b>Net Assets</b>	the fixed and current assets less the aggregate of the liabilities of the relevant company
<b>No Dredging Zone</b>	the area extending to 250 metres either side of the Centre Line
<b>Non Operational Fee</b>	30% of the Operational Fee per year as agreed or determined from time to time
<b>[Non Operation Start Date</b>	<p>the date which is the later of:</p> <p>(a) the date stated in the Notice of Non Operation as the date on which the Cable[s] will be taken out of use for the Permitted Use; and</p> <p>(b) the date 12 months after the date on which the Notice of Non Operation is served on the Licensor  <b>Note: see note to clause 4.4]</b></p>
<b>[Notice of Non Operation</b>	<p>a notice served by the Licensee on the Licensor referring to clause 4 and stating the date on which the Cable[s] will be taken out of use for the Permitted Use  <b>Note: see note to clause 4.4]</b></p>
<b>[Notice of Resumption of Use</b>	<p>a notice served by the Licensee on the Licensor referring to clause 4 and giving at least 14 days notice of the date on which the Licensee will be resuming use of the Cable[s] for the Permitted Use  <b>Note: see note to clause 4.4]</b></p>
<b>Operational Date</b>	<p>the date which is the earlier of:</p> <p>(a) the date on which the Cable[s] [is/are] first used for the Permitted Use other than transmissions required to test the Cable[s] before [it is/they are] brought into use; and</p> <p>(b) the Longstop Operational Date</p>
<b>Operational Fee</b>	£[     ] a year or such other amount as is from time to time agreed or determined in accordance with Part Six or otherwise
<b>Other Consents</b>	any consent, licence, permission, order, exemption, approval of or registration with any Authority (and which shall include for the avoidance of doubt all assessments which may be required to be undertaken before the grant of any of the foregoing) which may be relevant in the context provided that Authority shall in this definition apply to the jurisdiction[s] which the Cable System travels through before making landfall

at [●] [**Note: this is required where the Cable System has a destination outside Territorial Waters and may need to be refined depending upon that jurisdiction**]

**Out of Service Date**

the date which is the later of:

- (a) the date stated in the Out of Service Notice as the date on which the Cable[s] will be permanently taken out of use for the Permitted Use; and
- (b) the date 18 months after the date on which the Out of Service Notice is served on the Licensor; and
- (c) the date 12 months after the parties have agreed the Final Decommissioning Plan in accordance with clause 19.

**Out of Service Fee**

£[ ] a year or such other amount as is from time to time agreed or determined in accordance with Part Six or otherwise

- **£1000 updated with reference to the Indexation Formula where RF = £1000, A = value 2 months before completion date and B = 234.7 (being figure for [July 2011])**

**Out of Service Notice**

a notice served by the Licensee on the Licensor referring to clause 4 and stating the date on which the Cable[s] will be taken permanently out of use for the Permitted Use and which shall include preliminary details of the Final Decommissioning Plan (as defined in clause 17)

**Out of Service Period**

the period beginning on the Out of Service Date and ending on the date which is the earlier of:

- (a) the date 24 months after the Out of Service Date; and
- (b) on the End of this Licence.

**Part**

a part of this Licence

**Payment Dates**

[ ] and [ ] in each year

- **This will be the day and month of the Longstop Operational Date and the day six months later**

**[Period of Non Operation**

the period beginning on the Non Operation Start Date and ending on the earlier of :

- (a) that date on which the Licensee resumes use of the Cable[s] for the Permitted Use;
- (b) the date stated in the Notice of Resumption of Use as the date on which use of the Cable[s] for the Permitted Use will be resumed;



(c) the End of this Licence; and

(d) the date on which the period of 5 years referred to in clause 4.7 is exhausted

**Note: see note to clause 4.4]**

<b>Permitted Use</b>	[transmitting communications or other signals as part of an electronic communications network (as defined in the Communications Act 2003)][transmission of electricity] [(in the case of electricity cables) and (in the case of the fibre optic cable) the transmission of data signalling protection and control functions ancillary to the transmission of electricity.)]
<b>Plan</b>	the attached plan
<b>Rights</b>	the rights set out in clause 3.1
<b>Seabed</b>	the seabed where the Cable[s] is [are] laid [including] [excluding] the foreshore at the place where the Cable[s] join[s] the shore
<b>Territorial Limit</b>	the seaward limit from time to time of the territorial seas adjacent to Great Britain
<b>UKCS Cable Section</b>	the section of the Cable System on the United Kingdom Continental Shelf in the approximate position shown by the [green] line on the Plan
<b>VAT</b>	value added tax or a similar tax that replaces it or is charged in addition to it
<b>Works Restriction Zone</b>	(a) the area inside the Territorial Limit extending to 250 metres either side of the Centre Line in water depths up to 55 metres below chart datum;  (b) the area inside the Territorial Limit extending to 500 metres either side of the Centre Line in water depths greater than 55 metres below chart datum

## **2 Interpreting this Licence**

2.1 The headings in this Licence are for reference only. They are not to be used to interpret the text beneath.

2.2 The Schedule to this Licence is part of this Licence. References to the parties, Schedules and clauses mean those in this Licence.

- **Delete references to Schedule if no Schedules.**

2.3 References to persons include bodies corporate, unincorporated associations and partnerships, in each case whether or not they have a separate legal identity.

2.4 Unless the context specifically requires otherwise:

2.4.1 words relating to one gender are treated as meaning any gender;

2.4.2 words relating to individuals are treated as also meaning corporations and vice versa;

- 2.4.3 words in the singular are treated as also meaning the plural and vice versa; and
- 2.4.4 words relating to the whole are treated as including any part of the whole.
- 2.5 All agreements and obligations by a party in this Licence (whether or not expressed as covenants) are to be read as covenants by that party. The Licensee will comply with its agreements and obligations up to the End of this Licence (and after the End of this Licence as provided in clauses 14.2, 15.4 and 21.4).
- 2.6 If an obligation in this Licence requires the Licensee not to do something, it is a breach of the obligation to allow somebody else to do it.
- 2.7 References to statutory provisions, acts EC Directives or binding International laws or obligations include (except where expressly stated to the contrary) references to:
- 2.7.1 any changes to them, including any extension, consolidation, replacement or re-enactment (before or after the date of this Licence);
- 2.7.2 any previous statutory provisions, acts EC Directives or binding International laws or obligations that they have replaced or changed; and
- 2.7.3 any regulation, instrument or order or other subordinate legislation made under them.
- 2.8 If a party consists of more than one person, the covenants and obligations which that party undertakes can be enforced against them all jointly or against each individually.
- 2.9 A covenant by (or implied by) the Licensor is made (or implied) by the Commissioners acting in exercise of the powers of the Crown Estate Act 1961. No covenants, agreements or obligations are given by Her Majesty or anyone who reigns after Her. No liability is imposed on Her Majesty or anyone who reigns after Her nor on the Commissioners in any personal or private capacity.
- 2.10 If any provision of this Licence is held to be invalid or unenforceable by any court or other competent authority, all its other provisions will remain in full force.
- 2.11 This Licence does not confer on any person or party (except the parties to it) rights under the Contracts (Rights of Third Parties) Act 1999.
- 2.12 Where a period is stated to begin and end on specified dates, the period will include the date it is stated to begin on but exclude the date it is stated to end on.
- 2.13 The words "include" and "including" are deemed to be followed by the words "but not limited to".
- 2.14 Subject to clause 9, any consent or approval to be given by the Licensor is not effective unless it is given in writing.

## PART TWO: LICENCE AND LICENCE FEE

### **3 Licence**

- 3.1 The Licensor grants to the Licensee licence to exercise the following rights during the Licence Period:
- 3.1.1 the right to enter the Seabed as far as necessary to lay, inspect, maintain, repair, remove and, where permitted under this Licence, alter and renew the Cable[s] and Accommodation Works; and

- 3.1.2 the right to use the Cable[s] and Accommodation Works on the Seabed.
- 3.2 The licence in clause 3.1 is granted subject to:
  - 3.2.1 the right of the Licensor and persons authorised by it to undertake any works on in over or under the Seabed provided clause 16 has been complied with;
  - 3.2.2 the right of the Licensor to require the Licensee to divert the Cable[s] in accordance with clause 8;
  - 3.2.3 the public rights of navigation and fishing; and
  - 3.2.4 all rights, easements, quasi-easements, restrictions, covenants and liabilities which affect the Seabed including the matters set out in the Schedule or in any document mentioned in it.
- 3.3 The Licensor retains all rights of possession and control of the Seabed and, provided that clause 16 has been complied with where applicable, the Licensee must not in any way impede the Licensor and persons authorised by it in the exercise of those rights.

#### **4 Licence Fee**

- 4.1 The Licensee will pay the Licence Fee to the Licensor during the Licence Period in accordance with this clause 4.
- 4.2 The Licensee will pay the Non Operational Fee for the period beginning on the Licence Start Date and ending on the Operational Date. On the date of this Licence the Licensee will pay the Non Operational Fee to the Licensor for the whole of the period beginning on the Licence Start Date and ending on the Longstop Operational Date.
- 4.3 Subject to clause [4.4 and] 4.10, the Licensee will pay the Operational Fee to the Licensor from the Operational Date for the remainder of the Licence Period by equal half-yearly payments in advance on the Payment Dates. If the Operational Date is before the Longstop Operational Date then on the Operational Date the Licensee will pay to the Licensor a sum equal to the amount by which the Operational Fee for the period beginning on the Operational Date and ending on the Longstop Operational Date exceeds the Non Operational Fee already paid for that period. If the Operational Date is the Longstop Operational Date then the Longstop Operational Date will be the first Payment Date for the Operational Fee.
- 4.4 **[Note: this non operational period is only available to telecommunications cable to reflect changes in usage during lifetime of the cable.** If the Licensee serves a Notice of Non Operation on the Licensor in accordance with clause 4.5, the Licensee will pay the Non Operational Fee to the Licensor for the Period of Non Operation. If the beginning of the Period of Non Operation is not a Payment Date then the amount of the Licence Fee payable on the last Payment Date before the start of the Period of Non Operation will be a sum apportioned between Operational Fee and the Non Operational Fee in proportion to the number of days in the period beginning on that Payment Date and ending on the start of the Period of Non Operation and the number of days in the period beginning on the start of the Period of Non Operation and ending on the next Payment Date.
- 4.5 The Licensee may only serve a Notice of Non Operation if at the date of service:
  - 4.5.1 the Operational Date has occurred; and
  - 4.5.2 the period of five years referred to in clause 4.7 has not been exhausted.

- 4.6 Once a Period of Non Operation has started the Licensee may not use the Cable[s] for the Permitted Use:
- 4.6.1 until the Licensee has served a Notice of Resumption of Use on the Licensor; and
  - 4.6.2 not before the date for resuming use given in that Notice of Resumption of Use.
- 4.7 The maximum length of a Period of Non Operation is five years. The Licensee may serve a Notice of Non Operation on more than one occasion but the total length of all the Periods of Non Operation may not exceed five years.
- 4.8 The Licensee will pay the Non Operational Fee on each Payment Date during each Period of Non Operation.
- 4.9 At the end of a Period of Non Operation (unless it is also the End of this Licence) the Licensee will resume paying the Operational Fee in accordance with clause 4.3. If the end of the Period of Non Operation is not a Payment Date then on the date the Period of Non Operation ends the Licensee will pay to the Licensor a sum equal to the amount by which the Operational Fee for the period beginning on the date the Period of Non Operation ends and ending on the next Payment Date exceeds any Non Operational Fee already paid for that period.]
- 4.10 If the Licensee serves an Out of Service Notice on the Licensor, the Licensee will pay the Out of Service Fee to the Licensor for the Out of Service Period. If the beginning of the Out of Service Period is not a Payment Date then the amount of the Licence Fee payable on the last Payment Date before the start of the Out of Service Period will be a sum apportioned between the Operational Fee and the Out of Service Fee in proportion to the number of days in the period beginning on that Payment Date and ending on the start of the Out of Service Period and the number of days in the period beginning on the start of the Out of Service Period and ending on the next Payment Date.
- 4.11 Once an Out of Service Period has started the Licensee may never use the Cable[s] for the Permitted Use even after the Out of Service Period has expired.
- 4.12 The Licensee will pay the Out of Service Fee on each Payment Date during the Out of Service Period.
- 4.13 At the end of an Out of Service Period (unless it is also the End of this Licence) the Licensee will resume paying the Operational Fee in accordance with clause 4.3. If the end of the Out of Service Period is not a Payment Date then on the date the Out of Service Period ends the Licensee will pay to the Licensor a sum equal to the amount by which the Operational Fee for the period beginning on the date the Out of Service Period ends and ending on the next Payment Date exceeds any Out of Service Fee already paid for that period.
- 4.14 The Licensee will pay the Licence Fee (plus VAT if it applies) without deduction or set off (whether legal or equitable). Payment is to be made by standing order (from a bank in the United Kingdom) or by any other method reasonably required by the Licensor.
- 4.15 Where any Licence Fee is payable for a period of less than a year then a proportion of the annual amount will be paid calculated on a daily basis.

## PART THREE: LICENSEE'S OBLIGATIONS (OTHER THAN LICENCE FEE)

### 5 Outgoings

- 5.1 The Licensee will pay and indemnify the Licensor against all rates, taxes, assessments, impositions, duties, charges and outgoings payable at any time during the Licence Period in respect of the Cable[s] or the exercise of the Rights.
- 5.2 The Licensee will pay and indemnify the Licensor against all VAT charged on:
- 5.2.1 the Licence Fee;
  - 5.2.2 any other sum payable under this Licence; or
  - 5.2.3 any other taxable supply received by the Licensee under this Licence.

### 6 Laying and Maintenance of the Cable[s]

- 6.1 Before exercising the Rights the Licensee will:-
- 6.1.1 obtain all Necessary Consents needed to exercise the Rights; and
  - 6.1.2 comply with any conditions contained in those Necessary Consents in so far as they are capable of being complied with before exercise of the Rights; [and]
  - 6.1.3 [obtain all Other Consents for the Cable System beyond the Territorial Limit to its next point of landfall; and
  - 6.1.4 comply with any conditions contained in those Other Consents in so far as this is required by any Authority before the exercise of the Rights. ]**[Note: Other Consents will only be needed where the Cable[s] are due to make landfall in another jurisdiction]**

and in each case the Licensee will confirm to the Licensor that all Necessary or Other Consents have been obtained and complied with as set out in clause 6.1.2 [and 6.1.4]. If requested by the Licensor the Licensee will produce copies of the Necessary or Other Consents to the Licensor [together with any confirmation that the Licensor may reasonably require to satisfy itself that all Necessary or Other Consents have been obtained and complied with as set out in clause 6.1.2 [and 6.1.4] **[Note: Other Consents will only be needed where the Cable[s] are due to make landfall in another jurisdiction]**

- 6.2 The Licensee shall use its best endeavours to design and install the Cable[s] at [the point of landfall and [ ] to mitigate and minimise the impact on the potential for future users to install any apparatus in the immediate vicinity.
- 6.3 To carry out and complete the installation of the Cable[s]:-
- 6.3.1 in a good and workmanlike manner;
  - 6.3.2 using only suitable good quality materials of their several kinds;
  - 6.3.3 in accordance with [the attached specification] all Necessary Consents and Legal Obligations; and
  - 6.3.4 with all reasonable speed.
- 6.4 The Licensee will, if requested by the Licensor, provide to the Licensor copies of all reports prepared in connection with the laying of the Cable[s].

- 6.5 Immediately after the Cable[s] has [have] been laid the Licensee will provide to the Licensor plans and co-ordinates showing the exact location as laid of the Cable[s] and the UKCS Cable Section.
- 6.6 The Licensee will restore the Seabed to its former or proper condition as soon as reasonably practicable after any disturbance of it in the exercise of the Rights.
- 6.7 The Licensee will remove the Accommodation Works immediately once they are no longer needed and in any event will remove them by the Operational Date.
- 6.8 The Licensee will keep the Cable[s] and any Accommodation Works in good safe and substantial repair and condition.
- 6.9 The Licensee will not cause waste, spoil or destruction on, in or under the Seabed except as may be necessary for the proper exercise of the Rights.
- 6.10 The Licensee will not construct, erect or place on, in or under the Seabed any building, erection, works, Conduits or materials except the Cable[s].
- 6.11 The Licensee will not alter, add to, renew or replace the Cable[s] except as permitted in clause 6.12.
- 6.12 Where necessary to repair damage to the Cable[s], the Licensee may replace a part of the Cable[s] or make an addition to the Cable[s]. As soon as reasonably practicable after the works have been carried out, the Licensee will provide to the Licensor plans and co-ordinates showing the exact location of any replacement or addition made in accordance with this clause 6.12.
- 6.13 No warranty or representation is given or implied as to the adequacy, suitability, effectiveness or otherwise of the Seabed for the Cable[s]. The Licensor will incur no liability to the Licensee from any approval given to or inspection made of the Cable[s] or any drawing, plan or specification of it. The Licensee will not be relieved of its obligations under this Licence by any approval or inspection of the Cable[s] by the Licensor.
- 6.14 The Licensee will:
- 6.14.1 inform the Licensor of any incident in connection with the Cable[s] resulting in a loss of life or significant harm within 14 days of the incident; and
- 6.14.2 on each anniversary of the Licence Start Date submit to the Licensor a copy of its health and safety reports for the preceding year in a format to be agreed between the parties incorporating the outcomes of any assessment of any incidents and the management measures which have been employed to avoid a repeat.
- 6.15 [The Licensee will not damage or interfere with the Conduits referred to in the Schedule.]

## **7 User**

- 7.1 Subject to clauses 4.6 and 4.11, the Licensee will use the Cable[s] for the Permitted Use only.
- 7.2 The Licensee will not exercise the Rights or use the Cable[s] in a way that is or may cause a nuisance, disturbance or damage to the Licensor or any other person. If a nuisance occurs, the Licensee will immediately take all necessary action to stop it.
- 7.3 The Licensee will not exercise the Rights or use the Cable[s] in a way that:

- 7.3.1 causes pollution or harm to human health or the environment;
  - 7.3.2 is dangerous, noisy or offensive; or
  - 7.3.3 is illegal or immoral.
- 7.4 The Licensee shall exercise the Rights in accordance with Good Industry Practice and recognised international standards for such Rights and, if required by the Commissioners, shall produce evidence of such compliance to the Commissioners for inspection.

## **8 Diversion**

- 8.1 If the Licensor requests at any time or times the Licensee will divert the Cable[s] to an alternative position reasonably specified by the Licensor.
- 8.2 In the event of a diversion of the Cable[s] under this clause 8:
- 8.2.1 the Licensor will pay the costs and expenses reasonably incurred by the Licensee in carrying out the diversion; and
  - 8.2.2 the provisions of this Licence will apply, after the diversion has taken place, to the Cable[s] in its diverted position in substitution for the position from which it has [they have] been diverted.

## **9 Alienation**

- 9.1 Unless permitted to do so by the rest of this clause, the Licensee will not:
- 9.1.1 hold this Licence expressly or impliedly on trust for another person;
  - 9.1.2 allow anyone except the Licensee or its officers and employees to exercise the Rights; nor
  - 9.1.3 grant any sub-licence in respect of the whole or a part of this Licence or the Rights.

### *Assignment*

- 9.2 The Licensee will not assign part of the benefit of this Licence.
- 9.3 The Licensee will not assign the whole of the benefit of this Licence:
- 9.3.1 unless the conditions specified in clause 9.4 are met;
  - 9.3.2 unless the circumstances specified in clauses 9.5 and 9.6 do not apply; and
  - 9.3.3 unless the Licensee obtains the prior written consent of the Licensor (such consent not to be unreasonably withheld).
- 9.4 The Licensor may give its consent to an assignment subject to the following conditions:
- 9.4.1 a condition that on or before the date of the assignment the assignee enters into a covenant by deed with the Licensor in such form as the Licensor reasonably requires to pay the Licence Fee and observe and perform the covenants and other provisions of this Licence that the Licensee is to observe and perform; and

9.4.2 (if the Licensor reasonably requires) a condition that on or before the date of the assignment the Licensee has procured a covenant by deed with the Licensor from a guarantor or guarantors acceptable to the Licensor (such acceptance not to be unreasonably withheld) [in the terms of Part Eight (with any variations the Licensor reasonably requires)] [as a primary obligation that:

- (a) the assignee will pay the Licence Fee and observe and perform the covenants and provisions of this Licence that the Licensee is to observe and perform;
- (b) if the assignee fails to comply with the obligations in (a), the guarantor will comply with them and indemnify the Licensor; and
- (c) if this Licence is disclaimed or terminated under clause 31 or the assignee is struck-off or ceases to exist, the guarantor will, if required by the Licensor, take a new licence for the unexpired portion of the Licence Period at the Licence Fee then payable and on the same terms as this Licence,

such deed to be in the form and on such other terms as the Licensor reasonably requires.]

9.5 The Licensor may withhold its consent to any assignment if, in the Licensor's reasonable opinion, the assignee is not of sufficient financial standing to comply with the Licensee's obligations under this Licence.

9.6 The Licensor may withhold its consent to any assignment if the proposed assignee or proposed assignee's guarantor does not have an Acceptable Covenant.

9.7 Even if the Licensee meets all the conditions in clause 9.3, the Licensor may withhold consent in any other circumstances if it is reasonable to do so or impose other reasonable conditions upon the grant of consent.

#### *Charges*

9.8 The Licensee will not charge this Licence unless the Licensee obtains the prior written consent of the Licensor (such consent not to be unreasonably withheld).

#### *Sub-licences*

9.9 The Licensee may grant sub-licences which permit the sub-licensee to share the use of the Cable[s] with the Licensee but do not permit the sub-licensee to exercise any of the Rights referred to in clause 3.1.1.

#### *Registration*

9.10 The Licensee will give the Licensor a certified copy of the document that brings about or evidences a dealing with or devolution of this Licence within 28 days of its completion.

#### *Form of Consent*

9.11 Any consent to be given under this clause 9 is not effective unless it is given as a formal licence executed as a deed.

## **10 Legal Obligations**

10.1 The Licensee will obtain all Necessary Consents needed from time to time to keep and operate the Cable[s].



- 10.2 The Licensee will observe and comply with all Legal Obligations at its own expense. It will not do or fail to do anything in relation to the Cable[s] or the exercise of the Rights which would make the Licensor incur any liability under a Legal Obligation whether for penalties, damages, compensation, costs or otherwise.
- 10.3 If a Legal Obligation requires work to be done, the Licensee will do it straight away. In any event, the Licensee will notify the Licensor of any steps it has taken in connection with a Legal Obligation and give the Licensor copies of all relevant documents.
- 10.4 Without limiting the obligations in this clause 10, the Licensee will:
- 10.4.1 comply with its obligations under the CDM Regulations, including all requirements in relation to the provision and maintenance of a health and safety file;
  - 10.4.2 give the Licensor on request any information requested by the Licensor to help it meet its own obligations under the CDM Regulations, and
  - 10.4.3 make a written election before exercising the Rights that the Licensee is to be treated as the only client for the purposes of the CDM Regulations and give the Licensor a copy of the election (and the Licensor agrees to the election to the extent the Licensor actually is a client in respect of the exercise of the Rights).

## **11 Inspection**

- 11.1 The Licensee will permit the Licensor (and anybody authorised by the Licensor) to inspect the Cable[s] and the Accommodation Works if the Licensor reasonably suspects that there is a risk of danger to any person or a risk of pollution or harm to human health or the environment.
- 11.2 Any inspection under this clause 11 will be at a time reasonably requested by the Licensor. The Licensee may require that the inspection is carried out under its supervision.

## **12 Costs**

- 12.1 The Licensee will pay the Licensor on demand and on a full indemnity basis all costs, charges and expenses properly incurred by the Licensor relating to:
- 12.1.1 an application for the Licensor's consent or approval (whether or not the consent is given or the application is withdrawn);
  - 12.1.2 recovering (or the attempted recovery of) arrears of Licence Fee or other sums payable under this Licence;
  - 12.1.3 enforcing any of the Licensee's covenants under this Licence;
  - 12.1.4 stopping a nuisance that the Licensee fails to stop;
  - 12.1.5 any inspection of the Seabed (where the inspection reveals a breach of any of the Licensee's covenants under this Licence) and the supervision of any work required to remedy any breach of the Licensee's covenants under this Licence.
  - 12.1.6 any solicitors and surveyors costs and expenses including VAT incurred by the Licensor in connection with the negotiation and completion of any supplementary documentation required as a result of clause 37

- 12.2 The Licensee will pay to the Licensor on the date of this Licence the solicitors and surveyors costs and expenses including VAT incurred by the Licensor in connection with the negotiation and completion of this Licence and the Licensor's costs of preparing the attached plan.

### **13 Interest**

The Licensee will pay the Licensor Interest at the Interest Rate on any Licence Fee and VAT (if applicable) that is not paid to the Licensor on the date it is due (whether payment is formally demanded or not) and on any other sum that is not paid to the Licensor by the later of:

- 13.1 the date it is due; and
- 13.2 the date 21 days after a demand for payment is made.

### **14 Indemnity**

- 14.1 The Licensee is responsible for and will indemnify and keep the Licensor indemnified against all actions, proceedings, claims and demands brought or made and all losses, damages, costs, expenses and liabilities incurred, suffered or arising, directly or indirectly, from or otherwise connected with:

- 14.1.1 the exercise or purported exercise of the Rights;
- 14.1.2 the laying, operation, presence, condition, repair or removal of the Cable[s] during the Licence Period;
- 14.1.3 any act, neglect or default of the Licensee or anyone exercising the Rights with the express or implied authority of the Licensee;
- 14.1.4 any breach of any covenant or other provision of this Licence to be observed and performed by the Licensee;
- 14.1.5 (without prejudice to clause 21) the presence or state of repair and condition of the Cable[s] or any part of it [them] remaining on, in or under the Seabed after the End of this Licence (whether or not in breach of clause 21);
- 14.1.6 any decommissioning of the Cable[s] by the Licensor in the event of the Cable[s] not being fully decommissioned in accordance with clause 21 by the End of this Licence; or
- 14.1.7 claims by third parties against the Licensor in connection with any removal, destruction or disposal by the Licensor of any residues of the Cable[s] in accordance with clause 22.

- 14.2 The Licensor may bring claims under this clause 14 both before and after the End of this Licence. The Licensor may bring a claim under this clause 14 regardless of whether the subject matter of the claim occurs or was brought or made against the Licensor or was suffered or incurred by the Licensor before or after the End of this Licence.

- 14.3 The following provisions apply to any action, proceedings, claim or demand for which the Licensor claims an indemnity under this clause 14 ("Relevant Claim"):

- 14.3.1 the Licensor will use reasonable endeavours to give notice to the Licensee of the Relevant Claim as soon as reasonably practicable after deciding that the indemnity in this clause 14 applies to it;

- 14.3.2 the Licensor will not make any admission of liability nor compromise or settle any Relevant Claim without the consent of the Licensee (such consent not to be unreasonably withheld);
- 14.3.3 the Licensee may with the consent of the Licensor (which will not be unreasonably withheld) negotiate a settlement of or conduct on the Licensor's behalf any proceedings that may arise in respect of the Relevant Claim, but if it does so the Licensee will:
- (a) give security to the Licensor for the costs of the proceedings; and
  - (b) act so as to minimise any liabilities or other adverse effects on the Licensor.

## **15 Insurance**

- 15.1 The Licensee will effect and maintain with a reputable insurer third party and public liability insurance in respect of the Cable[s] and the exercise of the Rights in the sum of £[ ], or any other sum that the Licensor may from time to time reasonably require, for each and every claim and on terms approved by the Licensor (such approval not to be unreasonably withheld).
- 15.2 In relation to the insurance effected and maintained under clause 15.1:
- 15.2.1 the Licensee will produce to the Licensor upon request from time to time a copy of or full details of the policy and evidence that it is in force;
  - 15.2.2 the Licensee will comply with the insurers requirements and recommendations; and
  - 15.2.3 the Licensee will not do or omit to do anything which may make any insurance policy void or voidable in whole or in part or increase the premium for any policy.
- 15.3 The Licensee will pay to the Licensor the premium and other costs which the Licensor may incur in effecting and maintaining any insurance which the Licensee fails to effect or maintain in accordance with this clause 15.
- 15.4 The obligations of the Licensee under this clause 15 will continue in operation after the End of this Licence in relation to the residues of the Cable[s] referred to in clause 22.

## **PART FOUR: LICENSOR'S OBLIGATIONS**

### **16 Works and Dredging Restrictions**

- 16.1 The obligations in this clause 16 will commence from the Licence Start Date and will:
- 16.1.1 cease at the Operational Date until such time as the Licensee has complied with clause 6.5; and
  - 16.1.2 cease to apply when the Cable[s] is [are] decommissioned or permanently taken out of use or from the Out of Service Date whichever is the earliest.
- 16.2 The Licensor will not itself carry out and will not grant any licence or consent for third parties to carry out any dredging or removal of minerals within the No Dredging Zone.
- 16.3 Subject to clause 16.4, the Licensor will not itself carry out or grant any licence or consent for third parties to carry out the construction of any works within the Works Restriction Zone without obtaining the Licensee's consent. The Licensee will not

unreasonably withhold or delay giving consent under this clause 16.3 and will not require any consideration to be paid for giving its consent.

16.4 The Licensor may grant licence or consent for a third party to carry out the construction of works within the Works Restriction Zone without having obtained the Licensee's consent under clause 16.3 if the terms of the licence or consent provide that the works are not to be carried out until the consent required by clause 16.3 has been obtained.

16.5 The expression "works" in clause 16.3 does not include dredging or removal of minerals.

#### PART FIVE: DECOMMISSIONING

### 17 Definitions

17.1 In this Part the following expressions have the following meanings:

**Applicable Final Decommissioning Plan** means the Final Decommissioning Plan used by the Licensee to carry out the decommissioning of the Cable[s] in accordance with clause 21.1

**Decommissioning Plan** a statement of:

- (a) the measures, methods and timescales for decommissioning the Cable[s] including:
  - (i) the parts of the Cable[s] to be removed and the methods of removal;
  - (ii) the parts of the Cable[s] to remain in situ and the measures to make them safe; and
  - (iii) the measures for the clearance of debris and the restoration of the Seabed;
- (b) the methods of providing post-decommissioning verification that the decommissioning has been completed satisfactorily; and
- (c) the measures for post decommissioning monitoring, maintenance and management of the Seabed

**Decommissioning Principles** the following principles:

- (a) the measures and methods will comply with any Legal Obligations which will apply to the decommissioning of the Cable[s] when it takes place;
- (b) all sections of the Cable[s] will be removed except for any section or sections which it is preferable to leave in situ having regard to the principles in (c) below; and
- (c) the measures and methods will be those which are the best for or minimise the risks to:
  - (i) the safety of surface or subsurface navigation;
  - (ii) other uses of the sea;
  - (iii) the marine environment including living resources;

and

(iv) health and safety;

(d) the Seabed will be restored, as far as possible, to the condition that it was in before the Cable[s] was [were] installed

**Final Decommissioning Plan** a Decommissioning Plan in accordance with the Decommissioning Principles and having due regard to the Initial Decommissioning Plan

**Initial Decommissioning Plan** the attached Decommissioning Plan as revised from time to time in accordance with clause 18

## **18 Initial Decommissioning Plan**

18.1 The Initial Decommissioning Plan will be reviewed in accordance with the Decommissioning Principles at such times as may be reasonably required by the Licensor or the Licensee to take account of any relevant change in circumstances.

18.2 The Licensor and the Licensee may agree any revisions to the Initial Decommissioning Plan or, if they do not agree, either party may at any time require the revisions to be determined by arbitration in accordance with clause 35.

## **19 Final Decommissioning Plan**

19.1 The Licensor and the Licensee may agree a Final Decommissioning Plan or, if they do not agree, either party may at any time require a Final Decommissioning Plan to be determined by arbitration in accordance with clause 35.

19.2 The Licensor may elect that a Final Decommissioning Plan is invalid if the decommissioning works in it are not completed within 24 months after the date of agreement or determination of that Final Decommissioning Plan.

## **20 Costs and additional surveys etc**

20.1 The Licensee will, at its own expense, engage appropriate professional consultants to carry out any tests, assessments or surveys which the Licensor reasonably requires before either any revisions to the Initial Decommissioning Plan are agreed or determined or a Final Decommissioning Plan is agreed or determined and will provide full details of the results to the Licensor as soon as they are available.

20.2 The Licensee will pay the Licensor on demand on a full indemnity basis all costs, charges and expenses incurred by the Licensor in engaging suitable professional consultants to advise the Licensor upon any revisions to the Initial Decommissioning Plan or any Final Decommissioning Plan.

## **21 Decommissioning**

21.1 Before the End of this Licence (or in the event of this Licence being terminated in accordance with Part Seven, immediately after the End of this Licence) the Licensee will decommission the Cable[s] in accordance with a Final Decommissioning Plan which has been agreed or determined and remains valid in accordance with clause 19.

21.2 As soon as reasonably possible after the completion of the decommissioning works the Licensee will carry out the steps required under the Applicable Final Decommissioning Plan for post-decommissioning verification that the

decommissioning of the Cable[s] has been completed satisfactorily and will provide full details of the results to the Licensor as soon as they are available.

21.3 The Licensee will comply with the requirements of the Applicable Final Decommissioning Plan in relation to post-decommissioning monitoring, maintenance and remediation (if any).

21.4 The obligations of the Licensee under this Part Five will remain in operation after the End of this Licence.

## **22 Residues of the Cable[s]**

22.1 Any sections of the Cable[s] remaining on the Seabed after the End of this Licence and which the Licensee was not obliged to remove under the Decommissioning Plan will remain the property of the Licensee even after the End of this Licence but the Licensor may in its absolute discretion remove, destroy and dispose of those sections of the Cable[s] as it sees fit without any liability to the Licensee.

22.2 In the event of any sections of the Cable[s] remaining on the Seabed after the End of this Licence the Licensor and Licensee shall immediately enter into a deed in such form as the Licensor shall reasonably require in relation to their continuing obligations in this clause 22 and any other obligations which continue after the End of this Licence and upon that deed being entered into the obligations contained in this Licence shall be replaced by the obligations contained in that deed.

## **23 Termination following decommissioning**

23.1 Either the Licensor or the Licensee may terminate this Licence at any time after the Cable[s] has [have] been fully decommissioned in accordance with clause 21.1 and the requirements of clause 21.2 have been complied with by giving to the other at least six months' written notice expiring on a Payment Date.

23.2 A notice served by the Licensee under clause 23.1 will be of no effect if, at the date of expiry of the notice, the Licensee has not paid any Licence Fee or any VAT in respect of it which was due to have been paid.

23.3 Termination of this Licence under this clause 23 will not affect the Licensor's rights and remedies for any prior claim or breach of covenant and the continuing operation of clauses 14, 15 and 21 after the End of the Licence.

## **PART SIX: REVIEW OF LICENCE FEE**

## **24 Definitions**

24.1 In this Part the following expressions have the following meanings:

**Index** the all items Index of Retail Prices published by the Office for National Statistics or any successor ministry, department or agency and any substitute index for it agreed or determined under clause 26

**Indexation Formula** the following formula:

$$RF \times \frac{A}{B}$$

where:

RF = the amount of the Relevant Fee immediately before the relevant Review Date

A = the value of the Index for the month that is two months earlier than the relevant Review Date

B = at the first Review Date, the value of the Index for the month that is [two months earlier than the Licence Start Date - **assuming initial values indexed up to Licence Start Date**] and at each subsequent Review Date, the value of the Index for the month that is two months earlier than the previous Review Date

**Index Review Date** [the Operational Date][and][the first anniversary of Licence Start Date] and each subsequent anniversary of that date and any other date that becomes a Review Date under clause 30

**Market Review Date** [twentieth anniversary of Licence Start Date] and each subsequent tenth anniversary of that date during the Licence Period and any other date that becomes a Review Date under clause 30

**Open Market Licence Fee** the best yearly Licence Fee that might reasonably be expected to become payable on a licence of the Rights by a willing licensor to a willing licensee in the open market on the Market Review Date, making the following assumptions:

- (a) no fine or premium is received by either party for the grant of the hypothetical licence;
- (b) the Licensee has fully complied with its obligations in this Licence;
- (c) the grant of the Rights is on the terms of this Licence (except the amount of the Licence Fee);
- (d) the term of the hypothetical licence is [20] years starting on the Market Review Date with a Licence Fee review in the same terms as this Licence;
- (e) the willing licensee is in a position in all respects immediately and lawfully to exploit the Rights;
- (f) the Cable[s] has [have] been installed and commissioned prior to relevant Review Date; and
- (g) the willing licensee will receive whatever period of nil concessionary or abated licence fee that might be negotiated in the open market at the relevant Market Review Date in respect of the period prior to the Cable[s] becoming operational

**Relevant Fee** whichever of the Operational Fee and the Out of Service Fee is being revised

**Restrictions** restrictions imposed by an Authority which operate to impose any limitation in relation to the review of or the collection of any increase in the Licence Fee

**Review Date** either the Market Review Date or the Index Review Date as appropriate

**Review Surveyor** a chartered surveyor having at least 10 years' experience in assessing the rental value of rights similar to the Rights and acting either as a single arbitrator or (if the Licensor so chooses at any time before taking up his appointment) as an independent expert

**Valuation Office** the Valuation Office Agency of HM Revenue & Customs

24.2 In this Part time is not of the essence except where specified.

## **25 Index Review of Licence Fee**

**Note: to enable changes between review dates each of the relevant fees will be renewed at each review date.**

25.1 On each Review Date each of the Operational Fee and the Out of Service Fee will be revised.

25.2 With effect from and including each Index Review Date, the Operational Fee will be the greater of:

25.2.1 the amount of the Operational Fee immediately before that Index Review Date; and

25.2.2 the figure calculated in accordance with the Indexation Formula.

25.3 With effect from and including each Index Review Date, the Out of Service Fee will be the greater of:

25.3.1 the amount of the Out of Service Fee immediately before that Index Review Date; and

25.3.2 the figure calculated in accordance with the Indexation Formula.

## **26 Index**

26.1 In the Indexation Formula, if the reference base used to compile the Index changes after B is published but before A is published, A will be adjusted so that it is the figure that would have been shown in the Index if the change had not been made.

26.2 If it becomes impossible to calculate the revised Licence Fee at any Review Date by reference to the Index because of a change in the methods used to calculate the Index after the date of this Licence or for any other reason, then another index will be substituted by agreement between the Licensor and the Licensee.

26.3 If the Licensor and the Licensee do not agree on an adjusted or substitute index, either party may at any time require the adjusted or substitute index to be determined by arbitration under clause 35.

## **27 Open Market Review**

27.1 With effect from and including each Market Review Date the Operational Fee shall be the greater of:-

27.1.1 the relevant amount immediately before that Market Review Date or that would have been payable if the Licensee had not elected that Cable[s] was [were] non operational, operational or out of service as appropriate; or

27.1.2 the Open Market Licence Fee as agreed or determined under the provisions of this clause 27; or



- 27.1.3 the Licence Fee as revised in accordance with clause 25.
- 27.2 The Open Market Licence Fee as at the relevant Market Review Date may be agreed at any time between the Licensor and the Licensee but if they have not agreed it by the date three months before the relevant Review Date either of them may by notice to the other require it to be determined by the Valuation Office under clause 28

## **28 Determination by Valuation Office**

- 28.1 On determination of the Open Market Licence Fee by the Valuation Office:-
- 28.1.1 the Valuation Office shall act as if it were an independent expert;
- 28.1.2 the Licensor and the Licensee shall have the opportunity to make representations to the Valuation Office;
- 28.1.3 the Licensor and the Licensee shall take all steps reasonably necessary to enable the Valuation Office to determine the Open Market Licence Fee with all reasonable despatch and shall use their best endeavours to procure that it shall be so determined;
- 28.1.4 the determination of the Valuation Office shall be final and binding;
- 28.1.5 the Licensor and the Licensee shall each bear their own costs of the determination; and
- 28.1.6 the costs of the Valuation Office shall be shared equally between the Licensor and the Licensee
- 28.2 If the Valuation Office does not accept the appointment or ceases to exist or cannot complete the determination then the Licensor or the Licensee may by notice to the other require the Open Market Licence Fee to be determined by an independent chartered surveyor and:-
- 28.2.1 if the Licensor and the Licensee do not agree on the joint appointment of such surveyor the surveyor shall be nominated on the application of either the Licensor or the Licensee by or on behalf of the President for the time being of the Royal Institution of Chartered Surveyors
- 28.2.2 on a determination under this clause 28.2 of the Open Market Licence Fee:-
- (a) the surveyor shall act as an expert
  - (b) the surveyor shall give the Licensor and the Licensee the opportunity to make representations
  - (c) the Licensor and the Licensee shall take all steps reasonably necessary to enable the surveyor to determine the Open Market Licence Fee with all reasonable despatch and shall use their best endeavours to procure that the same shall be so determined
  - (d) the surveyor shall give written reasons for his determination
  - (e) the determination of the surveyor shall be final and binding (save in the case of manifest error)
  - (f) the Licensor and the Licensee shall bear their own costs of the determination; and

- (g) the costs of the surveyor shall be shared equally between the Licensor and the Licensee

## **29 Delayed Review**

If the Licence Fee applicable with effect from a Review Date is not agreed or determined before that Review Date:

- 29.1 the Licensee will continue to pay the Licence Fee at the rates applicable immediately before that Review Date (the "Interim Fee"); and
- 29.2 once the revised Licence Fee has been agreed or determined the Licensee will pay on or before the day (the "Due Date") 14 days after the revised Licence Fee is agreed or determined to the Licensor an amount equal to the total of the sums (if any) by which each instalment of the Licence Fee would have exceeded each instalment of the Interim Fee had the revised Licence Fee been agreed or determined by that Review Date. Interest is also payable at 3% below the Interest Rate on each of those sums for the period beginning on the date it would have been due and ending on the Due Date or (if earlier) the date of payment.

## **30 Restrictions**

If Restrictions are in force at a Review Date, the Licensor may (whether or not the revised Licence Fee has been agreed or determined with effect from that Review Date) give notice to the Licensee within 28 days after that Review Date (time being of the essence) postponing the review due on that Review Date (the "Original Review Date") until such later date (the "Postponed Review Date") as the Licensor later specifies by at least three months' notice (but which may not be later than the next following Review Date). In that event:

- 30.1 the Licence Fee applicable immediately before the Original Review Date will (despite any review that may have taken place as at the Original Review Date) continue to be the Licence Fee payable until increased at the Postponed Review Date or (as the case may be) at a subsequent Review Date;
- 30.2 subject to clause 26.1, at the postponed review A in the Indexation Formula will be the value of the Index for the month that is two months earlier than the Postponed Review Date but B will remain the same as it would have been at a review on the Original Review Date.

PART SEVEN: TERMINATION

## **31 Termination**

At any time after any of the following events, the Licensor may terminate this Licence immediately by serving notice on the Licensee. This Licence will then end (but without affecting the Licensor's rights and remedies for any prior claim or breach of covenant and the continuing operation of clauses 14, 15 and 21). The events are:

- 31.1 if any Licence Fee remains unpaid 21 days after it is due (whether formally demanded or not);
- 31.2 if the Licensee is in breach of any of its obligations in this Licence and has failed to rectify the breach within a reasonable time after receiving notice to rectify from the Licensor;
- 31.3 if the Licensee or any guarantor of the Licensee's obligation under this Licence (or any person comprised within the Licensee or such guarantor):

- 31.3.1 is a company and makes a return or reduction of capital or is struck off the register of companies or dissolved or ceases to exist for any other reason; or
  - 31.3.2 becomes Insolvent; or
  - 31.3.3 suffers equivalent proceedings or events to those set out in this clause 31.3 outside England and Wales; or
  - 31.3.4 has an order made or proceedings raised against it which constitute main proceedings in any member state of the European Union; or
  - 31.3.5 fails to comply with clause 37.2.
- 31.4 if the Licensee has not:-
- 31.4.1 started laying the Cable[s] by [three] calendar months after the Licence Start Date; or
  - 31.4.2 substantially completed laying it [them] by the Longstop Operational Date.

[PART EIGHT: GUARANTEE

## **32 Guarantor's covenant**

- 32.1 In consideration of this Licence having been granted at its request, the Guarantor covenants with the Licensor as a primary obligation that:
- 32.1.1 the Licensee will:
    - (a) pay the Licence Fee as and when specified in this Licence; and
    - (b) duly observe and perform all the Licensee's covenants of this Licence,in both cases until the End of this Licence (and beyond the End of this Licence in relation to the continuing operation of clauses 14, 15 and 21);
  - 32.1.2 if the Licensee fails to comply with any of the obligations referred to in clause 32.1.1, the Guarantor will:
    - (a) comply with those obligations; and
    - (b) pay and make good to the Licensor on demand on a full indemnity basis all losses, damages, costs and expenses arising from such default or incurred by the Licensor.
- 32.2 The Guarantor's liability under this Licence will not be affected in any way by:
- 32.2.1 any neglect or forbearance of the Licensor in enforcing payment of the Licence Fee or observance or performance of the covenants and provisions of this Licence;
  - 32.2.2 any extra time or other concession given by the Licensor to the Licensee;
  - 32.2.3 this Licence being disclaimed;
  - 32.2.4 the Licensee (being a corporation) being dissolved or ceasing to exist or suffering any legal limitation and/or immunity or incapacity;

- 32.2.5 any variation of this Licence;
  - 32.2.6 any change in the constitution or powers of the Licensee, the Guarantor or the Licensor;
  - 32.2.7 the Licensee or the Guarantor being Insolvent;
  - 32.2.8 anything else by which, but for this provision, the Guarantor would be released.
- 32.3 The Guarantor waives any right to require the Licensor to proceed against the Licensee or to pursue any other remedy that may be available to the Licensor before proceeding against the Guarantor.
- 32.4 The Guarantor covenants with the Licensor that:
- 32.4.1 it will not claim in any insolvency of the Licensee in competition with the Licensor;
  - 32.4.2 it will hold all security and rights that it may have over the Licensee's assets for the benefit of the Licensor as security for the Licensee's liabilities.
- 32.5 The Guarantor will not be entitled to participate in or be subrogated to any security held by the Licensor for the Licensee's obligations or otherwise to stand in the place of the Licensor in respect of such security.
- 32.6 If:
- 32.6.1 this Licence is ended under clause 31;
  - 32.6.2 a liquidator or trustee in bankruptcy disclaims this Licence; or
  - 32.6.3 the Licensee (being a company or limited liability partnership or other corporation) is struck off the relevant register or ceases to exist for any other reason,

then the Guarantor will, if so required upon written notice from the Licensor given within six months of the Licensor becoming aware of the relevant event, accept from, execute and deliver to the Licensor at the Guarantor's cost a new licence. The new licence will be for a period equal to the then unexpired portion of the Licence Period at the Licence Fee then payable under this Licence. The new licence will contain the same covenants and terms (with changes where appropriate) including any Licence Fee review or reviews as in this Licence (without, however, requiring any other person to act as guarantor). It will take effect from the date of the relevant event.

### **33 Guarantee on assignment**

- 33.1 If a guarantor for an assignee is required, the guarantor will covenant with the Licensor as if it were the Guarantor except that:
- 33.1.1 the guarantee will take effect only from the date of the assignment; and
  - 33.1.2 the word "Assignee" is substituted for "Licensee".

### **34 New Guarantor**

If any person who enters into covenants with the Licensor in accordance with this Part Eight dies or makes a return or reduction of capital or is dissolved or becomes Insolvent, the Licensee will give notice of the event to the Licensor within 14 days of it happening. If required by the Licensor, the Licensee will arrange within 28 days of

such requirement for some other person acceptable to the Licensor to covenant by deed with the Licensor in the terms (with changes where appropriate) of clause 32.

#### PART [NINE]: MISCELLANEOUS PROVISIONS

### **35 Disputes**

- 35.1 Where this Licence provides for a difference or dispute between the Licensor and the Licensee to be determined by arbitration the following provisions will apply:
- 35.1.1 the matter will be referred to a single arbitrator;
  - 35.1.2 if the Licensor and the Licensee do not agree on the joint appointment of the arbitrator, either party may apply to the President of the Chartered Institute of Arbitrators to make the appointment;
  - 35.1.3 the arbitrator will act in accordance with the Arbitration Acts in force at the time; and
  - 35.1.4 his fees and expenses (including those relating to his appointment) will be met by the Licensor and the Licensee in whatever way he decides (and failing a decision in equal shares).
- 35.2 If the arbitrator does not or cannot complete his duties in accordance with his appointment the Licensor and the Licensee may agree on or either of them may apply for the appointment of another arbitrator whenever necessary in accordance with this clause.
- 35.3 If within 21 days of demand a party fails to pay its share of the arbitrator's fees and expenses, the other party may pay them. The party that failed to pay will then repay the amount so paid on demand.

### **36 User**

- 36.1 The Licensor gives no assurance that the Seabed may lawfully be used for the exercise of the Rights.
- 36.2 If at any time during the Licence Period the exercise of the Rights is not authorised by the Necessary Consents needed for the purpose, the Licensee will remain bound by the restrictions contained in this Licence without being entitled to any compensation or relief.

### **37 Acceptable Covenant**

- 37.1 The Licensee [and the Guarantor] will:
- 37.1.1 on the anniversary of the Licence Start Date in every year; and
  - 37.1.2 at any other time during the Licence Period, within 5 working days of request by the Licensor
- deliver to the Licensor a letter that confirms that the Licensee [and the Guarantor] continue[s] to have an Acceptable Covenant and shall provide to the Licensor on demand any evidence of such Acceptable Covenant that the Licensor may require.
- 37.2 If the Licensee [and Guarantor] is [are] unable to confirm that it [they] have an Acceptable Covenant or fails to provide satisfactory evidence of such Acceptable Covenant to the Licensor, then it [they] will within 10 working days provide an alternative security or guarantee in a form and from a new provider acceptable to the Licensor (acting reasonably) but for the avoidance of doubt the Licensor shall be

acting reasonably if they require that any new provider of such security or guarantee has an Acceptable Covenant.

### **38 Liability**

The Licensor is not responsible (as far as it is lawful to exclude such responsibility) for any accident, injury, loss or damage:

- 38.1 to the Licensee or to anyone exercising or purporting to exercise the Rights with the Licensee's express or implied authority or to its or their property;
- 38.2 due to any act, neglect or default of any other licensee or tenant of the Licensor.

### **39 Data Protection Act 1998**

For the purposes of the Data Protection Act 1998 or otherwise, the Licensee [and the Guarantor]:

- 39.1 acknowledge that information relating to this Licence will be held on computer and other filing systems by the Licensor or the Licensor's managing agent (if any) for general administration and/or enforcement of this Licence;
- 39.2 agrees to such information being used for such purposes and being disclosed to third parties so far only as is necessary in connection with:
  - 39.2.1 the management of the Licensor's interest in the insurance and/or maintenance of the Seabed;
  - 39.2.2 checking the creditworthiness of the Licensee [and the Guarantor]; or
  - 39.2.3 the disposal of the Seabed

### **40 Notices**

Section 196 Law of Property Act 1925 applies to any notices required or authorised to be given under this Licence. Any notice to be given to the Licensor under this Licence must be addressed so as to be delivered to the Commissioners at their office at the time of giving the notice.

### **41 Jurisdiction**

- 41.1 This Licence is governed by and is to be construed in all respects in accordance with the Laws of England and Wales.
- 41.2 [For the benefit of the Licensor, the Licensee [and the Guarantor] irrevocably submit[s] to the jurisdiction of the courts in England and Wales for hearing and deciding any disputes arising out of or in connection with this Licence and for enforcing any judgment against their respective assets. This clause does not limit the Licensor's right to take proceedings against the Licensee [or the Guarantor] in any other competent jurisdiction.
- 41.3 Each party irrevocably:
  - 41.3.1 waives any objection it might at any time have to the courts of England and Wales being nominated to hear and decide any disputes;
  - 41.3.2 agrees not to claim that the courts of England and Wales are not a convenient or appropriate forum for any such disputes;

41.3.3 agrees that a judgment in any proceedings brought in any court referred to in this clause will be conclusive and binding on the parties and may be enforced in the courts of any other jurisdiction.

41.4 Any notices or proceedings relating to this Licence will be validly served on the Licensee [and the Guarantor] if sent in writing to [insert name and address of Licensee/Guarantor's Solicitors] or to such other firm of solicitors practising in England and Wales whose name and address the Licensee [and the Guarantor] notifies in writing to the Licensor as soon as that firm accepts instructions.]

- **Delete clauses 41.2 to 41.4 where initial Licensee and any guarantor are individuals domiciled in or bodies formed in England and Wales.**

This Licence is executed as a deed by the parties and is delivered and takes effect on the date at the beginning of this Licence.

## SCHEDULE

### Part 1

The following documents contain obligations on the Licensor to obtain the consent of the grantees specified below before the Rights can be exercised in the vicinity of the works specified below. Each of these consents is a Necessary Consent which the Licensee is responsible for obtaining under this Licence.

Date	Document	Works	Grantee

### Part 2

The following are licences leases and other rights granted by the Commissioners which include or affect the Seabed or part of it but do not contain any relevant express covenants or undertakings on the part of the Commissioners

Date	Party	Matter

**Complete or say "NO DOCUMENTS"**



THE OFFICIAL SEAL of THE CROWN ESTATE  
COMMISSIONERS placed here was confirmed as  
authentic by:

***[Insert execution clause of other party/parties]***