

DATED September 2016

THE SECRETARY OF STATE FOR ENERGY AND CLIMATE CHANGE
and
LOW CARBON CONTRACTS COMPANY LTD
and
NNB HOLDING COMPANY (HPC) LIMITED
and
NNB GENERATION COMPANY (HPC) LIMITED
and
NNB FINANCE COMPANY (HPC) LTD
and
EDF ENERGY PLC
and
ÉLECTRICITÉ DE FRANCE S.A. and CHINA GENERAL NUCLEAR POWER CORPORATION
(each an Ultimate Investor)
and
EDF ENERGY HOLDINGS LIMITED and INTERNATIONAL NUCLEAR INVESTMENT LIMITED
(each an Original Investor)
and
NNB TOP COMPANY HPC (B) LTD and LIBRA INTERNATIONAL LIMITED
(each an Original Investor Super TopCo)
and
NNB TOP COMPANY HPC (A) LTD and SAGITTARIUS INTERNATIONAL LIMITED
(each an Original Investor TopCo)
and
NNB FINANCE COMPANY (HPC) LTD
(the Original Financing Representative)

SECRETARY OF STATE INVESTOR AGREEMENT

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THIS SECRETARY OF STATE INVESTOR AGREEMENT (this “**Agreement**”) is dated September 2016 and made as a deed

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR ENERGY AND CLIMATE CHANGE**, acting in that capacity (the “**Secretary of State**”);
- (2) **LOW CARBON CONTRACTS COMPANY LTD**, a company incorporated in England and Wales (registered number 08818711) whose registered office is at Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX (the “**CfD Counterparty**”);
- (3) **NNB HOLDING COMPANY (HPC) LIMITED**, a company incorporated in England and Wales (registered number 06937080) whose registered office is at 40 Grosvenor Place, Victoria, London SW1X 7EN (“**NNB HoldCo**”);
- (4) **NNB GENERATION COMPANY (HPC) LIMITED**, a company incorporated in England and Wales (registered number 06937084) whose registered office is at 40 Grosvenor Place, London SW1X 7EN (the “**Generator**”);
- (5) **NNB FINANCE COMPANY (HPC) LTD**, a company incorporated in England and Wales (registered number 09284824) whose registered office is at 40 Grosvenor Place, London SW1X 7EN (as “**NNB FinCo**”);
- (6) **EDF ENERGY PLC**, a company incorporated in England and Wales (registered number 02366852) whose registered office is at 40 Grosvenor Place, Victoria, London SW1X 7EN (“**EDF Energy**”);
- (7) **ÉLECTRICITÉ DE FRANCE S.A.**, a company incorporated in France (registered number 552 081 317) whose registered office is at 22-30 Avenue de Wagram, Paris, 75008, France (“**EDF SA**”) and **CHINA GENERAL NUCLEAR POWER CORPORATION**, a state owned enterprise organised and existing under the laws of the People’s Republic of China (with Consolidated Social Credit No 9144030010001694XX issued by the Shenzhen City Markets Supervision Administrative Office) whose registered address is at Floor 33, China General Nuclear Building South, No. 2002 Shennan Avenue, Futian District, Shenzhen, People’s Republic of China (“**CGNPC**”) (each, an “**Ultimate Investor**” and together, the “**Ultimate Investors**”);
- (8) **EDF ENERGY HOLDINGS LIMITED**, a company incorporated in England and Wales (registered number 06930266) whose registered office is at 40 Grosvenor Place, London SW1X 7EN (“**EDF Energy Holdings**”) and **INTERNATIONAL NUCLEAR INVESTMENT LIMITED**, a company incorporated in England and Wales (registered number 09894505) whose registered office is at First Floor, Stratton House, 5 Stratton Street, Mayfair, London W1J 8LA (“**International Nuclear Investment**”) (each, an “**Original Investor**” and together, the “**Original Investors**”);
- (9) **NNB TOP COMPANY HPC (B) LTD**, a company incorporated in England and Wales (registered number 9284753) whose registered office is at 40 Grosvenor Place, London SW1X 7EN and **LIBRA INTERNATIONAL LIMITED**, a company incorporated in England and Wales (registered number 9895524) whose registered office is at First Floor, Stratton

House, 5 Stratton Street, Mayfair, London W1J 8LA (each, an “**Original Investor Super TopCo**” and together, the “**Original Investor Super TopCos**”);

- (10) **NNB TOP COMPANY HPC (A) LTD**, a company incorporated in England and Wales (registered number 9284749) whose registered office is at 40 Grosvenor Place, London SW1X 7EN and **SAGITTARIUS INTERNATIONAL LIMITED**, a company incorporated in England and Wales (registered number 9896547) whose registered office is at First Floor, Stratton House, 5 Stratton Street, Mayfair, London W1J 8LA (each, an “**Original Investor TopCo**” and together, the “**Original Investor TopCos**”); and
- (11) **NNB FINANCE COMPANY (HPC) LTD**, a company incorporated in England and Wales (registered number 09284824) whose registered office is at 40 Grosvenor Place, London SW1X 7EN (as the “**Original Financing Representative**”),

(each, a “**Party**” and together, the “**Parties**”).

RECITALS:

- (A) The CfD Counterparty and the Generator have entered into a contract for difference (the “**HPC CfD**”) in relation to the nuclear power project at Hinkley Point C on the same date as this Agreement.
- (B) This Agreement will be a connected agreement for the purposes of the Supplier Obligation Regulations pursuant to clause 84 (*Connected Agreements*) of the HPC CfD.
- (C) The Parties intend this document to take effect as a deed.

IT IS AGREED as follows:

**PART 1
INTRODUCTION**

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

“**2013 Transfer Scheme**” means a transfer scheme made under paragraph 1(1) of schedule 1 or paragraph 16 of schedule 2 to the EA 2013;

“**Abusive**” has the meaning given to that term in paragraph 2 of Annex 2 (*Avoidance Event and Abusive arrangements*);

“**Acceptable Credit Standing**” means, in relation to an Investor, that:

- (A) it has a long-term credit rating of not less than [REDACTED]

- (B) it has consolidated net assets as determined in accordance with IFRS of not less than an amount which is equal to that percentage of ██████████ ██████████ expressed in Base Year terms and indexed on the Agreement Date and each anniversary thereafter by reference to the Reference CPI, which is equal to the proportion which the Economic Interests in NNB HoldCo of the Investor TopCo through which the Investor and/or its Associated persons hold their Economic Interests in NNB HoldCo bears to the total Economic Interests in NNB HoldCo of all Investor TopCos, expressed as a percentage;
- (C) its obligations under this Agreement are guaranteed under a guarantee and indemnity in form and content satisfactory to the other Investors and the CfD Counterparty (each acting reasonably) by a person which satisfies the requirements of paragraph (A) or (B) above (as if for that purpose that person were the Investor) and provided that such person shall not amend the terms of the guarantee and indemnity without the prior written consent of the other Investors and the CfD Counterparty (each acting reasonably); or
- (D) in the case of International Nuclear Investment and provided that and for so long as CGNPC satisfies the requirements of paragraph (A) or (B) above (as if for that purpose CGNPC were the Investor), its obligations under this Agreement are guaranteed on the terms set out in Clause 34.3 (*Guarantee*);

“Accession Conditions Precedent” means the conditions precedent set out in Part 2 (*Accession Conditions Precedent*) of Annex 1 (*Conditions Precedent*);

“Accountant’s Report” means, in respect of the Equity IRR Model, a report of factual findings from an Auditor, prepared in accordance with International Standard on Related Services (ISRS) 4400 Engagements to Perform Agreed-Upon Procedures Regarding Financial Information published by the International Auditing and Assurance Standards Board (or any replacement standard) and confirming:

- (A) (i) that the Project Cash Flows in respect of Sampled Investor TopCo Tranches for the most recent Project Gain Share Calculation Period have been correctly extracted and adjusted from all relevant information including that referred to in Clause 9.1(D) (*Preliminary Equity IRR Report*);
- (ii) if the Equity IRR Model includes Sale Cash Flows, that the Sale Cash Flows have been correctly extracted and adjusted from all relevant information (including sale documentation); and
- (iii) that any non-Generator cash flows specified in the Equity IRR Model agree back to source documentation (including investment cost documentation, investment disposal documentation or credit support costs documentation);
- (B) that the figures for the Project Cash Flows associated with the Sampled Investor TopCo Tranches and (where relevant) Sale Cash Flows specified in the Equity IRR Model agree back to the relevant Project Cash Flow figures for the previous Project Gain Share Calculation Period;

- (C) that the allocation of Project Cash Flows to the associated Sampled Investor TopCo Tranches agrees back to the overall Project Cash Flows for the most recent Project Gain Share Calculation Period and the relevant Project Cash Flow figures for the previous Project Gain Share Calculation Period, including (where relevant) Sale Cash Flows;
- (D) that the calculation of the Gain Share Amounts set out in the Equity IRR Model is arithmetically accurate and has been computed in accordance with the requirements of this Agreement;
- (E) that the determination of the Investor TopCo Tranches as set out in the Equity IRR Model is arithmetically accurate and has been derived in accordance with the definition thereof; and
- (F) the arithmetical accuracy of calculations set out in the Equity IRR Model,

and for the purposes of this definition “**Sampled Investor TopCo Tranches**” shall comprise:

- (1) any Investor TopCo Tranche which equals or exceeds five per cent. (5%) of the aggregate Economic Interests in NNB HoldCo; and
- (2) a random selection of twenty-five per cent. (25%) of the remaining Investor TopCo Tranches provided that if twenty-five per cent. (25%) of the remaining Investor TopCo Tranches is less than twenty (20) in number, all such remaining Investor TopCo Tranches shall be included in the sample;

“**Acquirer**” means, in relation to a Relevant Sale, the person(s) that acquire(s) the Economic Interests which are the subject of the Relevant Sale;

“**Agreed Principles**” has the meaning given to that term in the Contracting Policy;

“**Agreement Date**” means the date of this Agreement;

“**Agreement Date Conditions Precedent**” means the conditions precedent set out in Part 1 (*Agreement Date Conditions Precedent*) of Annex 1 (*Conditions Precedent*);

“**Appointor**” has the meaning given to that term in Clause 43(A) (*Agent for Service*);

“**Apportioned**” means, in relation to an Investor TopCo and the Investor TopCo Tranches of such Investor TopCo, apportioned between such Investor TopCo Tranches pro rata to the then current Economic Interests in NNB HoldCo represented by each such Investor TopCo Tranche and as from the date of creation of the relevant Investor TopCo Tranche to the date such Investor TopCo Tranche ceases to exist (which shall include where it is cancelled or combined with another Investor TopCo Tranche following a Relevant Sale) provided that for the purposes of any definition relevant to a Sale Gain Share calculation, any amount so apportioned shall be further apportioned to the portion of the Investor TopCo Tranche which is the subject of the Sale Gain Share calculation;

“Approved Arrangements” means the arrangements in connection with the HPC CfD and this Agreement that were approved by the European Commission in its decision of 8 October 2014. For the avoidance of doubt, the Approved Arrangements do not include the Electricity Market Reform Capacity Mechanism;

“Associated” means, in respect of a person, the Investor and/or Investor Super TopCo with which the relevant person is associated, either by reason of being a member of the same Group as such Investor and/or Investor Super TopCo, as applicable, or by being attributed to such Investor and/or Investor Super TopCo, as applicable, by written notice to the CfD Counterparty in accordance with the terms of this Agreement;

“Assumptions Book” means the Original Assumptions Book as updated from time to time and at the same time as any updates to the Financial Model;

“Auditor” means the auditors of NNB HoldCo, which shall be:

- (A) PricewaterhouseCoopers LLP;
- (B) the UK member firm of Ernst & Young Global Limited;
- (C) KPMG LLP;
- (D) the UK member firm of Deloitte Touche Tohmatsu Limited; or
- (E) another firm of independent and internationally reputable auditors of good standing;

“Authority” means the Gas and Electricity Markets Authority established pursuant to section 1 of the Utilities Act 2000;

“Available Cash Flow” means, as of a Project Gain Share Calculation Date:

- (A) all cash of the Generator (including (x) cash in hand, at bank or on deposit or which is cash pooled or similar, and (y) all cash equivalents including any financial instruments or money market instruments not part of the ordinary course of trade of the Generator) on the relevant Project Gain Share Calculation Date other than any such amounts as are at that date:
 - (i) required to be retained in the Generator to satisfy its reserve requirements under:
 - (a) the Nuclear Site Licence, applicable Law, Directives, Required Authorisations or Industry Documents; or
 - (b) the terms of:
 - (1) the Project Documents, but in each case if the Contracting Policy is applicable to the relevant Project Document only to the extent the terms of such document

are at that date in compliance with the Contracting Policy; or

- (2) the Consolidated Debt Documents or, to the extent entered into on arm's length terms with Third Party Lenders or Government Entities, any replacements thereof (including any retention obligations under such documents); or
- (ii) considered by the directors of the Generator to be necessary to retain in the Generator taking account of (without double counting) the requirements of the documents referred to in paragraphs (A)(i)(a) and (A)(i)(b) above and any directors' duties imposed by applicable Law, Directives, Required Authorisations or Industry Documents (including as directors of a nuclear generating company), provided that any cash amounts retained under this paragraph (A)(ii), when taken together with any amounts retained under paragraph (A)(i) above, shall not in aggregate exceed an amount that reasonable and prudent directors would consider it necessary to retain in the Generator,

less

- (B) all cash of the Generator (including (x) cash in hand, at bank or on deposit or which is cash pooled or similar, and (y) all cash equivalents including any financial instruments or money market instruments not part of the ordinary course of trade of the Generator) on the immediately preceding Project Gain Share Calculation Date (or, if there is no such immediately preceding Project Gain Share Calculation Date, the Agreement Date) other than any such amounts as were at that date:
 - (i) required to be retained in the Generator to satisfy its reserve requirements under:
 - (a) the Nuclear Site Licence, applicable Law, Directives, Required Authorisations or Industry Documents; or
 - (b) the terms of:
 - (1) the Project Documents, but in each case if the Contracting Policy is applicable to the relevant Project Document only to the extent the terms of such document were at that date in compliance with the Contracting Policy; or
 - (2) the Consolidated Debt Documents or, to the extent entered into on arm's length terms with Third Party Lenders or Government Entities, any replacements thereof (including any retention obligations under such documents); or

- (ii) considered by the directors of the Generator to be necessary to retain in the Generator taking account of (without double counting) the requirements of the documents referred to in paragraphs (B)(i)(a) and (B)(i)(b) above and any directors' duties imposed by applicable Law, Directives, Required Authorisations or Industry Documents (including as directors of a nuclear generating company), provided that any cash amounts retained under this paragraph (B)(ii), when taken together with any amounts retained under paragraph (B)(i) above, shall not in aggregate exceed an amount that reasonable and prudent directors would at that date have considered it necessary to retain in the Generator,

plus

- (C) the amount or cash equivalent amount of any Distributions made by the Generator in the period:
 - (i) commencing on the day after the Project Gain Share Calculation Date referred to in paragraph (B) above (or, if there is no such immediately preceding Project Gain Share Calculation Date, commencing on the Agreement Date); and
 - (ii) ending on (and including) the Project Gain Share Calculation Date referred to in paragraph (A) above,

provided that the Available Cash Flow shall not be less than zero (0);

“**Avoidance Event**” has the meaning given to that term in paragraph 1(A) of Annex 2 (*Avoidance Event and Abusive arrangements*);

“**Base Year**” means 2012;

“**Base Year CPI**” means the value of the CPI for November 2011;

“**Books and Records**” has its common law meaning and includes all notices, correspondence, drawings, plans, books of account and other documents and all computer disks or tapes or other machine legible programs or other records;

“**BSC**” has the meaning given to that term in the HPC CfD;

“**BSC Agent**” has the meaning given to that term in the HPC CfD;

“**BSC Company**” has the meaning given to that term in the HPC CfD;

“**Budget and Services Agreement**” means the FDP budget and services agreement dated on or around the Agreement Date between the Generator and the FDP Implementation Company;

“**Business Day**” means a day (other than a Saturday or a Sunday) on which banks are open for general business in London;

“**Call Option**” has the meaning given to that term in Clause 22.1(A) (*Call Option*);

“**Call Option Exercise Notice**” means a notice in writing substantially in the form set out at Annex 7 (*Form of Option Exercise Notice*) in relation to the exercise of the Call Option and given in accordance with Clause 22.1 (*Call Option*) during the applicable Call Option Exercise Period;

“**Call Option Exercise Period**” means the period:

- (A) commencing on, as applicable:
 - (i) the earlier of the date on which the CfD Counterparty approves the matters which are the subject of the Qualifying Effective Shutdown Event Notice and the date of a Positive QESE Determination; or
 - (ii) the earlier of the date on which the CfD Counterparty approves the matters which are the subject of the QCiL Cessation Event Notice and the date of a Positive QCiL Cessation Determination; and
- (B) ending on (and including) the date falling three (3) months thereafter;

“**CCE Proceedings**” means the proceedings brought by the Central Works Council (*comité central d'entreprise*) of EDF SA (“**CCE**”) in respect of the information and consultation process (which commenced on 2 May 2016) regarding the Project including the proceedings filed by the CCE in relation to such information and consultation process before the High Court (*Tribunal de Grande Instance*) of Paris on 22 June 2016 and on 25 July 2016 and any further proceedings brought by the CCE arising out of such information and consultation process (including (i) any appeals of the proceedings; (ii) any joinder of other parties to the proceedings; (iii) any other amendment of the proceedings; (iv) any consolidation of the proceedings; or (v) any withdrawal or discontinuance of the proceedings and their reissue or reinstatement; or (vi) the equivalent of any of the foregoing under the laws of any applicable jurisdiction);

“**CfD Counterparty Compensation Payment Default Event**” means, with respect to a Qualifying Exit Event, the non-payment by the CfD Counterparty of any Qualifying Exit Event Compensation by the date that is the earlier of:

- (A) the date falling ninety (90) days after the due date for such payment, provided that, unless the Investors and, if applicable, the Financing Parties are the sole recipients of payments under the Supplier Obligation Regulations, if the “pay when paid” payment model used by the CfD Counterparty in making payments under or pursuant to FiT Contracts for Difference is not in its operation discriminating against payments to the Investors or Financing Parties under this Agreement or to generators of civil nuclear generating stations which have entered into FiT Contracts for Difference as against payments to generators which have entered into FiT Contracts for Difference, the ordinary course operation of such “pay when paid” payment model will not constitute a failure to make payment within such ninety (90) days; or
- (B) the date that is the first (1st) anniversary of the last day of the HPC CfD Term;

“CfD Counterparty Confidential Information” means:

- (A) all Information which is confidential or proprietary in nature and which relates (directly or indirectly) to the CfD Counterparty or a Government Entity (including any such Information relating to the policy of Her Majesty’s Government of the United Kingdom with respect to matters pertinent to FiT Contracts for Difference, this Agreement or any other Transaction Document) which any member of an Investor Group or any IST Group Member (or their respective Representatives) receives or has received from the CfD Counterparty (or its Representatives) or from any third party who receives or has received such Information from the CfD Counterparty (or its Representatives) in respect of this Agreement or any other Transaction Document (including any Information which any member of an Investor Group or any IST Group Member prepares which contains or makes explicit reference to such Information or from which such Information is readily ascertainable);
- (B) without prejudice to the generality of paragraph (A) above, all Information relating to any QCiL Compensation or Qualifying Exit Event Compensation, including all Information relating to or arising from negotiations, discussions and correspondence in connection with any such QCiL Compensation or Qualifying Exit Event Compensation; and
- (C) all Information which relates to or arises from negotiations, discussions and correspondence in connection with this Agreement or any other Transaction Document,

but excluding in each case all Excluded Information;

“CfD Counterparty Designated Account” means the bank account designated by the CfD Counterparty to receive payments under and in accordance with Part 5 (*Equity Gain Share*);

“CfD Counterparty Permitted Purposes” means:

- (A) complying with the CfD Counterparty’s responsibilities and obligations, and exercising the CfD Counterparty’s rights, powers and discretions, under or for the purposes of this Agreement, any other Transaction Document or any Finance Document in relation to the Project;
- (B) complying with the CfD Counterparty’s responsibilities and obligations under or by virtue of the EA 2013, any other Law, or any Euratom law, or any Directive, or published official policies or published official guidance issued in respect of any thereof; and
- (C) except in the case of Sensitive Nuclear Information and subject to Clause 31.2 (*Generator Confidential Information and Investor Confidential Information: Obligations of the Government Parties*), reporting in the context of Her Majesty’s Government’s energy and climate change policy on a confidential and strict need-to-know basis to its members, any Government Entity (including, for the avoidance of doubt, Ofgem) and/or the Delivery Body on the establishment,

administration, performance or operation of, or compliance or non-compliance with, the obligations and arrangements contemplated by or provided for in this Agreement, any other Transaction Document or any Finance Document;

“CfD Settlement Activities” means:

- (A) the calculation, invoicing, recalculation and settlement of payments to be made pursuant to the HPC CfD; and
- (B) the calculation of collateral requirements and the provision of collateral in accordance with part 18 (*Credit Support*) of the HPC CfD;

“CfD Settlement Services Provider” means any person appointed for the time being and from time to time by the CfD Counterparty to carry out any of the CfD Settlement Activities, or who is designated by the Secretary of State to carry out the CfD Settlement Activities, acting in that capacity;

“Change in Applicable Law” means:

- (A) the coming into effect, amendment, supplement, termination, repeal, replacement or withdrawal of or to: (i) any Law or Directive; (ii) any Industry Document; or (iii) any Required Authorisation; or
- (B) a change in the interpretation or application of (for the avoidance of doubt, including any new interpretation or application of, or change in or further guidance in respect of, or the manner of exercise of discretions under) any Law, Directive, Industry Document or Required Authorisation by any Competent Authority,

in each case after the Agreement Date;

“China Nuclear Operation Company” has the meaning given to that term in the Contracting Policy;

“Chinese Government Group” has the meaning given to that term in the Contracting Policy;

“Civil Procedure Rules” means the rules of civil procedure as in force from time to time in the Courts of England and Wales;

“CJA” means the Criminal Justice Act 1993;

“Claimant(s)” has the meaning given to that term in Clause 30.1(C) (*Expert Determination Procedure – General*);

“Common Terms Agreement” means the common terms agreement dated on or about the Agreement Date between, among others, NNB FinCo, the Commissioners of Her Majesty’s Treasury, NNB HoldCo and the Generator;

“Competent Authority” means:

- (A) any international, national, federal, regional, state, local, European Union, Euratom or other court, arbitral tribunal, administrative agency or commission or other governmental, administrative or regulatory body, authority, agency or instrumentality;
- (B) any private body to the extent it carries out one or more public functions; or
- (C) any other body exercising public functions which has jurisdiction in respect of the Generator, the Facility, the Reactors, the Project, this Agreement or any other Transaction Document,

and includes the Authority, ONR, the International Atomic Energy Agency and the Environment Agencies;

“Competitor” means any person who competes directly with the Generator in the design, construction, installation, operation, maintenance or decommissioning of civil generation nuclear reactors;

“Completion Statement” has the meaning given to that term in Clause 17.4 (*Completion Statement*);

“Completion Statement Disputed Items” has the meaning given to that term in Clause 17.2(A) (*Approval of Completion Statement*);

“Confidential Information” means CfD Counterparty Confidential Information, Generator Confidential Information, Investor Confidential Information and Secretary of State Confidential Information;

“Consolidated Debt Documents” has the meaning given to the term at the Agreement Date in the Common Terms Agreement and includes, for the avoidance of doubt, each Initial CP Finance Document;

“Contracted Generation Cap” has the meaning given to that term in the HPC CfD;

“Contracting Policy” means the contracting policy set out at Annex 9 (*Contracting Policy*), as the same may be amended as agreed in writing between the CfD Counterparty and the Generator;

“Contracting Policy Failure” means any failure to perform or comply with the Contracting Policy;

“Contractor” means any contractor, subcontractor, consultant or adviser of or to the Generator but excludes any Transmission System Operator, Transmission Licensee or Licensed Distributor;

“Control” means, in relation to any person:

- (A) the power (whether acting alone or Acting in Concert (as defined in the City Code on Takeovers and Mergers), whether directly or indirectly and whether by the ownership of share capital, the possession of voting rights, contract or otherwise)

to appoint and/or remove all or such of the members of the board of directors or other governing body of that person as are able to cast the majority of the votes capable of being cast by the members of that board or body on all, or substantially all, matters, or otherwise to control or have the power to control the policies and affairs of that person (and for the purposes of determining whether the power to appoint or remove directors exists, the provisions of section 1159 of, and schedule 6 to, the Companies Act 2006 (as amended) shall apply); and/or

- (B) the power (whether acting alone or Acting in Concert (as defined in the City Code on Takeovers and Mergers), whether directly or indirectly and whether by the ownership of share capital, the possession of voting rights, contract or otherwise) to direct the voting in respect of more than 50 per cent. (50%) of the total voting rights exercisable at general meetings of that person on all, or substantially all, matters,

and “**Controlled**” and “**Controlling**” shall be construed accordingly;

“**Court of Justice of the European Union**” means the institution of the European Union which includes the General Court and the Court of Justice thereof;

“**CPI**” means:

- (A) the all items index of consumer price inflation published each month by the Office for National Statistics;
- (B) if that index is no longer being published, such index as the CfD Counterparty may reasonably determine to be appropriate in the circumstances; or
- (C) if there is a material change to the basis of that index, such other index as the CfD Counterparty may from time to time reasonably determine to be appropriate in the circumstances;

“**CP Party**” has the meaning given to that term in Clause 2.1 (*Agreement Date Conditions Precedent*);

“**C(RTP) Act**” means the Contracts (Rights of Third Parties) Act 1999;

“**Daily Discount Amount**” has the meaning given to that term in the Contracting Policy;

“**Debt Termination Agreement**” means a deed cancelling in full (without compensation payable by the Generator) Financial Indebtedness due, owing, incurred or payable by the Generator and releasing and discharging any associated Security Interest in respect of the assets of, or shares in, the Generator, each such deed to be in form and content satisfactory to the CfD Counterparty, acting reasonably;

“**DECC**” means the Department of Energy and Climate Change;

“**Deed of Accession**” means a deed substantially in the form set out in Annex 10 (*Form of Deed of Accession*) executed by all Parties or in such other form as the CfD Counterparty may from time to time agree in writing, acting reasonably;

“Deed of Undertaking” means the agreement between the Secretary of State, EDF SA and other equity investors in NNB HoldCo containing an undertaking from the Secretary of State, for the benefit of, among others, each “associated” person (as defined in the EA 2008), that no proposed modification to the FDP will result in liability being imposed on any “associated” person (other than the FDP Implementation Company and any subsidiary of the Generator);

“Deemed Available Cash Flow” means, in respect of the relevant Project Gain Share Calculation Period:

- (A) a sum equal to the amount of Available Cash Flow agreed between the CfD Counterparty and NNB HoldCo or, failing agreement, determined by an Expert in accordance with the Expert Determination Procedure as the additional amount that would have arisen but for a failure by any of the relevant Investor, Investor Super TopCo, Investor TopCo, NNB HoldCo or the Generator or any Tracked Person to perform or comply with one or more of the Equity Gain Share Rules, in each case as applicable to it, where such failure has been agreed between the CfD Counterparty and NNB HoldCo or determined by an Expert in accordance with the Expert Determination Procedure; and
- (B) the amount agreed between the CfD Counterparty and NNB HoldCo or, failing agreement, determined by an Expert in accordance with the Expert Determination Procedure as being a Related Party Discount Amount,

but, in any such case, for the purpose of calculating the Project Cash Flow or the Sale Cash Flow, before deducting any Gain Share Amount payable and not yet paid as a result of such Deemed Available Cash Flow;

“Default Interest” has the meaning given to that term in the HPC CfD;

“Defaulting Investor” has the meaning given to that term in Clause 34.2 (*Sanction for not having an Acceptable Credit Standing*);

“Delivery Body” means the person from time to time responsible pursuant to section 12(1) of the EA 2013 for notifying the CfD Counterparty to offer and enter into FiT Contracts for Difference, acting in that capacity;

“Designated Distribution Account” means the NNB HoldCo bank account in England designated by the Lead Investor, with the prior written consent of the CfD Counterparty (not to be unreasonably withheld), to make and receive payments under and in accordance with Clause 9.4(A)(i) (*Distributions*);

“Difference Amount” has the meaning given to that term in the HPC CfD;

“Direct Agreement” has the meaning given to that term in the HPC CfD;

“Directive” means, in relation to any Party, any ordinance, code, decision, directive, order, decree, regulation, determination, award, standard or rule of any Competent Authority;

- (A) which is legally binding upon that Party or, if not legally binding upon that Party, with which that Party would ordinarily comply, acting (in the case of the Generator) in accordance with the Reasonable and Prudent Standard; and
- (B) in circumstances in which the Generator is seeking to invoke the provisions of clause 29 (*Qualifying Change in Law: Procedure*) of the HPC CfD or clause 35 (*Change in Applicable Law: Procedure*) of the HPC CfD with which the Generator does comply or uses all reasonable endeavours to comply;

“Directors’ Certificate” means a certificate given without personal liability save in the case of wilful default or fraud on the part of the signatory or signatories, signed by two (2) directors of the relevant Party or one (1) director of the relevant Party in the presence of a witness who attests the signature, such directors or director (as applicable) having made, and confirmed in the certificate as having made, all due and careful enquiries in relation to the matters set out in such certificate (or set out in the notice, or enclosures or appendices to the notice, which such certificate is accompanying) and certifying that the relevant information, notices or reports contained in, enclosed with or accompanying the certificate, or any information, notices or reports to which the certificate relates, including Supporting Information, is in all material respects true, complete, accurate and not misleading, in each case by reference to the facts and circumstances then existing, provided that where any information, notice or report is provided by a third party that is not a member of the same Group of which the relevant Party is a member or a Representative of any such Party or a member of such Party’s Group and is marked as such, the certification of the director or directors (as applicable) of such information, notice or report shall only extend to the certification that such information, notice or report is in all material respects true, complete, accurate and not misleading to the best of his or their knowledge and belief having made all due and careful enquiries;

“Discount Amount” has the meaning given to that term in the Contracting Policy;

“Discounting” means converting a currency amount that:

- (A) is forecast to be incurred, paid or accrued after a particular date; or
- (B) has been incurred, paid or accrued prior to a particular date,

into Present Value terms as at that particular date and **“Discounted”** shall be construed accordingly;

“Dispute” means any dispute or claim in any way relating to or arising out of this Agreement, whether contractual or non-contractual, and including any dispute or claim regarding:

- (A) its existence, negotiation, validity or enforceability;
- (B) the performance or non-performance of a Party’s obligations pursuant to it; or
- (C) breach or termination of it;

“Dispute Resolution Procedure” means the rules, obligations and procedures set out in Clauses 29 (*Jurisdiction*) and 30 (*Expert Determination Procedure*);

“Distribution” means, in relation to any person, any payment, repayment, redemption (by way of set-off, counterclaim or otherwise) or other distribution or the like of any money or other asset in each case to a direct or indirect shareholder in, or a direct or indirect member of, such person, whether in cash or in kind and whether pursuant to the terms of an agreement or by way of gift or otherwise; and

- (A) includes payment of any dividend or return of capital to or for the benefit of, or any share repurchase from, any such shareholder or member or the making of any payment of interest, principal, costs, fees or expenses in respect of any debt (whether or not subordinated) owed to any such shareholder or member, but
- (B) excludes any payment due under a Related Party Transaction unless that Related Party Transaction is an Economic Interest,

and **“Distribute”** and **“Distributed”** shall be construed accordingly;

“Distribution Licence” means a licence granted or treated as granted pursuant to section 6(1)(c) of the EA 1989;

“Divestment Proceeds” means, in relation to any Relevant Sale:

- (A) all consideration (whether cash or non-cash and pro-rated as necessary by reference to the Valuation Percentage) paid or payable by or on behalf of the Acquirer to the seller under and in respect of such Relevant Sale or, if greater, the amount which would have been paid or payable but for a failure by any of the relevant Investor, Investor Super TopCo, Investor TopCo, NNB HoldCo or the Generator or any Tracked Person to perform or comply with one or more of the Equity Gain Share Rules or the Contracting Policy, in each case as applicable to it (where such failure has been agreed between the CfD Counterparty and NNB HoldCo or determined by an Expert in accordance with the Expert Determination Procedure),

less

- (B) any reasonable third party professional services fees reasonably and necessarily incurred by the seller exclusively for the purposes of such Relevant Sale, pro-rated as necessary by reference to the Valuation Percentage,

and

- (i) for the purposes of comparing against the First Equity IRR Threshold, calculated and expressed in Nominal Terms by reference to the date of completion of such Relevant Sale;
- (ii) for the purposes of comparing against the Second Equity IRR Nominal Threshold, calculated and expressed in Nominal Terms by reference to the date of completion of such Relevant Sale; and

- (iii) for the purposes of comparing against the Second Equity IRR Real Threshold, calculated and expressed in Real Terms as at the Base Year, as determined by multiplying the Nominal cash flow on any given day by the Base Year CPI and dividing by the value of the CPI for the month in which the cash flow was received or paid (or, if that latter CPI is not available, the Reference CPI) and in each case, for the avoidance of doubt, taking into account any rebasing of the relevant index;

“Draft Completion Statement” has the meaning given to that term in Clause 17.1(A) (*Preparation of Completion Statement*);

“Draft Equity IRR Model Information Request” has the meaning given to that term in Clause 13.2(F) (*Revision of the Equity IRR Model*);

“Draft Investor Shutdown Payment Statement” has the meaning given to that term in Clause 18.2(A) (*Compensation to Equity Investors*);

“Draft Lender Shutdown Payment Statement” has the meaning given to that term in Clause 18.1(A) (*Compensation to Financing Representative for debt holders*);

“Draft Revised Equity IRR Model” has the meaning given to that term in Clause 13.2(C) (*Revision of the Equity IRR Model*);

“DWMP” means the decommissioning and waste management plan that forms part of the FDP for the Facility, as modified (from time to time) in accordance with the EA 2008 and the FAP;

“EA 1989” means the Electricity Act 1989;

“EA 2008” means the Energy Act 2008;

“EA 2013” means the Energy Act 2013;

“Economic Interest” means, in relation to any person:

- (A) shares or other securities (including convertible securities and warrants and options in respect of shares or securities, but excluding the Call Option and the Put Option), direct or indirect, or other equity, partnership or other ownership interests, direct or indirect, in the relevant person;
- (B) loans, loan capital or other debt interests (whether or not subordinated) made to or held in such person by a direct or indirect shareholder in, or a direct or indirect member of, such person (each, a **“Shareholder Interest”**) or any loans, loan capital or other debt interests (whether or not subordinated) made to or held in such person which were originally Shareholder Interests; and/or
- (C) any other economic interest, direct or indirect, in such person the purpose of which is to, or which does in fact, distribute or return value from such person to a direct or indirect shareholder in, or a direct or indirect member of, such person (each, an **“Other Economic Interest”**) or any other economic interest, direct or indirect, in such person which was originally an Other Economic Interest,

excluding any such interest which arises solely by reason of being a counterparty under:

- (i) an agreement for the provision of goods or services to such person or the Generator entered into by such person in compliance with the Contracting Policy for the purposes of the Project;
- (ii) any guarantee, indemnity, performance bond, letter of credit or letter of support in respect of the obligations of the Generator entered into by such person in compliance with the Contracting Policy for the purposes of the Project;
- (iii) any hedging arrangement in respect of interest rate, foreign exchange or power sales entered into by such person in compliance with the Contracting Policy for the purposes of the Project; or
- (iv) any financing or refinancing arrangements (other than any hedging arrangements) entered into by such person,

in each case which does not fall within paragraph (A) or (B) above,

provided that an Economic Interest shall not include an interest arising under, and solely and exclusively by reason of:

- (x) a cash pooling arrangement (in any currency or currencies) operated by EDF SA as its group's treasury centralising entity in accordance with article L.511-7, 3rd paragraph of the *Code Monétaire et Financier*;
- (y) a cash pooling arrangement (in any currency or currencies) operated by the centralised treasury function of a Group for the benefit of that Group and of which an Investor (not being EDF Energy Holdings) is a member; or
- (z) any other similar arrangement (in any currency or currencies) operated for the benefit of an Investor Group which has been approved in writing in advance by the CfD Counterparty, acting reasonably,

and in any such case to which the Generator or NNB HoldCo is a party, but only to the extent that such cash pooling or similar arrangement:

- (1) has been disclosed in writing in advance to the Secretary of State and the CfD Counterparty;
- (2) provides for the regular sweep of cash balances between the centralising account and the Generator or NNB HoldCo, as applicable;
- (3) remunerates cash pooling transactions or similar arrangements, as applicable, at arm's length prices;

- (4) provides that amounts which are pooled or which are the subject of similar arrangements, as applicable, shall be repayable on demand;
- (5) does not constitute, and is not capable of being reasonably construed as, an arranged financing facility;
- (6) permits a maximum aggregate debit balance by the Generator or NNB HoldCo, as applicable, thereunder of one hundred million pounds (£100,000,000), as indexed on each anniversary of the Agreement Date by reference to the Reference CPI (or the equivalent in any other currency or currencies);
- (7) is operated in the shared interests of the parties to it;
- (8) does not create or give rise to any joint and several liability or any guarantee or other surety obligation or security on the part of the Generator or NNB HoldCo, as applicable, in favour of any other person; and
- (9) does not prevent the Generator or NNB HoldCo, as applicable, from providing assurance to third parties that it retains control over its own funds;

“EDF Energy Group” means EDF Energy and its subsidiaries, subsidiary undertakings, associated undertakings and any holding company of EDF Energy and all other subsidiaries, subsidiary undertakings and associated undertakings of any such holding company from time to time;

“EDF SA Letters” means:

- (A) the letter dated 14 September 2016 from Jean-Bernard Levy, Le Président-Directeur Général of EDF SA, to the Secretary of State regarding, amongst other things, EDF SA's intention to remain the controlling shareholder in the Generator during construction of the Project; and
- (B) the written confirmation on or around the Agreement Date provided on behalf of the board of directors of EDF SA and addressed to the Secretary of State confirming that the board of directors of EDF SA has considered and confirmed the commitments made in the letter referred to in paragraph (A) above in consideration for the Secretary of State entering into this Agreement;

“EIR” means the Environmental Information Regulations 2004, together with (where the context requires) any guidance and/or codes of practice issued by the Information Commissioner or relevant Crown Body in relation to such legislation;

“Electricity Supplier” has the meaning given to that term in section 9(10) of the EA 2013;

“Environment Agencies” means:

- (A) the Environment Agency in England;

- (B) Natural Resources Wales; and
- (C) the Scottish Environment Protection Agency;

“Equity Gain Share Rules” means the provisions set out at Annex 3 (*Equity Gain Share Rules*);

“Equity Gain Share Term” has the meaning given to that term in Clause 3(B) (*Duration*);

“Equity Gain Share Term End Date” means the last day of the Equity Gain Share Term;

“Equity IRR” means the IRR calculated for an Investor TopCo Tranche in relation to a Project Gain Share Calculation Period and:

- (A) for this purpose, ACF (as defined in the definition of “Project Cash Flow” in this Clause 1.1) shall be recognised on the date that an amount equal to the Available Cash Flow (net of the amounts referred to in Clause 9.4(B) (*Distributions*)) could have been Distributed by NNB HoldCo, being for the purpose of this calculation the date falling one hundred (100) Business Days after the Project Gain Share Calculation Date for the purposes of the Equity IRR Report in respect of the Project Gain Share Calculation Period ending on such Project Gain Share Calculation Date, corrected for subsequent Project Gain Share Calculation Periods (the **“Subsequent ACF Correction”**) to the date falling five (5) Business Days after (i) the date that such Equity IRR Report is agreed or determined, or (ii) in the case where Clause 9.4(D)(iii) (*Distributions*) applies, the date the Distribution was made in accordance with that Clause;
- (B) for the purposes of comparing against the First Equity IRR Threshold, calculated using the Project Cash Flows attributable to the Economic Interests comprised within the relevant Investor TopCo Tranche in relation to such Project Gain Share Calculation Period, which thereby presents a Nominal IRR;
- (C) for the purposes of comparing against the Second Equity IRR Nominal Threshold, calculated using the Project Cash Flows attributable to the Economic Interests comprised within the relevant Investor TopCo Tranche in relation to such Project Gain Share Calculation Period, which thereby presents a Nominal IRR; and
- (D) for the purposes of comparing against the Second Equity IRR Real Threshold, calculated using the Real Project Cash Flows attributable to the Economic Interests comprised within the relevant Investor TopCo Tranche in relation to such Project Gain Share Calculation Period, which thereby presents a Real IRR;

“Equity IRR Model” means the agreed financial computer model in respect of the Project used to calculate Gain Share Amounts and corresponding to the description and requirements set out in Clause 13.1 (*Description of the Equity IRR Model*), as amended, revised or replaced from time to time in accordance with this Agreement;

“Equity IRR Report” has the meaning given to that term in Clause 9.3 (*Equity IRR Report*);

“**Euratom**” means the European Atomic Energy Community;

“**European Union**” or “**EU**” means the European Union, established by the Treaty of the European Union signed at Maastricht on 7 February 1992 (as amended, supplemented or replaced by any later Treaty);

“**Excluded Compensation Liabilities**” means, without double counting, all Generator Liabilities agreed by the Lead Investor and the CfD Counterparty (or, in default of agreement, determined by an Expert in accordance with the Expert Determination Procedure) to result from or arise out of:

- (A) any outstanding Contracting Policy Failure (but without double counting any Discount Amount or Daily Discount Amount already taken into account in the calculation of any Gain Share Amount or deducted from an Investor Shutdown Payment in accordance with Clause 18.2(H) (*Compensation to Equity Investors*));
- (B) the Generator or NNB HoldCo ceasing to be resident for Tax purposes in England or establishing or maintaining any place of business or permanent establishment outside England during the Shutdown Arrangements Term, except in the circumstance where such event occurs while the Generator is under the Control of a Government Authority or Government Entity;
- (C) any failure to perform or comply with the Protective Provisions during the Shutdown Arrangements Term, except in the circumstance where such failure occurs while the Generator is under the Control of a Government Authority or Government Entity;
- (D) any breach of the representations and warranties set out in Clause 26 (*Representations and Warranties*);
- (E) any failure to perform or comply with the acts, matters and things set out or referred to in Clause 23.3 (*Conduct of Business before Option Completion*);
- (F) any FAP Failure;
- (G) if the Responsible Designer Contract or a Technical Services Agreement is terminated howsoever and whether or not in accordance with its terms, any liability, cost or expense under or in respect of the Responsible Designer Contract or such Technical Services Agreement, as applicable, in each case in excess of the aggregate of accrued earned incentive fees, the costs of work carried out and demobilisation costs thereunder, in each case reasonably incurred, to the date of termination (if any) of the Responsible Designer Contract or such Technical Services Agreement, as applicable, and which would not have been incurred but for such termination;
- (H) any liability, cost or expense under or in respect of the Intellectual Property Licence Agreements resulting from or arising out of any breach by the Generator or failure by the Generator to perform its obligations under the Intellectual

Property Licence Agreements, unless such breach or failure occurs while the Generator is under the Control of a Government Authority or Government Entity;

- (I) any liability for any Financial Indebtedness or any other liability, cost or expense of the Generator (in any such case, whether present or future, actual or contingent) which is not included in the updated Financial Model used to calculate the Investor Shutdown Payment(s) and which has not been validly cancelled in full, except to the extent that:
 - (i) any such liability, cost or expense is first incurred while the Generator is under the Control of a Government Authority or Government Entity; or
 - (ii) any contingent liability crystallises while the Generator is under the Control of a Government Authority or Government Entity by reason of the failure of such Government Authority or Government Entity, as applicable, to act in accordance with the Reasonable and Prudent Standard (save where it is not possible so to act by reason of pre-existing arrangements or conditions); and/or
- (J) where the ownership of the Generator is transferred pursuant to the Put Option or Call Option, any liability for any Financial Indebtedness of the Generator (whether present or future, actual or contingent) which is or ought to be the subject of a Debt Termination Agreement and which has not been validly cancelled in full pursuant to such Debt Termination Agreement on or before Option Completion,

but shall not include:

- (i) the Excluded Residual Liabilities; and
- (ii) any Generator Liabilities to the extent incurred by the Generator as a result of the Qualifying Effective Shutdown Event and which are:
 - (a) necessary to comply with the Nuclear Site Licence;
 - (b) incurred due to FAP contributions having been accelerated or increased; or
 - (c) incurred with the prior written consent of the CfD Counterparty,

and, for the purposes of paragraphs (I) and (J) above, an independent expert shall be appointed to calculate the amount of any contingent liabilities and assess the likelihood of such contingent liabilities crystallising and attribute a value thereto, such value to be included as an Excluded Compensation Liability;

“Excluded Information” means Information:

- (A) in, or which enters, the public domain otherwise than as a consequence of a breach of any provision of this Agreement; or

(B) properly in the possession of the recipient on a non-confidential basis and not, to the knowledge of the recipient, as a result of a breach by it, its Representatives or any third party of any duty of confidentiality attaching thereto prior to such Information being acquired by or provided to it;

“Excluded Residual Liabilities” has the meaning given to that term in Clause 14.3(A)(iv) (*Shareholder and Generator Consent*);

“Expedited Expert Determination Procedure” means the rules, obligations and procedures set out in Clause 30.2 (*Expedited Expert Determination Procedure*);

“Expert” means any person appointed in accordance with the Expert Determination Procedure to determine an Expert Dispute;

“Expert Appointment Date” means the date on which an Expert is appointed to determine an Expert Dispute by means of an appointment letter entered into by such Expert and each party to the Expert Dispute;

“Expert Determination Notice” means a written notice satisfying the requirements of Clause 30.1(A) (*Expert Determination Procedure – General*), which expression shall include each element of, and (if applicable) each computation contained or referred to in, such notice and (if applicable) all Supporting Information referred to in Clause 30.1(A)(iv) (*Expert Determination Procedure – General*);

“Expert Determination Procedure” means the rules, obligations and procedures set out in Clause 30 (*Expert Determination Procedure*);

“Expert Determination Response Notice” has the meaning given to that term in Clause 30.1(C) (*Expert Determination Procedure – General*);

“Expert Dispute” means a Dispute which this Agreement expressly provides may be determined by an Expert (unless the Parties have otherwise agreed in writing);

“Expert Referral Date” has the meaning given to that term in Clause 30.1(F)(i) (*Expert Determination Procedure – General*);

“Facility” means the nuclear installations referred to in schedule 1 to the Nuclear Site Licence and other electrical generating equipment within the Site boundary, but excluding assets forming part of the Transmission System or the Distribution System (each as defined in the HPC CfD), and commonly known as Hinkley Point C;

“FAP” means the funding arrangements plan for the Facility made or proposed to be made between the Generator and the FDP Implementation Company;

“FAP Failure” means any failure by the Generator to perform or comply with the FAP in regard to any scheduled, but unpaid, contributions or any other shortfall in making good the required level of contributions thereunder;

“**FDP**” means the funded decommissioning programme in respect of the Site approved or to be approved by the Secretary of State under the EA 2008 and comprising as at the Agreement Date:

- (A) the FAP; and
- (B) the DWMP,

in each case as may be amended from time to time under the EA 2008;

“**FDP Documents**” means:

- (A) the FAP;
- (B) the DWMP;
- (C) the Section 46 Agreement and the Deed of Undertaking;
- (D) the Waste Transfer Contracts;
- (E) the Budget and Services Agreement;
- (F) the shareholders’ agreement relating to the FDP Implementation Company between the Generator, the FDP Implementation Company and the independent directors of the FDP Implementation Company; and
- (G) any direct agreement entered into by the Generator in relation to the above;

“**FDP Implementation Company**” means The Nuclear Decommissioning Fund Company Limited, a company incorporated under the laws of England and Wales with registered number 07992648;

“**Fees Regulations**” means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;

“**Final Funding Notice**” has the meaning given to that term in Clause 14.2(A) (*Final Funding Notice*);

“**Final Investor Shutdown Payment(s)**” has the meaning given to that term in Clause 18.2(H) (*Compensation to Equity Investors*);

“**Finance Document**” means:

- (A) as the context requires, each Consolidated Debt Document and each other document in force (as amended from time to time) between, among others, any member of the NNB HoldCo Group and any Lender (as defined in the HPC CfD) in respect of the provision of Financial Indebtedness to a member of the NNB HoldCo Group in respect and for the purposes of the Project; and

- (B) any other document designated as such in writing by the CfD Counterparty and the Generator;

“Financial Indebtedness” means (without double counting) any indebtedness for or in respect of:

- (A) moneys borrowed;
- (B) any amount raised by acceptance under any acceptance credit facility;
- (C) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (D) the amount of any liability in respect of any agreement which would, in accordance with IFRS, be treated as a finance or capital lease;
- (E) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (F) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of borrowing which is of a type not referred to in any other paragraph of this definition;
- (G) any hedging or derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
- (H) shares which are expressed to be redeemable or are otherwise classified as borrowings under IFRS;
- (I) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
- (J) the acquisition cost of any asset to the extent payable after its acquisition or possession by the party liable where the deferred payment is arranged primarily as a method of raising finance or financing the acquisition of that asset; or
- (K) the amount of any liability in respect of any guarantee or indemnity or similar assurance for any of the items referred to in paragraphs (A) to (J) (inclusive) above;

“Financial Model” means the agreed financial computer model in respect of the Project (represented initially by the Original Base Case Financial Model) which uses technical, economic and other assumptions to produce financial projections and projected cash flows, as amended, revised or replaced from time to time in accordance with the HPC CfD or this Agreement and, where relevant, includes the Assumptions Book;

“Financing Party” means:

- (A) NNB FinCo under the Consolidated Debt Documents or where NNB FinCo is on-lending to the Generator any moneys advanced by any third party senior secured lender to NNB FinCo; and
- (B) any third party senior secured lender (which includes a guarantor in respect of Financial Indebtedness provided by any such lender) to the Generator or, where NNB HoldCo is on-lending to the Generator any moneys advanced by any such lender to NNB HoldCo, NNB HoldCo, in either case for the purposes of the Project;

“Financing Representative” means:

- (A) the Original Financing Representative; and
- (B) such other agent and/or security trustee for the Financing Parties for the time being and from time to time which has become a Party in the capacity of Financing Representative in accordance with Clause 35.11 (*Financing Representative accession*),

in each case which has not ceased to be a Party as the Financing Representative in accordance with that Clause;

“Financing Representative Permitted Purposes” means:

- (A) complying with the responsibilities and obligations, and exercising the rights, powers and discretions of the Financing Representative, the Commissioners of Her Majesty’s Treasury or any Financing Party, under or in connection with this Agreement or any other Transaction Document or any Finance Document in relation to the Project; and
- (B) complying with the responsibilities and obligations of the Financing Representative, the Commissioners of Her Majesty’s Treasury or any Financing Party under or by virtue of any Law, or any Euratom law, or any Directive, or the rules of any securities exchange, clearing system or regulatory body to which it is subject or published official policies or published official guidance issued in respect of any thereof;

“First Criticality” means the date on which a self-sustaining nuclear chain reaction first occurs at a Reactor;

“First Equity IRR Threshold” means eleven point four per cent. (11.4%) (Nominal);

“First Submission” has the meaning given to that term in Clause 30.1(F)(ii) (*Expert Determination Procedure – General*);

“First Submission Deadline” has the meaning given to that term in Clause 30.1(F)(ii) (*Expert Determination Procedure – General*);

“First Threshold Excess Sale Proceeds” means, in respect of a Relevant Sale, an amount (expressed in pounds) equal to:

(A) the Divestment Proceeds (Apportioned as necessary) in respect of such Relevant Sale,

less

(B) the Divestment Proceeds (Apportioned as necessary) which would have needed to have been realised in respect of such Relevant Sale for the result of those proceeds to be that the Sale IRR would have been equal to the First Equity IRR Threshold,

provided that the First Threshold Excess Sale Proceeds shall not be less than zero;

“First Threshold Project IRR Amount” means, in respect of any Project Gain Share Calculation Period:

(A) the aggregate amount of Available Cash Flow or Deemed Available Cash Flow, Apportioned to each Investor TopCo Tranche,

less

(B) such amount thereof as would have resulted in the Equity IRR for such Investor TopCo Tranche being equal to the First Equity IRR Threshold,

provided that the First Threshold Project IRR Amount shall not be less than zero;

“FIT Contract for Difference” means:

(A) a contract for difference (as such term is defined in section 6(2) of the EA 2013);
or

(B) an investment contract (as such term is defined in schedule 2 to the EA 2013);

“Fitch” means Fitch Ratings Limited, an English corporation, and any successor thereto;

“FM Affected Party” has the meaning given to that term in Clause 48.1(A) (*Relief due to Force Majeure*);

“FoIA” means the Freedom of Information Act 2000 and any subordinate legislation made under that Act, together with (where the context requires) any guidance and/or codes of practice issued by the Information Commissioner or relevant Crown Body in relation to such legislation;

“FoIA Information” means any information of whatever nature, however conveyed, and in whatever form, including written, oral and electronic and in visual or machine-readable form (including CD-ROM, magnetic and digital form);

“Force Majeure” means any event or circumstance (including (i) any Change in Applicable Law, and (ii) any exercise of a discretion by a Competent Authority) that is beyond the reasonable control of the FM Affected Party or, if relevant, its Representatives (in the case of any Non-Government Party and its Representatives, acting and having acted in accordance with the Reasonable and Prudent Standard) which, in either case, the FM Affected Party or its Representative (as appropriate) could not reasonably have avoided or overcome and which is not due to the FM Affected Party’s fault or negligence (or that of its Representatives) provided always that:

- (A) neither the non-availability of funds nor the lack of funds shall ever constitute Force Majeure; and
- (B) none of EDF SA, EDF Energy, EDF Energy Holdings, NNB Top Company HPC (B) Ltd, NNB Top Company HPC (A) Ltd or any member of the NNB HoldCo Group or the EDF Energy Group (as defined in the Contracting Policy) shall ever be a FM Affected Party to the extent that the event or circumstance in question is or results from the CCE Proceedings or any decision, order, determination, award or ruling of a Competent Authority with respect to or arising out of the CCE Proceedings;

“French Government Group” has the meaning given to that term in the Contracting Policy;

“FSMA” means the Financial Services and Markets Act 2000;

“Further Investor Payment Statement Information Request” has the meaning given to that term in Clause 18.2(B) (*Compensation to Equity Investors*);

“Further Lender Shutdown Payment Statement Information Request” has the meaning given to that term in Clause 18.1(B) (*Compensation to Financing Representative for debt holders*);

“Further QCiL Cessation Event Information Request” has the meaning given to that term in Clause 16.1(E) (*QCIL Cessation Event Notice*);

“Further Qualifying Effective Shutdown Event Information Request” has the meaning given to that term in Clause 15.1(E) (*Qualifying Effective Shutdown Event Notice*);

“Further Sale IRR Information Request” has the meaning given to that term in Clause 10.1(D) (*Preliminary Sale IRR Report*);

“Gain Share” means a Project Gain Share or a Sale Gain Share, as applicable;

“Gain Share Amount” means a Project Gain Share Amount or a Sale Gain Share Amount, as applicable;

“Generator Confidential Information” means:

- (A) all Information which is confidential or proprietary in nature and which relates (directly or indirectly) to a member of the NNB HoldCo Group, the Facility, a

Reactor, the Site or the Project which the CfD Counterparty (or its Representatives) receives or has received from a member of the NNB HoldCo Group (or its Representatives) or from any third party who receives or has received such Information from a member of the NNB HoldCo Group (or its Representatives) in connection with this Agreement or any other Transaction Document (including any Information which the CfD Counterparty prepares which contains or makes explicit reference to such Information or from which such Information is readily ascertainable);

- (B) without prejudice to the generality of paragraph (A) above, all Information relating to any QCiL Compensation or Qualifying Exit Event Compensation, including all Information relating to or arising from negotiations, discussions and correspondence in connection with any such QCiL Compensation or Qualifying Exit Event Compensation; and
- (C) any Information (including any Sensitive Nuclear Information) which relates to or arises from negotiations, discussions and correspondence in connection with this Agreement or any other Transaction Document,

but excluding in each case all Excluded Information;

“Generator Liabilities” means all present and future moneys, losses, damages, actions, claims, obligations, costs (including legal costs), demands, interest, expenses, debts and liabilities due, owing, incurred or payable by the Generator (whether actually or contingently, and whether as principal, surety or otherwise);

“Generator Permitted Purposes” means:

- (A) complying with the responsibilities and obligations, and exercising the rights, powers and discretions, of the Generator under or for the purposes of this Agreement or any other Transaction Document or any Finance Document in relation to the Project; and
- (B) complying with the responsibilities and obligations of the Generator under or by virtue of the EA 2013, any other Law, or any Euratom law, or any Directive, or published official policies or published official guidance issued in respect of any thereof;

“Government Authority” means Her Majesty’s Government of the United Kingdom or the Secretary of State or any other Minister of the Crown or any department of Her Majesty’s Government of the United Kingdom;

“Government Entity” means:

- (A) any department, non-departmental public body, authority or agency of Her Majesty’s Government of the United Kingdom or the Crown;
- (B) any of Her Majesty’s Secretaries of State and any other Minister of the Crown;

- (C) any body corporate established by statute, some or all of the members of which are appointed by a Secretary of State or Minister of the Crown; and
- (D) any other entity or person directly or indirectly wholly owned by, or held on trust for, any of the foregoing;

“**Government Parties**” means the Secretary of State and the CfD Counterparty, and “**Government Party**” means either or a particular one of them, as appropriate;

“**Group**” means, in respect of any person, its subsidiaries, subsidiary undertakings, associated undertakings and any holding company of that person and all other subsidiaries, subsidiary undertakings and associated undertakings of any such holding company from time to time;

“**Guaranteed Obligations**” has the meaning given to that term in Clause 34.3(A)(i) (*Guarantee*);

“**HPC CfD**” has the meaning given to that term in Recital (A);

“**HPC CfD Term**” has the meaning given to the term “Term” in the HPC CfD;

“**HPC CfD Transferee**” has the meaning given to the term “Transferee” in the HPC CfD;

“**HPC Share Purchase Agreement**” means the share purchase agreement dated on or around the Agreement Date between, among others, EDF Energy Holdings and Sagittarius International Limited relating to the sale of a thirty-three point five per cent. (33.5%) interest in NNB HoldCo;

“**IFRS**” means the body of pronouncements issued or adopted by the International Accounting Standards Board (“**IASB**”) including International Financial Reporting Standards and associated interpretations issued by the IASB and International Accounting Standards and associated interpretations adopted by the IASB;

“**ILW**” means radioactive waste, the radioactive content of which exceeds four (4) gigabecquerels per tonne of alpha activity or twelve (12) gigabecquerels per tonne of beta and/or gamma activity and which does not need heat to be taken into account in the design of disposal or storage facilities;

“**ILW Waste Transfer Contract**” means the agreement entered into or to be entered into between the Secretary of State and the Generator in relation to the transfer of title to ILW;

“**Indemnified Liabilities**” has the meaning given to that term in Clause 34.3(A)(ii) (*Guarantee*);

“**Industry Documents**” means all agreements, codes, standards and instruments regulating the generation, transmission, distribution, supply or trading of electricity in Great Britain, including the Transmission Licence, the Grid Code, the SOTO Code, the BSC, the Code Subsidiary Documents, the CUSC, the Master Registration Agreement, any Distribution Code, any Distribution Connection and Use of System Agreement and any other connection or use of system agreement with a Transmission Licensee or

Licensed Distributor (such terms where not defined in this Agreement to have the meaning given to them in the HPC CfD), and “**Industry Document**” shall be construed accordingly;

“**Information**” means any information of whatever nature and in whatever form, including written, oral and electronic and in visual or machine-readable form (including CD-ROM, magnetic and digital form) and, in relation to any obligation of any person to provide information pursuant to this Agreement, shall be limited to such information that is within the control of that person, and for these purposes information shall be deemed to be within the control of a person if: (i) it is within the possession of such person; (ii) such person has a right to possession of it; or (iii) such person has a right to inspect or take copies of it;

“**Initial CP Finance Document**” means each of the documents listed in part 1 (*Consolidated Debt Documents signed at FID*) of schedule 1 (*FID Documents*) to the waiver and amendment letter dated on or about the Agreement Date between, among others, NNB FinCo, the Commissioners of Her Majesty’s Treasury and the Generator, being those set out in the definition of the “Initial CP Finance Document” in clause 1.1 (*Definitions*) of the HPC CfD (other than this Agreement);

“**Initial Funding Notice**” has the meaning given to that term in Clause 14.1(A) (*Initial Funding Notice*);

“**Inside Information**” means Generator Confidential Information which is “inside information” within the meaning of section 118C of the FSMA or section 56 of the CJA in relation to the Generator or any member of its Group;

“**Insolvency Regulations**” means The Council of The European Union Regulation No. 1346/2000 on Insolvency Proceedings;

“**Insurance Arrangements**” means arrangements with any person(s) for the purpose of enabling the licensee of a licensed site to make Insurance Provision, which arrangements may include the provision of insurance or reinsurance or the provision of an indemnity or guarantee;

“**Insurance Failure Event**” means an event which satisfies the conditions in clauses 48.4(A)(i) to 48.4(A)(iv) (inclusive) (*Failure by Her Majesty’s Government of the United Kingdom to make Insurance Arrangements with respect to third party nuclear liability insurance cover*) of the HPC CfD;

“**Insurance Provision**” means, in respect of a licensed site, the provision which the licensee of such licensed site is required to make to comply with section 19(1) of the NIA 1965;

“**Insurance Shutdown Event**” means:

- (A) an Insurance Failure Event has occurred;
- (B) the Generator is unable to set aside cash to meet the Insurance Provision by way of self-insurance, the Generator having reasonably demonstrated that it does not

have and, having used its best endeavours, cannot raise, capital equal to the Required Insured Amount;

- (C) the CfD Counterparty has failed to make or procure arrangements necessary to arrange or effect the necessary insurance or financial support that would enable the Generator to make Insurance Provision as licensee of the Site on terms that ought reasonably be acceptable to the licensees of licensed sites required to make Insurance Provision, but nothing in this paragraph shall oblige or require the CfD Counterparty to make or procure such arrangements or to undertake a regulated activity (as defined in the FSMA) unless the CfD Counterparty elects, in its sole discretion, so to do; and
- (D) as a direct result of paragraphs (A) to (C) (inclusive) above having occurred:
 - (i) the Generator (or, if the Investors no longer Control the Generator, alternatively the Lead Investor), each acting honestly and diligently, has made a written declaration to the CfD Counterparty confirming that the Reactors will not commence the generation of electricity or have permanently ceased to generate electricity; and
 - (ii) if either Reactor has reached First Criticality, the Generator has sought (and not withdrawn its application for) consent from any regulator with jurisdiction over the Generator and with respect to the Nuclear Site Licence to start a decommissioning project in respect of the Reactors unless the Generator is not under the Control of the Investors or Third Party Lenders in which event alternatively the Lead Investor has demonstrated to the reasonable satisfaction of the CfD Counterparty that if the Generator had been under the Control of the Investors or Third Party Lenders, it would have been reasonable for the Generator to seek (and not withdraw its application for) such consent,

provided that there shall be no Insurance Shutdown Event if alternative Insurance Arrangements are not available for reasons arising out of or in connection with:

- (a) the Generator's adverse claims record; or
- (b) a breach or default by the Generator of any term of any insurance policy relating to the Insurance Provision or any Insurance Arrangements or any prior Insurance Provision or Insurance Arrangements;

"Intellectual Property Licence Agreements" has the meaning given to that term in the Contracting Policy;

"Intellectual Property Rights" means:

- (A) all intellectual property rights, including patents, trade marks, rights in designs, know-how, copyrights, database rights and topography rights (whether or not any of these is registered and including applications for registration of any such thing) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world; and

(B) all data and Information (whether or not Confidential Information);

“Investment Cost” means, in relation to any Relevant Sale, the aggregate of:

- (A) all consideration (whether cash or non-cash and pro-rated as necessary by reference to the Valuation Percentage) paid or payable by or on behalf of the Acquirer to the seller under and in respect of such Relevant Sale or, if greater, the amount which would have been paid or payable but for a failure by any of the relevant Investor, Investor Super TopCo, Investor TopCo, NNB HoldCo or the Generator or any Tracked Person to perform or comply with, one or more of the Equity Gain Share Rules or the Contracting Policy, in each case as applicable to it (where such failure has been agreed between the CfD Counterparty and NNB HoldCo or determined by an Expert in accordance with the Expert Determination Procedure); and
- (B) any reasonable third party professional services fees reasonably and necessarily incurred by the Acquirer exclusively for the purposes of such Relevant Sale, pro-rated as necessary by reference to the Valuation Percentage,

and:

- (i) for the purposes of comparing against the First Equity IRR Threshold, calculated and expressed in Nominal Terms by reference to the date of completion of such Relevant Sale;
- (ii) for the purposes of comparing against the Second Equity IRR Nominal Threshold, calculated and expressed in Nominal Terms by reference to the date of completion of such Relevant Sale; and
- (iii) for the purposes of comparing against the Second Equity IRR Real Threshold, calculated and expressed in Real Terms as at the Base Year, as determined by multiplying the Nominal cash flow on any given day by the Base Year CPI and dividing by the value of the CPI for the month in which the cash flow was received or paid (or, if that latter CPI is not available, the Reference CPI) and in each case, for the avoidance of doubt, taking into account any rebasing of the relevant index;

“Investment Structure Chart” means the group structure chart set out at Annex 6 (*Investment Structure Chart*);

“Investor” means:

- (A) an Original Investor; and
- (B) any person which has become a Party as an Investor in accordance with Clause 35 (*Changes to the Parties*),

in each case which has not ceased to be a Party as an Investor in accordance with that Clause;

“Investor Confidential Information” means:

- (A) all information which is confidential or proprietary in nature and which relates (directly or indirectly) to a member of the Investor Group, the Facility, a Reactor, the Site or the Project which the CfD Counterparty (or its Representatives) receives or has received from a member of the Investor Group or any IST Group Member (or their respective Representatives) or from any third party who receives or has received such information from a member of the Investor Group or any IST Group Member (or their respective Representatives) in connection with this Agreement (including any information which the CfD Counterparty prepares which contains or makes explicit reference to such information or from which such information is readily ascertainable);
- (B) without prejudice to the generality of paragraph (A) above, all information relating to any Qualifying Exit Event Compensation, including all information relating to or arising from negotiations, discussions and correspondence in connection with any such Qualifying Exit Event Compensation; and
- (C) any information (including any Sensitive Nuclear Information) which relates to or arises from negotiations, discussions and correspondence in connection with this Agreement or any other Transaction Document,

but excluding in each case all Excluded Information;

“Investor Group” means, in respect of an Investor, that Investor and its Group;

“Investor Permitted Purpose” means:

- (A) complying with the responsibilities and obligations, and exercising the rights, powers and discretions of the Investors, or any one of them, under or in connection with this Agreement or any other Transaction Document or any Finance Document in relation to the Project; and
- (B) complying with the responsibilities and obligations of the Investors, or any one of them, under or by virtue of the EA 2013, any other Law, or any Euratom law, or any Directive, published official policies or published official guidance issued in respect thereof;

“Investor Residual Company” means a company directly or indirectly owned by some or all of the Investors;

“Investor Shutdown Payment(s)” means:

- (A) in the case where neither Reactor has reached First Criticality, an amount equal to:
 - (i) in the case of a Qualifying Effective Shutdown Event, the QESE Construction Event Payment; or

- (ii) in the case of a QCiL Cessation Event, the QCiL Construction Event Payment; or
- (B) in any other case, the net payments which, but for the Qualifying Exit Event (on the basis that a Qualifying Exit Event in respect of one Reactor is treated as affecting both Reactors), would otherwise have been payable and paid (and have in fact not been paid) by the Generator to NNB HoldCo by way of a dividend or other Distribution on and from the date of the Qualifying Exit Event until the end of the HPC CfD Term (or, if earlier, the date on which, taking into account the projected performance of the Facility set out in the most recent Financial Model, the HPC CfD would have expired by reason of the Contracted Generation Cap having reduced to zero) and attributable to the Project, where such amount(s) shall be determined on the basis of the most recent Financial Model updated as at the time immediately prior to the occurrence of the Qualifying Exit Event and:
- (i) (if applicable) reduced for any dividend or other Distribution actually paid by the Generator to NNB HoldCo or any member of an Investor Group; and
 - (ii) (if applicable) increased for any payment made by the Investors or any member of the NNB HoldCo Group (other than the Generator, except to the extent that the Generator has been put in funds to make such payment by the Investors or any other member of the NNB HoldCo Group) and applied in the payment or repayment of:
 - (a) principal, interest and fees or any other cost or expense (excluding, for this purpose, break costs) in respect of Financial Indebtedness for the purposes of the Project owed by any member of the NNB HoldCo Group to Financing Parties, but only to the extent that a corresponding reduction in amounts which would otherwise have been payable as “Lender Shutdown Payments” has been made; or
 - (b) any liabilities of the Generator (other than those referred to in paragraph (B)(ii)(a) above) that were included in the most recent Financial Model referred to in paragraph (B) above,

in each case only to the extent that such amounts or liabilities have been discharged earlier than as set out in the most recent Financial Model referred to in paragraph (B) above,

in each case, between the date of the Qualifying Exit Event and the Ownership Transfer Date;

“Investor Shutdown Payment Statement” has the meaning given to that term in Clause 18.2(G) (*Compensation to Equity Investors*);

“Investor Super TopCo” means:

- (A) an Original Investor Super TopCo; and

- (B) any person which has become a Party as an Investor Super TopCo in accordance with Clause 35 (*Changes to the Parties*),

in each case which has not ceased to be a Party as an Investor Super TopCo in accordance with that Clause;

“Investor Super TopCo Designated Account” means, with respect to an Investor Super TopCo, the bank account in England designated by the relevant Investor Super TopCo, with the prior written consent of the CfD Counterparty (not to be unreasonably withheld), to receive payments under and in accordance with Clause 9.4 (*Distributions*);

“Investor TopCo” means:

- (A) an Original Investor TopCo; and
- (B) any person which has become a Party as an Investor TopCo in accordance with Clause 35 (*Changes to the Parties*),

in each case which has not ceased to be a Party as an Investor TopCo in accordance with that Clause;

“Investor TopCo Designated Account” means, with respect to an Investor TopCo, the bank account in England designated by the relevant Investor TopCo, with the prior written consent of the CfD Counterparty (not to be unreasonably withheld), to make and receive payments under and in accordance with Clause 9.4 (*Distributions*);

“Investor TopCo Tranche” means, in relation to each Investor TopCo, a tranche of Economic Interests in NNB HoldCo determined and attributed to the relevant Investor TopCo in accordance with the following rules:

- (A) at the Agreement Date, an Investor TopCo’s aggregate Economic Interests in NNB HoldCo shall constitute a single Investor TopCo Tranche and any Economic Interests in NNB HoldCo acquired thereafter (other than pursuant to a Relevant Sale) and relating to such Investor TopCo shall accrete to the Investor TopCo Tranche to which those Economic Interests most closely relate;
- (B) at the date a new Investor TopCo becomes an Investor TopCo other than by way of Relevant Sale, the aggregate Economic Interests in NNB HoldCo of such Investor TopCo shall constitute a single Investor TopCo Tranche;
- (C) if there is a Relevant Sale by such Investor TopCo or any person who holds a Qualifying Economic Interest through that Investor TopCo, the Investor TopCo Tranche(s) relating to such Investor TopCo which, at that time, together comprise such Investor TopCo’s aggregate Economic Interests in NNB HoldCo shall be re-tranched, revised or cancelled as follows:
- (i) the Sale Gain Share calculation shall be carried out in relation to that portion of each Investor TopCo Tranche which is subject to the Relevant Sale where, for each such Investor TopCo Tranche, such portion is equal to the ratio (expressed as a percentage) of the Economic Interests in

NNB HoldCo that are the subject of the Relevant Sale, divided by the aggregate Economic Interests in NNB HoldCo of the Investor TopCo Tranches to which the Economic Interests that are the subject of the Relevant Sale relate;

- (ii) if the percentage share under sub-paragraph (i) above is less than one hundred per cent. (100%), each existing Investor TopCo Tranche (relating to such Investor TopCo) to which the Economic Interests that are the subject of the Relevant Sale relate shall be divided into two parts such that:
 - (a) one part, representing the Economic Interests in NNB HoldCo which are referable to the Relevant Sale, shall be subject to the Sale Gain Share calculation referred to in sub-paragraph (i) above and, following that Sale Gain Share calculation, shall be cancelled; and
 - (b) the other part shall remain as an Investor TopCo Tranche relating to such Investor TopCo but shall reference the reduced Economic Interests in NNB HoldCo, being those which are not subject to the Sale Gain Share calculation referred to in sub-paragraph (i) above;
 - (iii) a new Investor TopCo Tranche with Economic Interests in NNB HoldCo equal to the Economic Interests in NNB HoldCo which were referable to the Relevant Sale shall be created in relation to the Investor TopCo which is the Acquirer (or, where the Acquirer is not the Investor TopCo, the Investor TopCo through which the relevant Economic Interest is held) of those latter Economic Interests and, for the avoidance of doubt, such new Investor TopCo Tranche shall be in addition to and separate from any other then existing Investor TopCo Tranche(s) relating to such Investor TopCo; and
 - (iv) any Investor TopCo Tranche(s) of the relevant Investor TopCo which is (or are) not the subject of a Sale Gain Share calculation pursuant to sub-paragraphs (i) and (ii) above shall continue to exist unamended; and
- (D) for the avoidance of doubt, the Economic Interests in NNB HoldCo represented in aggregate by all Investor TopCo Tranches shall always be equal to the aggregate of the actual Economic Interests in NNB HoldCo of all Investor TopCos;

“**IRR**” means the internal rate of return calculated as the annual discount rate which, when applied to a series of cash flows, produces a net present value equal to zero;

“**Issuing Entity**” has the meaning given to that term in Clause 35.7 (*Issues of new Economic Interests below Investor Super TopCos*);

“**IST Group Member**” has the meaning given to that term in the Contracting Policy;

“**Law**” means any Act of Parliament, any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, any enforceable EU right within the meaning of section 2 of the European Communities Act 1972, in each case in the United Kingdom, and (to the extent directly binding on and/or enforceable against private persons within the United Kingdom) any obligations arising from a Treaty to which the United Kingdom is a signatory;

“**LCIA**” means the London Court of International Arbitration;

“**Lead Investor**” means NNB Top Company HPC (B) Ltd or such other Investor Super TopCo as may be designated as Lead Investor in accordance with Clause 20.3 (*Appointment of Lead Investor*);

“**Legal Reservations**” means:

- (A) the principle that equitable remedies may be granted or refused at the discretion of a court;
- (B) the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors;
- (C) the time-barring of claims pursuant to applicable limitation laws;
- (D) defences of set-off or counterclaim; and
- (E) similar principles, rights and defences available at law;

“**Lender Shutdown Payment**” means, in respect of a Qualifying Exit Event, an amount equal to the Generator’s scheduled payments of principal, interest and fees (excluding, for this purpose, any break costs) in respect of all Financial Indebtedness owed by the Generator to Financing Parties not exceeding in the aggregate the Permitted Gearing Level which, but for the Qualifying Exit Event (on the basis that a Qualifying Exit Event in respect of one Reactor is treated as affecting both Reactors), would otherwise have been payable and paid (and have in fact not been paid) by the Generator on and from the date of the Qualifying Exit Event until the earlier of the end of the HPC CfD Term (or, if earlier, the date on which, taking into account the projected performance of the Facility set out in the most recent Financial Model, the HPC CfD would have expired by reason of the Contracted Generation Cap having reduced to zero) and the scheduled maturity of the relevant Financial Indebtedness, where such amount(s) shall be determined on the basis of the most recent Financial Model updated as at the time immediately prior to the occurrence of the Qualifying Exit Event and (if applicable) reduced for any payments of principal, interest or fees or any other cost or expense actually paid to the Financing Parties between the date of the Qualifying Exit Event and the Ownership Transfer Date;

“**Lender Shutdown Payment Statement**” has the meaning given to that term in Clause 18.1(G) (*Compensation to Financing Representative for debt holders*);

“**Licensed Distributor**” means a person who is authorised pursuant to a Distribution Licence to distribute electricity, acting in that capacity;

“Material Adverse Effect” means, in respect of any Party, a material adverse effect on the ability of that Party to perform or comply with its obligations under this Agreement or any other Transaction Document (other than those obligations that are immaterial);

“Metering Dispute” has the meaning given to that term in the HPC CfD;

“Money of the Year” means a currency amount in a particular year and expressed in the price base of that particular year;

“Moody’s” means Moody’s Investors Service, Inc., a Delaware corporation, and any successor thereto;

“MSA Counterparty” has the meaning given to that term in Clause 7.1 (*Trading Commitment*);

“NIA 1965” means the Nuclear Installations Act 1965;

“NNB HoldCo Designated Account” means the bank account in England designated by NNB HoldCo, with the prior written consent of the CfD Counterparty (not to be unreasonably withheld), to make and receive payments under and in accordance with Clause 9.4 (*Distributions*);

“NNB HoldCo Group” means each of NNB HoldCo, NNB FinCo and the Generator;

“Nominal Project IRR” means [REDACTED] calculated on the basis set out in the Model User Guide (as defined in the HPC CfD);

“Nominal Value” means a currency amount expressed in Money of the Year for the year in which the amount was incurred or saved or forecast to be incurred or saved, and **“Nominal”** and **“Nominal Terms”** shall be construed accordingly;

“Non-Expert Dispute” means any Dispute other than an Expert Dispute;

“Non-Government Parties” means all of the parties to this Agreement other than the Government Parties, and **“Non-Government Party”** shall be construed accordingly;

“Nuclear Site Licence” means the nuclear site licence (site licence no. 97) granted to the Generator pursuant to section 1 of the NIA 1965;

“Nuclear Transfer Scheme” means a nuclear transfer scheme (as defined in the Energy Act 2004) made under section 40 of that Act;

“Nuclear Transport” means those aspects of the civil transport of radioactive material in Great Britain by road, rail, inland water or sea within the territorial waters of Great Britain which are specific to the transport of radioactive material, with the transport of the radioactive material beginning with any preparatory process (such as packaging) and continuing until the radioactive material has been unloaded at its destination;

“ONR” means the Office for Nuclear Regulation established under the EA 2013;

“**Option Completion**” means the completion of the sale and purchase of the Option Shares pursuant to Clause 23 (*Option Completion*);

“**Option Completion Date**” means the date on which Option Completion occurs;

“**Option Exercise Notice**” means a Call Option Exercise Notice or a Put Option Exercise Notice, as applicable;

“**Option Shares**” means the entire issued share capital of the Generator;

“**Original Assumptions Book**” means the assumptions book in respect of the Financial Model delivered or to be delivered to the CfD Counterparty pursuant to paragraph 12 of part A (*Initial Conditions Precedent*) of schedule 1 (*Conditions Precedent*) to the HPC CfD;

“**Original Base Case Financial Model**” means the agreed, audited financial computer model in respect of the Project (version 33.17) delivered or to be delivered to the CfD Counterparty pursuant to paragraph 12 of part A (*Initial Conditions Precedent*) of schedule 1 (*Conditions Precedent*) to the HPC CfD and, where relevant, includes the Original Assumptions Book;

“**Other EPR Reactors**” means nuclear reactors, located in North America or an EU Member State, using the same or similar technology to the UK EPR Technology;

“**Ownership Transfer Date**” means the first to occur of:

- (A) the date that a Permitted Transfer Scheme, Nuclear Transfer Scheme or other Statutory Transfer Scheme, in each case in respect of the Generator, becomes effective;
- (B) the Option Completion Date; and
- (C) the date of transfer of the Option Shares under Clause 21(A)(ii) (*Transfer of Ownership following a Qualifying Effective Shutdown Event*);

“**Payment Disruption Event**” means a material disruption to those payment systems or to those financial markets which are, in each case, required to operate in order for payments or transfers of money to be made pursuant to this Agreement which the PDE Affected Party (or, if relevant, its Representatives) could not reasonably have overcome and which is not due to the PDE Affected Party’s fault or negligence (or that of its Representatives);

“**PDE Affected Party**” has the meaning given to that term in Clause 47.1 (*Relief due to Payment Disruption Event*);

“**PDE Obligations**” has the meaning given to that term in Clause 47.1 (*Relief due to Payment Disruption Event*);

“**Permitted Gearing Level**” has the meaning given to that term in the FAP as at the Agreement Date;

“Permitted Transfer Scheme” means a Nuclear Transfer Scheme under section 40 of the Energy Act 2004 or any other Statutory Transfer Scheme, in each case to which each Ultimate Investor, Investor, Investor Super TopCo and Investor TopCo, NNB HoldCo, NNB FinCo and the Generator has consented pursuant to Clause 14.3(A) (*Shareholder and Generator Consent*) or otherwise consented in writing;

“Positive QCiL Cessation Determination” has the meaning given to that term in Clause 16.2 (*Disputes in respect of a QCiL Cessation Event*);

“Positive QESE Determination” has the meaning given to that term in Clause 15.2 (*Disputes in respect of a Qualifying Effective Shutdown Event*);

“Post-Criticality Shutdown Event” means after either Reactor has reached First Criticality:

- (A) the Generator (or, if the Investors no longer Control the Generator, alternatively the Lead Investor), each acting honestly and diligently, has made a written declaration to the CfD Counterparty confirming that the Reactors (or the relevant one of them) have (or has) permanently ceased to generate electricity; and
- (B) the Generator has sought (and not withdrawn its application for) consent from any regulator with jurisdiction over the Generator and with respect to the Nuclear Site Licence to start a decommissioning project in respect of the Reactors (or the relevant one of them) unless the Generator is not under the Control of the Investors or Third Party Lenders in which event alternatively the Lead Investor has demonstrated to the reasonable satisfaction of the CfD Counterparty that if the Generator had been under the Control of Third Party Lenders, it would have been reasonable for the Generator to seek (and not withdraw its application for) such consent,

due to:

- (i) the imposition by a Shutdown Authority of a requirement that permanently prevents the Reactors or, as the case may be, the relevant one of them from nuclear generation or commencing nuclear generation; or
- (ii) where approval by a Shutdown Authority is required, the formal refusal by the appropriate Shutdown Authority of, the formal withholding of approval by such Shutdown Authority to, or the failure by such Shutdown Authority within a reasonable period to approve, the formal request by the Generator (which request must be made in compliance with all applicable requirements, statutory or otherwise) for consent to any restart of the Reactors or, as the case may be, the relevant one of them, in circumstances where, but for such refusal, withholding or failure, the Generator would have been available to generate electricity from the Reactors (or the relevant one of them) in compliance with all applicable laws;

“Pre-Criticality Shutdown Event” means before either Reactor has reached First Criticality a written declaration by the Generator (or, if the Investors no longer Control the Generator, alternatively by the Lead Investor), each acting honestly and diligently, to the CfD Counterparty that, due to the imposition of a requirement by a Shutdown Authority,

the Reactors or, as the case may be, the relevant one of them, have (or has) been permanently prevented from completing construction or commencing nuclear generation;

“Preliminary Equity IRR Report” means a written report satisfying the requirements of Clause 9.1(C) (*Preliminary Equity IRR Report*), which expression shall include each element of, and each computation contained or referred to in, such report and all Supporting Information referred to in Clauses 9.1(C) and 9.1(D) (*Preliminary Equity IRR Report*);

“Preliminary Sale IRR Report” means a written report satisfying the requirements of Clause 10.1(A) (*Preliminary Sale IRR Report*), which expression shall include each element of, and each computation contained or referred to in, such report and all Supporting Information referred to in Clause 10.1(A) (*Preliminary Sale IRR Report*);

“Present Value” means the value, as of any particular date, ‘t’, of a currency amount or any other amount, ‘AMT’, that is forecast to be incurred, paid or accrued on any other date (that is, relative to that particular date ‘t’), ‘T’ (with “t-T” expressed in years or fractions thereof), which shall be calculated in accordance with the following formula and using the Nominal Project IRR as the discount rate, ‘r’,

$$Present\ Value = \frac{AMT}{(1+r)^{t-T}}$$

any such discounting to be calculated from day to day on the basis of the actual number of days elapsed and a year of three hundred and sixty-five (365) days;

“Proceedings” means any proceeding, suit or action relating to or arising out of this Agreement or any Dispute;

“Project” means the design, development, engineering, construction, installation, completion, testing, commissioning, operation, maintenance, decommissioning and clean-up of the Facility and the Reactors and each of them;

“Project Cash Flow” means, in relation to any Investor TopCo and each Investor TopCo Tranche relating to such Investor TopCo, the cash flow in respect of each Project Gain Share Calculation Period, calculated in accordance with the following formula:

$$PCF = ACF + PACF - E - IC - PGSA$$

where:

PCF is the Project Cash Flow (expressed in pounds);

ACF is the aggregate of the amounts of Available Cash Flow or Deemed Available Cash Flow, Apportioned to such Investor TopCo Tranche and calculated as at the relevant Project Gain Share Calculation Date;

PACF is the aggregate of the amounts of Available Cash Flow or Deemed Available Cash Flow, Apportioned to such Investor TopCo Tranche as at each previous Project Gain Share Calculation Date;

E is the aggregate Apportioned (at the time of payment in the case of paragraph (i) below) to such Investor TopCo Tranche of:

- (i)
 - (a) the amount of equity injections made by such Investor TopCo on or after the date of incorporation of the Generator on 17 June 2009 in;
 - (b) the principal amount of all shareholder loans made by such Investor TopCo to; and
 - (c) the amount paid by such Investor TopCo in respect of any other Economic Interest in,

NNB HoldCo (other than any Investment Cost), in each case to the extent that the same amount is in fact contributed to the Generator for the purposes of funding Project costs (and not, for the avoidance of doubt, funding Distributions) and without double counting, and calculated as at the date of the relevant payment or advance, as applicable, to NNB HoldCo, with equity injections, shareholder loans and other Economic Interests made in or to NNB HoldCo prior to the Agreement Date (including by Investor TopCos) Apportioned to each such Investor TopCo Tranche at the Agreement Date (such that, for the purposes of this definition of Project Cash Flow, the amount of each equity injection and shareholder loan and the amount of each payment in respect of other Economic Interests made in or to NNB HoldCo in the period from and including 17 June 2009 to (and including) the Agreement Date shall be attributed as to thirty-three point five per cent. (33.5%) thereof to the Investor TopCo Tranche relating to Sagittarius International Limited and as to sixty-six point five per cent. (66.5%) thereof to the Investor TopCo Tranche relating to NNB Top Company HPC (A) Limited. For the avoidance of doubt, the consideration and other amounts actually paid or payable pursuant to the HPC Share Purchase Agreement shall be disregarded for the purposes of this definition);

- (ii) a fixed credit support cost equal to an annual rate of [REDACTED] per annum accruing on a daily basis on the amount of any undrawn equity commitments during the equity funding period, such commitments to be (a) in such amounts as is reasonable for the transaction and in no event to exceed in the aggregate [REDACTED] (b) contractually committed to be available to be drawn at the direction of the applicable Third Party Lender or Government Entity on terms that are comparable with those for any on-market UK project financing in the United Kingdom civil nuclear generation sector or, where there is no such market, on arm's length terms; and (c) credit supported (including by way of a parent company guarantee) at a level and in a manner no less than that required by commercial lenders under any on-market UK power project financing or, where there is no such market, on arm's length terms; and

- (iii) a fixed credit support cost equal to an annual rate of [REDACTED] per annum accruing on a daily basis on the amount standing to the credit of any reserve accounts maintained by any member of the NNB HoldCo Group, in each case, for the purposes of the Project to the extent that such reserve accounts are or would be required by Third Party Lenders or Government Entities to be maintained in such amounts under any on-market UK project financing in the United Kingdom civil nuclear generation sector or, where there is no such market, under an arm's length financing (but in any event with such amounts capped in the aggregate at the equivalent of twenty-four (24) months' debt service payments by the Generator to commercial lenders under such on-market UK project financing or, where there is no such market, under such arm's length financing):
- (a) to the extent not funded by cash unless that cash is provided directly by the Investors as collateral to an entity other than a member of the NNB HoldCo Group; and
 - (b) where such unfunded amount is in fact credit supported (including by way of a parent company guarantee) at a level and in a manner no less than that required by commercial lenders under any on-market UK power project financing or, where there is no such market, on arm's length terms, but only to the extent that the cost of such credit support is not itself funded by the Generator;

IC is the Investment Cost (if any) attributed to such Investor TopCo Tranche as at the date such Investor TopCo Tranche was created following a Relevant Sale, Apportioned where a portion of such Investor TopCo Tranche is the subject of a Sale Gain Share calculation, and calculated as at the date of completion of the Relevant Sale; and

PGSA is the Project Gain Share Amount under Clause 9.5 (*Project Gain Share with the CfD Counterparty*) already paid by NNB HoldCo, Apportioned to such Investor TopCo Tranche and calculated as at the date of such payment,

provided that for the purposes of determining whether the Second Equity IRR Real Threshold has been exceeded, the Real Project Cash Flow shall be used;

"Project Documents" means:

- (A) the Transaction Documents; and
- (B) the FDP Documents;

"Project Gain Share" means the determination of a Project Gain Share Amount in accordance with this Agreement;

“Project Gain Share Amount” means the amount paid or payable, as the case may be, to the CfD Counterparty as a result of the operation of Clause 9.5 (*Project Gain Share with the CfD Counterparty*);

“Project Gain Share Calculation Date” means:

- (A) in relation to the Project Gain Share Preliminary Period, 31 December of each year (beginning on 31 December 2016) ending in such period and/or such other date or dates in that year as the CfD Counterparty may (acting reasonably) agree in writing with NNB HoldCo; and
- (B) in relation to the Project Gain Share Secondary Period:
 - (i) 30 June of each year falling within such period;
 - (ii) 31 December of each year falling within such period; and/or
 - (iii) such other date or dates in that year as the CfD Counterparty may (acting reasonably) agree in writing with NNB HoldCo;

“Project Gain Share Calculation Period” means, in respect of any Project Gain Share Calculation Date and an Investor TopCo Tranche, each period from (and including) 17 June 2009 or, if later, the date of completion of the previous Relevant Sale (if any) in respect of that Investor TopCo Tranche, to (and including) such Project Gain Share Calculation Date;

“Project Gain Share Due Date” means, in respect of any Project Gain Share Calculation Period, the date falling ten (10) Business Days after the date of agreement or determination of the Equity IRR Report for the relevant Project Gain Share Calculation Period or, if Clause 9.1(B) (*Preliminary Equity IRR Report*) applies, ten (10) Business Days after the date of the independent expert’s opinion;

“Project Gain Share Payment Deadline” has the meaning given to that term in Clause 11.2(A) (*Enforcement Mechanism for Project Gain Share Provisions*);

“Project Gain Share Preliminary Period” means the period from (and including) the Agreement Date to (and including) the first to occur of the Reactor One Start Date and the date on which the Generator makes its first Distribution;

“Project Gain Share Secondary Period” means the period from (but excluding) the last day of the Project Gain Share Preliminary Period to (and including) the date falling on the second (2nd) anniversary of the Equity Gain Share Term End Date;

“Protective Provisions” means the provisions set out at Annex 8 (*Protective Provisions*);

“Purchase Price” means one pound (£1);

“Put Option” has the meaning given to that term in Clause 22.2(A) (*Put Option*);

“Put Option Exercise Notice” means a notice in writing substantially in the form set out at Annex 7 (*Form of Option Exercise Notice*) in relation to the exercise of the Put Option and given in accordance with Clause 22.2 (*Put Option*) during the Put Option Exercise Period;

“Put Option Exercise Period” means:

- (A) in the case of a Qualifying Effective Shutdown Event, the period commencing on the expiry of the period referred to in Clause 21(A)(ii) (*Transfer of Ownership following a Qualifying Effective Shutdown Event*) and ending on (and including) the date falling three (3) months thereafter; or
- (B) in the case of a QCiL Cessation Event, the period commencing on the day immediately following the last day of the Call Option Exercise Period and ending on (and including) the date falling three (3) months thereafter;

“QCiL Cessation Event” means:

- (A) that there has been a Qualifying Change in Law (not being a Qualifying Effective Shutdown Event):
 - (i) with which it is not technologically feasible (even if the Generator were to do those acts, matters and things that the Generator should do, acting in accordance with the Reasonable and Prudent Standard) for the Facility to comply, as agreed in writing between the CfD Counterparty and the Lead Investor or the Generator or, in default of agreement, as determined by an Expert in accordance with the Expert Determination Procedure; or
 - (ii) with which it is technologically feasible for the Facility to comply:
 - (a) were the Generator to do those acts, matters and things that the Generator should do, acting in accordance with the Reasonable and Prudent Standard;
 - (b) where, if the Generator were to do those acts, matters and things that the Generator should do, acting in accordance with the Reasonable and Prudent Standard, the cost of compliance would be in excess of the aggregate amount of Investor Shutdown Payments and Lender Shutdown Payments that the CfD Counterparty and the Lead Investor agree (or, in default of agreement, which an Expert determines in accordance with the Expert Determination Procedure) is a reasonable estimate of the amount that would be payable were a Qualifying Effective Shutdown Event to have occurred at the time, and instead, of the relevant Qualifying Change in Law; and
 - (c) where the CfD Counterparty does not publish the amount of any compensation to the Generator for such costs of compliance, such compensation being as agreed or determined in accordance with the HPC CfD,

and which, in any such case, permanently prevents:

- (1) the completion of construction of one or both Reactors;
 - (2) the commencement of the operation of and nuclear generation from one or both Reactors; or
 - (3) the continued operation of, and nuclear generation from, one or both Reactors; or
- (B) that the CfD Counterparty has given the Generator a QCiL Compensation Termination Notice;

“QCiL Cessation Event Notice” means a written notice from the Lead Investor or the Generator to the CfD Counterparty which satisfies the requirements of Clauses 16.1(A) and 16.1(B) (*QCiL Cessation Event Notice*), which expression shall include each element of, and each computation contained or referred to in, such notice and all Supporting Information referred to in Clause 16.1(B)(iv) (*QCiL Cessation Event Notice*);

“QCiL Compensation” has the meaning given to that term in the HPC CfD;

“QCiL Compensation Termination Notice” means a written notice:

- (A) from the CfD Counterparty to the Generator terminating the HPC CfD in its entirety in accordance with clause 30.1(D) (*QCiL Compensation*) of the HPC CfD; and
- (B) which satisfies the requirements of clause 57.4(B) (*QCiL Compensation termination*) of the HPC CfD;

“QCiL Construction Event Payment” means an amount calculated as:

- (A) the latest estimate of the post-tax pre-financing nominal operating period cash flows for the remaining HPC CfD Term as set out in the Original Base Case Financial Model:
 - (i) adjusted for the projected performance of the Facility or one or both Reactors, as applicable, for the remaining HPC CfD Term taking into account their or its actual performance to the date of the calculation or, where there is insufficient data to form a reasonable judgment on the performance of the relevant Reactor(s), the actual performance of Other EPR Reactors; and
 - (ii) calculated on the basis that:
 - (a) the QCiL Cessation Event had not occurred; and
 - (b) the total amount of generation from the Facility is capped at the remaining Contracted Generation Cap,

less:

- (B) the latest estimate of all costs to complete the Project; and
- (C) the amount of any outstanding debt in respect of the Project as at the date of the relevant QCiL Cessation Event,

with each of the amounts in paragraphs (A) and (B) above Discounted to Present Value as at the date of the relevant QCiL Cessation Event using the Nominal Project IRR as the discount rate, and any QCiL Construction Event Payment shall be calculated as agreed between NNB HoldCo and the CfD Counterparty or, in default of agreement, as determined by an Expert in accordance with the Expert Determination Procedure;

“QESE Construction Event Payment” means an amount calculated as:

- (A) the latest estimate of the post-tax pre-financing nominal operating period cash flows for the remaining HPC CfD Term as set out in the Original Base Case Financial Model:
 - (i) adjusted for the projected performance of the Facility or one or both Reactors, as applicable, for the remaining HPC CfD Term taking into account their or its actual performance to the date of the calculation or, where there is insufficient data to form a reasonable judgment on the performance of the relevant Reactor(s), the actual performance of Other EPR Reactors; and
 - (ii) calculated on the basis that:
 - (a) the Qualifying Effective Shutdown Event had not occurred; and
 - (b) the total amount of generation from the Facility is capped at the remaining Contracted Generation Cap,

less:

- (B) the latest estimate of all costs to complete the Project; and
- (C) the amount of any outstanding debt in respect of the Project as at the date of the relevant Qualifying Effective Shutdown Event,

with each of the amounts in paragraphs (A) and (B) above Discounted to Present Value as at the date of the relevant Qualifying Effective Shutdown Event using the Nominal Project IRR as the discount rate, and any QESE Construction Event Payment shall be calculated as agreed between NNB HoldCo and the CfD Counterparty or, in default of agreement, as determined by an Expert in accordance with the Expert Determination Procedure;

“Qualifying Change in Law” has the meaning given to that term in the HPC CfD;

“Qualifying Economic Interest” means an Economic Interest in any person:

- (A) which directly or indirectly has an Economic Interest in NNB HoldCo or the Generator; and
- (B) of which the Valuation Percentage is no less than [REDACTED]

and, without prejudice to the generality of the foregoing, any directly held Economic Interest in the Generator, NNB HoldCo or an Investor TopCo shall be a Qualifying Economic Interest, and provided always that:

- (i) Economic Interests in a publicly listed person which have been offered to the market and which are publicly traded on a recognised UK securities exchange; and
- (ii) Economic Interests held directly or indirectly by a person who directly or indirectly participates in, but does not have day-to-day control over the management of, any collective or pooled investment scheme, but only to the extent that such holding arises as a result of such person's direct or indirect participation in the collective or pooled investment scheme,

shall not constitute Qualifying Economic Interests and, for the purpose of this definition, “collective or pooled investment scheme” means an arrangement:

- (a) with respect to property of any description (but including Economic Interests in NNB HoldCo), the purpose of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income;
- (b) which has the following characteristics:
 - (I) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; and
 - (II) the property is managed as a whole by or on behalf of the operator of the scheme who shall be a professional fund manager contracted on arm's length terms and provided that the Economic Interests in NNB HoldCo which are pooled and managed by such professional fund manager do not constitute a material part of such manager's business; and
- (c) which is operated by way of business;

“Qualifying Effective Shutdown Event” means:

- (A) a Shutdown Event where (in the case of a Pre-Criticality Shutdown Event) the relevant imposition or (in the case of a Post-Criticality Shutdown Event) the relevant imposition, refusal or failure (in each case, referred to in the definitions of those terms) is due to:

- (i) a Government Authority (a) applying, implementing or changing the Law which is in force from time to time; (b) applying or exercising its powers in that way; or (c) applying, implementing and/or changing policy or guidance which has effect from time to time; or
- (ii) a UK Competent Authority (not being a Government Authority) being obliged to exercise its powers in that way by reason of a direction or instruction by a Government Authority; or
- (iii) a UK Competent Authority (not being a Government Authority) exercising its powers in that way where in such exercise the UK Competent Authority has not acted independently of a Government Authority; and for this purpose a UK Competent Authority shall be deemed to have acted independently of a Government Authority unless the exercise of powers in that way was procured or encouraged by the Government Authority; or
- (iv) a Competent Authority falling within paragraph (A) of the definition of that term in this Clause 1.1 (not being a Government Authority or a UK Competent Authority) with jurisdiction over the Facility and the Generator exercising its powers in that way; or

(B) an Insurance Shutdown Event,

provided that, in the case of paragraph (A) above, it shall not be a Qualifying Effective Shutdown Event if the event was for a material reason:

- (i) of health, nuclear safety, security, environment, Nuclear Transport, damage to property or nuclear safeguards (in this definition, the “**Relevant Matters**”) directly or necessarily affecting:
 - (a) the Facility or the generation of electricity therefrom;
 - (b) the Reactors (or either of them) or the generation of electricity therefrom;
 - (c) the Generator;
 - (d) the Site;
 - (e) the management of any of (a) to (d) above; or
 - (f) the generation of electricity using nuclear fission reactors (whether in the United Kingdom or elsewhere) but only to the extent that the Relevant Matters in that case also apply to one or more of the subjects referred to in (a) to (e) above,

where at the time of the relevant event it was objectively justifiable by reference to an identified change in the circumstances as they related or applied to the relevant one(s) of (a) to (f) above (and, for the avoidance of doubt, for this purpose the Parties agree that it will not be argued that a nuclear health, nuclear safety,

nuclear security or radiological environmental issue identified by a Competent Authority at a facility using UK EPR Technology is excluded from consideration):

- (1) in the case of a Pre-Criticality Shutdown Event, to prevent the completion of construction or commencement of operations of the Reactors or, as the case may be, the relevant Reactor; or
 - (2) in the case of a Post-Criticality Shutdown Event, to prevent the operation or commencement of operations, or refuse to or withhold consent to any restart, of the Reactors or, as the case may be, the relevant Reactor; or
- (ii) due to the negligence, breach or fault of, or a failure to act in accordance with the Reasonable and Prudent Standard by, the Generator where at the time of the Shutdown Event it was objectively justifiable in the circumstances:
- (a) in the case of a Pre-Criticality Shutdown Event, to prevent the completion of construction or commencement of operations of the Reactors or, as the case may be, the relevant Reactor; or
 - (b) in the case of a Post-Criticality Shutdown Event, to prevent the operation or commencement of operations, or refuse to or withhold consent to any restart, of the Reactors or, as the case may be, the relevant Reactor,

and provided further that, in the case of each of paragraphs (A) and (B) above, it shall not be a Qualifying Effective Shutdown Event if the event was for a material reason relating to any negotiation of or compliance with the State aid approval decision in relation to the Approved Arrangements or any annulment, invalidation, revocation, modification, suspension or replacement of such a State aid approval decision by the European Commission or other Competent Authority;

“Qualifying Effective Shutdown Event Notice” means a written notice from the Lead Investor or the Generator to the CfD Counterparty which satisfies the requirements of Clauses 15.1(A) and 15.1(B) (*Qualifying Effective Shutdown Event Notice*), which expression shall include each element of, and each computation contained or referred to in, such notice and all Supporting Information referred to in Clause 15.1(B)(iv) (*Qualifying Effective Shutdown Event Notice*);

“Qualifying Exit Event” means:

- (A) a QCiL Cessation Event; or
- (B) a Qualifying Effective Shutdown Event,

as applicable;

“Qualifying Exit Event Compensation” means:

- (A) Final Investor Shutdown Payment(s); or
- (B) a Lender Shutdown Payment,

as applicable;

“Reactor” means any or, as the context requires or admits, a particular nuclear reactor (as defined in the NIA 1965) at the Site and **“Reactors”** shall be construed accordingly;

“Reactor One Start Date” has the meaning given to that term in the HPC CfD;

“Real” means a currency amount that has been adjusted from a Nominal Value to remove the effects of inflation, thus expressed in prices at any one particular day, being the Real Reference Date. For the avoidance of doubt, this is irrespective of the date at which the amount was incurred or saved, or forecast to be incurred or saved and **“Real Terms”** shall be construed accordingly;

“Real Project Cash Flow” means the Project Cash Flow deflated to Base Year terms by multiplying the cash flow on any given day by the Base Year CPI and dividing by the value of the CPI for the month in which the cash flow was received or paid (or if that latter CPI is not available, the Reference CPI) and in each case, for the avoidance of doubt, taking into account any rebasing of the relevant index;

“Real Reference Date” means the date in whose prices a Real currency amount is expressed, irrespective of the date or year in which the amount was incurred or saved, or forecast to be incurred or saved;

“Real Sale Cash Flow” means the Sale Cash Flow deflated to Base Year terms by multiplying the cash flow on any given day by the Base Year CPI and dividing by the value of the CPI for the month in which the cash flow was received or paid (or if that latter CPI is not available, the Reference CPI) and in each case, for the avoidance of doubt, taking into account any rebasing of the relevant index;

“Reasonable and Prudent Standard” means the standard of a person seeking honestly and diligently to comply with its contractual obligations and, in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person complying with all applicable Laws, Directives, Industry Documents and Required Authorisations and engaged in the same type of undertaking under the same or similar circumstances and conditions, including taking account of nuclear safety procedures and relevant guidance;

“Reconciliation Payments” has the meaning given to that term in Clause 5(G) (*State Aid Suspension*);

“Reference CPI” means the most recently published CPI as at the date to or as at which the relevant reference to CPI refers;

“Related Party Discount Amount” means, in respect of a Related Party Transaction, the sum (expressed in pounds) of:

- (A) any Discount Amount (as determined by an Auditor as defined in, and in accordance with, the Contracting Policy); and

- (B) any Daily Discount Amount (as determined by an Auditor as defined in, and in accordance with, the Contracting Policy) calculated from the determination of the relevant breach or failure until such time as Corrective Action (as defined in the Contracting Policy) has been successfully taken and completed with respect to the relevant breach or failure;

“**Related Party Transaction**” has the meaning given to that term in the Contracting Policy;

“**Relevant Authority**” means a Government Authority or a UK Competent Authority, as the context requires;

“**Relevant Sale**” means, unless otherwise agreed in writing by the CfD Counterparty:

- (A) a sale, assignment, novation, transfer or other disposal of;
- (B) the enforcement of any pledge, charge, mortgage, lien or other security interest or encumbrance on or over;
- (C) creating any trust or conferring any interest in, over or in respect of;
- (D) any agreement, arrangement or understanding in respect of votes or the right to receive dividends in respect of;
- (E) the renunciation or assignment of any right to subscribe or receive share(s) or any legal or beneficial interest in share(s) in respect of;
- (F) any agreement or arrangement to do, or having substantially the same effect as, any of the above in respect of; or
- (G) transmission by operation of law of,

any Qualifying Economic Interest provided that neither (i) the sale by EDF Energy Holdings to Sagittarius International Limited of a thirty-three point five per cent. (33.5%) interest in NNB HoldCo pursuant to the HPC Share Purchase Agreement, nor (ii) the transfer of any Qualifying Economic Interest which is strictly necessary to enable the confirmation referred to in paragraph 5 of Part 1 (*Agreement Date Conditions Precedent*) of Annex 1 (*Conditions Precedent*) to be given, shall constitute a Relevant Sale;

“**Representatives**” means:

- (A) in respect of the CfD Counterparty:
 - (i) its directors, officials, officers, employees, agents, consultants and advisers; and
 - (ii) the CfD Settlement Services Provider and its directors, officers, employees, agents, consultants and advisers who are engaged in connection with the Project and acting in that capacity;

- (B) in respect of the Generator:
- (i) its directors, officers, employees or secondees;
 - (ii) any of its Contractors, agents, consultants and advisers who are engaged in connection with the Project and acting in that capacity; and
 - (iii) the directors, officers, employees, agents, consultants and advisers of any of its Contractors who are engaged in connection with the Project and acting in that capacity;
- (C) in respect of the Secretary of State or any Government Entity (other than the CfD Counterparty), its directors, officials, officers, employees, agents, consultants and advisers who are engaged in connection with the Project and acting in that capacity; or
- (D) in respect of any other person (including NNB HoldCo, NNB FinCo, EDF Energy, each Ultimate Investor, each Investor, each Investor Super TopCo, each Investor TopCo and the Financing Representative), its directors, officers, officials, employees, agents, consultants and advisers;

“Request for Information” means:

- (A) a request for information (as such term is defined in section 8 of the FoIA);
- (B) a request that environmental information (as such term is defined in the EIR) be made available pursuant to the EIR; or
- (C) any apparent request for information under the FoIA or the EIR;

“Required Authorisation” means, in relation to the Generator, each authorisation, licence, accreditation, permit, consent, certificate, resolution, clearance, exemption, order, confirmation, permission or other approval of or from any Competent Authority required at the relevant time to enable the Generator:

- (A) to perform and comply with its obligations under this Agreement and the other Transaction Documents to which it is a party; and
- (B) to design, develop, construct, install, complete, test, commission, operate, maintain and decommission the Facility or the Reactors or either of them;

“Required Insured Amount” means the maximum amount of funds in respect of which provision is required to be made by the Generator as licensee of the Site by section 19(1) of the NIA 1965 (and which amount is referred to in that section as “the required amount”) in respect of any, or each severally, of the cover periods mentioned in section 19(1)(a), (b) and (c) of the NIA 1965;

“Resource Co” means the company which may be established by, or at the direction of, EDF SA, to enable the sharing of resources between the Generator and other developers of UK EPR Technology;

“Respondent(s)” has the meaning given to that term in Clause 30.1(C) (*Expert Determination Procedure – General*);

“Response Submission” has the meaning given to that term in Clause 30.1(F)(iii) (*Expert Determination Procedure – General*);

“Responsible Designer Contract” has the meaning given to that term in the Contracting Policy;

“Responsible Investor Super TopCo” means, as applicable, in relation to a Relevant Sale:

- (A) the Investor Super TopCo through which a person holds;
- (B) the Investor Super TopCo that holds; or
- (C) the Investor Super TopCo of the Investor TopCo that holds,

the relevant Qualifying Economic Interest which is the subject of the Relevant Sale, provided that, if no Responsible Investor Super TopCo can be identified with respect to the Qualifying Economic Interest which is the subject of the Relevant Sale:

- (i) the Investor Super TopCo with whom the relevant Qualifying Economic Interest was last identified shall be the “Responsible Investor Super TopCo” for the purposes of this Agreement and the relevant Security Document; or
- (ii) if no such Investor Super TopCo can be identified, the “Responsible Investor Super TopCo” for the purposes of this Agreement and the relevant Security Document shall be that Investor Super TopCo that the CfD Counterparty considers, acting reasonably and on the basis of information available to it, to satisfy paragraph (A), (B) or (C) above;

“Sale Cash Flow” means, in relation to any Investor TopCo and each Investor TopCo Tranche relating to such Investor TopCo or any portion thereof which is subject to a Sale Gain Share calculation, the cash flow in respect of each Sale IRR Calculation Period, calculated in accordance with the following formula:

$$SCF = ACF + PACF + DP - E - IC - PGSA$$

where:

SCF is the Sale Cash Flow (expressed in pounds);

ACF is the aggregate of the amounts of Available Cash Flow and Deemed Available Cash Flow, Apportioned to such Investor TopCo Tranche or portion thereof and calculated as at the Project Gain Share Calculation Date immediately preceding the date of completion of the Relevant Sale;

PACF is the aggregate of the amounts of Available Cash Flow or Deemed Available Cash Flow, Apportioned to such Investor TopCo Tranche as at each previous Project Gain Share Calculation Date;

DP is the Divestment Proceeds attributed to such Investor TopCo Tranche or portion thereof pro rata to the Investor TopCo Tranches which are the subject of the Relevant Sale;

E is the aggregate Apportioned (at the time of payment in the case of paragraph (i) below) to such Investor TopCo Tranche or portion thereof of:

- (i)
 - (a) the amount of equity injections made by such Investor TopCo on or after the date of incorporation of the Generator on 17 June 2009 in;
 - (b) the principal amount of all shareholder loans made by such Investor TopCo to; and
 - (c) the amount paid by such Investor TopCo in respect of any other Economic Interest in,

NNB HoldCo (other than any Investment Cost), in each case to the extent that the same amount is in fact contributed to the Generator for the purposes of funding Project costs (and not, for the avoidance of doubt, funding Distributions) and without double counting, and calculated as at the date of the relevant payment or advance, as applicable, to NNB HoldCo, with equity injections, shareholder loans and other Economic Interests made in or to NNB HoldCo prior to the Agreement Date (including by Investor TopCos) Apportioned to each such Investor TopCo Tranche at the Agreement Date (such that, for the purposes of this definition of Sale Cash Flow, the amount of each equity injection and shareholder loan and the amount of each payment in respect of other Economic Interests made in or to NNB HoldCo in the period from and including 17 June 2009 to (and including) the Agreement Date shall be attributed as to thirty-three point five per cent. (33.5%) thereof to the Investor TopCo Tranche relating to Sagittarius International Limited and as to sixty-six point five per cent. (66.5%) thereof to the Investor TopCo Tranche relating to NNB Top Company HPC (A) Limited. For the avoidance of doubt, the consideration and other amounts actually paid or payable pursuant to the HPC Share Purchase Agreement shall be disregarded for the purposes of this definition);

- (ii) a fixed credit support cost equal to an annual rate of [REDACTED] per annum accruing on a daily basis on the amount of any undrawn equity commitments during the equity funding period, such commitments to be (a) in such amounts as is reasonable for the transaction and in no event to exceed in the aggregate [REDACTED] (b) contractually committed to be available to be drawn at the direction of the applicable Third Party Lender or Government Entity on terms that are comparable with those for any on-

market UK project financing in the United Kingdom civil nuclear generation sector or, where there is no such market, on arm's length terms; and (c) credit supported (including by way of a parent company guarantee) at a level and in a manner no less than that required by commercial lenders under any on-market UK power project financing or, where there is no such market, on arm's length terms; and

- (iii) a fixed credit support cost equal to an annual rate of [REDACTED] per annum accruing on a daily basis on the amount standing to the credit of any reserve accounts maintained by any member of the NNB HoldCo Group, in each case, for the purposes of the Project to the extent that such reserve accounts are or would be required by Third Party Lenders or Government Entities to be maintained in such amounts under any on-market UK project financing in the United Kingdom civil nuclear generation sector or, where there is no such market, under an arm's length financing (but in any event with such amounts capped in the aggregate at the equivalent of twenty-four (24) months' debt service payments by the Generator to commercial lenders under such on-market UK project financing or, where there is no such market, under such arm's length financing):
- (a) to the extent not funded by cash unless that cash is provided directly by the Investors as collateral to an entity other than a member of the NNB HoldCo Group; and
 - (b) where such unfunded amount is in fact credit supported (including by way of a parent company guarantee) at a level and in a manner no less than that required by commercial lenders under any on-market UK power project financing or, where there is no such market, on arm's length terms, but only to the extent that the cost of such credit support is not itself funded by the Generator;

IC is the Investment Cost (if any) attributed to such Investor TopCo Tranche as at the date such Investor TopCo Tranche was created following a Relevant Sale, Apportioned where a portion of such Investor TopCo Tranche is the subject of a Sale Gain Share calculation and calculated as at the date of completion of the Relevant Sale; and

PGSA is the Project Gain Share Amount under Clause 9.5 (*Project Gain Share with the CfD Counterparty*) already paid by NNB HoldCo and Apportioned to such Investor TopCo Tranche,

provided that for the purposes of determining whether the Second Equity IRR Real Threshold has been exceeded, the Real Sale Cash Flow shall be used;

"Sale Gain Share" means the determination of a Sale Gain Share Amount in accordance with this Agreement;

“Sale Gain Share Amount” means the amount paid or payable, as the case may be, to the CfD Counterparty as a result of the operation of Clause 10.4 (*Sale Gain Share with the CfD Counterparty*);

“Sale Gain Share Due Date” has the meaning given to that term in Clause 10.4(A) (*Sale Gain Share with the CfD Counterparty*);

“Sale Gain Share Payment Deadline” has the meaning given to that term in Clause 11.3(A) (*Enforcement Mechanism for Sale Gain Share Provisions*);

“Sale IRR” means the IRR calculated for each Investor TopCo Tranche, or portion thereof which is subject to a Sale Gain Share calculation, comprising the Qualifying Economic Interests which are the subject of a Relevant Sale (in this definition, the **“Relevant Investor TopCo Tranche”**) in relation to the Sale IRR Calculation Period for such Relevant Sale and:

- (A) for the purposes of comparing against the First Equity IRR Threshold, calculated using the Sale Cash Flows attributable to the Relevant Investor TopCo Tranche(s) in relation to such Sale IRR Calculation Period, which thereby presents a Nominal IRR;
- (B) for the purposes of comparing against the Second Equity IRR Nominal Threshold, calculated using the Sale Cash Flows attributable to the Relevant Investor TopCo Tranche(s) in relation to such Sale IRR Calculation Period, which thereby presents a Nominal IRR; and
- (C) for the purposes of comparing against the Second Equity IRR Real Threshold, calculated using the Real Sale Cash Flows attributable to the Relevant Investor TopCo Tranche(s) in relation to such Sale IRR Calculation Period, which thereby presents a Real IRR;

“Sale IRR Calculation Period” means, in respect of any Relevant Sale, the period from (and including) 17 June 2009 or, if later, the date of completion of the previous Relevant Sale (if any) in respect of the relevant Investor TopCo Tranche, to (and including) the date of completion of such Relevant Sale;

“Sale IRR Report” has the meaning given to that term in Clause 10.3 (*Sale IRR Report*);

“Second Equity IRR Nominal Threshold” means thirteen point five per cent. (13.5%) (where the Equity IRR is expressed in Nominal Terms);

“Second Equity IRR Real Threshold” means eleven point five per cent. (11.5%) (where the Equity IRR is expressed in Real Terms);

“Second Equity IRR Thresholds” means:

- (A) the Second Equity IRR Nominal Threshold; and
- (B) the Second Equity IRR Real Threshold;

“Second Threshold Excess Sale Proceeds (First Threshold Difference)” means, in respect of a Relevant Sale, an amount (expressed in pounds) equal to:

- (A) the least amount of Divestment Proceeds (Apportioned as necessary) which would have needed to have been realised in respect of such Relevant Sale for the result of those proceeds to be a Sale IRR that would have been equal to one of the Second Equity IRR Nominal Threshold and the Second Equity IRR Real Threshold and greater than the other,

less

- (B) the Divestment Proceeds (Apportioned as necessary) which would have been realised in respect of such Relevant Sale had those proceeds resulted in a Sale IRR equal to the First Equity IRR Threshold,

provided that the Second Threshold Excess Sale Proceeds (First Threshold Difference) shall not be less than zero;

“Second Threshold Excess Sale Proceeds (Second Threshold Difference)” means, in respect of a Relevant Sale, an amount (expressed in pounds) equal to:

- (A) the Divestment Proceeds (Apportioned as necessary) in respect of such Relevant Sale,

less

- (B) the least amount of Divestment Proceeds (Apportioned as necessary) which would have needed to have been realised in respect of such Relevant Sale for the result of those proceeds, after deducting for the purposes of this calculation any Gain Share Amount that would be payable under Clause 10.4 (*Sale Gain Share with the CfD Counterparty*) in relation to the First Threshold Excess Sale Proceeds, to be a Sale IRR that would have been equal to one of the Second Equity IRR Nominal Threshold and the Second Equity IRR Real Threshold and greater than the other,

provided that the Second Threshold Excess Sale Proceeds (Second Threshold Difference) shall not be less than zero;

“Second Threshold Project IRR Amount” means, in respect of any Project Gain Share Calculation Period:

- (A) the aggregate amount of Available Cash Flow or Deemed Available Cash Flow Apportioned to each Investor TopCo Tranche,

less

- (B) the least such amount thereof as would have resulted, after deducting for the purposes of this calculation any Gain Share Amount that would be payable under Clause 9.5 (*Project Gain Share with the CfD Counterparty*) in relation to the First Threshold Project IRR Amount, in the Equity IRR being equal to one of the

Second Equity IRR Nominal Threshold and the Second Equity IRR Real Threshold and greater than the other,

provided that the Second Threshold Project IRR Amount shall not be less than zero;

“Secretary of State Confidential Information” means:

- (A) all Information which is confidential or proprietary in nature and which relates (directly or indirectly) to the Secretary of State or a Government Entity (including any such Information relating to the policy of Her Majesty’s Government of the United Kingdom with respect to matters pertinent to FiT Contracts for Difference, this Agreement or any other Transaction Document) which any member of an Investor Group or any IST Group Member (or their respective Representatives) receives or has received from the Secretary of State (or its Representatives) or from any third party who receives or has received such Information from the Secretary of State (or its Representatives) in respect of this Agreement or any other Transaction Document (including any Information which any member of an Investor Group or any IST Group Member prepares which contains or makes explicit reference to such Information or from which such Information is readily ascertainable);
- (B) without prejudice to the generality of paragraph (A) above, all Information relating to any Qualifying Exit Event Compensation, including all Information relating to or arising from negotiations, discussions and correspondence in connection with any such Qualifying Exit Event Compensation; and
- (C) all Information which relates to or arises from negotiations, discussions and correspondence in connection with this Agreement or any other Transaction Document,

but excluding in each case all Excluded Information;

“Secretary of State Permitted Purposes” means:

- (A) complying with the Secretary of State’s responsibilities and obligations, and exercising the Secretary of State’s rights, powers and discretions, under or for the purposes of this Agreement or any other Transaction Document in relation to the Project (including the making of any Statutory Transfer Scheme or the sale and purchase of the Option Shares);
- (B) complying with the Secretary of State’s responsibilities and obligations under or by virtue of the EA 2013, any other Law, or any Euratom law, or any Directive, or published official policies or published official guidance issued in respect of any thereof; and
- (C) except in the case of Sensitive Nuclear Information and subject to Clause 31.2 (*Generator Confidential Information and Investor Confidential Information: Obligations of the Government Parties*), reporting in the context of Her Majesty’s Government’s energy and climate change policy on a confidential and strict need-to-know basis to any Government Entity (including, for the avoidance of doubt,

Ofgem) and/or the Delivery Body on the establishment, administration, performance or operation of, or compliance or non-compliance with, the obligations and arrangements contemplated by or provided for in this Agreement or any other Transaction Document;

“Section 46 Agreement” means the agreement entered into or to be entered into between the Generator, the FDP Implementation Company and the Secretary of State in accordance with section 46(3A) of the EA 2008;

“Secured Sums” means:

- (A) with respect to each Investor Super TopCo, each amount agreed or determined as due to the CfD Counterparty under Clause 9.5 (*Project Gain Share with the CfD Counterparty*); and
- (B) with respect to the Responsible Investor Super TopCo, each amount agreed or determined as due to the CfD Counterparty pursuant to Clause 10.4 (*Sale Gain Share with the CfD Counterparty*);

“Security Document” means a first-ranking, fixed and floating charge substantially in the form set out at Annex 11 (*Form of Security Document*) or in such other form as the CfD Counterparty may approve in writing;

“Security Interest” means any mortgage, charge, pledge, lien, option, restriction, right of first refusal, right of pre-emption, third party right or interest, other encumbrance or security interest of any kind, and any other type of preferential arrangement (including title transfer and retention arrangements) having a similar effect;

“Selling Shareholder” means, in relation to a Relevant Sale, the seller of the relevant Qualifying Economic Interest which is the subject of the Relevant Sale and, in respect of rights, obligations and liabilities of a Selling Shareholder under this Agreement, only to the extent that such seller is party to this Agreement;

“Sensitive Nuclear Information” means:

- (A) information relating to, or capable of use in connection with, the enrichment of uranium; or
- (B) information relating to activities carried out on or in relation to nuclear sites or other nuclear premises which appears to the Secretary of State to be information which needs to be protected in the interests of national security and which the Secretary of State has notified the Generator is sensitive nuclear information,

and in each case where the information has been clearly and correctly marked as sensitive nuclear information by the Generator;

“Service Document” means a claim form, application notice, order, judgment or other document relating to any Proceedings;

“Shareholder Group” has the meaning given to that term in the Contracting Policy;

“Shutdown Arrangements Term” has the meaning given to that term in Clause 3(C) (*Duration*);

“Shutdown Authority” means:

- (A) a Relevant Authority; or
- (B) any international, national, federal, regional, state, local, European Union, Euratom or other court, arbitral tribunal, administrative agency or commission or other governmental, administrative or regulatory body, authority, agency or instrumentality (not being a Government Authority or a UK Competent Authority) with jurisdiction over the Facility and the Generator,

but, for the avoidance of doubt, shall not include the Commissioners of Her Majesty’s Treasury in its capacity as guarantor under any guarantee issued by the Commissioners of Her Majesty’s Treasury in respect of the provision of Financial Indebtedness to a member of the NNB HoldCo Group in respect and for the purposes of the Project;

“Shutdown Event” means:

- (A) a Pre-Criticality Shutdown Event; or
- (B) a Post-Criticality Shutdown Event;

“Side Letter Parties” means the Secretary of State, the CfD Counterparty, the Generator and the Lead Investor (for itself and for the benefit of those named as beneficiaries in the State Aid Side Letter and such other Investor(s) as the CfD Counterparty agrees, acting reasonably), as the case may be;

“Single Purpose Company” means that the Generator’s business is limited to:

- (A) its Wind Farm Activities (as defined in the HPC CfD);
- (B) the holding of a “Non-Voting Operator Share” (as defined in the FAP);
- (C) the Project;
- (D) the holding of shares in Resource Co, if the CfD Counterparty consents in writing to the holding of shares in Resource Co;
- (E) providing services under the Intra-Project Services Agreement (as defined in the HPC CfD); and
- (F) activities associated with any or all of the foregoing or reasonably incidental or preparatory thereto, including under any Transaction Documents or Finance Documents to which it is a party;

“Site” means the site known as Hinkley Point C being land situated near Stogursey in the District of West Somerset in the County of Somerset and shown outlined in red on the Generator’s drawing referenced HPC-NNBOSL-XX-000-DRW-000001, revision L entitled

“Hinkley Point C Nuclear Site Licence Area” and dated 4 October 2012, annexed to the Nuclear Site Licence;

“**Sizewell C Condition**” means the earlier of:

- (A) the entry into a FiT Contract for Difference (or equivalent support) in relation to the Sizewell C Project by each of the parties thereto and the satisfaction or permitted waiver of the State aid condition precedent (if any) in respect thereof; and
- (B) the date of First Nuclear Island Concrete (as defined in the HPC CfD) pour for the Sizewell C Project;

“**Sizewell C Project**” means the proposed new nuclear power project which is, or which at the Agreement Date is intended to be:

- (A) located at Leiston-cum-Sizewell, Suffolk; and
- (B) based on the UK EPR Technology;

“**Spent Fuel**” means nuclear fuel that has been irradiated in a nuclear reactor and that has been permanently removed from the reactor core, or that is in a nuclear reactor upon the cessation of its operation;

“**Spent Fuel Waste Transfer Contract**” means the agreement entered into or to be entered into between the Secretary of State and the Generator in relation to the transfer of title to, and management of, Spent Fuel;

“**Standard & Poor’s**” means Standard & Poor’s Ratings Service, a division of the McGraw-Hill Companies, Inc., and any successor thereto;

“**Standard Transitional Service**” means any Transitional Service which is not a Unique Transitional Service;

“**State Aid Competent Authority**” means:

- (A) the European Commission;
- (B) the Court of Justice of the European Union; or
- (C) the national courts of any European Union member state that have jurisdiction over the Secretary of State and/or the CfD Counterparty and the decisions, determinations, rulings or other actions of which are binding on the Secretary of State and/or the CfD Counterparty;

“**State Aid Rules**” means:

- (A) the State aid provisions of the Treaty on the Functioning of the European Union;

- (B) any associated European Union legislation in relation to such State aid provisions including Council Regulation 2015/1589; and
- (C) any relevant decisions or judgments of the European Commission, the Court of Justice of the European Union or any other Competent Authority in relation to such State aid provisions;

“State Aid Side Letter” means the letter to be entered into between the Side Letter Parties;

“Statutory Transfer Scheme” means a scheme made by the Secretary of State pursuant to any Law providing for one or more transfers of property, rights and/or liabilities, and includes a Nuclear Transfer Scheme;

“Subsequent ACF Correction” has the meaning given to that term in paragraph (A) of the definition of “Equity IRR” in this Clause 1.1;

“Supplier Obligation Regulations” means the Contracts for Difference (Electricity Supplier Obligations) Regulations 2014;

“Supporting Information” means any and all relevant calculations, confirmations, data, documentation, evidence (including experts’ reports), explanations, information, measurements, readings, reports (including experts’ reports), representations and statements (whether in written or documentary form);

“Suspension Cessation Event” has the meaning given to that term in Clause 5(F) (*State Aid Suspension*);

“Tax” means any tax, and any deduction or withholding in the nature of tax, that is imposed by or on behalf of Her Majesty’s Government of the United Kingdom or a UK Competent Authority;

“Technical Services Agreements” has the meaning given to that term in the Contracting Policy;

“Third Party” has the meaning given to that term in Clause 52(A) (*Third Party Rights*);

“Third Party Lender” means any commercial lender which is not a Government Entity;

“Third Party Provisions” has the meaning given to that term in Clause 52(A) (*Third Party Rights*);

“Threshold Test” means, in respect of any transfer or issue of Economic Interest(s) in NNB HoldCo (other than a transfer of Qualifying Economic Interest(s) or a transfer or issue to a member of an Investor Group) whether actual or (in the case of paragraph (C) or (D) of the definition of “Tracked Person” in this Clause 1.1) notional, if the product of:

- (A) the proportion which the Economic Interests in NNB HoldCo which are the subject of, or form part of, the transfer or issue bears to the total Economic Interests in NNB HoldCo of all Investor TopCos, expressed as a decimal; and

- (B) the value of the Generator, expressed in pounds, where such value shall be assessed:
- (i) in the period from (and including) the Agreement Date to (but excluding) the Reactor One Start Date, on the basis of the book value of NNB HoldCo's Economic Interests in the Generator; and
 - (ii) thereafter, on the basis of the fair market value of NNB HoldCo's Economic Interests in the Generator,

is less than an amount equal to [REDACTED] as determined in the event of a Dispute by an Expert in accordance with the Expert Determination Procedure (and the Threshold Test shall be considered to be satisfied if such condition is met), and for the purposes of this definition, any reference to the book value of NNB HoldCo's Economic Interests in the Generator shall be determined as at the date of the transfer or issue by reference to the management accounts of NNB HoldCo produced at or updated to the date of the relevant transfer or issue, and such management accounts shall include the relevant information as to book value and be prepared in accordance with generally accepted accounting principles, as determined in the event of a Dispute by an Expert in accordance with the Expert Determination Procedure;

"Tracked Person" means, in respect of each Investor, Investor Super TopCo and Investor TopCo:

- (A) each person who holds an Economic Interest in NNB HoldCo through such person at the Agreement Date;
- (B) each person in that person's Shareholder Group, and any IST Group Member who holds an Economic Interest in NNB HoldCo;
- (C) each Transferee and each other person in that Transferee's Group who, by virtue of the transfer of Economic Interests in NNB HoldCo, holds an Economic Interest in NNB HoldCo which if that Economic Interest, together with any other Economic Interests in NNB HoldCo held by such person as at the time of transfer, were to be transferred by such person would not satisfy the Threshold Test; and
- (D) each person to whom Economic Interests in NNB HoldCo are issued which, if those Economic Interests, together with any other Economic Interests in NNB HoldCo held by such person as at the time of issue, were to be transferred by such person, would not satisfy the Threshold Test, and each other person in such person's Group who, by virtue of such issue of Economic Interests, holds an Economic Interest in NNB HoldCo which if that Economic Interest, together with any other Economic Interests in NNB HoldCo held by such person as at the time of issue, were to be transferred by such person would not satisfy the Threshold Test;

"Trading Commitment Term" has the meaning given to that term in Clause 3(A) (*Duration*);

“Transaction Documents” means:

- (A) this Agreement;
- (B) the HPC CfD;
- (C) the State Aid Side Letter;
- (D) the Direct Agreement;
- (E) any direct agreement referred to in Clause 36 (*Direct Agreement*); and
- (F) any Security Document;

“Transfer” has the meaning given to that term in Clause 35.2 (*Restrictions on Transfers*);

“Transferee” means, in respect of each Investor, Investor Super TopCo and Investor TopCo, each person to whom Economic Interests in NNB HoldCo originally held by or through that Investor, Investor Super TopCo or Investor TopCo or any other person referred to in the definition of “Tracked Person” in this Clause 1.1 (other than the Transferee itself) are transferred or further transferred, provided that:

- (A) if the Threshold Test is applicable to such Transferee, a person shall not be a “Transferee” for the purposes of this Agreement if the Economic Interests in NNB HoldCo transferred to such person satisfy the Threshold Test; and
- (B) for the avoidance of doubt, if that person becomes an Investor or is or becomes Associated with another Investor, in each case in accordance with this Agreement, such person shall be deemed to be a Transferee for the purposes of the definition of “Tracked Person” in this Clause 1.1 with respect to such other Investor;

“Transferee Investor” means, as appropriate, the person which acquires Economic Interests in NNB HoldCo through a Transferee Investor Super TopCo or through an Investor Super TopCo or from an Investor or through an issue of Economic Interests in NNB HoldCo, in each case, in accordance with Clause 35 (*Changes to the Parties*) and which will become an Investor upon execution of a Deed of Accession;

“Transferee Investor Super TopCo” means, as appropriate, the person which acquires Economic Interests in NNB HoldCo through a Transferee Investor TopCo or from an Investor Super TopCo or through an issue of Economic Interests in NNB HoldCo, in each case, in accordance with Clause 35 (*Changes to the Parties*) and which will become an Investor Super TopCo upon execution of a Deed of Accession;

“Transferee Investor TopCo” means, as appropriate, the person which acquires Economic Interests in NNB HoldCo from an Investor TopCo or through an issue of Economic Interests in NNB HoldCo, in each case, in accordance with Clause 35 (*Changes to the Parties*) and which will become an Investor TopCo upon execution of a Deed of Accession;

“Transferor Investor Super TopCo” means the Investor Super TopCo which transfers Economic Interests in NNB HoldCo in accordance with Clause 35 (*Changes to the Parties*);

“Transferor Investor TopCo” means the Investor TopCo which transfers Economic Interests in NNB HoldCo in accordance with Clause 35 (*Changes to the Parties*);

“Transition Period” means, as applicable, the period from:

- (A) the date on which a Permitted Transfer Scheme becomes effective;
- (B) the date on which a Nuclear Transfer Scheme or other Statutory Transfer Scheme which provides for fair compensation to Investors, having regard to the property, rights and liabilities of the Generator to which such scheme applies, becomes effective; or
- (C) the Option Completion Date,

and ending on the fifth (5th) anniversary of the date that a Permitted Transfer Scheme, Nuclear Transfer Scheme or other Statutory Transfer Scheme becomes effective, or of the Option Completion Date, as the case may be, or if the Government Parties have given written notice requiring an extension to the Transition Period to the relevant Transitional Services Provider(s) not less than one (1) month prior to the end of the Transition Period, the sixth (6th) anniversary of such date, provided that if the date of transfer in accordance with paragraph (A), (B) or (C) above is known in advance of the transfer taking place, the Transition Period may commence three (3) months prior to such transfer or such lesser period as is compatible with the time when the transfer date is known;

“Transitional Services” has the meaning given to that term in paragraph 1 of Annex 4 (*Transitional Services*);

“Transitional Services Providers” has the meaning given to that term in Clause 24 (*Provision of Transitional Services*);

“Transitional Services Term” has the meaning given to that term in Clause 3(D) (*Duration*);

“Transmission Licence” means an electricity transmission licence granted or treated as granted pursuant to section 6(1)(b) of the EA 1989 that authorises a person to transmit electricity;

“Transmission Licensee” means any person who is authorised by a Transmission Licence to transmit electricity, acting in that capacity;

“Transmission System Operator” means the holder of a Transmission Licence in relation to which licence the Authority or any Secretary of State, where appropriate, has issued a Section C (system operator standard conditions) Direction in accordance with such licence and where that direction remains in effect, acting in that capacity;

“Tribunal” has the meaning given to that term in the FOIA;

“UK Competent Authority” means a Competent Authority of the United Kingdom;

“UK EPR Technology” means technology that falls within the definition of “the EPR practice” in The Justification Decision (Generation of Electricity by the EPR Nuclear Reactor) Regulations 2010 and in respect of which the Health and Safety Executive issued a Design Acceptance Confirmation on 13 December 2012 (as amended) and the Environment Agency issued a Statement of Design Acceptability on 13 December 2012 (as amended), including any changes required as part of the evolution of the design process and development of “the EPR practice”;

“Unique Transitional Service” means any Transitional Service which is agreed or determined can only be provided by a Transitional Services Provider;

“Valuation Percentage” has the meaning given to that term in paragraph 3.1 of Annex 5 (*Valuation Procedure*);

“VAT” means any value added tax or any replacement or other tax levied by reference to value added;

“Waste Transfer Contracts” means:

- (A) the Spent Fuel Waste Transfer Contract; and
- (B) the ILW Waste Transfer Contract; and

“Working Hours” means 09:00 to 17:00 on a Business Day.

1.2 Interpretation

- (A) Any reference in this Agreement to:
 - (i) a Law, Directive or other similar enactment or instrument (including any European Union or Euratom instrument) (each, an “**enactment**”) includes references to:
 - (a) that enactment as amended, supplemented or applied by or pursuant to any other enactment before, on or after the Agreement Date;
 - (b) any enactment which re-enacts, restates or replaces (in each case with or without modification) that enactment; and
 - (c) any subordinate legislation made (before, on or after the Agreement Date) pursuant to any enactment, including an enactment falling within Clause 1.2(A)(i)(a) or 1.2(A)(i)(b);
 - (ii) an Industry Document includes reference to such Industry Document as amended, supplemented, restated, novated or replaced from time to time; or

- (iii) a person through which the Qualifying Economic Interest which is the subject of a Relevant Sale is held shall be construed as a reference to the person through which the Economic Interest in NNB HoldCo or the Generator is held to which the relevant Qualifying Economic Interest which is the subject of the Relevant Sale relates.
- (B) Unless otherwise expressly specified in this Agreement:
- (i) any reference in this Agreement (or in any certificate or other document made or delivered pursuant to this Agreement) to:
 - (a) this “**Agreement**” shall be deemed to include the Annexes;
 - (b) a “**company**” shall be construed as including any corporation or other body corporate, wherever and however incorporated or established;
 - (c) the expressions “**holding company**” and “**subsidiary**” shall have the meanings respectively ascribed to them by section 1159 of the Companies Act 2006, the expressions “**parent undertaking**” and “**subsidiary undertaking**” shall have the meanings respectively ascribed to them by section 1162 of the Companies Act 2006 and the expression “**associated undertaking**” shall have the meaning ascribed to it in schedule 6 to The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (but for this purpose ignoring paragraph 19(1)(b) of those regulations);
 - (d) a “**person**” shall be construed as including any individual, firm, company, unincorporated organisation, government, state or agency of a state or any association, trust or partnership (whether or not having separate legal personality) or any other entity;
 - (e) a person shall be construed as including its successors, permitted assignees and permitted transferees and, where a person ceases to exist, any other person to which some or all of its duties, functions, liabilities, obligations, powers or responsibilities may from time to time be transferred;
 - (f) an “**agreement**” shall be construed as including any commitment or arrangement, whether legally binding or not, and references to being party to an agreement or having agreed to do anything shall be construed accordingly;
 - (g) any agreement or document shall (subject as provided in Clause 1.2(A)) be construed as a reference to that agreement or document as amended, supplemented, restated, novated or replaced from time to time;

- (h) “**licensed site**” and “**licensee**” have the meanings given to those terms in section 26(1) of the NIA 1965;
- (i) any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be treated as including what most nearly approximates in that jurisdiction to the English legal term; and
- (j) time shall be a reference to time in London, England;
- (ii) words in the singular shall be interpreted as including the plural and vice versa;
- (iii) any gender includes the other genders;
- (iv) in construing this Agreement (or any certificate or other document made or delivered pursuant to this Agreement):
 - (a) the rule of interpretation known as the *ejusdem generis* rule shall not apply and, accordingly, general words introduced by the word “other” shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things; and
 - (b) general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by the general words;
- (v) any reference in this Agreement to “**includes**” or “**including**” shall be construed as “**includes without limitation**” or “**including without limitation**”; and
- (vi) any reference in this Agreement to a “**paragraph**”, “**Clause**”, “**Part**” or “**Annex**” is a reference to a paragraph, Clause or Part of, or an Annex to, this Agreement.
- (C) Headings and sub-headings used in this Agreement are for ease of reference only and shall not affect the interpretation of this Agreement.
- (D) If there is a conflict between the main body of this Agreement and any Annex, the main body of this Agreement shall prevail.

1.3 **Symbols and currency**

Any reference in this Agreement to “**£**”, “**sterling**” or “**pounds**” is to the lawful currency of the United Kingdom.

1.4 Remedies in respect of failure to comply with Equity Gain Share Rules and Protective Provisions

The CfD Counterparty's rights and remedies in respect of a failure by a Party to comply with the Equity Gain Share Rules or the Protective Provisions, in each case as applicable to it, shall be limited to:

- (A) such failure being taken into consideration for the purposes of the definitions in Clause 1.1 (*Definitions*) of "Deemed Available Cash Flow", "Divestment Proceeds", "Excluded Compensation Liabilities" and "Investment Cost", as appropriate, and the rights and remedies which arise in connection therewith as set out in (in the case of the Equity Gain Share Rules) Clauses 9 (*Equity Gain Share: Project Gain Share Provisions*), 10 (*Equity Gain Share: Sale Gain Share Provisions*) and 11 (*Equity Gain Share: Security and Enforcement*) and (in the case of the Protective Provisions) Clauses 17 (*Equity Investor Completion Statement*) and 18 (*Qualifying Exit Events: Compensation*);
- (B) where such failure to comply is agreed or determined to take the form of an act or omission which is designed to or a main purpose of which is to:
 - (i) avoid the application of Clause 10 (*Equity Gain Share: Sale Gain Share Provisions*) to a disposal of Economic Interests being a Relevant Sale, deeming such disposal to be a Relevant Sale (and, for the avoidance of doubt, for the purposes of this Agreement, a Relevant Sale shall include a deemed Relevant Sale); or
 - (ii) avoid a transferee of Economic Interests in NNB HoldCo being a Tracked Person, deeming such transferee to be a Tracked Person (and, for the avoidance of doubt, for the purposes of this Agreement, a Tracked Person shall include a deemed Tracked Person); and
- (C) equitable rights and remedies (including specific performance and injunctive relief),

and the CfD Counterparty shall have no other rights or remedies in respect of any such failure to comply.

1.5 Remedies in respect of failure to comply with the Gain Share provisions

The CfD Counterparty's rights and remedies in respect of a failure to make a payment due to the CfD Counterparty pursuant to Clause 9.5 (*Project Gain Share with the CfD Counterparty*) by the Project Gain Share Payment Deadline or due to the CfD Counterparty pursuant to Clause 10.4 (*Sale Gain Share with the CfD Counterparty*) by the Sale Gain Share Payment Deadline shall be limited to:

- (A) in the case of Clause 9.5 (*Project Gain Share with the CfD Counterparty*), the rights and remedies set out in Clause 11.2 (*Enforcement Mechanism for Project Gain Share Provisions*) and under and in respect of the Security Documents, together with equitable rights and remedies (including specific performance and injunctive relief); and

- (B) in the case of Clause 10.4 (*Sale Gain Share with the CfD Counterparty*), the rights and remedies set out in Clause 11.3 (*Enforcement Mechanism for Sale Gain Share Provisions*) and under and in respect of the Security Documents, together with equitable rights and remedies (including specific performance and injunctive relief),

and the CfD Counterparty shall have no other rights or remedies in respect of any such failure.

1.6 Remedies in respect of failure to comply with the Contracting Policy

The CfD Counterparty's rights and remedies in respect of a failure by a Party to comply with the Contracting Policy (which shall include a failure of a Party to comply with Clause 27 (*Contracting Policy*) but which shall not include a failure by an Investor to comply with Clause 12.1(C) (*Investor undertakings*)) shall be limited to:

- (A) the agreement or determination of any Related Party Discount Amount for the purposes of the agreement or determination of any Gain Share Amount;
- (B) the agreement or determination and deduction of any Discount Amounts (where applicable) and/or Daily Discount Amounts from any Qualifying Exit Event Compensation payable by the CfD Counterparty;
- (C) the express rights and remedies of the CfD Counterparty set out in this Agreement (including under and in respect of the Security Documents) arising out of the agreement or determination of any Related Party Discount Amounts and/or Discount Amounts and/or Daily Discount Amounts, as referred to in paragraphs (A) and (B) above; and
- (D) equitable rights and remedies (including specific performance and injunctive relief),

and the CfD Counterparty shall have no other rights or remedies in respect of any such failure to comply.

1.7 Relationship with Finance Documents

Nothing in this Agreement shall alter, as between the parties to the Finance Documents, any rights or obligations of such parties arising under the Finance Documents.

1.8 Miscellaneous

- (A) All references to the preparation of estimates and statements by or on behalf of:
 - (i) a Party (other than the Secretary of State or the CfD Counterparty) shall include the requirement that such estimates and statements are prepared honestly and diligently; and

- (ii) the Secretary of State or the CfD Counterparty shall include the requirement that such estimates and statements are prepared in good faith.
- (B) Any calculation under this Agreement of the Economic Interests in NNB HoldCo following a Relevant Sale, or any calculation of the apportionment between, or of a portion or proportion of, or of the attribution of any amount to, an Investor TopCo Tranche following a Relevant Sale shall be made by reference to the direct or indirect shareholding in NNB HoldCo represented by such Investor TopCo Tranche to which the Economic Interests in NNB HoldCo referred to above relate save that where:
- (i) Economic Interests in a person forming part of an Investor TopCo Tranche are the subject of a Relevant Sale and are of different types; and
 - (ii) each such type of Economic Interests is not held in the same proportion as the same type of Economic Interests held by each other holder of Economic Interests in that person which also form part of the same Investor TopCo Tranche,

then such calculation shall be made by reference to the par value of the shares and the principal amount of shareholder loans plus any accrued, unpaid interest (or nearest equivalent in the case of other Economic Interests) directly or indirectly held in or made to (as applicable) NNB HoldCo by such person.

1.9 CCE Proceedings

Without prejudice to any right or remedy which the CfD Counterparty or the Secretary of State may otherwise have, if any or all of the obligations of EDF SA, EDF Energy, EDF Energy Holdings, NNB Top Company HPC (B) Ltd, NNB Top Company HPC (A) Ltd or any member of the NNB HoldCo Group or the EDF SA Group under the Transaction Documents (or any of them) are suspended under or pursuant to the CCE Proceedings:

- (A) EDF SA shall, to the extent permitted by applicable law, provide the CfD Counterparty with such Information as the CfD Counterparty reasonably requires relating to the CCE Proceedings and the suspension, in each case which is available to EDF SA; and
- (B) the person whose obligations are suspended shall, upon cessation of the suspension, resume performance of those obligations and shall as soon as reasonably practicable and to the extent permitted by applicable law do or procure the doing of all things reasonably necessary to perform the obligations that were suspended.

PART 2
AGREEMENT DATE CONDITIONS PRECEDENT AND DURATION

2. AGREEMENT DATE CONDITIONS PRECEDENT

2.1 Agreement Date Conditions Precedent

To the extent such documentation or information has not already been provided pursuant to the Initial Conditions Precedent (under and as defined in the HPC CfD), each of the Generator, NNB HoldCo, NNB FinCo, the Investor TopCos, the Investor Super TopCos, the Investors, the Ultimate Investors and EDF Energy (each, a “**CP Party**”) shall use reasonable endeavours to fulfil (or procure the fulfilment of) their respective Agreement Date Conditions Precedent as soon as reasonably practicable, and in any event within twenty (20) Business Days after the Agreement Date.

2.2 Non-fulfilment of Agreement Date Conditions Precedent

If the Agreement Date Conditions Precedent are not fulfilled by the relevant CP Parties or waived by the CfD Counterparty and the Secretary of State by the date falling thirty (30) Business Days after the Agreement Date, this Agreement shall lapse and be of no further effect.

2.3 Provisions Effective and Binding

The provisions of, and the rights and obligations of the Parties pursuant to, this Agreement shall become effective and binding on the Agreement Date, other than those arising under Part 6 (*Orderly Handover of HPC*), Part 7 (*Qualifying Exit Events*) and Equity Gain Share Rule 12 (*Funding*) which are conditional upon the Agreement Date Conditions Precedent:

- (A) being fulfilled by the relevant CP Party by the date falling thirty (30) Business Days after the Agreement Date; or
- (B) being waived by the CfD Counterparty and the Secretary of State.

3. DURATION

Subject to Clause 6 (*State Aid Termination*), this Agreement shall remain effective and binding:

- (A) in respect of Part 4 (*Trading Commitment*), from the Agreement Date until the date on which EDF Energy or any member of its Group ceases to be a direct or indirect shareholder in, or member of, the Generator or, if earlier, the date on which the Generator terminates (and does not replace with arrangements with any member of the EDF Energy Group) all trading arrangements between the Generator and members of the EDF Energy Group (the “**Trading Commitment Term**”), provided that if the Generator having terminated all such arrangements subsequently enters into any new trading arrangements with any such member the Trading Commitment Term shall recommence and the foregoing provisions of this Clause 3(A) shall once again apply;

- (B) in respect of Part 5 (*Equity Gain Share*), from the Agreement Date until the date falling two (2) years after the Facility permanently ceases commercial nuclear generation (the “**Equity Gain Share Term**”);
- (C) in respect of Part 6 (*Orderly Handover of HPC*) and Part 7 (*Qualifying Exit Events*), from the date on which the Agreement Date Conditions Precedent are fulfilled or waived in accordance with Clause 2.3 (*Provisions Effective and Binding*) until the later of:
- (i) the date which is the last day of the HPC CfD Term, or, if earlier, the termination date of the HPC CfD, in each case if a Qualifying Exit Event has not occurred on or prior to such date; and
 - (ii) if a Qualifying Exit Event has occurred on or prior to the date referred to in Clause 3(C)(i), the date on which all Qualifying Exit Event Compensation to be paid by the CfD Counterparty or the Secretary of State under this Agreement is paid,
- (the “**Shutdown Arrangements Term**”);
- (D) in respect of Part 8 (*Transitional Services and Intellectual Property*), from the Agreement Date until the last day of the Transition Period (the “**Transitional Services Term**”); and
- (E) in respect of all other Parts of this Agreement, from the Agreement Date until the latest of the last day of the Equity Gain Share Term, the Shutdown Arrangements Term, the Trading Commitment Term and the Transitional Services Term,

provided that expiry, lapse or termination of this Agreement shall not affect the continued existence and validity of, and the continuing rights and obligations of, each Party under:

- (i) Part 1 (*Introduction*);
- (ii) this Part 2;
- (iii) Part 10 (*Dispute Resolution*);
- (iv) Part 11 (*Confidentiality, Announcements and Freedom of Information*);
- (v) Part 12 (*Miscellaneous*); and
- (vi) any outstanding payment obligations or payment procurement obligations.

**PART 3
STATE AID**

4. STATE AID UNDERTAKINGS

(A) Subject to the terms of the State Aid Side Letter or as otherwise agreed by the Parties in writing, the Parties shall promptly take or refrain from taking all such actions (including promptly providing information and acting in accordance with the Reasonable and Prudent Standard and any standstill requirements) as may be:

- (i) required by a State Aid Competent Authority and/or the State Aid Rules; and/or
- (ii) requested by the Secretary of State (acting reasonably),

to enable the United Kingdom to grant approved State aid in relation to this Agreement in compliance with the terms of any European Commission State aid approval decision and/or the State Aid Rules.

(B) If a State Aid Competent Authority has determined that the United Kingdom must recover any State aid granted or paid in relation to this Agreement and the Secretary of State has decided that the United Kingdom must recover such State aid, the Secretary of State shall as soon as reasonably practicable notify the Parties of this and of the amount to be repaid and to whom and all other actions which it is necessary for the Parties to take or procure to ensure compliance with the terms of that decision, determination or ruling and/or the State Aid Rules.

(C) Each Non-Government Party shall without delay repay or procure repayment of any amount notified to it under Clause 4(B) (provided that such action is in accordance with the State Aid Rules) and, where reasonably practicable, will perform any other necessary actions so notified to it under Clause 4(B) in accordance with the State Aid Rules.

(D) If the Side Letter Parties have, pursuant to the terms of the State Aid Side Letter, agreed any amendments to this Agreement, the Parties agree that any such amendments will, subject to the terms of the State Aid Side Letter, be implemented as soon as reasonably practicable.

5. STATE AID SUSPENSION

(A) The Government Parties shall not be required to perform their obligations under this Agreement to the extent that such performance:

- (i) is or becomes unlawful as a result of not being in compliance with the terms of any European Commission State aid approval decision in relation to this Agreement;
- (ii) is or becomes unlawful as a result of a decision, determination, ruling or other action of a State Aid Competent Authority; or

- (iii) otherwise is or becomes unlawful under the State Aid Rules.
- (B) If a Government Party decides to suspend the performance of its obligations under this Agreement pursuant to Clause 5(A), it shall notify the Parties of this decision.
 - (C) If, pursuant to clause 56.2(A) (*State Aid Suspension*) of the HPC CfD, the CfD Counterparty decides to suspend payment of Difference Amounts under the HPC CfD (whether or not the CfD Counterparty decides pursuant to clause 56.2(A) (*State Aid Suspension*) of the HPC CfD to suspend payment of any other amounts under the HPC CfD) then, subject to Clause 4(B) (*State Aid Undertakings*), from the date of the suspension and for so long as such suspension continues, all obligations of each of the Parties under this Agreement and the HPC CfD to make payments under this Agreement or the HPC CfD (including payment of Difference Amounts), as applicable, shall also be suspended, except to the extent required under the State Aid Rules or to comply with a decision, determination, ruling or other action of a State Aid Competent Authority.
 - (D) If, pursuant to Clause 5(A), a Government Party decides to suspend payment of amounts under this Agreement and the CfD Counterparty has not decided pursuant to clause 56.2(A) (*State Aid Suspension*) of the HPC CfD to suspend payment of Difference Amounts under the HPC CfD then, subject to Clause 4(B) (*State Aid Undertakings*), the Parties shall be obliged to continue to make all other payments due under this Agreement and/or the HPC CfD, to the extent this is in compliance with the State Aid Rules and/or with a decision, determination, ruling or other action of a State Aid Competent Authority.
 - (E) For the avoidance of doubt, any obligation of a Party that has not been suspended pursuant to the foregoing provisions of this Clause 5 shall continue in full force and effect and, without prejudice to the generality of the foregoing, the Parties shall continue to keep records, receive and exchange information, monitor performance and generally continue to operate and manage this Agreement in accordance with its terms such that upon cessation of the suspension of the Parties' obligations, they are each ready and able to comply with the requirements of Clause 5(F).
 - (F) Any suspension of a Party's obligations pursuant to the foregoing provisions of this Clause 5 shall continue until the date on which the first of the following events occurs:
 - (i) the Side Letter Parties have taken or refrained from taking all such actions as may be required by a State Aid Competent Authority and/or the State Aid Rules or as reasonably requested by the Secretary of State to enable the United Kingdom to grant approved State aid in relation to this Agreement in compliance with the terms of any European Commission State aid approval decision in relation to this Agreement and the State Aid Rules;
 - (ii) the Side Letter Parties have, pursuant to the terms of the State Aid Side Letter, agreed amendments to the Approved Arrangements to enable the

Parties to perform their respective obligations under this Agreement in compliance with the terms of any European Commission State aid approval decision in relation to this Agreement and/or the State Aid Rules and such amendments have been implemented in accordance with Clause 4(D) (*State Aid Undertakings*) and any actions or events upon which the amendments are conditional have taken place;

- (iii) a decision, determination or ruling leading to a suspension under Clause 5(A) has been annulled, revoked or otherwise overturned, such that the performance by the Parties of their respective obligations under this Agreement is in compliance with the terms of any European Commission State aid approval decision in relation to this Agreement and the State Aid Rules;
- (iv) performance by the CfD Counterparty otherwise ceases to be unlawful under the State Aid Rules; or
- (v) expiry or earlier termination of the HPC CfD,

(each, a “**Suspension Cessation Event**”).

- (G) Upon the occurrence of a Suspension Cessation Event, the Parties shall make such payments (“**Reconciliation Payments**”) to the other Parties as they would have made under this Agreement but for any such suspension save to the extent that any such payment would be unlawful, and for this purpose:
 - (i) the amount of any such Reconciliation Payment shall be determined in the same manner (in terms of both methodology and data used) in which the original payment would have been determined had there been no suspension;
 - (ii) the amount of any such Reconciliation Payment shall not exceed the amount of the original payment that would have been determined had there been no suspension and, in particular but without prejudice to the generality of the foregoing, the Parties shall not be obliged to pay any Compensatory Interest (as defined in the HPC CfD) or Default Interest on, or any other compensation with respect to, amounts that would have been required to have been paid but for such suspension (save to the extent otherwise required under the State Aid Rules or to comply with a decision, determination, ruling or other action of a State Aid Competent Authority); and
 - (iii) the manner and timing of any such Reconciliation Payment made by a Government Party shall be determined by the Secretary of State having regard to the interests of both electricity suppliers (being persons who are holders of a licence to supply electricity under section 6(1)(d) of the EA 1989) and consumers.

6. STATE AID TERMINATION

- (A) This Agreement shall terminate in its entirety if all of (i), (ii) and (iii) apply:
- (i) in circumstances where the Government Parties have suspended their obligations in any material respect under this Agreement in accordance with Clause 5(A)(ii) (*State Aid Suspension*):
 - (a) the time period under the relevant European or national laws for filing an appeal against the decision, determination, ruling or other action has lapsed without an appeal having been filed; or
 - (b) there is no right of further appeal of the decision, determination, ruling or other action;
 - (ii) a Suspension Cessation Event has not yet occurred by the date falling thirty (30) months (or such other period, if any, as is agreed in writing between the Side Letter Parties) after the date that a Government Party notifies the Parties of the decision to suspend its obligations under this Agreement pursuant to Clause 5(B) (*State Aid Suspension*); and
 - (iii) either:
 - (a) a Government Party has notified the other Parties in writing that it wishes to terminate this Agreement pursuant to this Clause 6(A), provided that it may not serve such a notice of termination until twenty (20) Business Days after the end of the period referred to in Clause 6(A)(ii); or
 - (b) the Generator has notified the other Parties in writing that it wishes to terminate this Agreement pursuant to this Clause 6(A), provided that the Generator may not serve such a notice of termination unless the HPC CfD has terminated pursuant to clause 57.2 (*State aid termination*) of that agreement and a period of twenty (20) Business Days after the end of the period referred to in Clause 6(A)(ii) has lapsed.
- (B) For the avoidance of doubt, termination of this Agreement will take effect upon receipt of such written notice from a Government Party or the Generator to the other Parties under and in accordance with Clause 6(A)(iii).

PART 4
TRADING COMMITMENT

7. TRADING COMMITMENT

7.1 Trading Commitment

Each of the Generator and EDF Energy shall ensure in any agreement for market services for the sale of the output of the Facility entered into with any member of the EDF Energy Group (the “**MSA Counterparty**”) that, for so long as any member of the EDF Energy Group is a shareholder (direct or indirect) in the Generator, the MSA Counterparty agrees to:

- (A) record all trades undertaken to sell the forecast output from the Facility in a separate Generator book;
- (B) price all trades undertaken to sell the forecast output from the Facility conducted with any member of the EDF Energy Group at the market price for the product concerned at the time of trading;
- (C) undertake at market price all bilateral trades relating to forecast output from the Facility with any other asset portfolios owned or traded by any member of the EDF Energy Group; and
- (D) provide to the Generator (with consent for the Generator to provide the same to the CfD Counterparty, the Secretary of State and the European Commission) such information as may be reasonably required by the Generator to report to the CfD Counterparty, the Secretary of State and the European Commission on the MSA Counterparty’s compliance with Clauses 7.1(A), (B) and (C).

7.2 Trading Commitment Reports

The Generator shall, and EDF Energy shall procure that the Generator shall, by the thirtieth (30th) Business Day of each calendar year provide the CfD Counterparty (with consent for the CfD Counterparty to provide the same to the Secretary of State and the European Commission) with a written report on the MSA Counterparty’s compliance with Clauses 7.1(A), 7.1(B) and 7.1(C) (*Trading Commitment*) in the previous calendar year.

PART 5
EQUITY GAIN SHARE

8. EQUITY GAIN SHARE: GENERAL

8.1 Introduction

Each of the Generator, NNB HoldCo, the Investor TopCos, the Investor Super TopCos and the Investors intends that the CfD Counterparty shall be entitled to receive sums under this Part 5 calculated by reference to:

- (A) Available Cash Flow and Deemed Available Cash Flow; and
- (B) the proceeds of the sale of Qualifying Economic Interests,

in each case as and when the First Equity IRR Threshold or the Second Equity IRR Thresholds, as applicable, are reached on an Investor TopCo Tranche by Investor TopCo Tranche (or, as applicable, portion thereof) basis.

8.2 Gain Share: No double counting of cash

In the event of a Relevant Sale, there shall be no double counting for the purposes of any Sale Gain Share of cash in, or cash which has been deemed to be in, the Generator in respect of which a Project Gain Share Amount has previously been calculated, and in the event of a subsequent Project Gain Share calculation there shall be no double counting for that purpose of cash or deemed cash in respect of which a Sale Gain Share has previously been calculated.

9. EQUITY GAIN SHARE: PROJECT GAIN SHARE PROVISIONS

9.1 Preliminary Equity IRR Report

- (A) No later than seventy (70) Business Days after each Project Gain Share Calculation Date, the Investor Super TopCos shall jointly and severally procure that NNB HoldCo shall provide the CfD Counterparty with a written report in respect of the Project Gain Share Calculation Period ending on the Project Gain Share Calculation Date satisfying the requirements of Clause 9.1(C).
- (B) If the report referred to in Clause 9.1(A) is not provided in respect of any Project Gain Share Calculation Period on or by the date referred to in that Clause:
 - (i) the CfD Counterparty may obtain at NNB HoldCo's cost and expense (failing which, at the joint and several cost and expense of the Investor Super TopCos) an opinion from an independent expert as to the Equity IRR in respect of each Investor TopCo Tranche (which opinion shall be final and binding on the Parties in the absence of fraud or manifest error) for the Project Gain Share Calculation Period that would otherwise have been covered by the relevant Preliminary Equity IRR Report and that opinion shall be treated as the Equity IRR Report for the relevant Project Gain Share Calculation Period and used in the determination of the

amounts payable to the CfD Counterparty under Clause 9.5 (*Project Gain Share with the CfD Counterparty*);

- (ii) no Preliminary Equity IRR Report or separate or further Equity IRR Report shall be required for this purpose;
 - (iii) each Investor Super TopCo shall provide (and shall procure that its Investor TopCo and NNB HoldCo shall provide) the independent expert such information and assistance as the independent expert may reasonably request for the purposes referred to in Clause 9.1(B)(i); and
 - (iv) the CfD Counterparty shall provide a copy of any independent expert's final opinion obtained by it pursuant to Clause 9.1(B)(i) to NNB HoldCo as soon as reasonably practicable.
- (C) Each Preliminary Equity IRR Report shall:
- (i) be prepared at the cost and expense of NNB HoldCo (failing which, at the joint and several cost and expense of the Investor Super TopCos);
 - (ii) be prepared using the most up-to-date data available to the Generator, NNB HoldCo, the Investor TopCos and the Investor Super TopCos at the time of its preparation;
 - (iii) be substantially in the form and with the content set out at Annex 12 (*Form of Preliminary Equity IRR Report*) and be accompanied by the Information referred to in Clause 9.1(D);
 - (iv) set out in reasonable detail the Available Cash Flow in respect of the relevant Project Gain Share Calculation Period;
 - (v) give reasons in reasonable detail for the retention of any amounts retained by the Generator as referred to in paragraph (A)(ii) of the definition of "Available Cash Flow" in Clause 1.1 (*Definitions*) together with reasonable details of the amounts so retained and the calculation thereof;
 - (vi) contain confirmation that there has been no failure to perform or comply with one or more of the Equity Gain Share Rules or Clause 9.4 (*Distributions*) or, if such an event has occurred, full details of such failure and the consequences thereof, including the amount and calculation of any resultant Deemed Available Cash Flow;
 - (vii) contain confirmation that there has been no failure to perform or comply with the Contracting Policy or, if such an event has occurred, full details of such failure and the consequences thereof, including the amount and calculation of any Related Party Discount Amount;
 - (viii) set out in reasonable detail all Project Cash Flows and Real Project Cash Flows in respect of the relevant Project Gain Share Calculation Period on

an Investor TopCo Tranche by Investor TopCo Tranche basis including the dates on which each such cash flow was received or paid, or is forecast to be received or paid;

- (ix) set out, in reasonable detail, the calculation of the Equity IRR on an Investor TopCo Tranche by Investor TopCo Tranche basis (taking into account, among other things, the information referred to in Clause 9.1(C)(viii) in respect of each Investor TopCo Tranche) as at the Project Gain Share Calculation Date relating to that Project Gain Share Calculation Period;
 - (x) specify whether and the extent to which the Equity IRR for each Investor TopCo Tranche as at such Project Gain Share Calculation Date (a) exceeds the First Equity IRR Threshold but is less than or equal to one or both of the Second Equity IRR Thresholds or (b) exceeds one or both of the Second Equity IRR Thresholds;
 - (xi) contain full details of administrative costs and expenses of NNB HoldCo incurred since the immediately preceding Project Gain Share Calculation Date and of administrative costs and expenses that it forecasts it will incur before it receives a Distribution sufficient to discharge them; and
 - (xii) contain full details of any proposed Distribution to each Investor TopCo and the Project Gain Share Amount to be paid to the CfD Counterparty consequent upon the Project Cash Flows in relation to the relevant Project Gain Share Calculation Period, including the amount and calculation thereof, and NNB HoldCo's estimate of the Project Gain Share Due Date.
- (D) Each Preliminary Equity IRR Report shall be accompanied by:
- (i) a Directors' Certificate from the directors of NNB HoldCo in relation to the Information contained in, or enclosed with, the Preliminary Equity IRR Report;
 - (ii) the Equity IRR Model and including details of the cash flows from the Generator (including the Available Cash Flow) and the calculation of the amount available for distribution by NNB HoldCo and the Project Gain Share Amount (if any);
 - (iii) copies of:
 - (a) the then latest management accounts of each of the Generator and NNB HoldCo;
 - (b) a reconciliation statement against each of the latest Financial Model (where the Project Gain Share Calculation Date is during the HPC CfD Term) and the latest management accounts of each of the Generator and NNB HoldCo; and

- (c) any other Supporting Information, in reasonable detail, which NNB HoldCo considers to be relevant to the matters which are the subject of the Preliminary Equity IRR Report, for the relevant period;
 - (iv) in the case of each Preliminary Equity IRR Report with a Project Gain Share Calculation Date of 31 December, a certificate from the Auditors addressed to the CfD Counterparty confirming the statements made in the Preliminary Equity IRR Report and certifying the Available Cash Flow and Deemed Available Cash Flow in respect of such Project Gain Share Calculation Period and each Investor TopCo Tranche together with computations in reasonable detail in support; and
 - (v) an update of the Equity IRR Report(s) for earlier Project Gain Share Calculation Period(s) correcting the Equity IRR calculation thereunder solely for the dates in accordance with the Subsequent ACF Correction.
- (E) Each of the Investor Super TopCos shall provide (and shall procure that its Investor TopCo and the Generator shall provide) NNB HoldCo such information and assistance as NNB HoldCo may reasonably request to prepare a Preliminary Equity IRR Report.
 - (F) The CfD Counterparty shall, within thirty (30) Business Days after receipt of the Preliminary Equity IRR Report, notify NNB HoldCo whether or not it approves the matters which are the subject of the Preliminary Equity IRR Report and, where the CfD Counterparty does not approve the matters which are the subject of the Preliminary Equity IRR Report, it shall give NNB HoldCo reasons in support.
 - (G) If the CfD Counterparty does not notify NNB HoldCo whether or not it approves the matters which are the subject of a Preliminary Equity IRR Report within the thirty (30) Business Day period referred to in Clause 9.1(F), that Preliminary Equity IRR Report shall be deemed not to be agreed.

9.2 Disputes in relation to a Preliminary Equity IRR Report

- (A) If NNB HoldCo and the CfD Counterparty are not able to agree, or are deemed not to have agreed, the matters which are the subject of a Preliminary Equity IRR Report or related matters (including Supporting Information), either NNB HoldCo or the CfD Counterparty may refer the Dispute for determination by an Expert in accordance with the Expedited Expert Determination Procedure.
- (B) Until NNB HoldCo and the CfD Counterparty agree the matters which are the subject of a Preliminary Equity IRR Report or the Dispute in respect of it has been determined by an Expert in accordance with the Expedited Expert Determination Procedure, there shall be no Equity IRR Report in respect of the relevant Project Gain Share Calculation Date.

9.3 Equity IRR Report

Upon:

- (A) the CfD Counterparty notifying NNB HoldCo that it approves the matters which are the subject of a Preliminary Equity IRR Report;
- (B) the CfD Counterparty and NNB HoldCo agreeing the matters which are the subject of a Preliminary Equity IRR Report (and any amendments to that Preliminary Equity IRR Report being made in accordance with that agreement); or
- (C) any Dispute (other than merely as to whether NNB HoldCo has submitted all the information required for a Preliminary Equity IRR Report) with respect to the matters which are the subject of a Preliminary Equity IRR Report being resolved or determined as provided in Clause 9.2 (*Disputes in relation to a Preliminary Equity IRR Report*) (and any amendments to the Preliminary Equity IRR Report being made in accordance with that resolution or determination),

the Preliminary Equity IRR Report (once delivered and as amended, if applicable) shall become the “**Equity IRR Report**” in respect of the relevant Project Gain Share Calculation Date. Without prejudice to the foregoing, each of the Investor Super TopCos, NNB HoldCo and the CfD Counterparty acknowledges and agrees that it is its intention, and (subject and without prejudice to the Expert Determination Procedure) each such person shall use its reasonable endeavours to ensure, that there shall be an Equity IRR Report in respect of a Project Gain Share Calculation Period before the Project Gain Share Calculation Date for the next succeeding Project Gain Share Calculation Period.

9.4 Distributions

- (A) The Investor Super TopCos shall jointly and severally procure that all Distributions shall be made and paid (and shall only be made and paid) as follows:
 - (i) Distributions by the Generator must be made and paid to the credit of the NNB HoldCo Designated Account;
 - (ii) Distributions by NNB HoldCo must be made and paid as follows:
 - (a) an amount equivalent to the aggregate of the Distributions by NNB HoldCo (net only of the amounts referred to in Clause 9.4(B)) must be made and paid from the NNB HoldCo Designated Account to the credit of the Designated Distribution Account; and
 - (b) an amount equivalent to the amount referred to in Clause 9.4(A)(ii)(a) must be made and paid from the Designated Distribution Account to the credit of the relevant Investor TopCo Designated Accounts; and

- (iii) Distributions received under Clause 9.4(A)(ii)(b) (net only of the amounts referred to in Clause 9.4(C)) by each Investor TopCo must be made and paid from its Investor TopCo Designated Account to the credit of the Investor Super TopCo Designated Account of its Investor Super TopCo,

or, in any such case, as otherwise agreed in writing by the CfD Counterparty.

- (B) Subject to applicable Law, Directives and Required Authorisations and Clause 9.4(D) and save as otherwise agreed in writing by the CfD Counterparty, the Investor Super TopCos shall jointly and severally procure that NNB HoldCo shall promptly pay amounts equivalent to the entirety of the Distributions it receives from the Generator to the credit of the Designated Distribution Account and from the Designated Distribution Account to the credit of the relevant Investor TopCo Designated Accounts net only of:
 - (i) administrative costs and expenses that NNB HoldCo has reasonably and properly incurred (or reasonably forecasts it will incur before it receives a Distribution sufficient to discharge them) as a holding company of shares in the Generator (details of which the Investor Super TopCos shall procure that NNB HoldCo shall provide to the CfD Counterparty upon reasonable request); and
 - (ii) Project Gain Share Amounts.
- (C) Subject to applicable Law, Directives and Required Authorisations and save as otherwise agreed in writing by the CfD Counterparty, each Investor Super TopCo shall procure in respect of its Investor TopCo that such Investor TopCo shall promptly pay amounts equivalent to the entirety of the Distributions it receives from NNB HoldCo to the credit of the Investor Super TopCo Designated Account of such Investor Super TopCo, net only of administrative costs and expenses that such Investor TopCo has reasonably and properly incurred (or reasonably forecasts it will incur before it receives a Distribution sufficient to discharge them) as a holding company (details of which the relevant Investor Super TopCo shall procure its Investor TopCo shall provide to the CfD Counterparty upon reasonable request).
- (D) The Investor Super TopCos shall jointly and severally procure that Distributions by NNB HoldCo shall be made and paid only:
 - (i) to the extent that the relevant Distribution has been provided for in the latest Equity IRR Report or in the latest report of the independent expert pursuant to Clause 9.1(B) (*Preliminary Equity IRR Report*) and:
 - (a) the CfD Counterparty has agreed in writing that the whole or part of such Distribution may be made and paid, in which event payment thereof (to the extent permitted) shall be made in accordance with Clause 9.4(A); or
 - (b) all Project Gain Share Amounts the subject of such Equity IRR Report or report of the independent expert pursuant to

Clause 9.1(B) (*Preliminary Equity IRR Report*) have been paid in full by credit to the CfD Counterparty Designated Account;

- (ii) in advance of an Equity IRR Report being agreed or determined or the report of an independent expert pursuant to Clause 9.1(B) (*Preliminary Equity IRR Report*) being delivered, to the extent agreed in writing by the CfD Counterparty and provided that such payment is made in accordance with Clause 9.4(A);
- (iii) if after a Project Gain Share Calculation Date the Investor Super TopCos or NNB HoldCo have demonstrated to the satisfaction of the CfD Counterparty (acting reasonably) that there is no plausible circumstance in which there could be a Project Gain Share Amount payable in respect of the Project Gain Share Calculation Period ending on that Project Gain Share Calculation Date, and then only to the extent of the amount(s) which NNB HoldCo has confirmed in advance in writing to the CfD Counterparty that it wishes to Distribute (not exceeding in aggregate the amount of the Available Cash Flow for that Project Gain Share Calculation Period) and provided always that such payment is made in accordance with Clause 9.4(A) on the date(s) which NNB HoldCo has confirmed in advance in writing to the CfD Counterparty and falling no later than the next succeeding Project Gain Share Calculation Date; or
- (iv) when otherwise agreed in writing between NNB HoldCo and the CfD Counterparty.

9.5 **Project Gain Share with the CfD Counterparty**

- (A) Where, as regards an Investor TopCo Tranche, the Equity IRR (set out in the latest Equity IRR Report or in the latest report of the independent expert pursuant to Clause 9.1(B) (*Preliminary Equity IRR Report*)) is or falls below the First Equity IRR Threshold, no Project Gain Share Amount in respect of such Investor TopCo Tranche shall be payable.
- (B) Where Clause 9.5(A) does not apply, the Investor Super TopCos shall jointly and severally procure that NNB HoldCo shall (or shall themselves):
 - (i) where, as regards an Investor TopCo Tranche, the Equity IRR (set out in the latest Equity IRR Report or in the latest report of the independent expert pursuant to Clause 9.1(B) (*Preliminary Equity IRR Report*)) exceeds the First Equity IRR Threshold but not both of the Second Equity IRR Thresholds:
 - (a) subject to Clause 9.5(B)(i)(b), pay no later than the Project Gain Share Due Date to the credit of the CfD Counterparty Designated Account a Project Gain Share Amount in an amount equivalent to thirty per cent. (30%) of the Available Cash Flow and Deemed Available Cash Flow referable to the Investor TopCo Tranche; and

- (b) if for the Project Gain Share Calculation Period to which the latest Equity IRR Report relates, the Equity IRR is greater than the First Equity IRR Threshold, but for the immediately preceding Project Gain Share Calculation Period the Equity IRR was below the First Equity IRR Threshold, pay no later than the Project Gain Share Due Date to the credit of the CfD Counterparty Designated Account a Project Gain Share Amount in an amount equivalent to thirty per cent. (30%) of the First Threshold Project IRR Amount referable to such Investor TopCo Tranche; and
- (ii) where, as regards an Investor TopCo Tranche, the Equity IRR (set out in the latest Equity IRR Report or in the latest report of the independent expert pursuant to Clause 9.1(B) (*Preliminary Equity IRR Report*)) exceeds both of the Second Equity IRR Thresholds:
 - (a) subject to Clause 9.5(B)(ii)(b), pay no later than the Project Gain Share Due Date to the credit of the CfD Counterparty Designated Account a Project Gain Share Amount in an amount equivalent to sixty per cent. (60%) of the Available Cash Flow and Deemed Available Cash Flow referable to the Investor TopCo Tranche; and
 - (b) if for the Project Gain Share Calculation Period to which the latest Equity IRR Report relates, the Equity IRR is greater than both of the Second Equity IRR Thresholds, but for the immediately preceding Project Gain Share Calculation Period the Equity IRR was below both of the Second Equity IRR Thresholds, pay no later than the Project Gain Share Due Date to the credit of the CfD Counterparty Designated Account a Project Gain Share Amount in an amount equivalent to sixty per cent. (60%) of the Second Threshold Project IRR Amount referable to such Investor TopCo Tranche.
- (C) If the CfD Counterparty considers that payment of a Project Gain Share Amount due to the CfD Counterparty under this Clause 9.5 has not been made to the credit of the CfD Counterparty Designated Account by the Project Gain Share Due Date:
 - (i) the CfD Counterparty shall notify NNB HoldCo within one hundred and eighty (180) Business Days after the relevant Project Gain Share Due Date; and
 - (ii) if NNB HoldCo agrees, or if an Expert determines in accordance with the Expert Determination Procedure, that there has been a failure to make payment of a Project Gain Share Amount, the Investor Super TopCos shall jointly and severally procure that NNB HoldCo shall make (or shall themselves make) that payment to the credit of the CfD Counterparty Designated Account (together with Default Interest thereon from the Project Gain Share Due Date to the actual date of payment).

10. EQUITY GAIN SHARE: SALE GAIN SHARE PROVISIONS

10.1 Preliminary Sale IRR Report

- (A) No later than twenty (20) Business Days after completion of a Relevant Sale, the Responsible Investor Super TopCo and (if party to this Agreement) the Acquirer shall, and shall be jointly and severally liable to, calculate the Sale IRR(s) and provide the CfD Counterparty with a written report setting out:
- (i) reasonable details of the Relevant Sale, including details of the seller, the Acquirer, the Qualifying Economic Interest the subject of the Relevant Sale, details of any new Tracked Person(s) as a result of the Relevant Sale, details of the relevant Investor and Investor Super TopCo with which the Acquirer is or is to be Associated, the date of the Relevant Sale agreement, the date of completion of the Relevant Sale and the consideration received or receivable or potentially receivable;
 - (ii) if, as a result of the Relevant Sale, there is any change in the Economic Interests held by an Investor (including any Economic Interests held by any member of the Investor's Group and any of its Associated persons), reasonable details of the division of Economic Interests between such Investor (or any such member or Associated person) and the Acquirer;
 - (iii) reasonable details of any persons of which the Responsible Investor Super TopCo or Acquirer is aware who would have been, as a result of the Relevant Sale, Tracked Persons but for the Threshold Test;
 - (iv) the Sale IRR(s) and reasonable details of the calculation thereof;
 - (v) any calculations and other Supporting Information, in reasonable detail, which the Responsible Investor Super TopCo or the Acquirer considers to be relevant to the Preliminary Sale IRR Report; and
 - (vi) confirmation that there has been no failure by the Responsible Investor Super TopCo, the seller or any IST Group Member to comply with one or more of the Equity Gain Share Rules or the Contracting Policy, in each case as applicable to it, or, if such an event has occurred, full details of such failure and the consequences thereof, including the amount and calculation of any resultant change in the Divestment Proceeds or Investment Cost.
- (B) If the Responsible Investor Super TopCo or the Acquirer does not provide the report referred to in Clause 10.1(A) within the period referred to in Clause 10.1(A):
- (i) the CfD Counterparty may obtain at the cost and expense of the Responsible Investor Super TopCo or (if party to this Agreement) the Acquirer an opinion from an independent expert as to the Sale IRR(s) (which opinion shall be final and binding on the Parties in the absence of fraud or manifest error) and that opinion shall be treated as the Sale IRR

Report and used in the determination of the amounts payable to the CfD Counterparty under Clause 10.4 (*Sale Gain Share with the CfD Counterparty*);

- (ii) no Preliminary Sale IRR Report or separate or further Sale IRR Report shall be required for this purpose;
 - (iii) the Responsible Investor Super TopCo and the Acquirer shall provide the Expert such information and assistance as it may reasonably request for the purposes referred to in Clause 10.1(B)(i); and
 - (iv) the CfD Counterparty shall provide a copy of any independent expert's final opinion obtained by it pursuant to Clause 10.1(B)(i) to the Responsible Investor Super TopCo and the Acquirer as soon as reasonably practicable.
- (C) The Preliminary Sale IRR Report shall be accompanied by a Directors' Certificate from the directors of the Responsible Investor Super TopCo and (if party to this Agreement) the Acquirer in relation to the information contained in, or enclosed with, the Preliminary Sale IRR Report.
- (D) The CfD Counterparty may, by notice to the Responsible Investor Super TopCo during the thirty (30) Business Day period after receipt of the Preliminary Sale IRR Report, request the Responsible Investor Super TopCo and (if party to this Agreement) the Acquirer to provide to the CfD Counterparty such Supporting Information in relation to the Preliminary Sale IRR Report (a "**Further Sale IRR Information Request**") as the CfD Counterparty reasonably requires.
- (E) If the CfD Counterparty gives a Further Sale IRR Information Request to the Responsible Investor Super TopCo, the Responsible Investor Super TopCo and (if party to this Agreement) the Acquirer shall within thirty (30) Business Days, or such longer period, if any, as is agreed between the CfD Counterparty and the Responsible Investor Super TopCo (each acting reasonably), after receipt of the request, prepare and deliver such further Supporting Information to the CfD Counterparty, together with a Directors' Certificate in relation to the Supporting Information provided in response to such Further Sale IRR Information Request.
- (F) The CfD Counterparty shall, within thirty (30) Business Days after receipt of the Preliminary Sale IRR Report or, if it has given a Further Sale IRR Information Request to the Responsible Investor Super TopCo, within thirty (30) Business Days after receipt of the further Supporting Information requested in the relevant Further Sale IRR Information Request, notify the Responsible Investor Super TopCo whether or not it approves the matters which are the subject of the Preliminary Sale IRR Report and, where the CfD Counterparty does not approve the matters which are the subject of the Preliminary Sale IRR Report, it shall give the Responsible Investor Super TopCo reasons in support.
- (G) If the CfD Counterparty does not notify the Responsible Investor Super TopCo whether or not it approves the matters which are the subject of the Preliminary Sale IRR Report within the relevant thirty (30) Business Day period referred to in

Clause 10.1(F), the Preliminary Sale IRR Report shall be deemed not to be agreed.

10.2 Disputes in relation to a Preliminary Sale IRR Report

- (A) If the Responsible Investor Super TopCo and the CfD Counterparty are not able to agree, or are deemed not to have agreed, the matters which are the subject of a Preliminary Sale IRR Report or related matters (including Supporting Information), either the Responsible Investor Super TopCo or the CfD Counterparty may refer the Dispute for determination by an Expert in accordance with the Expert Determination Procedure.
- (B) Until the Responsible Investor Super TopCo and the CfD Counterparty agree the matters which are the subject of a Preliminary Sale IRR Report or the Dispute in respect of it has been determined by an Expert in accordance with the Expert Determination Procedure, there shall be no Sale IRR Report.

10.3 Sale IRR Report

Upon:

- (A) the CfD Counterparty notifying the Responsible Investor Super TopCo that it approves the matters which are the subject of a Preliminary Sale IRR Report;
- (B) the CfD Counterparty and the Responsible Investor Super TopCo agreeing the matters which are the subject of a Preliminary Sale IRR Report (and any amendments to that Preliminary Sale IRR Report being made in accordance with that agreement); or
- (C) any Dispute (other than merely as to whether the Responsible Investor Super TopCo or the Acquirer has submitted all the information required for a Preliminary Sale IRR Report) with respect to the matters which are the subject of a Preliminary Sale IRR Report being resolved or determined as provided in Clause 10.2 (*Disputes in relation to a Preliminary Sale IRR Report*) (and any amendments to the Preliminary Sale IRR Report being made in accordance with that resolution or determination),

the Preliminary Sale IRR Report (once delivered and as amended, if applicable) shall become the "**Sale IRR Report**" in respect of the Relevant Sale.

10.4 Sale Gain Share with the CfD Counterparty

- (A) Within ten (10) Business Days after the finalisation of the Sale IRR Report or receipt by the Responsible Investor Super TopCo of the report of the independent expert pursuant to Clause 10.1(B) (*Preliminary Sale IRR Report*) or such other date as the CfD Counterparty and the Responsible Investor Super TopCo may agree in writing (the "**Sale Gain Share Due Date**"), the Responsible Investor Super TopCo and (if party to this Agreement) the Selling Shareholder and the Acquirer and the Acquirer's Investor Super TopCo shall be jointly and severally

liable in respect of each relevant Investor TopCo Tranche (or portion thereof, as applicable):

- (i) where the Sale IRR(s) (set out in the Sale IRR Report or in the report of the independent expert pursuant to Clause 10.1(B) (*Preliminary Sale IRR Report*)) exceeds the First Equity IRR Threshold but not both of the Second Equity IRR Thresholds, to pay no later than the Sale Gain Share Due Date to the credit of the CfD Counterparty Designated Account an amount equal to thirty per cent. (30%) of the First Threshold Excess Sale Proceeds; and
 - (ii) where the Sale IRR(s) (set out in the Sale IRR Report or in the report of the independent expert pursuant to Clause 10.1(B) (*Preliminary Sale IRR Report*)) exceeds both of the Second Equity IRR Thresholds, to pay no later than the Sale Gain Share Due Date to the credit of the CfD Counterparty Designated Account an amount equal to thirty per cent. (30%) of the Second Threshold Excess Sale Proceeds (First Threshold Difference) and an amount equal to sixty per cent. (60%) of the Second Threshold Excess Sale Proceeds (Second Threshold Difference).
- (B) If any further consideration in respect of a Relevant Sale is received (which for these purposes shall include any further Distributions, or amounts in respect thereof, in respect of the Economic Interests which are the subject of the Relevant Sale and received by the Selling Shareholder as part of the consideration for the Relevant Sale), the Responsible Investor Super TopCo and (if party to this Agreement) the Selling Shareholder and the Acquirer and the Acquirer's Investor Super TopCo shall be jointly and severally liable on each occasion after receipt of any such consideration to recalculate the Sale IRR(s) set out in the Sale IRR Report or report of the independent expert pursuant to Clause 10.1(B) (*Preliminary Sale IRR Report*) to include such further consideration (as of the date of receipt of such further consideration but otherwise on the same basis as the original calculation) and provide written details of the calculation to the CfD Counterparty no later than ten (10) Business Days after such receipt. The provisions of Clause 10.4(A) shall apply *mutatis mutandis* in respect of such recalculated Sale IRR(s) and if as a result, and after deducting payments previously made thereunder, an amount or additional amount becomes payable pursuant thereto, the Responsible Investor Super TopCo and (if party to this Agreement) the Selling Shareholder and the Acquirer and the Acquirer's Investor Super TopCo shall, and shall be jointly and severally liable to, pay the same to the credit of the CfD Counterparty Designated Account no later than ten (10) Business Days after the provision of the details referred to above. For the avoidance of doubt, no payment or repayment will be due or payable by the CfD Counterparty under or pursuant to this Clause 10.4(B).
- (C) If the CfD Counterparty considers that none of the Responsible Investor Super TopCo, the Selling Shareholder, the Acquirer or the Acquirer's Investor Super TopCo has made payment of a Sale Gain Share Amount due from it under this Clause 10 into the CfD Counterparty Designated Account by the Sale Gain Share Due Date or the date provided for under Clause 10.4(B), as applicable, then:

- (i) the CfD Counterparty shall notify the Responsible Investor Super TopCo within one hundred and eighty (180) Business Days after the CfD Counterparty first becomes aware of the failure to make such payment; and
- (ii) if the Responsible Investor Super TopCo agrees, or if an Expert determines in accordance with the Expert Determination Procedure, there has been a failure to make payment, then the Responsible Investor Super TopCo and (if party to this Agreement), the Selling Shareholder, the Acquirer and the Acquirer's Investor Super TopCo shall forthwith make that payment to the credit of the CfD Counterparty Designated Account (together with Default Interest thereon from the due date for payment to the actual date of payment).

11. EQUITY GAIN SHARE: SECURITY AND ENFORCEMENT

11.1 Security

On the Agreement Date, each Investor Super TopCo shall enter into a Security Document in favour of the CfD Counterparty as security for the Secured Sums.

11.2 Enforcement Mechanism for Project Gain Share Provisions

Where the CfD Counterparty and NNB HoldCo agree or it is determined that a payment due to the CfD Counterparty pursuant to Clause 9.5 (*Project Gain Share with the CfD Counterparty*) has not been made by the Project Gain Share Due Date:

- (A) the Investor Super TopCos shall be jointly and severally liable to pay the outstanding amount to the CfD Counterparty no later than five (5) Business Days after such agreement or determination (the "**Project Gain Share Payment Deadline**"); and
- (B) if payment of the outstanding amount is not made by the Project Gain Share Payment Deadline then, at the CfD Counterparty's election:
 - (i) the CfD Counterparty may suspend the payment of Difference Amounts under and in accordance with the HPC CfD to the extent and for so long as provided for by the HPC CfD;
 - (ii) the Investor Super TopCos shall jointly and severally ensure that no Distributions are thereafter made by the Generator, NNB HoldCo, any of the Investor TopCos or any of the Investor Super TopCos for so long as such payment is outstanding; and/or
 - (iii) the CfD Counterparty shall be entitled to enforce any or all of the Security Documents given by the Investor Super TopCos (including through appropriation of shares) to recover the relevant Secured Sums.

11.3 Enforcement Mechanism for Sale Gain Share Provisions

Where the CfD Counterparty and the Responsible Investor Super TopCo agree or it is determined that a payment due to the CfD Counterparty pursuant to Clause 10.4 (*Sale Gain Share with the CfD Counterparty*) has not been made by the Sale Gain Share Due Date or the date provided for under Clause 10.4(B) (*Sale Gain Share with the CfD Counterparty*), as applicable:

- (A) the relevant Responsible Investor Super TopCo or (if party to this Agreement) the Selling Shareholder, the Acquirer or the Acquirer's Investor Super TopCo shall pay, or procure the payment of, the outstanding amount due to the CfD Counterparty no later than five (5) Business Days after such agreement or determination (the "**Sale Gain Share Payment Deadline**"); and
- (B) if payment of the outstanding amount is not made by the Sale Gain Share Payment Deadline then, at the CfD Counterparty's election:
 - (i) the relevant Responsible Investor Super TopCo(s) shall procure that no Distributions are thereafter made by it or its Investor TopCo for so long as such payment is outstanding; and/or
 - (ii) the CfD Counterparty shall be entitled to enforce the Security Document given by the relevant Responsible Investor Super TopCo, the Acquirer or the Acquirer's Investor Super TopCo (including through appropriation of shares) to recover the relevant Secured Sums.

12. EQUITY GAIN SHARE: UNDERTAKINGS

12.1 Investor undertakings

Each Investor undertakes to the CfD Counterparty as follows (provided that, in the case of EDF Energy Holdings, the government of the French Republic, and, in the case of International Nuclear Investment, the government of the People's Republic of China, shall not be considered to be Tracked Persons for the purposes of this Clause 12.1):

- (A) **Avoidance Events:**
 - (i) it shall procure that any Avoidance Event which it or the Investor Super TopCo or Investor TopCo through which the Investor and/or its Associated persons hold an Economic Interest in NNB HoldCo or any of its or their respective Tracked Persons enters into or facilitates or in which it participates, whether directly or indirectly, is promptly unwound or reversed out or that all corrective or remedial steps are promptly taken, in each case to the extent necessary to ensure that the relevant contract, arrangement, scheme, transaction or series of transactions or other circumstances cease(s) to be an Avoidance Event (without prejudice to any claim of the CfD Counterparty to a Gain Share Amount or additional Gain Share Amount attributable to that Avoidance Event or its consequences), and shall keep the CfD Counterparty fully informed as to

all material actions or steps it is taking or procuring to be taken in this regard; and

- (ii) if the government of the French Republic or, as the case may be, the government of the People's Republic of China has entered into, facilitated or participated in, whether directly or indirectly, any Avoidance Event and has failed promptly to unwind, reverse out or take corrective or remedial steps in each case to the extent necessary to ensure that the relevant contract, arrangement, scheme, transaction or series of transactions or other circumstances cease(s) to be an Avoidance Event, EDF Energy Holdings or International Nuclear Investment, as applicable, shall be liable to the CfD Counterparty for such loss, liability, cost or expense as would have arisen had the government of the French Republic or the government of the People's Republic of China, as applicable, been a Tracked Person for the purpose of this Clause 12.1(A);

(B) **Abusive arrangements:**

- (i) it shall procure that any Abusive arrangement which it or the Investor Super TopCo or Investor TopCo through which the Investor and/or its Associated persons hold an Economic Interest in NNB HoldCo or any of its or their respective Tracked Persons enters into or carries out is promptly unwound or reversed out or that all corrective or remedial steps are promptly taken, in each case to the extent necessary to ensure that the relevant arrangement ceases to be Abusive (without prejudice to any claim of the CfD Counterparty to a Gain Share Amount or additional Gain Share Amount attributable to that Abusive arrangement or its consequences), and shall keep the CfD Counterparty fully informed as to all material actions or steps it is taking or procuring to be taken in this regard; and
- (ii) if the government of the French Republic or, as the case may be, the government of the People's Republic of China has entered into or carried out any Abusive arrangement and has failed promptly to unwind, reverse out or take corrective or remedial steps in each case to the extent necessary to ensure that the relevant arrangement ceases to be Abusive, EDF Energy Holdings or International Nuclear Investment, as applicable, shall be liable to the CfD Counterparty for such loss, liability, cost or expense as would have arisen had the government of the French Republic or the government of the People's Republic of China, as applicable, been a Tracked Person for the purpose of this Clause 12.1(B);

- (C) **Contracting Policy:** it shall comply, and shall procure compliance by each member of the NNB HoldCo Group and each of the Investor Super TopCo and Investor TopCo through which the Investor and/or its Associated persons hold an Economic Interest in NNB HoldCo, with the Contracting Policy;

- (D) **Group structure:** it shall comply, and shall procure that each of the Investor Super TopCo and Investor TopCo through which the Investor and/or its

Associated persons hold an Economic Interest in NNB HoldCo complies, with the structure set out in the Investment Structure Chart;

(E) ***Accession and transfers:***

- (i) it shall comply, and shall procure that each of the Investor Super TopCo and Investor TopCo through which the Investor and/or its Associated persons hold an Economic Interest in NNB HoldCo and each of its or their respective Tracked Persons complies, with the procedure set out in Clause 35 (*Changes to the Parties*) to the extent that such procedures apply to the relevant person(s); and
- (ii) if the government of the French Republic or, as the case may be, the government of the People's Republic of China has failed to comply with the procedure set out in Clause 35 (*Changes to the Parties*) to the extent that such procedures apply to it, EDF Energy Holdings or International Nuclear Investment, as applicable, shall be liable to the CfD Counterparty for such loss, liability, cost or expense as would have arisen had the government of the French Republic or the government of the People's Republic of China, as applicable, been a Tracked Person for the purpose of this Clause 12.1(E);

(F) ***Stapling:***

- (i) it shall not, and it shall procure that none of the Investor Super TopCo or the Investor TopCo through which the Investor and/or its Associated persons hold an Economic Interest in NNB HoldCo nor any of its or their respective Tracked Persons shall, effect or seek to effect a sale or transfer in respect of its Economic Interests in NNB HoldCo unless a pro rata amount of all such Economic Interests is comprised within the sale or transfer; and
- (ii) if the government of the French Republic or, as the case may be, the government of the People's Republic of China has effected or sought to effect a sale or transfer in respect of its Economic Interests in NNB HoldCo and a pro rata amount of all such Economic Interests is not comprised within the sale or transfer, EDF Energy Holdings or International Nuclear Investment, as applicable, shall be liable to the CfD Counterparty for such loss, liability, cost or expense as would have arisen had the government of the French Republic or the government of the People's Republic of China, as applicable, been a Tracked Person for the purpose of this Clause 12.1(F),

and for the purpose of this Clause 12.1(F):

- (a) shares or other securities or other equity, partnership or other ownership interests shall be taken at their par value;
- (b) loans, loan capital and other debt instruments shall be taken at their principal amount plus accrued, unpaid interest; and

(c) other Economic Interests shall be taken at the nearest equivalent to that in paragraphs (a) and (b) above; and

(G) **Distributions:** it shall procure compliance by each of the Investor TopCo and Investor Super TopCo through which the Investor and/or its Associated persons hold an Economic Interest in NNB HoldCo with Clause 9.4 (*Distributions*).

12.2 Further Investor undertakings

Each Investor (or, in the case where EDF Energy Holdings is an Investor, EDF SA (except where EDF SA's obligations in respect of this Clause are suspended, illegal, invalid or unenforceable in any respect in any jurisdiction) or, in the case where International Nuclear Investment is an Investor, CGNPC) undertakes to the CfD Counterparty as follows for so long as the relevant Ultimate Investor or Investor, as the case may be, has, and/or any of the Investor's Tracked Persons and/or Associated persons have, an Economic Interest in NNB HoldCo:

(A) **Information:** it shall promptly provide the CfD Counterparty with reasonable details on the transfer of any Economic Interest in NNB HoldCo by that Investor or any of that Investor's Tracked Persons, including details of the seller, the Transferee, the Economic Interest transferred, details of the relevant Investor and Investor Super TopCo with which the Transferee is or is to be Associated, details of any new Tracked Person(s) as a result of the transfer and details of any persons of which it is aware who would have been Tracked Persons but for the Threshold Test, the date of the agreement to transfer, the date of completion of the transfer and the consideration received, receivable or potentially receivable and, if applicable, details of the division of Economic Interests in NNB HoldCo between it and the Transferee; and

(B) **Audit:** it shall procure the timely provision to the CfD Counterparty of the Auditors' certificate referred to in Clause 9.1(D)(iv) (*Preliminary Equity IRR Report*) and shall provide the Auditors (or shall procure that the Auditors are provided) with all Information necessary for the purposes of their issuing the certificate with the required confirmations and certifications.

12.3 Transfers

The Ultimate Investors and EDF Energy Holdings undertake to the CfD Counterparty and the Secretary of State that as from the Agreement Date there shall be no transfer of Economic Interests in NNB HoldCo or any Relevant Sale in the period prior to the date of fulfilment of all Agreement Date Conditions Precedent (including those set out in paragraphs 5 and 6 of Part 1 (*Agreement Date Conditions Precedent*) of Annex 1 (*Conditions Precedent*), save as strictly necessary to enable the confirmation referred to in paragraph 5 of Part 1 (*Agreement Date Conditions Precedent*) of Annex 1 (*Conditions Precedent*) to be given.

12.4 CCE Suspension

Without prejudice to Clause 12.3 (*Transfers*), the Ultimate Investors and EDF Energy Holdings undertake to the CfD Counterparty and the Secretary of State that:

- (A) as from the Agreement Date there shall be no transfer of Economic Interests in (in the case of the undertaking by EDF SA and EDF Energy Holdings) NNB Top Company HPC (A) Ltd or (in the case of the undertaking by CGNPC) Sagittarius International Limited, or any Relevant Sale until such time as the CCE Proceedings are finally determined and any suspension of obligations under the Transaction Documents under or pursuant to the CCE Proceedings has ended (the “**CCE Suspension Period**”) unless such transfer or Relevant Sale, as applicable, may lawfully be carried out in accordance with this Agreement notwithstanding such suspension and the Generator, NNB HoldCo, the Investor Topcos, the Investor Super Topcos and the Investors can and do perform their respective obligations under this Part 5 (*Equity Gain Share*) (as those obligations would have applied but for such suspension) and provide such assurance as regards that performance as the CfD Counterparty may reasonably require; and
- (B) within ten (10) Business Days after the end of the CCE Suspension Period, they shall provide a Directors' Certificate to the CfD Counterparty and the Secretary of State (in form and content satisfactory to the CfD Counterparty and the Secretary of State, acting reasonably) confirming compliance with Clause 12.4(A).

13. EQUITY IRR MODEL

13.1 Description of the Equity IRR Model

The Equity IRR Model shall:

- (A) identify each Investor TopCo Tranche and for each Investor TopCo Tranche shall set out, as applicable:
- (i) the Investment Cost;
 - (ii) the Divestment Proceeds;
 - (iii) the costs of credit support;
 - (iv) the Available Cash Flow and the Deemed Available Cash Flow;
 - (v) the Project Cash Flow;
 - (vi) the Equity IRR;
 - (vii) any Project Gain Share;
 - (viii) the Sale Cash Flow;
 - (ix) the Sale IRR; and
 - (x) any Sale Gain Share;

- (B) be based on the management accounts of the Generator and NNB HoldCo, each prepared in accordance with generally accepted accounting principles, and shall reconcile to such principles;
- (C) show how NNB HoldCo (notionally) distributes the Available Cash Flow to each Investor TopCo Tranche;
- (D) store and identify any previous cash flows with respect to each Investor TopCo Tranche from any previous Equity IRR Model;
- (E) calculate the costs of credit support;
- (F) carry out Real as well as Nominal calculations for the purposes of the Second Equity IRR Real Threshold and the Second Equity IRR Nominal Threshold;
- (G) calculate and set out the Distribution required to achieve the First Equity IRR Threshold or the Second Equity IRR Thresholds, as applicable, for each Investor TopCo Tranche in the next succeeding Project Gain Share Calculation Period; and
- (H) reconcile figures to the latest then available audited financial statements of NNB HoldCo.

13.2 Revision of the Equity IRR Model

- (A) The Investor Super TopCos shall jointly and severally procure that NNB HoldCo shall submit a revised draft of the Equity IRR Model:
 - (i) no later than:
 - (a) 31 March in each year ending in a Project Gain Share Preliminary Period (or, in the case of the first revision of the Equity IRR Model and if earlier than 31 March, 2017, the earlier of the date on which the first Preliminary Equity IRR Report or the first Preliminary Sale IRR Report is provided to the CfD Counterparty in accordance with Clause 9.1(A) (*Preliminary Equity IRR Report*) or 10.1(A) (*Preliminary Sale IRR Report*), as applicable); and
 - (b) 31 March and 31 August in each year ending in a Project Gain Share Secondary Period; and
 - (ii) if necessary to correct any issues of compatibility of the Equity IRR Model with supporting hardware or software (including the relevant operating programme) or to ensure that the Equity IRR Model remains compliant with this Agreement.
- (B) The Equity IRR Model shall not be revised save as set out in this Clause 13 or as otherwise expressly provided for in this Agreement.

- (C) Wherever it is required that the Equity IRR Model be revised by NNB HoldCo pursuant to Clause 13.2(A), the Investor Super TopCos shall jointly and severally procure that NNB HoldCo shall prepare a revised draft of the Equity IRR Model (a “**Draft Revised Equity IRR Model**”) and provide a copy of the same to the CfD Counterparty, together with a covering paper identifying all of the assumptions, values, line items or rows which have been modified or any other changes that have been made and setting out NNB HoldCo’s reasons for doing so, in each case in reasonable detail.
- (D) Any Draft Revised Equity IRR Model shall:
- (i) be prepared at the cost and expense of NNB HoldCo (failing which, at the joint and several cost and expense of the Investor Super TopCos);
 - (ii) be, to the extent reasonably possible, in substantially the same form as the Equity IRR Model applicable immediately prior to the relevant revision;
 - (iii) be compatible with supporting hardware and software (including the operating programme on which the Equity IRR Model is based);
 - (iv) correct any errors identified in any previous version of the Equity IRR Model;
 - (v) be compliant with this Agreement and its requirements;
 - (vi) be prepared using the most up-to-date data available to NNB HoldCo at the time of preparation of such Draft Revised Equity IRR Model; and
 - (vii) in the case of each revision required under Clause 13.2(A)(i)(a) and by 31 March under Clause 13.2(A)(i)(b), be accompanied by an Accountant’s Report.
- (E) Each Draft Revised Equity IRR Model shall be accompanied by a Directors’ Certificate in relation to the information contained in, and enclosed with, the Draft Revised Equity IRR Model.
- (F) The CfD Counterparty may, by notice to NNB HoldCo on one occasion within thirty (30) Business Days, or such other period, if any, as is agreed in writing between the CfD Counterparty and NNB HoldCo (each acting reasonably), after receipt of a Draft Revised Equity IRR Model, request NNB HoldCo to provide the CfD Counterparty such Supporting Information in relation to that Draft Revised Equity IRR Model (a “**Draft Equity IRR Model Information Request**”) as the CfD Counterparty reasonably requires.
- (G) If the CfD Counterparty gives a Draft Equity IRR Model Information Request to NNB HoldCo, the Investor Super TopCos shall jointly and severally procure that NNB HoldCo shall, within thirty (30) Business Days, or such other period, if any, as is agreed in writing between the CfD Counterparty and NNB HoldCo (each acting reasonably), after receipt of the request, prepare and deliver such further

Supporting Information to the CfD Counterparty, together with a Directors' Certificate in relation to the Supporting Information provided in response to such Draft Equity IRR Model Information Request.

- (H) The CfD Counterparty shall, within thirty (30) Business Days, or such other period, if any, as is agreed in writing between the CfD Counterparty and NNB HoldCo (each acting reasonably), after receipt of a Draft Revised Equity IRR Model or, if it has given a Draft Equity IRR Model Information Request to NNB HoldCo, within thirty (30) Business Days, or such other period, if any, as is agreed in writing between the CfD Counterparty and NNB HoldCo (each acting reasonably), after receipt of the further Supporting Information requested in the relevant Draft Equity IRR Model Information Request, notify NNB HoldCo whether or not it approves the matters which are the subject of the Draft Revised Equity IRR Model, and, where the CfD Counterparty does not approve the matters which are the subject of that Draft Revised Equity IRR Model, it shall give NNB HoldCo reasons in support.

13.3 Disputes in relation to the Equity IRR Model

- (A) If the CfD Counterparty does not provide a notice in accordance with Clause 13.2(H) (*Revision of the Equity IRR Model*) or if NNB HoldCo and the CfD Counterparty are not able to agree a Draft Revised Equity IRR Model or related matters including Supporting Information or any adjustments or payments resulting from the provisions of this Clause 13, either NNB HoldCo or the CfD Counterparty may refer the Dispute for resolution by an Expert in accordance with the Expert Determination Procedure.
- (B) Until NNB HoldCo and the CfD Counterparty agree a Draft Revised Equity IRR Model in respect of any period or the Dispute has been determined in accordance with the Expert Determination Procedure, there shall be no revised Equity IRR Model in respect of that period and the version of the Equity IRR Model applicable immediately prior to the modification shall apply for the purposes of this Agreement.

13.4 Updating of the Equity IRR Model

Upon:

- (A) the CfD Counterparty notifying NNB HoldCo that it approves a Draft Revised Equity IRR Model;
- (B) the CfD Counterparty and NNB HoldCo agreeing a Draft Revised Equity IRR Model (and any amendments to the Draft Revised Equity IRR Model being made in accordance with that agreement); or
- (C) any Dispute (other than merely as to whether NNB HoldCo has submitted all information required for a Draft Revised Equity IRR Model) with respect to a Draft Revised Equity IRR Model being resolved or determined as provided in Clause 13.3 (*Disputes in relation to the Equity IRR Model*) (and any amendments

to the Draft Revised Equity IRR Model being made in accordance with that resolution or determination),

the Draft Revised Equity IRR Model (once delivered and as amended, if applicable) shall become the “**Equity IRR Model**” for the purposes of this Agreement.

13.5 Custody of the Equity IRR Model

- (A) Whenever the Equity IRR Model is revised pursuant to this Clause 13, the Investor Super TopCos shall jointly and severally procure that NNB HoldCo shall, as soon as reasonably practicable, (i) arrange for the revised Equity IRR Model to be recorded electronically, and (ii) deliver an electronic copy and a copy on an electronic storage device formatted ready for printing (in the case of a copy on an electronic storage device, to be delivered only in respect of the revision required no later than 31 March under Clause 13.2(A)(i) (*Revision of the Equity IRR Model*)) of the revised Equity IRR Model to the CfD Counterparty.
- (B) Each of NNB HoldCo and the CfD Counterparty shall retain a copy of the Equity IRR Model, as revised from time to time. In the event of any discrepancy between the Equity IRR Model that is held by the CfD Counterparty and the copy held by NNB HoldCo, the copy held by the CfD Counterparty (in its original form as delivered to the CfD Counterparty) shall, in the absence of manifest error, prevail.

13.6 Conflict involving the Equity IRR Model

- (A) In the event of any discrepancy between the Equity IRR Model and any provision of this Agreement, the provisions of this Agreement shall prevail.
- (B) Any changes to the Equity IRR Model not effected in accordance with this Agreement shall be of no effect for the purposes of this Agreement.

PART 6
ORDERLY HANDOVER OF HPC

14. ORDERLY HANDOVER OF HPC

14.1 Initial Funding Notice

- (A) If the Investors at any time consider it likely that, within the immediately succeeding twelve (12) months, a decision will be taken by the Investors irrevocably to cease providing funding to the Generator for the purposes of the Project in response to funding requests made or funding requests which may in the future be made by the Generator, the Investors, acting jointly, shall notify the Secretary of State, copied to the CfD Counterparty and the Financing Representative, of such fact and the relevant circumstances in writing as soon as reasonably practicable (the “**Initial Funding Notice**”).
- (B) After receipt of the Initial Funding Notice, the Secretary of State may, in the Secretary of State’s sole discretion, hold discussions with the Investors and the Financing Representative with a view to a Final Funding Notice not being issued by the Investors. The Investors hereby agree to participate and engage honestly and diligently in any such discussions requested by the Secretary of State (although it is acknowledged and agreed that, without prejudice to the obligations (if any) of the Investors under the Finance Documents, any decision made by the Investors ultimately to issue a Final Funding Notice shall be for the Investors alone).
- (C) If the Investors have given an Initial Funding Notice in accordance with Clause 14.1(A) and either:
- (i) the Investors, acting jointly, withdraw such Initial Funding Notice by notice in writing to the Secretary of State, copied to the CfD Counterparty and the Financing Representative, prior to the issue of a Final Funding Notice in respect of such Initial Funding Notice; or
 - (ii) a Final Funding Notice in respect of such Initial Funding Notice is not given by the Investors in accordance with Clause 14.2(A) (*Final Funding Notice*),

the Investors may give a further Initial Funding Notice in accordance with Clause 14.1(A) in relation to the same circumstances for which such Initial Funding Notice was given, provided that the provisions of this Clause 14 shall apply to such further Initial Funding Notice.

- (D) The Investors shall not give an Initial Funding Notice frivolously or vexatiously.

14.2 Final Funding Notice

- (A) The Investors, acting jointly, may, after the date falling three (3) months after the Investors have given (and not withdrawn) an Initial Funding Notice in accordance with Clause 14.1(A) (*Initial Funding Notice*) but no later than twelve (12) months

after such date, give a notice in writing to the Secretary of State, copied to the CfD Counterparty and the Financing Representative, in relation to the same set of circumstances for which such Initial Funding Notice was issued (the “**Final Funding Notice**”) confirming the decision set out in the Initial Funding Notice. The issue of a Final Funding Notice shall be irrevocable, unless agreed otherwise in writing by the Investors and the Secretary of State.

- (B) The Secretary of State may, after receipt of a Final Funding Notice and without prejudice to any rights, powers or course of action which may be available to the Secretary of State at the time, make (i) a Nuclear Transfer Scheme transferring some or all of the property, rights and liabilities of the Generator to the NDA or to a publicly owned company (each as defined in the Energy Act 2004), or (ii) another Statutory Transfer Scheme.
- (C) Nothing in this Clause 14 shall oblige, or be construed as obliging, the Secretary of State to make a Nuclear Transfer Scheme or any other Statutory Transfer Scheme or to take any other action or exercise any rights or powers as are referred to in this Clause 14, nor shall this Clause 14 be construed as giving rise to any expectation as to how the Secretary of State will or will not exercise the Secretary of State’s discretion or otherwise act nor be construed as fettering the discretion of the Secretary of State nor shall this Clause 14 constitute, nor shall it be construed as constituting, a predetermination of the Secretary of State’s discretion in such matters.

14.3 Shareholder and Generator Consent

- (A) The Ultimate Investors, the Investors, the Investor Super TopCos, the Investor TopCos, NNB HoldCo, NNB FinCo and the Generator each hereby irrevocably give their respective consents to the making of a Nuclear Transfer Scheme (to the extent required under section 40(2) of the Energy Act 2004), or to a Statutory Transfer Scheme (not being a Nuclear Transfer Scheme), to a person other than a member of the NNB HoldCo Group, and each Investor shall procure that all other direct or indirect shareholder or member consents required by the relevant legislation to give effect to the scheme shall be given in each case subject to the terms and conditions set out below:
 - (i) the Investors have issued a Final Funding Notice;
 - (ii) the property, rights and liabilities transferred (including by way of transfer of shares) by virtue of such a scheme include the Site, the Reactors and all liabilities of the type costed within the DWMP (as defined in the FAP);
 - (iii) the making of such a scheme is without prejudice to any claim for compensation in relation to the circumstances leading to the Investors’ decision to issue a Final Funding Notice; and
 - (iv) the property, rights and liabilities which are:

- (a) not transferred by virtue of the Nuclear Transfer Scheme to the NDA or a publicly owned company (each as defined in the Energy Act 2004); or
- (b) transferred by virtue of any other Statutory Transfer Scheme to an Investor Residual Company,

shall be treated as “**Excluded Residual Liabilities**”.

- (B) Without prejudice to Clause 14.3(A)(iii), each Ultimate Investor, Investor, Investor Super TopCo and Investor TopCo, NNB HoldCo, NNB FinCo and the Generator hereby acknowledges and agrees that the making of a Permitted Transfer Scheme does not, in and of itself, give rise to a claim for compensation by any of them and is not and does not constitute in and of itself an expropriation or a measure equivalent to expropriation.
- (C) Each Ultimate Investor, Investor, Investor Super TopCo and Investor TopCo and NNB HoldCo hereby acknowledges and agrees that, without prejudice to its rights under Clause 14.3(A)(iii) and without prejudice to the CfD Counterparty’s rights under Clause 17 (*Equity Investor Completion Statement*) and Clauses 18.2(H) and 18.2(I) (*Compensation to Equity Investors*), the value of its investment, whether direct or indirect, in the Generator (howsoever determined) at the time that a Permitted Transfer Scheme is made shall be, and shall be deemed for the purposes of such a scheme to be, no greater than zero.

14.4 **Co-operation, Access and Information**

- (A) Each Ultimate Investor, Investor, Investor Super TopCo, Investor TopCo, NNB HoldCo, NNB FinCo and the Generator agrees to (and the Investors shall procure that each of its direct or indirect shareholders and members, and each Investor Super TopCo, Investor TopCo, NNB HoldCo, NNB FinCo and the Generator shall) co-operate in the making of a Permitted Transfer Scheme, including providing all such information and assistance as the Secretary of State may reasonably require (taking into account the requirements of applicable law and regulation) and upon reasonable notice (taking into account prevailing circumstances) in order for the Secretary of State to assess whether or not to make a Permitted Transfer Scheme and for the purposes of conducting due diligence on the business, finances, property, assets, rights, liabilities and other affairs of the Generator.
- (B) Subject to the requirements of applicable law and regulation, the information and assistance referred to in Clause 14.4(A) shall include:
 - (i) making available to the Secretary of State and the Secretary of State’s Representatives any Books and Records of the Generator or other members of the NNB HoldCo Group as are reasonably required by the Secretary of State for inspection and copying (at the Secretary of State’s expense);

- (ii) providing access to the Site and the Facility to the Secretary of State and the Secretary of State's Representatives; and
 - (iii) providing access to the directors, officers, employees, agents, consultants and advisers of the Generator or other members of the NNB HoldCo Group, who shall be instructed to give, as soon as reasonably practicable, all such information and explanation as is reasonably requested by or on behalf of the Secretary of State.
- (C) The Investors shall ensure that all information provided to the Secretary of State and the Secretary of State's Representatives pursuant to Clause 14.4(A) is, to the best of their knowledge and belief having made all due and careful enquiries, true and accurate in all material respects and not misleading in any material respect.

PART 7
QUALIFYING EXIT EVENTS

15. QUALIFYING EFFECTIVE SHUTDOWN EVENT: PROCEDURE

15.1 Qualifying Effective Shutdown Event Notice

- (A) If the Lead Investor or the Generator considers that a Qualifying Effective Shutdown Event has occurred and is continuing, the Lead Investor or the Generator may deliver a Qualifying Effective Shutdown Event Notice to the CfD Counterparty. A Qualifying Effective Shutdown Event Notice may (but need not) be given to the CfD Counterparty at the same time as a QCiL Cessation Event Notice. There shall be a single Qualifying Effective Shutdown Event Notice in respect of a particular circumstance or set of circumstances and if the Lead Investor and the Generator both purport to give a Qualifying Effective Shutdown Event Notice, the notice given by the Lead Investor shall prevail and the notice given by the Generator shall be of no effect.
- (B) A Qualifying Effective Shutdown Event Notice shall:
- (i) be prepared at the cost and expense of the Investors (or, if the notice is given by the Generator, at the cost and expense of the Generator);
 - (ii) specify and include reasonable details of the relevant Qualifying Effective Shutdown Event, including whether and for what reasons the Shutdown Event is a Pre-Criticality Shutdown Event, a Post-Criticality Shutdown Event or an Insurance Shutdown Event;
 - (iii) specify the date on which the Qualifying Effective Shutdown Event occurred; and
 - (iv) include such Supporting Information, in reasonable detail, which the Lead Investor (or, if the notice is given by the Generator, which the Generator) considers to be relevant and supportive of the foregoing.
- (C) Any Qualifying Effective Shutdown Event Notice delivered by the Lead Investor pursuant to this Clause 15.1 shall be deemed to have been given for itself and on behalf of each Investor and a Qualifying Effective Shutdown Event Notice shall be irrevocable.
- (D) Any Qualifying Effective Shutdown Event Notice shall be accompanied by a Directors' Certificate from the Lead Investor (or, if the notice is given by the Generator, from the Generator) in relation to the information contained in, and enclosed with, the Qualifying Effective Shutdown Event Notice.
- (E) The CfD Counterparty may, by notice to the Lead Investor or the Generator, as applicable, during the thirty (30) Business Day period after receipt of a Qualifying Effective Shutdown Event Notice, acting reasonably, require the Investors or the Generator, as applicable, to provide Supporting Information in relation to the Qualifying Effective Shutdown Event Notice (a "**Further Qualifying Effective**

Shutdown Event Information Request”) as the CfD Counterparty reasonably requires.

- (F) If the CfD Counterparty gives a Further Qualifying Effective Shutdown Event Information Request to the Lead Investor or the Generator, as applicable, the Lead Investor or the Generator, as applicable, shall within thirty (30) Business Days, or such longer period, if any, as is agreed in writing between the CfD Counterparty and the Lead Investor or the Generator, as applicable, (each acting reasonably) after receipt of the request, prepare and deliver such further Supporting Information to the CfD Counterparty together with a Directors’ Certificate from the Lead Investor or the Generator, as applicable, in relation to the Supporting Information provided in response to such Further Qualifying Effective Shutdown Event Information Request.
- (G) The CfD Counterparty shall, within thirty (30) Business Days after receipt of the Qualifying Effective Shutdown Event Notice or, if it has given a Further Qualifying Effective Shutdown Event Information Request to the Lead Investor or the Generator, as applicable, within thirty (30) Business Days after receipt of the further Supporting Information requested in the relevant Further Qualifying Effective Shutdown Event Information Request, notify the Lead Investor or the Generator, as applicable, whether or not it approves the matters which are the subject of the Qualifying Effective Shutdown Event Notice and, where the CfD Counterparty does not approve the matters which are the subject of that notice, it shall give the Lead Investor or the Generator, as applicable, reasons in support.
- (H) If the CfD Counterparty does not notify the Lead Investor or the Generator, as applicable, whether or not it approves the matters which are the subject of the Qualifying Effective Shutdown Event Notice within the relevant time period referred to in Clause 15.1(G), the Qualifying Effective Shutdown Event Notice shall be deemed not to be agreed.

15.2 Disputes in respect of a Qualifying Effective Shutdown Event

If the CfD Counterparty does not give a notice in accordance with Clause 15.1(G) (*Qualifying Effective Shutdown Event Notice*) or if the Investors or the Generator, as applicable, and the CfD Counterparty are not able to agree any of the matters in or which are the subject of a Qualifying Effective Shutdown Event Notice (including in relation to any Supporting Information in connection with such notice) or are deemed not to have agreed the Qualifying Effective Shutdown Event Notice, each Party irrevocably agrees that, pursuant to Clause 29 (*Jurisdiction*), the Courts of England and Wales shall have exclusive jurisdiction to settle any and all Disputes in connection with a Qualifying Effective Shutdown Event, including determining whether a Qualifying Effective Shutdown Event has occurred and is continuing (the agreement between the Investors or the Generator, as applicable, and the CfD Counterparty or the final such determination by the Courts of England and Wales that a Qualifying Effective Shutdown Event has occurred, as applicable, being a “**Positive QESE Determination**”).

16. QCiL CESSATION EVENT: PROCEDURE

16.1 QCiL Cessation Event Notice

- (A) If the Lead Investor or the Generator considers that a QCiL Cessation Event has occurred and is continuing, the Lead Investor or the Generator, as applicable, may deliver a QCiL Cessation Event Notice to the CfD Counterparty. A QCiL Cessation Event Notice may (but need not) be given to the CfD Counterparty at the same time as a Qualifying Effective Shutdown Event Notice. There shall be a single QCiL Cessation Event Notice in respect of a particular circumstance or set of circumstances and if the Lead Investor and the Generator both purport to give a QCiL Cessation Event Notice, the notice given by the Lead Investor shall prevail and the notice given by the Generator shall be of no effect.
- (B) A QCiL Cessation Event Notice either shall attach a copy of the QCiL Compensation Termination Notice or shall:
- (i) be prepared at the cost and expense of the Investors (or, if the notice is given by the Generator, at the cost and expense of the Generator);
 - (ii) specify and include reasonable details of the relevant QCiL Cessation Event, including whether and for what reasons the QCiL Cessation Event is an event described in paragraph (A) of the definition of “QCiL Cessation Event” in Clause 1.1 (*Definitions*);
 - (iii) specify the date on which the QCiL Cessation Event occurred; and
 - (iv) include such Supporting Information, in reasonable detail, which the Lead Investor (or, if the notice is given by the Generator, which the Generator) considers to be relevant and supportive of the foregoing.
- (C) Any QCiL Cessation Event Notice delivered by the Lead Investor pursuant to this Clause 16.1 shall be deemed to have been given for itself and on behalf of each Investor and a QCiL Cessation Event Notice shall be irrevocable.
- (D) Any QCiL Cessation Event Notice shall be accompanied by a Directors’ Certificate from the Lead Investor (or, if the notice is given by the Generator, from the Generator) in relation to the information contained in, and enclosed with, the QCiL Cessation Event Notice.
- (E) The CfD Counterparty may, by notice to the Lead Investor or the Generator, as applicable, during the thirty (30) Business Day period after receipt of the QCiL Cessation Event Notice, acting reasonably, require the Investors or the Generator, as applicable, to provide Supporting Information in relation to the QCiL Cessation Event Notice (a “**Further QCiL Cessation Event Information Request**”) as the CfD Counterparty reasonably requires.
- (F) If the CfD Counterparty gives a Further QCiL Cessation Event Information Request to the Lead Investor or the Generator, as applicable, the Lead Investor or the Generator, as applicable, shall within thirty (30) Business Days, or such

longer period as is agreed in writing between the CfD Counterparty and the Lead Investor or the Generator, as applicable, (each acting reasonably) after receipt of the request, prepare and deliver such further Supporting Information to the CfD Counterparty together with a Directors' Certificate from the Lead Investor or the Generator, as applicable, in relation to the Supporting Information provided in response to such Further QCiL Cessation Event Information Request.

- (G) The CfD Counterparty shall, within thirty (30) Business Days after receipt of the QCiL Cessation Event Notice or, if it has given a Further QCiL Cessation Event Information Request to the Lead Investor or the Generator, as applicable, within thirty (30) Business Days after receipt of the further Supporting Information requested in the relevant Further QCiL Cessation Event Information Request, notify the Lead Investor or the Generator, as applicable, whether or not it approves the matters which are the subject of the QCiL Cessation Event Notice and, where the CfD Counterparty does not approve the matters which are the subject of that notice, it shall give the Lead Investor or the Generator, as applicable, reasons in support.
- (H) If the CfD Counterparty does not notify the Lead Investor or the Generator, as applicable, whether or not it approves the matters which are the subject of the QCiL Cessation Event Notice within the relevant time period referred to in Clause 16.1(G), the QCiL Cessation Event Notice shall, subject to Clause 16.1(I), be deemed not to be agreed.
- (I) If the QCiL Cessation Event Notice attaches a copy of a QCiL Compensation Termination Notice, the QCiL Cessation Event Notice shall be considered to be agreed by the CfD Counterparty.

16.2 Disputes in respect of a QCiL Cessation Event

If the CfD Counterparty does not give a notice in accordance with Clause 16.1(G) (*QCIL Cessation Event Notice*) or if the Investors or the Generator, as applicable, and the CfD Counterparty are not able to agree any of the matters in or which are the subject of a QCiL Cessation Event Notice (including in relation to any Supporting Information in connection with such notice) or are deemed not to have agreed the QCiL Cessation Event Notice, each Party irrevocably agrees that, pursuant to Clause 29 (*Jurisdiction*), the Courts of England and Wales shall have exclusive jurisdiction to settle any and all Disputes in connection with a QCiL Cessation Event, including determining whether a QCiL Cessation Event has occurred and is continuing (the agreement between the Investors or the Generator, as applicable, and the CfD Counterparty or the final such determination by the Courts of England and Wales that a QCiL Cessation Event has occurred, as applicable, being a "**Positive QCiL Cessation Determination**").

17. EQUITY INVESTOR COMPLETION STATEMENT

17.1 Preparation of Completion Statement

- (A) As soon as reasonably practicable and in any event within ninety (90) Business Days after, as applicable:

- (i) the earlier of the date on which the CfD Counterparty approves the matters which are the subject of the Qualifying Effective Shutdown Event Notice and the date of a Positive QESE Determination, unless the Call Option or Put Option has been exercised in which event within ninety (90) Business Days after Option Completion; or
- (ii) the earlier of the date on which the CfD Counterparty approves the matters which are the subject of the QCiL Cessation Event Notice and the date of a Positive QCiL Cessation Determination, unless the Call Option or Put Option has been exercised in which event within ninety (90) Business Days after Option Completion,

the CfD Counterparty shall provide the Lead Investor with a completion statement specifying (without double counting) the total amount of Excluded Compensation Liabilities (with a breakdown by each category of Excluded Compensation Liabilities) as at the date of the Qualifying Effective Shutdown Event or QCiL Cessation Event, as applicable (the “**Draft Completion Statement**”).

- (B) The Draft Completion Statement shall be prepared using the same accounting rules, practices, policies, principles, methodologies and estimation techniques adopted in the preparation of the Generator’s last annual, audited financial statements.
- (C) Each Investor shall provide, or procure to be provided, such information to assist the preparation of the Draft Completion Statement as may be reasonably required by the CfD Counterparty or the Secretary of State.
- (D) Each Investor shall procure that each of NNB HoldCo and the Generator and each of the accountants of each of NNB HoldCo and the Generator shall provide without charge to the CfD Counterparty or the Secretary of State such access to their personnel, Books and Records, calculations and working papers as the CfD Counterparty or the Secretary of State or their respective accountants and advisers may reasonably request in connection with the preparation of the Draft Completion Statement.
- (E) Save in accordance with the provisions of Clause 17.2 (*Approval of Completion Statement*), no amendment shall be made to the Draft Completion Statement after its delivery to the Lead Investor in accordance with Clause 17.1(A).

17.2 **Approval of Completion Statement**

- (A) The Lead Investor may dispute the Draft Completion Statement by notice in writing delivered to the CfD Counterparty within forty-five (45) Business Days of receiving the Draft Completion Statement and such notice shall:
 - (i) specify which items of the Draft Completion Statement are disputed and the reasons therefor;

- (ii) specify the monetary value of the adjustments that the Lead Investor claims are, accordingly, required to be made to the Excluded Compensation Liabilities; and
- (iii) be accompanied by such Supporting Information, in reasonable detail, as the Lead Investor considers to be relevant to and supportive of its claims.

Only those items or amounts specified in the notice shall be treated as being in dispute (the “**Completion Statement Disputed Items**”) and no amendment may be made by any Party, or any Expert appointed pursuant to Clause 17.3 (*Disputes in relation to the Draft Completion Statement*), to any items or amounts which are not Completion Statement Disputed Items.

- (B) The Generator and the Generator’s accountants shall (and for so long as the Generator is under the Control of the Investors, each Investor shall procure that the Generator and the Generator’s accountants shall) provide without charge to the Lead Investor such access to their personnel, Books and Records, calculations and working papers as the Lead Investor’s accountants and advisers may reasonably request in connection with their review of the Draft Completion Statement.
- (C) If the Lead Investor serves a notice in accordance with Clause 17.2(A), the CfD Counterparty and the Lead Investor shall negotiate for a period of thirty (30) Business Days in good faith with a view to agreeing the Completion Statement Disputed Items.
- (D) The Lead Investor shall, within thirty (30) Business Days after receipt of the Draft Completion Statement, or if it has served a notice in accordance with Clause 17.2(A), the end of the period prescribed in Clause 17.2(C), notify the CfD Counterparty whether or not it approves the Draft Completion Statement and, where the Lead Investor does not approve the Draft Completion Statement, it shall give the CfD Counterparty reasons in support.
- (E) If the Lead Investor does not notify the CfD Counterparty whether or not it approves the Draft Completion Statement within the relevant time period referred to in Clause 17.2(D), the Draft Completion Statement shall be deemed not to be agreed.

17.3 **Disputes in relation to the Draft Completion Statement**

If the Lead Investor does not give a notice in accordance with Clause 17.2(D) (*Approval of Completion Statement*) or if the Lead Investor and the CfD Counterparty are not able to reach agreement on the Completion Statement Disputed Items within the period prescribed in Clause 17.2(C) (*Approval of Completion Statement*), or are deemed not to have agreed the Draft Completion Statement, either the Lead Investor or the CfD Counterparty may refer the Dispute for determination by an Expert in accordance with the Expert Determination Procedure. Until the Lead Investor and the CfD Counterparty agree a Draft Completion Statement or the Dispute has been determined in accordance with the Expert Determination Procedure, there shall be no agreed Completion Statement.

17.4 Completion Statement

Upon:

- (A) the Lead Investor notifying the CfD Counterparty that it approves a Draft Completion Statement in accordance with Clause 17.2(D) (*Approval of Completion Statement*);
- (B) the Lead Investor and the CfD Counterparty agreeing the Draft Completion Statement (and any amendments to the Draft Completion Statement being made in accordance with that agreement); or
- (C) any Dispute with respect to the Draft Completion Statement being resolved or determined as provided in Clause 17.3 (*Disputes in relation to the Draft Completion Statement*) (and any amendments to the Draft Completion Statement being made in accordance with that resolution or determination),

the Draft Completion Statement (as amended, if applicable) shall become the “**Completion Statement**”.

18. QUALIFYING EXIT EVENTS: COMPENSATION

18.1 Compensation to Financing Representative for debt holders

- (A) As soon as reasonably practicable, and in any event within thirty (30) Business Days after:
 - (i) in the case of a Qualifying Effective Shutdown Event, the earlier of the date on which the CfD Counterparty approves the matters which are the subject of the Qualifying Effective Shutdown Event Notice and the date of a Positive QESE Determination; or
 - (ii) in the case of a QCiL Cessation Event, the earlier of the date on which the CfD Counterparty approves the matters which are the subject of the QCiL Cessation Event Notice and the date of a Positive QCiL Cessation Determination,

the Financing Representative shall provide the CfD Counterparty with a statement (the “**Draft Lender Shutdown Payment Statement**”) of:

- (a) the Lender Shutdown Payment (including calculations in support and its assessment of whether the HPC CfD would have expired before the end of the HPC CfD Term by reason of the Contracted Generation Cap having reduced to zero); and
- (b) any other Supporting Information, in reasonable detail, which the Financing Representative considers to be relevant and supportive of the foregoing.

- (B) The CfD Counterparty, acting reasonably, may, by notice to the Financing Representative during the thirty (30) Business Day period after receipt of the Draft Lender Shutdown Payment Statement, request the Financing Representative to provide Supporting Information in relation to the Draft Lender Shutdown Payment Statement (a “**Further Lender Shutdown Payment Statement Information Request**”) as the CfD Counterparty reasonably requires.
- (C) If the CfD Counterparty gives a Further Lender Shutdown Payment Statement Information Request to the Financing Representative, the Financing Representative shall within thirty (30) Business Days, or such longer period as is agreed in writing between the CfD Counterparty and the Financing Representative (each acting reasonably) after receipt of the request, prepare and deliver such further Supporting Information to the CfD Counterparty.
- (D) The CfD Counterparty shall, within thirty (30) Business Days after receipt of the Draft Lender Shutdown Payment Statement or, if it has given a Further Lender Shutdown Payment Statement Information Request to the Financing Representative, within thirty (30) Business Days after receipt of the further Supporting Information requested in the relevant Further Lender Shutdown Payment Statement Information Request, notify the Financing Representative whether or not it approves the matters which are the subject of the Draft Lender Shutdown Payment Statement and, where the CfD Counterparty does not approve the matters which are the subject of the Draft Lender Shutdown Payment Statement, it shall give the Financing Representative reasons in support.
- (E) If the CfD Counterparty does not notify the Financing Representative whether or not it approves the matters which are the subject of the Draft Lender Shutdown Payment Statement within the relevant thirty (30) Business Day period, the Draft Lender Shutdown Payment Statement shall be deemed not to be agreed.
- (F) If the Financing Representative and the CfD Counterparty are not able to agree, or are deemed not to have agreed, the matters which are the subject of the Draft Lender Shutdown Payment Statement, either the Financing Representative or the CfD Counterparty may refer the Dispute for determination by an Expert in accordance with the Expert Determination Procedure. Until the Financing Representative and the CfD Counterparty agree the matters which are the subject of a Draft Lender Shutdown Payment Statement or the Dispute has been determined in accordance with the Expert Determination Procedure, there shall be no Lender Shutdown Payment Statement.
- (G) Upon:
 - (i) the CfD Counterparty notifying the Financing Representative that it approves the matters which are the subject of a Draft Lender Shutdown Payment Statement;
 - (ii) the CfD Counterparty and the Financing Representative agreeing the matters which are the subject of a Draft Lender Shutdown Payment Statement (and any amendments to the Draft Lender Shutdown Payment Statement being made in accordance with that agreement); or

- (iii) any Dispute with respect to the matters which are the subject of a Draft Lender Shutdown Payment Statement being resolved or determined as provided in Clause 18.1(F) (and any amendments to the Draft Lender Shutdown Payment Statement being made in accordance with that resolution or determination),

the Draft Lender Shutdown Payment Statement (once delivered and as amended, if applicable) shall become the “**Lender Shutdown Payment Statement**”.

- (H) Within thirty (30) Business Days after agreement or determination of the Lender Shutdown Payment Statement, the CfD Counterparty shall, subject to Clause 19.2 (*Limited Recourse*), pay such Lender Shutdown Payment to the Financing Representative either profiled in accordance with the payment timing schedule as set out in the updated Financial Model used to calculate the Lender Shutdown Payment or as calculated or determined by the Expert pursuant to Clause 30 (*Expert Determination Procedure*). Payment of the Lender Shutdown Payment to the Financing Representative shall, to the extent of that payment, constitute good, full and final discharge of the CfD Counterparty’s corresponding payment obligation in that regard.

18.2 Compensation to Equity Investors

- (A) As soon as reasonably practicable, and in any event within thirty (30) Business Days after:
 - (i) in the case of a Qualifying Effective Shutdown Event, the earlier of the date on which the CfD Counterparty approves the matters which are the subject of the Qualifying Effective Shutdown Event Notice and the date of a Positive QESE Determination; or
 - (ii) in the case of a QCiL Cessation Event, the earlier of the date on which the CfD Counterparty approves the matters which are the subject of the QCiL Cessation Event Notice and the date of a Positive QCiL Cessation Determination,

the Lead Investor shall provide the CfD Counterparty with a statement (the “**Draft Investor Shutdown Payment Statement**”) of:

- (a) the Investor Shutdown Payment(s) (including calculations in support and its assessment of whether the HPC CfD would have expired before the end of the HPC CfD Term by reason of the Contracted Generation Cap having reduced to zero); and
 - (b) any other Supporting Information, in reasonable detail, which the Lead Investor considers to be relevant and supportive of the foregoing.
- (B) The CfD Counterparty, acting reasonably, may, by notice to the Lead Investor during the thirty (30) Business Day period after receipt of the Draft Investor Shutdown Payment Statement, require the Lead Investor to provide Supporting

Information in relation to the Draft Investor Shutdown Payment Statement (a **“Further Investor Payment Statement Information Request”**) as the CfD Counterparty reasonably requires.

- (C) If the CfD Counterparty gives a Further Investor Payment Statement Information Request to the Lead Investor, the Lead Investor shall within thirty (30) Business Days, or such longer period as is agreed in writing between the CfD Counterparty and the Lead Investor (each acting reasonably) after receipt of the request, prepare and deliver such further Supporting Information to the CfD Counterparty.
- (D) The CfD Counterparty shall, within thirty (30) Business Days after receipt of the Draft Investor Shutdown Payment Statement or, if it has given a Further Investor Payment Statement Information Request to the Lead Investor, within thirty (30) Business Days after receipt of the further Supporting Information requested in the relevant Further Investor Payment Statement Information Request, notify the Lead Investor whether or not it approves the matters which are the subject of the Draft Investor Shutdown Payment Statement and, where the CfD Counterparty does not approve the matters which are the subject of the Draft Investor Shutdown Payment Statement, it shall give the Lead Investor reasons in support.
- (E) If the CfD Counterparty does not notify the Lead Investor whether or not it approves the matters which are the subject of the Draft Investor Shutdown Payment Statement within the relevant thirty (30) Business Day period, the Draft Investor Shutdown Payment Statement shall be deemed not to be agreed.
- (F) If the Lead Investor and the CfD Counterparty are not able to agree, or are deemed not to have agreed, the matters which are the subject of the Draft Investor Shutdown Payment Statement, either the Lead Investor or the CfD Counterparty may refer the Dispute for determination by an Expert in accordance with the Expert Determination Procedure. Until the Lead Investor and the CfD Counterparty agree the matters which are the subject of a Draft Investor Shutdown Payment Statement or the Dispute has been determined in accordance with the Expert Determination Procedure, there shall be no Investor Shutdown Payment Statement.
- (G) Upon:
 - (i) the CfD Counterparty notifying the Lead Investor that it approves the matters which are the subject of a Draft Investor Shutdown Payment Statement;
 - (ii) the CfD Counterparty and the Lead Investor agreeing the matters which are the subject of a Draft Investor Shutdown Payment Statement (and any amendments to the Draft Investor Shutdown Payment Statement being made in accordance with that agreement); or
 - (iii) any Dispute with respect to the matters which are the subject of a Draft Investor Shutdown Payment Statement being resolved or determined as provided in Clause 18.2(F) (and any amendments to the Draft Investor

Shutdown Payment Statement being made in accordance with that resolution or determination),

the Draft Investor Shutdown Payment Statement (once delivered and as amended, if applicable) shall become the “**Investor Shutdown Payment Statement**”.

- (H) The Investor Shutdown Payment(s) as shown by the Investor Shutdown Payment Statement shall be adjusted by deducting, without double counting:
- (i) the total amount of Excluded Compensation Liabilities as determined by reference to the Completion Statement;
 - (ii) any and all Discount Amounts to the extent that such amounts are outstanding;
 - (iii) any and all Daily Discount Amounts; and
 - (iv) the total amount of any Excluded Compensation Liabilities incurred in or relating to the period from the date of the Qualifying Exit Event to the Ownership Transfer Date irrespective of when such liabilities fall due for payment,

(the result being the “**Final Investor Shutdown Payment(s)**”). If the Lead Investor and the CfD Counterparty are not able to agree the Final Investor Shutdown Payment(s), either the Lead Investor or the CfD Counterparty may refer the Dispute for determination by an Expert in accordance with the Expert Determination Procedure.

- (I) Within thirty (30) Business Days after agreement or determination of the Final Investor Shutdown Payment(s) (or, if later, agreement or determination of the Completion Statement), the CfD Counterparty shall, subject to Clause 19.2 (*Limited Recourse*), pay the Final Investor Shutdown Payment(s) to the Lead Investor or, on the written instruction of the Lead Investor, to one or more nominated accounts in England, either profiled in accordance with the payment timing schedule as set out in the updated Financial Model used to calculate the Investor Shutdown Payment(s) or as calculated or determined by the Expert pursuant to Clause 30 (*Expert Determination Procedure*). Payment of the Final Investor Shutdown Payment(s) to the Lead Investor (or in accordance with the instructions of the Lead Investor) shall, to the extent of that payment, constitute good, full and final discharge of the CfD Counterparty’s corresponding payment obligation in that regard.
- (J) If and to the extent that any contingent liabilities to which a value was attributed as an Excluded Compensation Liability crystallises, is cancelled or is discharged on or before the last day of the Shutdown Arrangements Term, the CfD Counterparty and the Lead Investor shall seek to agree (and, in the absence of agreement, either the CfD Counterparty or the Lead Investor may refer the Dispute for determination by an Expert in accordance with the Expert Determination Procedure) the value of such contingent liabilities and

reconciliation payments shall be made by the Investors or the CfD Counterparty accordingly.

18.3 No Prejudice to Qualifying Effective Shutdown Event Claim

Any steps taken in or towards completion of the construction of, commencement of the operations of, or the restart of the Reactors by or at the direction of any UK Competent Authority (including, for this purpose, the CfD Counterparty and any Government Entity) or by any person to whom a UK Competent Authority (including, for this purpose, the CfD Counterparty and any Government Entity) has transferred Control of the Generator, in any such case after the date on which the Generator ceases to be Controlled by the Investors shall not prejudice any claim by the Investors or the Financing Representative in relation to a Qualifying Effective Shutdown Event.

19. QUALIFYING EXIT EVENTS: LIMITED RECOURSE ARRANGEMENTS, PRIORITISATION OF PAYMENTS AND SECRETARY OF STATE BALANCE PAYMENTS

19.1 CfD Counterparty Payment Undertakings

- (A) For the purposes of Clauses 19.1(A) to 19.1(E) (inclusive), Clause 19.3 (*Prioritisation of Payments*) and Clause 19.4 (*Secretary of State Balance Payments*) and the definition of "CfD Counterparty Compensation Payment Default Event" in Clause 1.1 (*Definitions*), references to "liabilities" or to moneys being "due" and/or "owing" shall be construed as if the limited recourse provisions set out in Clause 19.2 (*Limited Recourse*) do not apply.
- (B) The CfD Counterparty shall make requests to Electricity Suppliers on the basis provided for by the Supplier Obligation Regulations which are designed to ensure that it is in sufficient funds to meet its liabilities in full pursuant to this Agreement.
- (C) The CfD Counterparty shall, to the extent consistent with the CfD Counterparty's proper exercise of its functions and duties promptly:
 - (i) take such steps as are necessary to recover from an Electricity Supplier any sum which the Electricity Supplier is required by virtue of the Supplier Obligation Regulations to pay to the CfD Counterparty and which has not been paid by the date on which it is required by virtue of the Supplier Obligation Regulations to be paid and which is necessary to ensure the CfD Counterparty can meet its liabilities in full pursuant to this Agreement;
 - (ii) at the times and otherwise in the manner prescribed by the Supplier Obligation Regulations, issue and enforce notices to Electricity Suppliers requiring the provision and/or payment of financial collateral to ensure the CfD Counterparty can meet its liabilities in full pursuant to this Agreement;
 - (iii) take such action (including the taking and prosecution of legal proceedings) against Electricity Suppliers as is necessary to ensure that

the CfD Counterparty can meet its liabilities in full pursuant to this Agreement;

- (iv) pursue any Electricity Supplier which has defaulted in making payment pursuant to the Supplier Obligation Regulations as a civil debtor unless, acting reasonably, the CfD Counterparty considers that there are more appropriate means of pursuing the defaulting Electricity Supplier or securing payment in full due by the CfD Counterparty pursuant to this Agreement;
- (v) take such action (including the taking and prosecution of legal proceedings) to recover and receive from other sources of funds (if any) available to the CfD Counterparty, including:
 - (a) moneys standing to the credit of any designated risk, reserve or shortfall fund; and/or
 - (b) moneys available by reason of any 'make whole', loss mutualisation or similar arrangements among Electricity Suppliers or others in respect of any shortfall in amounts due and owing but not paid by Electricity Suppliers to the CfD Counterparty for the purposes of enabling the CfD Counterparty to make payments pursuant to FIT Contracts for Difference and connected agreements,

as is necessary for the purpose of meeting its liabilities in full pursuant to this Agreement; and

- (vi) notify the Secretary of State if the CfD Counterparty has reason to believe that it will have insufficient funds available to make when due the totality of the payments to generators that are required pursuant to FIT Contracts for Difference and connected agreements.
- (D) The CfD Counterparty shall notify the Lead Investor and the Financing Representative (if any) if it is of the opinion that it will have insufficient funds to meet its liabilities in full pursuant to this Agreement.
- (E) The CfD Counterparty agrees that in circumstances where the CfD Counterparty has failed to pay an amount in full on the due date therefor pursuant to this Agreement:
- (i) damages alone would not be an adequate remedy for any breach by it of its obligations set out in Clause 19.1(C)(i) to 19.1(C)(v) (inclusive);
 - (ii) accordingly, the Generator, the Investors and the Financing Representative (if any) will be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach by the CfD Counterparty of its obligations set out in Clause 19.1(C)(i) to 19.1(C)(v) (inclusive); and

- (iii) it will not raise any objection to an application by the Generator, the Investors or the Financing Representative (if any) for any such remedies.

19.2 Limited Recourse

Notwithstanding any other provision of this Agreement but subject to Clause 19.1(A) (*CfD Counterparty Payment Undertakings*):

- (A) the liability of the CfD Counterparty pursuant to this Agreement shall not exceed the aggregate of:
 - (i) the amounts from time to time received and held by the CfD Counterparty, and allocated to this Agreement, pursuant to the Supplier Obligation Regulations; and
 - (ii) any other funds of the type referred to in Clause 19.1(C)(v) (*CfD Counterparty Payment Undertakings*) from time to time received and held by the CfD Counterparty, and allocated to this Agreement pursuant to the Supplier Obligation Regulations; and
- (B) the CfD Counterparty shall not be in default pursuant to this Agreement in not making any payment that would otherwise be due and owing if and to the extent that it shall not have received the amounts and other funds referred to in Clause 19.2(A) which are necessary to make such payment but, if and to the extent that such payment is not made, the CfD Counterparty shall continue to owe an amount equal to the amount of the payment that would otherwise be due and owing but is not paid and shall make such payment promptly (and in any event within two (2) Business Days) after and to the extent of its receipt of such corresponding and allocated amounts and other funds.

19.3 Prioritisation of Payments

Where the CfD Counterparty has insufficient funds to pay Qualifying Exit Event Compensation at any time, the CfD Counterparty shall apply such funds as it does have and which are allocated for payments under this Agreement in the following order of priority:

- (i) first, in or towards payment of Lender Shutdown Payments; and
- (ii) secondly, in or towards payment of Final Investor Shutdown Payment(s),

and the failure to make any such payment in whole or in part on the due date for such payment will not constitute a breach by the CfD Counterparty of any payment obligation owed to the person entitled to the relevant payment.

19.4 Secretary of State Balance Payments

- (A) If a CfD Counterparty Compensation Payment Default Event occurs and is continuing, the Secretary of State shall pay to the Financing Representative (if any) the amount of the relevant Lender Shutdown Payment that is due and owing

but remains unpaid by the CfD Counterparty as at the date of the CfD Counterparty Compensation Payment Default Event no later than twenty (20) Business Days after receipt by the Secretary of State of written notice from the Financing Representative setting out the amount due and owing but unpaid with reasonable details in support.

- (B) If a CfD Counterparty Compensation Payment Default Event occurs and is continuing, the Secretary of State shall pay to the Investors the amount of the relevant Final Investor Shutdown Payment(s) that is due and owing but remains unpaid by the CfD Counterparty as at the date of the CfD Counterparty Compensation Payment Default Event no later than twenty (20) Business Days after receipt by the Secretary of State of written notice from the Lead Investor setting out the amount due and owing but unpaid with reasonable details in support.

20. QUALIFYING EXIT EVENTS: MISCELLANEOUS PROVISIONS

20.1 VAT on Final Investor Shutdown Payment(s)

To the extent that the Lead Investor or any other Investor is required by law to account for VAT in respect of a supply for which the Final Investor Shutdown Payment(s) represent(s) consideration, the CfD Counterparty shall be liable to pay to the Lead Investor a further amount equal to such VAT upon delivery to it of a valid VAT invoice.

20.2 Withholding Tax on Final Investor Shutdown Payment(s)

- (A) The Final Investor Shutdown Payment(s) shall be paid free and clear of any deduction or withholding on account of Tax save only for any deduction or withholding required by Law.
- (B) If any deduction or withholding on account of Tax is required by law in respect of the Final Investor Shutdown Payment(s), then (except to the extent that the same would not have arisen but for the Lead Investor or any other Investor not being resident for Tax purposes in the United Kingdom, or having a connection with a territory outside the United Kingdom) the CfD Counterparty shall be liable under this Clause 20.2 to increase the amount of the Final Investor Shutdown Payment(s) so that the Lead Investor will be entitled to receive the same amount as it would have received if there had been no withholding or deduction.
- (C) If the CfD Counterparty makes an increased payment pursuant to this Clause 20.2 and an Investor receives and utilises a relief in respect of the Tax that gave rise to such increased payment, the Investor shall reimburse the CfD Counterparty as soon as reasonably practicable such amount as shall leave the Investor in the same position as the Investor would have been in had no such deduction or withholding been required to be made.

20.3 Appointment of Lead Investor

- (A) At the Agreement Date, the Original Investors hereby appoint NNB Top Company HPC (B) Ltd as the Lead Investor.

- (B) If, during the Shutdown Arrangements Term, the Investors Controlling the Generator jointly wish to designate another Investor Super TopCo as the Lead Investor they may do so by not less than ten (10) Business Days' written notice to the CfD Counterparty.

20.4 VAT on Lender Shutdown Payment(s)

To the extent that the Financing Representative or any other Financing Party is required by law to account for VAT in respect of a supply for which the Lender Shutdown Payment(s) represent(s) consideration, the CfD Counterparty shall be liable to pay the Financing Representative (for itself or the relevant Financing Party, as applicable) a further amount equal to such VAT upon delivery to it of a valid VAT invoice.

20.5 Withholding Tax on Lender Shutdown Payment(s)

- (A) The Lender Shutdown Payment(s) shall be paid free and clear of any deduction or withholding on account of Tax save only for any deduction or withholding required by law.
- (B) If any deduction or withholding on account of Tax is required by law in respect of the Lender Shutdown Payment(s), then (except to the extent that the same would not have arisen but for the Financing Representative not being resident for Tax purposes in the United Kingdom, or having a connection with a territory outside the United Kingdom) the CfD Counterparty shall be liable under this Clause 20.5 to increase the amount of the Lender Shutdown Payment(s) so that the Financing Representative will be entitled to receive the same amount as it would have received if there had been no withholding or deduction.
- (C) If the CfD Counterparty makes an increased payment pursuant to this Clause 20.5 and the Financing Representative receives and utilises a relief in respect of the Tax that gave rise to such increased payment, the Financing Representative shall reimburse the CfD Counterparty as soon as reasonably practicable such amount as shall leave the Financing Representative in the same position as the Financing Representative would have been in had no such deduction or withholding been required to be made.

21. TRANSFER OF OWNERSHIP FOLLOWING A QUALIFYING EFFECTIVE SHUTDOWN EVENT

If the CfD Counterparty approves the matters which are the subject of a Qualifying Effective Shutdown Event Notice or a Positive QESE Determination is made, and the Secretary of State has not made a Statutory Transfer Scheme or otherwise taken ownership of the Generator or the Site, the Facility and the Reactors, then:

- (A) (i) the Secretary of State shall exercise the Call Option during the Call Option Exercise Period in accordance with the provisions of Clause 22.1 (*Call Option*),

failing which:

- (ii) the Secretary of State shall make arrangements using whatever private law rights and powers are then available to the Secretary of State to take within six (6) months after the earlier of the date on which the CfD Counterparty approves the matters which are the subject of the Qualifying Effective Shutdown Event Notice and the date of a Positive QESE Determination, either directly or through the Secretary of State's nominee, ownership of the Option Shares for nominal consideration (but without prejudice to the compensation, if any, payable to the Financing Representative (if any) in accordance with Clause 18.1 (*Compensation to Financing Representative for debt holders*) or to Investors in accordance with Clause 18.2 (*Compensation to Equity Investors*)). For the avoidance of doubt, this Clause 21(A)(ii) shall not oblige, or be construed as obliging, the Secretary of State to take any action in the context of the Secretary of State's public law rights or powers, nor shall it be construed as fettering the discretion of the Secretary of State in relation to the exercise of any public functions, or as constituting a predetermination by the Secretary of State of any decision as to the exercise of such public functions,

and failing such taking of ownership by the end of such period,

- (B) NNB HoldCo may, at its sole discretion, exercise the Put Option within the Put Option Exercise Period in accordance with the provisions of Clause 22.2 (*Put Option*).

22. CALL AND PUT OPTIONS

22.1 Call Option

- (A) In consideration of the payment by the Secretary of State of one pound (£1) (receipt of which is hereby acknowledged by NNB HoldCo), NNB HoldCo hereby grants the Secretary of State an option, exercisable during the Call Option Exercise Period, to require NNB HoldCo to sell and transfer the Option Shares to the Secretary of State or the Secretary of State's nominee (and the Investors shall procure that NNB HoldCo sells and transfers the Option Shares to the Secretary of State or the Secretary of State's nominee) on the terms and subject to the conditions of this Agreement (the "**Call Option**") (but without prejudice to the compensation, if any, payable to the Financing Representative (if any) in accordance with Clause 18.1 (*Compensation to Financing Representative for debt holders*) or to the Investors in accordance with Clause 18.2 (*Compensation to Equity Investors*)).
- (B) The Call Option may be exercised by the giving of a Call Option Exercise Notice to NNB HoldCo during the Call Option Exercise Period. If the Call Option is not duly exercised during the Call Option Exercise Period, it shall lapse and cease to have any further effect.
- (C) A Call Option Exercise Notice may not be withdrawn once given without the prior written consent of NNB HoldCo.

22.2 Put Option

(A) In consideration of the payment by NNB HoldCo of one pound (£1) (receipt of which is hereby acknowledged by the Secretary of State), the Secretary of State hereby grants NNB HoldCo an option, exercisable during the Put Option Exercise Period, to require the Secretary of State (or the Secretary of State's nominee) to purchase the Option Shares from NNB HoldCo on the terms and subject to the conditions of this Agreement (the "**Put Option**") (but without prejudice to the compensation, if any, payable to the Financing Representative (if any) in accordance with Clause 18.1 (*Compensation to Financing Representative for debt holders*) or to the Investors in accordance with Clause 18.2 (*Compensation to Equity Investors*)).

(B) Subject to:

- (i) the Call Option not having been exercised; and
- (ii) in the case of a Qualifying Effective Shutdown Event, the Secretary of State not having made arrangements under Clause 21(A)(ii) (*Transfer of Ownership following a Qualifying Effective Shutdown Event*) within the time period specified therein,

the Put Option may be exercised by the giving by NNB HoldCo of a Put Option Exercise Notice to the Secretary of State during the Put Option Exercise Period. If the Put Option is not duly exercised during the Put Option Exercise Period, it shall lapse and cease to have any further effect.

(C) A Put Option Exercise Notice may not be withdrawn once given without the prior written consent of the Secretary of State.

(D) The Put Option may only be exercised if at the time of its exercise:

- (i) NNB HoldCo is the sole legal and beneficial owner of the entire issued share capital of the Generator;
- (ii) the Generator is the sole legal and beneficial owner of the Facility, subject only to such rights and benefits as have been assigned by way of security in accordance with the HPC CfD;
- (iii) all Option Shares are fully paid;
- (iv) there is no ability for the directors of the Generator to refuse to register a transfer of the Option Shares; and
- (v) the Generator is the sole legal and beneficial owner with freehold or leasehold title of the Site.

22.3 Exercise of Options

- (A) If the Call Option or the Put Option is exercised in accordance with Clause 22.1 (*Call Option*) or Clause 22.2 (*Put Option*) (as applicable) then, subject to the terms and conditions of this Agreement, NNB HoldCo shall sell to the Secretary of State (or the Secretary of State's nominee) and the Secretary of State (or the Secretary of State's nominee) shall purchase the Option Shares with all rights attached or accruing to them at Option Completion.
- (B) On the receipt of an Option Exercise Notice given in accordance with the terms of this Agreement, the recipient shall, no later than five (5) Business Days after receipt, sign the acknowledgement set out in the Option Exercise Notice and return it to the sender.
- (C) A Call Option or a Put Option may be exercised only in respect of all of the Option Shares.
- (D) Without prejudice to the rights of the CfD Counterparty to receive Gain Share Amounts, all dividends and other distributions resolved or declared to be paid or made by the Generator in respect of the Option Shares by reference to a record date which falls on or before Option Completion shall for the purposes of this Agreement belong to, and be payable to, NNB HoldCo.

22.4 Purchase Price

The total consideration for the sale of the Option Shares shall be the Purchase Price.

23. OPTION COMPLETION

23.1 Timing of Option Completion

Completion of the sale and purchase of the Option Shares shall take place at 11:00 a.m. at the offices of the Secretary of State or the Secretary of State's legal representatives on the day which is specified as the date of Option Completion by the Secretary of State (in the case of arrangements under Clause 21(A)(ii) (*Transfer of Ownership following a Qualifying Effective Shutdown Event*)) or in the Option Exercise Notice, as applicable.

23.2 Obligations at Option Completion

- (A) At Option Completion, NNB HoldCo shall (and each Investor, Investor Super TopCo and Investor TopCo shall jointly and severally procure that NNB HoldCo shall):
 - (i) deliver to the Secretary of State or the Secretary of State's nominee a duly executed instrument of transfer, together with all relevant share certificates and other documents of title, in respect of the Option Shares, executed in favour of the Secretary of State or the Secretary of State's nominee;
 - (ii) deliver to the Secretary of State a Directors' Certificate confirming that:

- (a) all Option Shares are fully paid; and
 - (b) there is no ability for the directors of the Generator to refuse to register a transfer of the Option Shares;
- (iii) deliver to the Secretary of State or the Secretary of State's nominee any power of attorney under which any document is executed on behalf of the relevant shareholder in or member of NNB HoldCo or any relevant transferor;
- (iv) deliver a waiver of any applicable rights of pre-emption duly signed by or on behalf of all shareholders in, or members of, NNB HoldCo;
- (v) procure, subject only to due stamping at the expense of the Secretary of State, registration of the transfer of the Option Shares to the Secretary of State (or the Secretary of State's nominee) forthwith;
- (vi) deliver to the Secretary of State all waivers and consents as may be required by Law, any regulatory requirement, the articles of association of the Generator or any agreement to which the Generator is a party in order to enable the Secretary of State or the Secretary of State's nominee to be registered as legal and beneficial holder of the Option Shares;
- (vii) deliver to the Secretary of State all Debt Termination Agreements in respect of all Financial Indebtedness of the Generator:
- (a) owed to any IST Group Member, any member of a Shareholder Group (other than the French Government Group and the Chinese Government Group except to the extent that satisfaction of such Financial Indebtedness would constitute a Distribution and is treated as such in the Financial Model) or any Tracked Person; or
 - (b) in respect of which Lender Shutdown Payments are or will be payable,
- in each case, duly executed by the Generator and each of the counterparties thereto and which validly cancel all such Financial Indebtedness to the satisfaction of the Secretary of State (acting reasonably); and
- (viii) at the expense of the Investors, do such things and execute such documents as shall be necessary or as the Secretary of State may reasonably request to give effect to the sale of the Option Shares with full title guarantee and free from any Security Interest.
- (B) At Option Completion, subject to NNB HoldCo complying with its obligations under Clause 23.2(A), the Secretary of State shall pay the Purchase Price to NNB HoldCo in cash or immediately available funds by way of telegraphic transfer into a bank account in England nominated in writing by NNB HoldCo.

- (C) If the respective obligations of NNB HoldCo and the Secretary of State under Clauses 23.2(A) and 23.2(B) are not complied with on the Option Completion Date, the Secretary of State or, as the case may be, NNB HoldCo may without prejudice to its or any Party's other rights and remedies:
- (i) defer Option Completion so that the provisions of this Clause 23 shall apply to Option Completion as so deferred; or
 - (ii) proceed to Option Completion so far as practicable (without prejudice to its or the Secretary of State's rights under this Agreement).
- (D) The Secretary of State shall not be obliged or entitled to complete the sale and purchase of the Option Shares unless the sale and purchase of all of the Option Shares is completed simultaneously.

23.3 Conduct of Business before Option Completion

In the period from (and including) the date of the Qualifying Effective Shutdown Event Notice or QCiL Cessation Event Notice, as applicable, to the earlier of the date that a Permitted Transfer Scheme, a Nuclear Transfer Scheme or other Statutory Scheme becomes effective and the Option Completion Date (and, if neither the Call Option nor the Put Option is exercised, the expiry of the Put Option Exercise Period), the Generator shall not (and each Investor Super TopCo and Investor shall jointly and severally procure that the Generator shall not), without the prior written consent of the CfD Counterparty or unless expressly permitted or required pursuant to this Agreement or clause 69.2 (*Mitigation*) of the HPC CfD or unless necessary to comply (acting in accordance with the Reasonable and Prudent Standard) with the Nuclear Site Licence or its obligations under Law, Directives or Industry Documents, do any of the following acts or matters:

- (A) the entry into or amendment of any contracts, commitments or transactions, whether voluntary or involuntary;
- (B) the sale, lease, transfer or other disposal of any asset other than (i) in the ordinary course of trading and where the asset is no longer required for the purposes of the Project, or (ii) where directed by Her Majesty's Government of the United Kingdom;
- (C) the grant of any guarantee or indemnity for the obligations or liabilities of any person;
- (D) any failure to take any action required to maintain any of its insurances in force or knowingly doing anything to make any policy of insurance void or voidable;
- (E) any alteration of the provisions of its memorandum or articles of association or adopting or passing further regulations or resolutions inconsistent therewith;
- (F) the making of any substantial change in the nature or organisation of its business (other than as a necessary consequence of the event giving rise to the Qualifying Effective Shutdown Event Notice or QCiL Cessation Event Notice, as the case may be);

- (G) engaging (or offering to engage) any new employee or consultant, dismissing any employee or consultant, or amending (including increase in emoluments, salaries, pensions, commissions and other benefits) the terms of employment of any employee or consultant, whether individually or in the aggregate involving a financial cost to the Generator in excess of seven million five hundred thousand pounds (£7,500,000);
- (H) any issue, borrowing or granting of:
 - (i) any shares or other securities (including convertible securities and warrants and options in respect of shares or securities (excluding options granted under this Agreement)) or other equity, partnership or other ownership interests in the Generator;
 - (ii) any loans, loan capital or other debt interests (whether or not subordinated); or
 - (iii) any other economic interest, direct or indirect, in the Generator;
- (I) the creation or grant of any Security Interest on, over or affecting the whole or any part of the undertaking or assets of the Generator;
- (J) the passing of any resolutions in general meeting or by way of written resolution, including any resolution for winding up or to capitalise any profits or any sum standing to the credit of the share premium account or capital redemption reserve fund or any other reserve; and
- (K) the entry into of any agreement (conditional or otherwise) to do any of the foregoing.

23.4 **Investor undertaking: Contracting Policy**

Each Investor irrevocably, permanently and unconditionally waives in full (and each Investor shall procure each member of its Group and, in the case of EDF Energy Holdings, each member of the EDF Energy Group which is a counterparty to an IST Group Member with respect to a Related Party Transaction and, in the case of International Nuclear Investment, China Nuclear Operation Company irrevocably, permanently and unconditionally waives in full) any and all of its rights, powers, interests or claims in respect of the relevant Related Party Transaction if and to the extent that it is agreed or determined pursuant to the Contracting Policy that such Related Party Transaction fails to comply with the Agreed Principles, in each case with effect from the Option Completion Date or the date a Permitted Transfer Scheme becomes effective, as the case may be.

PART 8
TRANSITIONAL SERVICES AND INTELLECTUAL PROPERTY

24. PROVISION OF TRANSITIONAL SERVICES

Each of the Investors and EDF Energy (the “**Transitional Services Providers**”) shall provide, or shall procure the provision by any relevant member of its Group of, the Transitional Services to any member of the NNB HoldCo Group on the terms and subject to the conditions set out in Annex 4 (*Transitional Services*).

25. INTELLECTUAL PROPERTY

Each of the Investors, EDF Energy and NNB HoldCo hereby grants, and each of the Investors shall procure the grant by each member of its Group (at, as applicable, (i) the Option Completion Date; (ii) the date that a Nuclear Transfer Scheme transferring property, rights and liabilities of the Generator to the NDA or to a publicly owned company (each as defined in the Energy Act 2004) becomes effective in respect of the Generator, its assets or liabilities; or (iii) the date that a Permitted Transfer Scheme becomes effective in respect of the Generator, its assets or liabilities) to the Secretary of State a non-exclusive, perpetual, irrevocable, worldwide, royalty-free licence (with the right to sublicense if reasonably necessary for the purposes of the Project) of all Intellectual Property Rights (to the extent that the Secretary of State has not already been granted the benefit of such Intellectual Property Rights) which are:

- (A) owned by it or any member of its Group and which are reasonably necessary for the purposes of the Project; or
- (B) used (but not owned) by it or any member of its Group and which are reasonably necessary for the purposes of the Project, but only to the extent that it or the relevant member of its Group, as applicable and as licensor, has sufficient rights to grant such licence to the Secretary of State, it being understood that it or such member, as applicable and as licensor, shall use reasonable endeavours to obtain the right to license to the Secretary of State, for the purposes of this Clause 25, those Intellectual Property Rights which it has a right to use but does not own.

PART 9
REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS

26. REPRESENTATIONS AND WARRANTIES

Each of the Generator, NNB HoldCo, NNB FinCo, the Investor TopCos, the Investor Super TopCos, the Investors, the Ultimate Investors and EDF Energy represents and warrants (for itself) to each of the CfD Counterparty and the Secretary of State that, as at the Agreement Date, the following statements (with the exception, in the case of EDF Energy, of Clause 26(E)) are true, accurate and not misleading:

- (A) **Status:** It:
- (i) is a limited liability company, duly incorporated and validly existing under the laws of England or (in the case of the Ultimate Investors and the Investors) it is a corporation, duly incorporated and validly existing under the law of its jurisdiction of incorporation; and
 - (ii) has the power to own its assets and carry on its business as contemplated by the Transaction Documents to which it is a party.
- (B) **Power and authority:** It has the power to enter into, deliver and perform, and has taken all necessary action to authorise its entry into, delivery and performance of, the Transaction Documents to which it is a party and the transactions contemplated by the Transaction Documents to which it is a party (excluding in each case any direct agreement referred to in paragraph (E) of the definition of "Transaction Documents" in Clause 1.1 (*Definitions*), to the extent not in force on the Agreement Date) (and additionally, in the case of EDF SA, the EDF SA Letters and the commitments therein).
- (C) **Enforceability:** The obligations expressed to be assumed by it pursuant to the Transaction Documents (excluding any direct agreement referred to in paragraph (E) of the definition of "Transaction Documents" in Clause 1.1 (*Definitions*), to the extent not in force on the Agreement Date) to which it is a party (and additionally, in the case of EDF SA, the EDF SA Letters) are legal, valid, binding and enforceable subject only to the Legal Reservations.
- (D) **Non-conflict with other obligations:** The entry into, delivery and performance by it of, and the transactions contemplated by, the Transaction Documents (excluding the Direct Agreement and any direct agreement referred to in paragraph (E) of the definition of "Transaction Documents" in Clause 1.1 (*Definitions*), in each case to the extent not in force on the Agreement Date) to which it is a party (and additionally, in the case of EDF SA, the EDF SA Letters and the commitments therein) do not conflict with:
- (i) its constitutional documents;
 - (ii) any Law or Directive applicable to it to an extent or in a manner which has or is reasonably expected to have a Material Adverse Effect;

- (iii) any authorisation, licence, accreditation, permit, consent, certificate, resolution, clearance, exemption, order, confirmation or other approval of or from any Competent Authority required to enable it to perform and comply with its obligations under this Agreement and the other Transaction Documents to which it is a party, to an extent or in a manner which has or is reasonably expected to have a Material Adverse Effect; or
 - (iv) any agreement or instrument binding upon it or any of its assets to an extent or in a manner which has or is reasonably expected to have a material adverse effect on its payment obligations under this Agreement.
- (E) **No requirement to deduct or withhold:** It is not required by any Law or Directive applicable to it, as applied, interpreted or modified by the published practice of any relevant Competent Authority of any jurisdiction in which it is resident for tax purposes, to make any deduction or withholding for or on account of any tax from any payment to be made by it to another Party pursuant to any of the Transaction Documents to which it is a party.

27. CONTRACTING POLICY

Each of the Generator, NNB HoldCo, NNB FinCo, the Investor TopCos and the Investor Super TopCos shall comply with the Contracting Policy, in each case to the extent applicable to it, it being acknowledged that the CfD Counterparty's rights and remedies in respect of any failure by any such Party to comply with the Contracting Policy are as referred to in Clause 1.6 (*Remedies in respect of failure to comply with the Contracting Policy*).

28. EVIDENCE OF SIZEWELL C CONDITION

The Lead Investor shall:

- (A) procure that each of the CfD Counterparty and the Secretary of State is kept informed in writing no less frequently than quarterly after the Agreement Date of the estimated date for satisfaction of the Sizewell C Condition; and
- (B) promptly notify each of the CfD Counterparty and the Secretary of State of the date of satisfaction of the Sizewell C Condition (and in any event within ten (10) Business Days after such date).

PART 10
DISPUTE RESOLUTION

29. JURISDICTION

Each Party irrevocably agrees in relation to any Non-Expert Dispute (including any matter of jurisdiction, terms of reference or enforcement arising out of an Expert Dispute) that:

- (A) the Courts of England and Wales shall have exclusive jurisdiction to settle the Non-Expert Dispute;
- (B) it submits to the jurisdiction of the Courts of England and Wales;
- (C) it waives (and agrees not to raise) any objection, on the ground of *forum non conveniens* or on any other ground, to the taking of Proceedings in the Courts of England and Wales; and
- (D) a judgment against it in Proceedings brought in England shall be conclusive and binding upon it and may be enforced in any other jurisdiction.

30. EXPERT DETERMINATION PROCEDURE

30.1 Expert Determination Procedure – General

- (A) A Party or Parties may refer an Expert Dispute to be determined by an Expert. Such referral shall be effected by any Party giving an Expert Determination Notice to the other party or parties to the Expert Dispute. An Expert Determination Notice shall:
 - (i) include a description of the subject matter of the Expert Dispute and the issues to be resolved;
 - (ii) (if applicable) include a statement identifying the Clause to which the Expert Dispute relates or pursuant to which the Expert Dispute arises;
 - (iii) include a description of the position the referring Party considers is correct and a summary of the referring Party's reasons for that position;
 - (iv) where the referring Party considers it appropriate, include copies of any Supporting Information on which the referring Party intends to rely;
 - (v) include a statement outlining the relief, determination, remedy or recourse which the referring Party seeks in relation to the Expert Dispute; and
 - (vi) include a proposal as to the identity, and terms of reference, of the Expert and the relevant expertise that the referring Party considers qualifies him to determine the relevant Expert Dispute.

- (B) Any Expert appointed to determine any Expert Dispute shall be required to have an appropriate level of experience in relation to matters of the same general description as the matter in Expert Dispute.
- (C) The Party or Parties receiving the Expert Determination Notice (the “**Respondent(s)**”) shall, within ten (10) Business Days after receipt of the Expert Determination Notice, give notice to the Party or Parties who submitted the Expert Determination Notice (the “**Claimant(s)**”) (an “**Expert Determination Response Notice**”). An Expert Determination Response Notice shall specify whether or not the Respondent(s) accept:
- (i) the Expert proposed by the Claimant(s) (and, if the Respondent(s) do not accept the Expert proposed by the Claimant(s), they shall specify an alternative Expert for consideration by the Claimant(s)); and
 - (ii) the terms of reference for the Expert proposed by the Claimant(s) (and, if the Respondent(s) do not accept the terms of reference for the Expert proposed by the Claimant(s), they shall propose alternative terms of reference for the Expert for consideration by the Claimant(s)).
- (D) If the parties to the Expert Dispute fail to agree on the identity of the Expert within ten (10) Business Days after the date of service of the Expert Determination Notice, any party to the Expert Dispute may request that the LCIA appoints a suitably qualified and experienced Expert for the Expert Dispute in question.
- (E) The parties to the Expert Dispute shall:
- (i) use reasonable endeavours to procure that within ten (10) Business Days after the parties to the Expert Dispute have agreed the identity of the Expert to be appointed (or the LCIA having nominated an Expert in accordance with Clause 30.1(D)):
 - (a) the Expert confirms in writing to the parties to the Expert Dispute that:
 - (1) he is willing and available to act in relation to the Expert Dispute; and
 - (2) he has no conflict of interest which prevents him from determining the Expert Dispute;
 - (b) (subject to the confirmation referred to in Clause 30.1(E)(i)(a) having been given) the terms of appointment of the Expert are agreed between the parties to the Expert Dispute and the Expert (and an appointment letter entered into among them), such terms to:
 - (1) include an undertaking that the Expert shall not disclose to any person any submissions or Supporting Information disclosed or delivered to the Expert by a

party to the Expert Dispute in consequence of, or in respect of, his appointment as the Expert;

- (2) exempt the Expert (and any employee, agent or adviser of or to the Expert) from liability for anything done or omitted in the discharge or purported discharge of the Expert's functions, unless such act or omission is fraudulent or in bad faith; and
- (3) include the instructions set out in Clause 30.1(E)(ii).

No party to the Expert Dispute shall object to the terms of such appointment provided that they are reasonable and consistent with the applicable terms of this Agreement;

- (ii) instruct the Expert:
 - (a) to act fairly and impartially;
 - (b) to take the initiative in ascertaining the facts and the law, including by:
 - (1) considering any Supporting Information submitted to him by the parties to the Expert Dispute;
 - (2) instructing an Expert and/or taking counsel's opinion as to any matter raised in connection with the Expert Dispute, provided that the Expert shall not be entitled to delegate any decision to such Expert or counsel;
 - (3) requiring the parties to the Expert Dispute to produce any Supporting Information (excluding any Supporting Information which would be privileged from production in court proceedings);
 - (4) opening up, reviewing and revising any opinion, assessment, certificate, instruction, determination or decision of whatsoever nature given or made pursuant to this Agreement provided that he may not in so doing purport to decide any matter which falls outside the Expert's terms of reference in relation to the relevant Expert Dispute or is otherwise excluded from the Expert Determination Procedure; and
 - (5) taking such other actions as the Expert deems appropriate, taking into account the nature of the Expert Dispute;
 - (c) in determinations pursuant to Clauses 9.2 (*Disputes in relation to a Preliminary Equity IRR Report*), 10.2 (*Disputes in relation to a*

Preliminary Sale IRR Report), 17.3 (*Disputes in relation to the Draft Completion Statement*), 18.1(F) (*Compensation to Financing Representative for debt holders*), 18.2(F) and 18.2(H) (*Compensation to Equity Investors*), to have regard to the purposes, criteria and/or requirements imposed on the Parties in connection with the report or other documents the subject of the Expert Dispute;

- (d) if requested by any party to the Expert Dispute in writing, to provide reasons for his decision, which shall be communicated to the parties to the Expert Dispute; and
- (e) that, if necessary to resolve the Expert Dispute, his determination in respect of the relevant Expert Dispute may require the Parties to make amendments to this Agreement on the following basis:
 - (1) the Parties agree that it is their intention that, in the absence of their ability to agree any required amendments to this Agreement, this Agreement should continue and should not come to an end or be deemed void or voidable in accordance with the doctrine of frustration or any other legal theory;
 - (2) during the Expert Determination Procedure, the parties to the Expert Dispute shall submit such amendments to this Agreement as they deem fit to resolve this Dispute and any consequential amendments required to this Agreement; and
 - (3) the Expert shall use reasonable endeavours to arrive at a determination which adopts one such party's proposed amendments, provided that if no such party's proposed amendments are capable technically of resolving the Dispute in the Expert's opinion, the Expert shall be entitled to draft amendments which contain elements of such parties' proposed amendments or to substitute the Expert's own amendments in each case as necessary to resolve the Dispute and with due regard to the intent of the Parties' proposed amendments;
- (iii) afford the Expert the discretion to establish the procedure (including the timetable) for the determination of the Expert Dispute, it being agreed by the Parties that:
 - (a) the Expert shall be requested to confirm to the parties to the Expert Dispute the proposed procedure for the relevant Expert Dispute as soon as reasonably practicable after the Expert Appointment Date and, in any event, within ten (10) Business Days after such date and, in so doing, the Parties agree that:

- (1) the Expert shall be requested to afford the parties to the Expert Dispute the opportunity to address him in a meeting at which all the parties to the Expert Dispute shall have the right to be present, where any party to the Expert Dispute requests such a meeting in writing or the Expert otherwise considers it to be necessary or desirable to reach a determination in respect of the relevant Expert Dispute, with the format and procedure applicable to any such meeting being a matter for the Expert to decide in his sole and absolute discretion; and
 - (2) the Expert may (without limitation) modify the time periods provided for in Clause 30.1(F) and otherwise modify the procedure contemplated by such Clause;
- (b) all submissions made to the Expert by a party to the Expert Dispute (including all Supporting Information provided to him) shall be provided to all other parties to the Expert Dispute contemporaneously with such submissions being made to the Expert; and
- (c) the parties to the Expert Dispute shall (without prejudice to the foregoing provisions of this Clause 30.1(E)(iii)) request the Expert to determine the Expert Dispute within the earlier of:
- (1) thirty (30) Business Days following the date on which a Response Submission has been provided by each party to the Expert Dispute; and
 - (2) sixty (60) Business Days after the First Submission Deadline; and
- (iv) afford the Expert all Supporting Information and assistance which the Expert requires to determine the Expert Dispute (and, if a party to the Expert Dispute fails to produce any such Supporting Information or assistance, the Expert may continue the determination process without that Supporting Information or assistance).
- (F) Subject to Clause 30.1(E)(iii):
- (i) the Claimant(s) shall provide the Expert with a copy of the Expert Determination Notice within ten (10) Business Days after the Expert Appointment Date (the date on which the Expert receives the copy of the Expert Determination Notice being the “**Expert Referral Date**”);
 - (ii) each party to the Expert Dispute may, but is not obliged to, provide a written statement of its case, together with any Supporting Information, to the Expert (the “**First Submission**”) within twenty (20) Business Days after the Expert Referral Date (the “**First Submission Deadline**”) and, without limitation, the First Submission may cover any of the matters

required to be contained in the relevant Expert Determination Notice and a copy of such First Submission shall be provided to the other party or parties to the Expert Dispute at the same time as it is provided to the Expert; and

- (iii) each party to the Expert Dispute may submit a reply, together with any Supporting Information, to the First Submission made by any other party or parties to the Expert Dispute (a “**Response Submission**”) within fifteen (15) Business Days after receipt of the First Submission.
- (G) The Arbitration Act 1996 and the law relating to arbitrators and arbitrations shall not apply to the Expert or his determination or the procedure by which he reaches his determination.
- (H) If the Expert is at any time unable or unwilling to act, any party to the Expert Dispute may proceed to seek the appointment of a replacement Expert as if the Expert Determination Notice had just been served. The provisions of the Expert Determination Procedure shall apply, with the necessary modifications, to any replacement Expert and the replacement Expert shall be authorised to determine any Expert Dispute which was submitted to his predecessor but which his predecessor had not determined at the time when his predecessor became unable or unwilling to act.
- (I) The Expert’s determination shall be final and binding upon the Parties except in the event of fraud or manifest error.
- (J) No Expert determination shall have the effect of amending this Agreement unless expressly permitted pursuant to this Agreement. For the avoidance of doubt, the Expert’s determination may, in accordance with Clause 30.1(E)(ii)(e), require the Parties to make amendments to this Agreement in compliance with the requirements of Clause 50 (*No Variation*).
- (K) The Parties agree that they will take all necessary steps to implement the Expert determination. The Parties agree that any dispute relating to the enforcement, validity or interpretation of an Expert’s determination shall be a Non-Expert Dispute and settled according to Clause 29 (*Jurisdiction*).
- (L) The Expert may, in his determination, provide that any of the parties to the Expert Dispute pay the Expert’s fees and expenses and each other’s costs (including the fees and expenses of external advisers and consultants) in such proportions as he may specify on the general principle that the allocation of costs should reflect the relative success and failure in the Expert Determination Procedure. Without such a direction, each party to the Expert Dispute shall bear its own costs and the fees and expenses of the Expert shall be paid in equal shares by the parties to the Expert Dispute.

30.2 Expedited Expert Determination Procedure

In respect of any Disputes relating to a Preliminary Equity IRR Report or related matters in accordance with Clause 9.2 (*Disputes in relation to a Preliminary Equity IRR Report*),

Clause 30.1 (*Expert Determination Procedure – General*) shall apply *mutatis mutandis* with the following required changes:

- (A) the time periods set out in Clauses 30.1(C) and 30.1(D) (*Expert Determination Procedure – General*) shall be amended to be five (5) Business Days;
- (B) the time period set out in Clause 30.1(E)(iii)(c)(1) (*Expert Determination Procedure – General*) shall be amended to be fifteen (15) Business Days;
- (C) the time period set out in Clause 30.1(E)(iii)(c)(2) (*Expert Determination Procedure – General*) shall be amended to be thirty (30) Business Days; and
- (D) Clause 30.1(E)(iii) and Clause 30.1(E)(iii)(a)(2) (*Expert Determination Procedure – General*) shall be amended and apply such that, in relation to the Expedited Expert Determination Procedure, the Expert has no discretion to establish the procedure nor modify the time periods,

and the Expedited Expert Determination Procedure shall be carried out in accordance with Clause 30.1 (*Expert Determination Procedure – General*) as amended by this Clause 30.2. For the avoidance of doubt, the Expedited Expert Determination Procedure may be further amended by written agreement between the parties to the relevant Expert Dispute for that Expert Dispute.

PART 11
CONFIDENTIALITY, ANNOUNCEMENTS AND FREEDOM OF INFORMATION

31. CONFIDENTIALITY

31.1 Confidentiality Restrictions: Application to the Terms of this Agreement

Subject to Clause 32 (*Announcements*), the Parties agree that the provisions of this Agreement shall not be treated as Confidential Information (save for the Information to be redacted pursuant to Annex 13 (*Redacted Terms*) which shall be treated as Confidential Information) and may be disclosed without restriction, provided that the provisions of this Agreement are redacted in accordance with Annex 13 (*Redacted Terms*).

31.2 Generator Confidential Information and Investor Confidential Information: Obligations of the Government Parties

- (A) Each of the Government Parties shall keep all Generator Confidential Information and Investor Confidential Information confidential and shall not disclose Generator Confidential Information or Investor Confidential Information without the prior written consent of the Generator (in the case of Generator Confidential Information) or the relevant Investor (in the case of Investor Confidential Information), other than as permitted by Clause 31.2(D) and Clause 31.2(E).
- (B) The Government Parties shall not have the right to disclose to any third party technical information covering the design, construction, installation, commission, operation, maintenance or decommissioning of either or both of the Reactors owned or controlled by or licensed to the Generator, except if (and then only to the extent that) access to, and/or disclosure of, such technical information is necessary for the exercise of rights or the performance of obligations of the Government Parties contained in, or for the purposes of, this Agreement or any other Transaction Document in relation to the Project, in which case disclosure shall be made on a confidential and strict need-to-know basis and the Government Parties shall keep such technical information confidential in accordance with Clause 31.2(A) to the extent that such technical information also constitutes Generator Confidential Information.
- (C) The Government Parties shall not disclose or make use of any Generator Confidential Information or Investor Confidential Information otherwise than to fulfil the CfD Counterparty Permitted Purposes (in the case of the CfD Counterparty) or the Secretary of State Permitted Purposes (in the case of the Secretary of State), except with the prior written consent of the Generator or the relevant Investor, as the case may be.
- (D) Clause 31.2(A) shall not prevent the disclosure of Generator Confidential Information or Investor Confidential Information by the Secretary of State:
 - (i) on a confidential and strict need-to-know basis and without prejudice to Clause 31.2(A):

- (a) to its Representatives to enable or assist the Secretary of State to fulfil the Secretary of State Permitted Purposes;
- (b) to any HPC CfD Transferee to fulfil the Secretary of State Permitted Purposes;
- (c) to any person engaged in providing services to the Secretary of State to enable or assist the Secretary of State to fulfil the Secretary of State Permitted Purposes;
- (d) to any Government Party (or to its Representatives or to any person engaged in providing services to such Government Party) where the Secretary of State considers such disclosure is required to enable or assist:
 - (1) the Secretary of State to fulfil the Secretary of State Permitted Purposes;
 - (2) such person to: (i) fulfil any of its functions arising out of or for the purposes of this Agreement, any other Transaction Document or any Finance Document; (ii) perform any function in connection with its functions arising out of or for the purposes of this Agreement, any other Transaction Document, or any Finance Document; or (iii) fulfil any functions, duties or obligations arising by virtue of or pursuant to the EA 2013; or
 - (3) any transfer involving the Project, this Agreement or any other Transaction Document under a 2013 Transfer Scheme or any other Statutory Transfer Scheme or the sale and purchase of the Option Shares,

provided that: (1) the Secretary of State shall use reasonable endeavours to inform the recipient of the Generator Confidential Information or the Investor Confidential Information of the Secretary of State's obligations pursuant to Clause 31.2(A) and Clause 31.2(C); (2) in the case of disclosure of Generator Confidential Information or Investor Confidential Information pursuant to Clause 31.2(D)(i)(a), Clause 31.2(D)(i)(b) or Clause 31.2(D)(i)(c), the Secretary of State shall ensure that the recipient of the Generator Confidential Information or the Investor Confidential Information shall be subject to substantially the same obligation of confidentiality as contained in Clause 31.2(A) and Clause 31.2(C); and (3) this Clause 31.2(D)(i) shall not permit the disclosure of Generator Confidential Information to any person to whom the Generator objects in writing to the Secretary of State before the disclosure is made, on the basis that it reasonably considers such person to be a Competitor (and if the Generator and the Secretary of State are not able to agree on whether such proposed recipient is a Competitor, either the

Generator or the Secretary of State may refer the Dispute for resolution by an Expert in accordance with the Expert Determination Procedure) and, if any such objection is raised, no such further disclosure shall be permitted until the matter has been resolved pursuant to the Expert Determination Procedure or otherwise settled;

- (ii) on a confidential and strict need-to-know basis to enable a Dispute to be instigated, progressed, consolidated with other disputes, settled or determined pursuant to and in accordance with the Dispute Resolution Procedure (except where the relevant Generator Confidential Information or Investor Confidential Information has been provided to the Secretary of State on a “without prejudice” or “without prejudice save as to costs” basis) in which case such Generator Confidential Information and Investor Confidential Information shall not be disclosed by the Government Parties;
- (iii) (subject to Clause 31.2(F)) to Parliament or to any Parliamentary committee, but only if and to the extent that the Secretary of State, acting reasonably, considers such disclosure is required to enable or assist it to fulfil any Secretary of State Permitted Purpose;
- (iv) (subject to Clause 31.2(F)) to any other Secretary of State to enable or assist that Secretary of State to make a disclosure to Parliament or to any Parliamentary committee, but only if and to the extent that such disclosure is required to enable or assist that Secretary of State to fulfil its functions;
- (v) (subject to Clause 31.2(F)) to any other Secretary of State to enable or assist that Secretary of State to make a disclosure to the European Commission or other Competent Authority, but only if and to the extent that the CfD Counterparty considers (or that Secretary of State has notified the CfD Counterparty that) such disclosure is required in connection with the application of the State Aid Rules or in connection with any European Commission decision relating to those rules;
- (vi) (subject to Clause 31.2(F)):
 - (a) which is required to comply with any Law or Directive (including the rules of any securities exchange, clearing system or regulatory body) having the force of law provided that the Generator may object to any such disclosure in accordance with the term of the relevant Law or Directive; or
 - (b) which is required to comply with any requirement of any court of competent jurisdiction or any other competent judicial, governmental or regulatory body;
- (vii) (subject to Clause 33 (*Freedom of Information*)) which is required:

- (a) by the FoIA; or
- (b) by the EIR;
- (viii) to which the Generator (in the case of Generator Confidential Information) or the relevant Investor (in the case of Investor Confidential Information) has agreed in writing in advance, provided that where such agreement is conditional, those conditions are complied with;
- (ix) to the National Audit Office for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the CfD Counterparty has used its resources;
- (x) that forms part of, and was used in the computation of, any publicly published forecast of the supplier obligation that was produced or commissioned by the CfD Counterparty; or
- (xi) that is otherwise expressly permitted pursuant to the terms, or strictly required for the operation or fulfilment, of this Agreement or any other Transaction Document,

provided that Sensitive Nuclear Information may only be disclosed by the Secretary of State to the extent required to comply with Law.

- (E) Clause 31.2(A) shall not prevent the disclosure of Generator Confidential Information or Investor Confidential Information by the CfD Counterparty:
 - (i) on a confidential and strict need-to-know basis and without prejudice to Clause 31.2(A):
 - (a) to its Representatives to enable or assist the CfD Counterparty to fulfil the CfD Counterparty Permitted Purposes;
 - (b) to any HPC CfD Transferee to fulfil the CfD Counterparty Permitted Purposes;
 - (c) to any person engaged in providing services to the CfD Counterparty to enable or assist the CfD Counterparty to fulfil the CfD Counterparty Permitted Purposes;
 - (d) to any Government Party (or to its Representatives or to any person engaged in providing services to such Government Party) where the CfD Counterparty considers such disclosure is required to enable or assist:
 - (1) the CfD Counterparty to fulfil the CfD Counterparty Permitted Purposes;

- (2) such person to: (i) fulfil any of its functions arising out of or for the purposes of this Agreement, any other Transaction Document or any Finance Document; (ii) perform any function in connection with its functions arising out of or for the purposes of this Agreement, any other Transaction Document, or any Finance Document; or (iii) fulfil any functions, duties or obligations arising by virtue of or pursuant to the EA 2013; or
 - (3) any transfer involving the Project, this Agreement or any other Transaction Document under a 2013 Transfer Scheme or any other Statutory Transfer Scheme or the sale and purchase of the Option Shares; or
- (e) to any Transmission System Operator, Transmission Licensee or Licensed Distributor, the CfD Settlement Services Provider, the Delivery Body, any BSC Company or any BSC Agent (or to their respective Representatives) to the extent that the CfD Counterparty considers such disclosure is required to enable or assist: (i) the CfD Counterparty to fulfil the CfD Counterparty Permitted Purposes; or (ii) such person to fulfil or perform any of its functions, duties or obligations arising out of or for the purposes of this Agreement, any other Transaction Document or any Finance Document or to fulfil or perform any connected function, duty or obligation (including any such functions, duties or obligations arising by virtue of or pursuant to the EA 2013),

provided that: (1) the CfD Counterparty shall use reasonable endeavours to inform the recipient of the Generator Confidential Information or the Investor Confidential Information of the CfD Counterparty's obligations pursuant to Clause 31.2(A) and Clause 31.2(C); (2) in the case of disclosure of Generator Confidential Information or Investor Confidential Information pursuant to Clause 31.2(E)(i)(a), Clause 31.2(E)(i)(b) or Clause 31.2(E)(i)(c), the CfD Counterparty shall ensure that the recipient of the Generator Confidential Information or the Investor Confidential Information shall be subject to substantially the same obligation of confidentiality as contained in Clause 31.2(A) and Clause 31.2(C); and (3) this Clause 31.2(E)(i) shall not permit the disclosure of Generator Confidential Information to any person to whom the Generator objects in writing to the CfD Counterparty before the disclosure is made, on the basis that it reasonably considers such person to be a Competitor (and if the Generator and the CfD Counterparty are not able to agree on whether such proposed recipient is a Competitor, either the Generator or the CfD Counterparty may refer the Dispute for resolution by an Expert in accordance with the Expert Determination Procedure) and, if any such objection is raised, no such further disclosure shall be permitted until the matter has been resolved pursuant to the Expert Determination Procedure or otherwise settled;

- (ii) on a confidential and strict need-to-know basis to enable a Dispute to be instigated, progressed, consolidated with other disputes, settled or determined pursuant to and in accordance with the Dispute Resolution Procedure (except where the relevant Generator Confidential Information or Investor Confidential Information has been provided to the CfD Counterparty on a “without prejudice” or “without prejudice save as to costs” basis) in which case such Generator Confidential Information or Investor Confidential Information shall not be disclosed by the Government Parties;
- (iii) on a confidential and strict need-to-know basis to enable a Metering Dispute to be instigated, progressed, settled or determined in accordance with the provisions of the BSC;
- (iv) (subject to Clause 31.2(F)) to Parliament or to any Parliamentary committee, but only if and to the extent that the CfD Counterparty considers such disclosure is required to enable or assist it to fulfil any CfD Counterparty Permitted Purpose;
- (v) (subject to Clause 31.2(F)) to any Secretary of State to enable or assist the Secretary of State to make a disclosure to Parliament or to any Parliamentary committee, but only if and to the extent that the Secretary of State has notified the CfD Counterparty that such disclosure is required to enable or assist the Secretary of State to fulfil its functions;
- (vi) (subject to Clause 31.2(F)) to any Secretary of State to enable or assist the Secretary of State to make a disclosure to the European Commission or other Competent Authority, but only if and to the extent that the CfD Counterparty considers (or the Secretary of State has notified the CfD Counterparty that) such disclosure is required in connection with the application of the State Aid Rules or in connection with any European Commission decision relating to those rules;
- (vii) (subject to Clause 31.2(F)):
 - (a) which is required to comply with any Law or Directive (including the rules of any securities exchange, clearing system or regulated body) having the force of law provided that the Generator may object to any such disclosure in accordance with the terms of the relevant Law or Directive; or
 - (b) which is required to comply with any requirement of any court of competent jurisdiction or any other competent governmental or regulatory body;
- (viii) (subject to Clause 33 (*Freedom of Information*)) which is required:
 - (a) by the FoIA; or
 - (b) by the EIR;

- (ix) to which the Generator (in the case of Generator Confidential Information) or the relevant Investor (in the case of Investor Confidential Information) has agreed in writing in advance, provided that where such agreement is conditional, those conditions are complied with;
- (x) to the National Audit Office for the purpose of any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the CfD Counterparty has used its resources;
- (xi) on a confidential and strict need-to-know basis and only to the extent that the Generator owns or has the right to make such disclosure and the Generator has used all reasonable endeavours to have any restrictions on disclosure removed for this purpose to an expert under another FiT Contract for Difference for other UK nuclear generating facilities, provided that (a) the CfD Counterparty reasonably considers such Generator Confidential Information to be relevant in the context of benchmarking the costs of such other generators which are broadly comparable with the Eligible Opex Costs (as defined in the HPC CfD) in a process similar to that used in order to determine the Opex Reopener Adjustment under and as defined in the HPC CfD as set out in clause 16 (*Opex Reopener Adjustment*) of the HPC CfD; and (b) such Generator Confidential Information shall not be disclosed to any other generator, whether through the CfD Counterparty or otherwise, save that such Generator Confidential Information may be disclosed by the CfD Counterparty or the expert to external professional advisers of such other generators involved in a dispute similar to that set out in clause 16.2 (*Disputes in relation to an Opex reopener*) of the HPC CfD, where that adviser is subject to substantially the same obligation of confidentiality as contained in Clauses 31.2(A) and 31.2(C) to the extent relevant to the adviser; or
- (xii) that is otherwise expressly permitted pursuant to the terms, or strictly required for the operation or fulfilment, of this Agreement or any other Transaction Document,

provided that Sensitive Nuclear Information may only be disclosed by the CfD Counterparty to the extent required to comply with Law.

- (F) Prior to any disclosure of Generator Confidential Information or Investor Confidential Information by the Secretary of State or the CfD Counterparty pursuant to any of Clause 31.2(D)(iii), Clause 31.2(D)(iv), Clause 31.2(D)(v), Clause 31.2(D)(vi), Clause 31.2(E)(iv), Clause 31.2(E)(v), Clause 31.2(E)(vi) and Clause 31.2(E)(vii), the Secretary of State or the CfD Counterparty, as the case may be, shall use reasonable endeavours to give notice to the Generator (in the case of Generator Confidential Information) or the relevant Investor (in the case of Investor Confidential Information) of the Generator Confidential Information or Investor Confidential Information to be disclosed, provided that:
 - (i) it is lawful and reasonably practicable in the circumstances to do so; and

- (ii) in the case of any disclosure pursuant to Clause 31.2(D)(iii), Clause 31.2(D)(iv), Clause 31.2(D)(v) or Clause 31.2(D)(vi), it is not inconsistent with Parliamentary convention.
- (G) Each of the Government Parties shall have in place and maintain security measures and procedures designed to protect the confidentiality of the Generator Confidential Information and Investor Confidential Information (having regard to its form and nature).
- (H) The relevant Government Party shall immediately notify the Generator or the relevant Investor, as the case may be, in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Generator Confidential Information or Investor Confidential Information.

31.3 **Government Parties: Insider Dealing and Market Abuse**

Each Non-Government Party, acting honestly and diligently, shall consult the Government Parties, from time to time upon request by any Government Party, in relation to whether Generator Confidential Information or Investor Confidential Information held by that Government Party (or its Representatives) constitutes at that time Inside Information. Nothing in this Clause 31.3 is intended to or shall result in any Non-Government Party or any of its Representatives:

- (A) incurring any liability whatsoever under or in respect of the obligations and responsibilities of each Government Party (or any of their Representatives) pursuant to the FSMA or the CJA; or
- (B) being obliged to consult a Government Party on Generator Confidential Information or Investor Confidential Information to be provided to that Government Party which constitutes (or may constitute) “inside information” (within the meaning of section 118C of the FSMA or section 56 of the CJA) in respect of any person other than the Generator or any other members of the Investor Group or any Investor.

31.4 **Government Parties: Liability for Representatives and Service Providers**

- (A) The Secretary of State shall be responsible for:
 - (i) any failure by its current or former Representatives or any person to whom Generator Confidential Information or Investor Confidential Information is disclosed pursuant to Clause 31.2(D)(i)(b) or Clause 31.2(D)(i)(c) to comply with Clause 31.2(A) as if they were subject to it; and
 - (ii) any use by its current or former Representatives or any person to whom Generator Confidential Information or Investor Confidential Information is disclosed pursuant to Clause 31.2(D)(i)(b) or Clause 31.2(D)(i)(c) of any Generator Confidential Information or Investor Confidential Information in breach of Clause 31.2(C) as if they were subject to it.

- (B) The CfD Counterparty shall be responsible for:
- (i) any failure by its current or former Representatives or any person to whom Generator Confidential Information or Investor Confidential Information is disclosed pursuant to Clause 31.2(E)(i)(b) or Clause 31.2(E)(i)(c) to comply with Clause 31.2(A) as if they were subject to it; and
 - (ii) any use by its current or former Representatives or any person to whom Generator Confidential Information or Investor Confidential Information is disclosed pursuant to Clause 31.2(E)(i)(b) or Clause 31.2(E)(i)(c) of any Generator Confidential Information or Investor Confidential Information or Investor Confidential Information in breach of Clause 31.2(C) as if they were subject to it.

31.5 CfD Counterparty Confidential Information and Secretary of State Confidential Information: Obligations of the Non-Government Parties

- (A) The Non-Government Parties shall keep all CfD Counterparty Confidential Information and Secretary of State Confidential Information confidential and shall not disclose CfD Counterparty Confidential Information or Secretary of State Confidential Information without the prior written consent of the CfD Counterparty (in the case of CfD Counterparty Confidential Information) or the Secretary of State (in the case of Secretary of State Confidential Information), other than as permitted by Clause 31.5(C), Clause 31.5(D) or Clause 31.7 (*Financing Representative Disclosure*).
- (B) The Non-Government Parties shall not disclose or make use of any CfD Counterparty Confidential Information or Secretary of State Confidential Information otherwise than to fulfil the Generator Permitted Purposes (in the case of a member of the NNB HoldCo Group) or the Investor Permitted Purpose (in the case of an Investor, an Investor TopCo or an Investor Super TopCo), except with the prior written consent of the CfD Counterparty (in the case of CfD Counterparty Confidential Information) and the Secretary of State (in the case of Secretary of State Confidential Information) or as permitted by Clause 31.7 (*Financing Representative Disclosure*).
- (C) Clause 31.5(A) shall not prevent the disclosure of CfD Counterparty Confidential Information or Secretary of State Confidential Information by an Investor, Investor Super TopCo or Investor TopCo:
- (i) on a confidential and strict need-to-know basis:
 - (a) to its Representatives to enable or assist that Investor to fulfil the Investor Permitted Purpose;
 - (b) to providers or prospective providers to any member of the Investor Group of debt or equity financing, refinancing or credit support and their professional advisers, provided that such disclosure is restricted to Information necessary for the purposes

of assessing the provision or potential provision of such financing, refinancing or credit support; or

- (c) to bona fide prospective purchasers of the Facility, provided that such disclosure is restricted to Information necessary for the purpose of assessing such potential purchase,

provided that: (1) the relevant Investor, Investor Super TopCo or Investor TopCo shall use reasonable endeavours to inform the recipient of the CfD Counterparty Confidential Information or Secretary of State Confidential Information of that Investor's obligations pursuant to Clause 31.5(A) and Clause 31.5(B); and (2) in the case of disclosure of CfD Counterparty Confidential Information or Secretary of State Confidential Information pursuant to Clause 31.5(C)(i)(a), Clause 31.5(C)(i)(b) or Clause 31.5(C)(i)(c) that Investor shall ensure that the recipient of the CfD Counterparty Confidential Information or Secretary of State Confidential Information shall be subject to substantially the same obligation of confidentiality as contained in Clause 31.5(A) and Clause 31.5(B);

- (ii) on a confidential and strict need-to-know basis, to enable a Dispute to be instigated, progressed, consolidated with other disputes, settled or determined pursuant to and in accordance with the Dispute Resolution Procedure (except where the relevant CfD Counterparty Confidential Information or Secretary of State Confidential Information has been provided to the Investor on a "without prejudice" or "without prejudice save as to costs" basis);
 - (iii) (subject to Clause 31.5(E)) which is required to comply with any Law or Directive (including the rules of any securities exchange, clearing system or regulatory body) having the force of law, provided that the CfD Counterparty (in the case of CfD Counterparty Confidential Information) or the Secretary of State (in the case of Secretary of State Confidential Information) may object to any such disclosure in accordance with the terms of the relevant Law or Directive;
 - (iv) to which the CfD Counterparty (in the case of CfD Counterparty Confidential Information) or the Secretary of State (in the case of Secretary of State Confidential Information) has agreed in writing in advance, provided that where such agreement is conditional, those conditions are complied with; or
 - (v) that is otherwise expressly permitted pursuant to the terms of this Agreement or strictly required for the operation or fulfilment of this Agreement.
- (D) Clause 31.5(A) shall not prevent the disclosure of CfD Counterparty Confidential Information or Secretary of State Confidential Information by any member of the NNB HoldCo Group:

- (i) on a confidential and strict need-to-know basis:
 - (a) to their Representatives to enable or assist the Generator to fulfil the Generator Permitted Purposes;
 - (b) to members of an Investor Group (and their respective Representatives) to enable or assist the Generator to fulfil the Generator Permitted Purposes;
 - (c) to any HPC CfD Transferee to fulfil the Generator Permitted Purposes;
 - (d) to providers or prospective providers (or an agent or trustee on their behalf) to any member of the NNB HoldCo Group of debt or equity financing, refinancing or credit support and their professional advisers, provided that such disclosure is restricted to Information necessary for the purposes of assessing the provision or potential provision of such financing, refinancing or credit support;
 - (e) to bona fide prospective purchasers of the Facility, provided that such disclosure is restricted to Information necessary for the purpose of assessing such potential purchase;
 - (f) to any Transmission System Operator, Transmission Licensee or Licensed Distributor, the CfD Settlement Services Provider, the Delivery Body, any BSC Company or any BSC Agent (or to their respective Representatives) to the extent that the Generator considers such disclosure is required to enable or assist: (1) the Generator to fulfil the Generator Permitted Purposes; or (2) such person to fulfil or perform any of its functions, duties or obligations arising out of or for the purposes of this Agreement, any other Transaction Document or any Finance Document or to fulfil or perform any function, duty or obligation (including any such functions, duties or obligations arising by virtue of or pursuant to the EA 2013); or
 - (g) for the purposes of:
 - (1) the examination and certification by its auditors of the accounts of any member of the NNB HoldCo Group; or
 - (2) complying with a request from the insurance adviser or insurer of any member of the Investor Group on placing, renewing or complying with any current or future insurance policies,

provided that: (1) each member of the NNB HoldCo Group shall use reasonable endeavours to inform the recipient of the CfD Counterparty Confidential Information or the Secretary of State

Confidential Information of each member of the NNB HoldCo Group's obligations pursuant to Clause 31.5(A) and Clause 31.5(B); and (2) in the case of disclosure of CfD Counterparty Confidential Information or Secretary of State Confidential Information pursuant to Clause 31.5(D)(i)(a), Clause 31.5(D)(i)(b), Clause 31.5(D)(i)(c), Clause 31.5(D)(i)(d) or Clause 31.5(D)(i)(e) each member of the NNB HoldCo Group shall ensure that the recipient of the CfD Counterparty Confidential Information or the Secretary of State Information shall be subject to substantially the same obligation of confidentiality as contained in Clause 31.5(A) and Clause 31.5(B);

- (ii) on a confidential and strict need-to-know basis, to enable a Dispute to be instigated, progressed, consolidated with other disputes, settled or determined pursuant to and in accordance with the Dispute Resolution Procedure (except where the relevant CfD Counterparty Confidential Information or Secretary of State Confidential Information has been provided to the Investor on a "without prejudice" or "without prejudice save as to costs" basis);
 - (iii) (subject to Clause 31.5(E)):
 - (a) which is required to comply with any Law or Directive (including the rules of any securities exchange, clearing system or regulatory body) having the force of law or, if not having the force of law, compliance with which is in accordance with the general practice of the Generator, provided that the CfD Counterparty (in the case of CfD Counterparty Confidential Information) or the Secretary of State (in the case of Secretary of State Confidential Information) may object to any such disclosure in accordance with the terms of the relevant Law or Directive; or
 - (b) which is required to comply with any requirement of any court of competent jurisdiction or any other competent judicial governmental or regulatory body;
 - (iv) to which the CfD Counterparty (in the case of CfD Counterparty Confidential Information) or Secretary of State (in the case of Secretary of State Confidential Information) has agreed in writing in advance, provided that where such agreement is conditional, those conditions are complied with; or
 - (v) that is otherwise expressly permitted pursuant to the terms, or strictly required for the operation or fulfilment, of this Agreement.
- (E) Prior to any disclosure of CfD Counterparty Confidential Information or Secretary of State Confidential Information by either a member of the NNB HoldCo Group pursuant to Clause 31.5(D)(iii) or an Investor, Investor Super TopCo or Investor TopCo pursuant to Clause 31.5(C)(iii), the relevant member (or the Generator) or

the relevant Investor, as the case may be, shall use reasonable endeavours to give notice to the CfD Counterparty of the CfD Counterparty Confidential Information or Secretary of State Confidential Information to be disclosed, provided that it is lawful and reasonably practicable in the circumstances to do so.

- (F) Each Non-Government Party shall have in place and maintain appropriate security measures and procedures designed to protect the confidentiality of the CfD Counterparty Confidential Information and Secretary of State Confidential Information (having regard to its form and nature).
- (G) The relevant Non-Government Party shall immediately notify the CfD Counterparty or the Secretary of State, as appropriate, in writing if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the CfD Counterparty Confidential Information or Secretary of State Confidential Information.

31.6 **Non-Government Parties: Liability for Representatives and Service Providers**

- (A) Each member of the NNB HoldCo Group shall be (jointly and severally) responsible for:
 - (i) any failure by its or their current or former Representatives or any person to whom CfD Counterparty Confidential Information or Secretary of State Confidential Information is disclosed pursuant to Clause 31.5(D)(i)(b), Clause 31.5(D)(i)(c), Clause 31.5(D)(i)(d) or Clause 31.5(D)(i)(e), to comply with Clause 31.5(A) as if they were subject to it;
 - (ii) any use by its or their current or former Representatives or any person to whom CfD Counterparty Confidential Information or Secretary of State Confidential Information is disclosed pursuant to Clause 31.5(D)(i)(b) or Clause 31.5(D)(i)(c) of any CfD Counterparty Confidential Information or Secretary of State Confidential Information in breach of Clause 31.5(B) as if they were subject to it; and
 - (iii) any failure by any person to whom CfD Counterparty Confidential Information or Secretary of State Confidential Information is disclosed pursuant to Clause 31.5(D)(i)(d) or Clause 31.5(D)(i)(e) to comply with the restrictions on usage of CfD Counterparty Confidential Information or Secretary of State Confidential Information provided for in such Clauses.
- (B) Each Investor shall be (severally) responsible for:
 - (i) any failure by any member of its Group or its or their respective current or former Representatives or any person to whom CfD Counterparty Confidential Information or Secretary of State Confidential Information is disclosed pursuant to Clause 31.5(C)(i)(b) or Clause 31.5(C)(i)(c) to comply with Clause 31.5(A) as if they were subject to it;

- (ii) any use by any member of its Group or its or their current or former Representatives or any person to whom CfD Counterparty Confidential Information or Secretary of State Confidential Information is disclosed pursuant to Clause 31.5(D)(i)(b) or Clause 31.5(D)(i)(c) of any CfD Counterparty Confidential Information or Secretary of State Confidential Information in breach of Clause 31.5(B) as if they were subject to it; and
- (iii) any failure by any person to whom CfD Counterparty Confidential Information or Secretary of State Confidential Information is disclosed pursuant to Clause 31.5(D)(i)(d) or Clause 31.5(D)(i)(e) to comply with the restrictions on usage of CfD Counterparty Confidential Information or Secretary of State Confidential Information provided for in such Clauses.

31.7 **Financing Representative Disclosure**

The Financing Representative may disclose CfD Counterparty Confidential Information or Secretary of State Confidential Information:

- (A) on a confidential and strict need-to-know basis to the Commissioners of Her Majesty's Treasury, any Financing Party (or any prospective Financing Party or prospective transferee from the Financing Representative) for Financing Representative Permitted Purposes;
- (B) on a confidential and strict need-to-know basis to its (and its prospective transferee's), and to the Commissioners of Her Majesty's Treasury's, or to any Financing Representative's (or prospective Financing Representative's), officers, employees, agents, security trustees, consultants and advisers for Financing Representative Permitted Purposes;
- (C) to the extent required by any Law or Directive or the rules of any securities exchange, clearing system or regulatory body;
- (D) to the extent required in connection with the Dispute Resolution Procedure;
- (E) with the consent of the CfD Counterparty (in the case of CfD Counterparty Confidential Information) or the Secretary of State (in the case of Secretary of State Confidential Information); or
- (F) to the extent otherwise permitted pursuant to the terms of this Agreement or strictly required for the operation or fulfilment of this Agreement.

31.8 **No Licence**

No right or licence is granted to any person in relation to any Confidential Information save as explicitly set out in this Clause 31 and Clause 25 (*Intellectual Property*).

32. ANNOUNCEMENTS

32.1 No Announcements

Each Non-Government Party:

- (A) shall not, and shall ensure that its directors, officers and employees do not; and
- (B) shall use reasonable endeavours to ensure that each of its other current or former Representatives and each member of its Group (and their respective Representatives) do not,

make, publish, issue or release any announcement or public statement in relation to, or which refers to, this Agreement or any related or ancillary matter, without the express prior consent of the CfD Counterparty (such consent not to be unreasonably withheld or delayed).

32.2 Permitted Announcements

Notwithstanding Clause 32.1 (*No Announcements*):

- (A) the relevant Non-Government Party (and its respective directors, officers and employees) may make, publish, issue or release any announcement or public statement in relation to, or which refers to, this Agreement or any related or ancillary matter if and to the extent required by any Law or Directive (including the rules of any securities exchange, clearing system or regulatory body) having the force of law or, if not having the force of law, compliance with which is in accordance with the general practice of the relevant Non-Government Party provided that:
 - (i) the relevant Non-Government Party shall use (and shall procure that its directors, officers and employees shall use) reasonable endeavours to agree the contents of such announcement or public statement with the CfD Counterparty before it is made, published, issued or released (such consent not to be unreasonably withheld or delayed); or
 - (ii) if the contents of such announcement or public statement are not able to be agreed before the making, publishing, issuing or releasing of such announcement or public statement, the relevant Non-Government Party shall notify the CfD Counterparty and the Secretary of State of such announcement or public statement immediately following its being made, published, issued or released; and
- (B) each Non-Government Party (and its respective directors, officers and employees) shall not be precluded from making, publishing, issuing or releasing any announcement or publication in relation to, or which refers to, this Agreement or any related or ancillary matter if such announcement or publication:
 - (i) does not contain any CfD Counterparty Confidential Information or Secretary of State Confidential Information;

- (ii) will not hinder, preclude, prejudice or otherwise adversely affect or impact upon the CfD Counterparty Permitted Purposes or the Secretary of State Permitted Purposes or the ability of the Government Parties to fulfil the CfD Counterparty Permitted Purposes or the Secretary of State Permitted Purposes (whether in relation to this Agreement, the HPC CfD or any other FiT Contract for Difference);
- (iii) does not relate or refer to any fact, matter or circumstance in respect of a Dispute or which will, or is reasonably likely to, give rise to a Dispute (whether in relation to this Agreement, the HPC CfD or any other FiT Contract for Difference); and
- (iv) will not hinder, preclude, prejudice or otherwise adversely affect or impact upon:
 - (a) the allocation by the Government Parties of FiT Contracts for Difference, including any auction process in relation thereto; or
 - (b) any application by any person for a FiT Contract for Difference,

provided that the relevant Non-Government Parties shall notify the CfD Counterparty and the Secretary of State of such announcement or public statement immediately following its being made, published, issued or released.

32.3 **Government Parties Permitted Announcements**

Each Government Party may make, publish, issue or release any announcement or public statement in relation to, or which refers to, this Agreement or any related or ancillary matter if and to the extent it considers such action is necessary, desirable or appropriate (acting reasonably), provided that, if and to the extent that such announcement or statement contains any Generator Confidential Information or Investor Confidential Information, the making, publication, issue or release of such announcement or public statement does not breach Clause 31.2(A) (*Generator Confidential Information and Investor Confidential Information: Obligations of the Government Parties*).

33. **FREEDOM OF INFORMATION**

33.1 **Non-Government Parties Acknowledgements and Undertakings**

- (A) Each Non-Government Party acknowledges and agrees that each Government Party:
 - (i) is subject to the requirements of the FoIA and the EIR; and
 - (ii) shall be responsible for determining in its absolute discretion (subject to any decision of the Information Commissioner following an application under section 50 of the FoIA and the outcome of any subsequent appeal to the Tribunal if applicable) whether the FoIA Information it holds (or that is held on its behalf) that is the subject of a Request for Information:

- (a) is exempt or excepted from disclosure pursuant to the FoIA or the EIR, as appropriate; or
- (b) is to be disclosed in response to a Request for Information,

and, for the purposes of this Clause 33.1(A), any notification to a Government Party which identifies FoIA Information as being Generator Confidential Information or Investor Confidential Information is of indicative value only and that Government Party may nevertheless be obliged to disclose such FoIA Information in accordance with the requirements of the FoIA and the EIR.

(B) Each Non-Government Party:

- (i) shall not and shall ensure that its directors, officers and employees do not; and
- (ii) shall use reasonable endeavours to ensure that each of its other current or former Representatives and each member of its Group (and their respective Representatives) do not,

respond directly to a Request for Information unless:

- (a) expressly authorised to do so in writing by the relevant Government Party; or
- (b) required by Law.

- (C) Each Non-Government Party undertakes to assist and co-operate with the Government Parties to enable the Government Parties to comply with their obligations pursuant to the FoIA and the EIR, provided that any such assistance or co-operation is always at the cost of the relevant Non-Government Party and is not prohibited by Law.

33.2 Requests for Information: Procedure

- (A) If a Government Party receives a Request for Information in relation to FoIA Information that a Non-Government Party is holding on behalf of that Government Party and which that Government Party does not hold itself, that Government Party shall notify the relevant Non-Government Parties as to the FoIA Information to which the Request for Information relates and the relevant Non-Government Parties shall, as the case may be:
- (i) as soon as reasonably practicable (and in any event within ten (10) Business Days, or such longer period as is specified by that Government Party, after that Government Party's request) provide that Government Party with a copy of all such FoIA Information in the form that that Government Party requests; and
 - (ii) provide all assistance reasonably requested by that Government Party in respect of any such FoIA Information to enable that Government Party to

respond to a Request for Information within the time limit for compliance set out in section 10 of the FoIA and/or regulation 5 of the EIR.

- (B) Following notification under Clause 33.2(A) and until such time as all the FoIA Information specified in Clause 33.2(A)(i) has been provided by the relevant Non-Government Parties to the relevant Government Party, those Non-Government Parties may make representations to the relevant Government Party as to whether or on what basis the FoIA Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the FoIA Information requested.
- (C) Each Non-Government Party shall ensure that:
 - (i) all FoIA Information held on behalf of a Government Party by a Non-Government Party is retained for disclosure for at least the minimum period required by Law (or, if there is no such minimum period, six (6) years from the date it is acquired); and
 - (ii) each Government Party shall be entitled to inspect such FoIA Information as requested by that Government Party from time to time.
- (D) If a Non-Government Party receives a Request for Information in relation to a Government Party or in connection with this Agreement, the relevant Non-Government Parties shall, to the fullest extent permitted by Law, forward such Request for Information to that Government Party as soon as reasonably practicable after receipt and in any event within two (2) Business Days, and this Clause 33.2(D) shall apply as if the Request for Information had been received by that Government Party.
- (E)
 - (i) In the event of a request from a Government Party pursuant to Clause 33.2(A), the relevant Non-Government Party shall as soon as reasonably practicable, and in any event within five (5) Business Days of receipt of such request, inform that Government Party of that Non-Government Party's estimated costs of complying with the request to the extent these would be recoverable under section 12(1) of the FoIA and the Fees Regulations and/or regulation 8 of the EIR if incurred by the CfD Counterparty.
 - (ii) Where such costs (either on their own or in conjunction with the relevant Government Party's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in section 12(1) of the FoIA and as set out in the Fees Regulations and/or regulation 8(3) of the EIR, that Government Party shall inform the relevant Non-Government Party in writing whether or not it still requires that Non-Government Party to comply with the request and where it does require that Non-Government Party to comply with the request, the ten (10) Business Day period for compliance shall be extended by such number of additional days for compliance as that Government Party is entitled to under section 10 of the FoIA and/or regulation 8 of the EIR. In such case, that Government Party shall notify that Non-Government Party of such

additional days as soon as reasonably practicable after becoming aware of them.

- (iii) The relevant Government Party shall reimburse the relevant Non-Government Party for the costs that that Non-Government Party incurs in complying with a Request for Information to the extent that that Government Party is itself entitled to reimbursement of such costs in accordance with that Government Party's FoIA or EIR policy, as the case may be, from time to time.

33.3 Generator Confidential Information and Investor Confidential Information: Procedure and Disclosure

- (A) To the extent permitted by Law, the relevant Government Party shall inform the relevant Non-Government Party as soon as reasonably practicable after receiving notice of:
 - (i) any application for a decision of the Information Commissioner pursuant to section 50 of the FoIA; or
 - (ii) any appeal to the First Tier (Information Rights) Tribunal (or any subsequent appeal),

which relates to the Generator, any Generator Confidential Information or any Investor Confidential Information held by a Government Party. That Non-Government Party may make representations to that Government Party in response as to: (a) whether the information is commercially sensitive; (b) whether there is an obligation to disclose such Generator Confidential Information or Investor Confidential Information; (c) whether an exemption to disclosure under the FoIA and/or the EIR is applicable; and/or (d) the extent of any such required disclosure (including as to any redactions).

- (B) Each Non-Government Party acknowledges and agrees that each Government Party may be obliged under the FoIA or the EIR to disclose Generator Confidential Information or Investor Confidential Information:
 - (i) in certain circumstances without consulting or obtaining consent from any Non-Government Party; or
 - (ii) following consultation with the relevant Non-Government Parties and having taken their views into account,

provided that where Clause 33.3(B)(i) applies, the relevant Government Party shall draw this to the attention of the relevant Non-Government Party prior to any disclosure.

33.4 Publication Schemes

Nothing in this Clause 33 shall restrict or prevent the publication by a Government Party of any FoIA Information in accordance with:

- (A) any publication scheme (as defined in the FoIA) adopted and maintained by that Government Party in accordance with the FoIA; or
- (B) any model publication scheme applicable to that Government Party as may be approved by the Information Commissioner,

provided that, in deciding whether to publish Generator Confidential Information or Investor Confidential Information in accordance with any such publication scheme or model publication scheme, that Government Party shall take account of whether such Generator Confidential Information or Investor Confidential Information would be exempt from disclosure pursuant to the FoIA.

**PART 12
MISCELLANEOUS**

34. INVESTOR CREDIT STANDING

34.1 Investor Credit Standing

- (A) Each Investor shall at all times have and maintain an Acceptable Credit Standing.
- (B) Each Investor shall provide the CfD Counterparty with such Information as the CfD Counterparty may from time to time reasonably require to be satisfied that the Investor has (or does not have) an Acceptable Credit Standing.
- (C) If at any time an Investor does not have an Acceptable Credit Standing, the Investor shall:
 - (i) give written notice of such fact to the CfD Counterparty as soon as reasonably practicable, together with Supporting Information; and
 - (ii) keep the CfD Counterparty fully informed of all steps and actions that the Investor is undertaking as contemplated by Clause 34.2 (*Sanction for not having an Acceptable Credit Standing*).

34.2 Sanction for not having an Acceptable Credit Standing

If an Investor does not have an Acceptable Credit Standing (the “**Defaulting Investor**”), unless:

- (A) the Defaulting Investor regains an Acceptable Credit Standing;
- (B) another Investor with an Acceptable Credit Standing (or, where such Investor only has an Acceptable Credit Standing by virtue of paragraph (C) of the definition of “Acceptable Credit Standing” in Clause 1.1 (*Definitions*), the person providing such guarantee and indemnity in respect of such Investor) guarantees under a guarantee and indemnity in form and content satisfactory to the CfD Counterparty (acting reasonably) that it will pay:
 - (i) any Project Gain Share Amount when due and payable to the CfD Counterparty by NNB HoldCo as a result of the operation of Clause 9.5 (*Project Gain Share with the CfD Counterparty*); and
 - (ii) any Sale Gain Share Amount when due and payable to the CfD Counterparty by the Responsible Investor Super TopCo through which the Defaulting Investor and/or its Associated persons hold an Economic Interest in NNB HoldCo as a result of the operation of Clause 10.4 (*Sale Gain Share with the CfD Counterparty*); or
- (C) another Investor with an Acceptable Credit Standing takes the place of the Defaulting Investor,

in each case, within twenty (20) Business Days of the Defaulting Investor becoming aware that it no longer has an Acceptable Credit Standing, the CfD Counterparty may suspend the payment of Difference Amounts under and in accordance with the HPC CfD with effect from the date falling twenty (20) Business Days after the Defaulting Investor becoming aware that it no longer has an Acceptable Credit Standing.

34.3 **Guarantee**

(A) **Guarantee**

- (i) CGNPC irrevocably and unconditionally guarantees to the CfD Counterparty the due and punctual performance by International Nuclear Investment of all its present and future obligations under this Agreement (the “**Guaranteed Obligations**”) when they or any part of them become due and performable according to the terms of this Agreement, and CGNPC shall pay to the CfD Counterparty from time to time on demand all sums of money which International Nuclear Investment is at any time liable to pay to the CfD Counterparty under or pursuant to such Guaranteed Obligations and which are due but have not been paid at the time the demand is made.
- (ii) CGNPC, as primary obligor and as separate and independent obligations and liabilities from its obligations and liabilities under Clause 34.3(A)(i), agrees to indemnify (and keep indemnified) the CfD Counterparty against all loss, damage, liability, cost and expense (including legal expenses) incurred or suffered by the CfD Counterparty by reason or arising out of:
 - (a) a failure by International Nuclear Investment to perform or discharge the Guaranteed Obligations when they are due and performable; and/or
 - (b) any Guaranteed Obligation being or becoming void, voidable or unenforceable as against International Nuclear Investment for any reason whatsoever, whether or not known to the CfD Counterparty; and/or
 - (c) International Nuclear Investment going into liquidation, administration or receivership or having an administrator or receiver appointed or becoming subject to any other form of insolvency or similar proceedings or procedure or arrangement for the protection of creditors or the winding-up of International Nuclear Investment,

(together, the “**Indemnified Liabilities**”),

and CGNPC undertakes to pay to the CfD Counterparty immediately on the CfD Counterparty’s first written demand the amount(s) of such loss, damage, liability, cost and expense.

- (iii) All payments under this Clause 34.3 shall be made without set-off or counterclaim and free and clear of, and without deduction for or on account of, any present or future taxes, duties, charges, fees, deductions or withholdings of any nature whatsoever.

(B) ***Limitations***

- (i) No performance of the Guaranteed Obligations or payment in respect of the Indemnified Liabilities will be required by CGNPC under Clause 34.3(A)(i) or 34.3(A)(ii) if, at the time the Guaranteed Obligations are to be performed or discharged or payment is to be made in respect of the Indemnified Liabilities, such Guaranteed Obligations or Indemnified Liabilities have been released, satisfied or discharged in accordance with the terms and conditions of this Agreement.
- (ii) CGNPC shall be entitled in any action or proceedings by the CfD Counterparty under Clause 34.3(A)(i) and/or 34.3(A)(ii) to raise equivalent rights in defence of liability as would have been available to International Nuclear Investment under this Agreement (except those arising from the circumstances specified in Clause 34.3(A)(ii)(b) or 34.3(A)(ii)(c) above), and shall have no liability under Clause 34.3(A)(i) or 34.3(A)(ii) that is greater or of longer duration than International Nuclear Investment would have had under this Agreement.

(C) ***Preservation of rights***

- (i) This Clause 34.3 constitutes a continuing guarantee and indemnity which shall remain in full force and effect until all the Guaranteed Obligations have been satisfied or performed in full, notwithstanding any partial satisfaction or performance of the Guaranteed Obligations by International Nuclear Investment, CGNPC or any other person. Neither the obligations of CGNPC contained in Clause 34.3(A)(i) or 34.3(A)(ii) nor the rights, powers and remedies conferred upon the CfD Counterparty under such Clauses or by law shall be discharged, impaired or otherwise affected by:
 - (a) any incapacity, lack of power, authority or legal personality of, or the winding-up, dissolution, administration, reconstruction or reorganisation of International Nuclear Investment or any other person or any change in its status, function, control or ownership or amalgamation with any other person;
 - (b) any of the obligations of International Nuclear Investment or any other person under this Agreement being or becoming illegal, invalid, unenforceable or ineffective in any respect;
 - (c) any time, waiver, consent, concession or indulgence being granted or agreed to be granted to International Nuclear Investment or any other person in respect of any of its obligations under this Agreement;

- (d) any variation, amendment, waiver, release, novation, supplement, extension, restatement or replacement (however fundamental and of whatsoever nature) of this Agreement or any variation, waiver or release of, any part of (but not the whole of) the obligations of International Nuclear Investment or of the whole or part of the obligations of any other person under this Agreement; or
 - (e) any other act, event or omission which, but for this Clause 34.3(C)(i), might operate to discharge, impair or otherwise affect any of the obligations of CGNPC contained in this Agreement or any of the rights, powers or remedies conferred upon the CfD Counterparty by this Agreement or by law.
- (ii) Notwithstanding Clause 34.3(C)(i) above, no variation, amendment, waiver, release, novation, supplement, extension, restatement or replacement of this Agreement or other arrangement shall, without the prior written consent of CGNPC or save where amended by an Expert pursuant to Clause 30.1(E)(ii)(e) (*Expert Determination Procedure – General*) or Clause 30.2 (*Expedited Expert Determination Procedure*), be deemed to:
- (a) increase the amounts payable under or pursuant to the Guaranteed Obligations or Indemnified Liabilities;
 - (b) create any additional Guaranteed Obligations;
 - (c) alter (in a manner which is materially adverse to CGNPC) any existing Guaranteed Obligations or Indemnified Liabilities; or
 - (d) increase any amount payable, or create any new amount payable, by CGNPC under Clause 34.3(A)(i) or 34.3(A)(ii).
- (iii) Any settlement or discharge given by the CfD Counterparty to CGNPC in respect of CGNPC's obligations under Clause 34.3(A)(i) and/or 34.3(A)(ii) or any other agreement reached between the CfD Counterparty and CGNPC in relation to it shall be, and be deemed always to have been, void if any act on the faith of which the CfD Counterparty gave CGNPC that settlement or discharge or entered into that agreement is subsequently avoided by or in pursuance of any provision of law.
- (iv) CGNPC shall (at its own expense) promptly execute and deliver all such documents, and take all such actions, as may be reasonably required by the CfD Counterparty to give effect to the guarantee and indemnity in this Clause 34.3.

(D) Immediate Recourse and Additional Security

- (i) CGNPC waives any right it may have of first requiring the CfD Counterparty to proceed against or enforce any other rights or security or claim payment from any person before claiming from CGNPC under this Clause 34.3. The waiver applies irrespective of any law or any provision of this Agreement.
- (ii) This Clause 34.3 is in addition to and is not in any way prejudiced by any other guarantee or security now or subsequently held by the CfD Counterparty.

(E) Deferral of Rights

- (i) Until such time as International Nuclear Investment's obligations under this Agreement have been discharged in full, CGNPC will not exercise any rights which it may have to:
 - (a) claim, rank, prove or vote as a creditor of International Nuclear Investment in competition with the CfD Counterparty; or
 - (b) exercise, receive, claim or have the benefit of any right of payment, guarantee, indemnity, contribution, subrogation or security from or on account of International Nuclear Investment (in whole or in part); or
 - (c) exercise any right of set-off, combination or counter-claim or any right in relation to any "flawed-asset" or "hold back" arrangement as against International Nuclear Investment; and/or
 - (d) take any step or bring legal or other proceedings to force International Nuclear Investment to perform any of its obligations under this Agreement,

in circumstances where the CfD Counterparty has taken, or notified CGNPC of its intention or otherwise evidenced its intention to take, steps to enforce its rights under this Clause 34.3.

- (ii) CGNPC shall hold on trust for, and immediately pay or transfer to, the CfD Counterparty an amount equal to any payment or benefit received by it as a result of the exercise of any right referred to in Clause 34.3(E)(i) above to the extent necessary to discharge the obligations under this Agreement in full.

35. CHANGES TO THE PARTIES**35.1 Benefit of Agreement**

This Agreement shall be binding upon and shall enure for the benefit of each Party and its subsequent successors, transferees and assigns.

35.2 **Restrictions on Transfers**

Save as expressly permitted by this Clause 35, no Party may:

- (A) assign to any person all or any of its rights or benefits under this Agreement; or
- (B) make a declaration of trust in respect of or enter into any arrangement whereby it agrees to hold in trust for any person all or any of its rights or benefits under this Agreement; or
- (C) transfer (whether by way of novation, subcontract, delegation or otherwise) to any person or enter into an arrangement whereby any person is to perform any or all of its obligations under this Agreement,

(“**Transfer**”) without the prior written consent of the other Parties.

35.3 **General Principle**

The Parties acknowledge and agree that:

- (A) shareholdings as between an Investor and/or the Investor Super TopCo and Investor TopCo through which the Investor and/or its Associated persons hold an Economic Interest in NNB HoldCo, NNB HoldCo and the Generator shall be arranged and maintained in accordance with the Investment Structure Chart, and Economic Interests in NNB HoldCo must be held by an Investor TopCo and by or through an Investor Super TopCo;
- (B) a Tracked Person must at all times either be a member of the same Group as, or otherwise have attributed to it, an Investor and an Investor Super TopCo; and
- (C) transfers and issues of Economic Interests in NNB HoldCo shall be structured and effected so as to comply with the requirements of this Clause 35.

35.4 **Sale of Economic Interests in NNB HoldCo by an Investor TopCo**

- (A) Notwithstanding Clause 35.2 (*Restrictions on Transfers*) but subject to Clauses 12.1(F) (*Investor undertakings*) and 35.3 (*General Principle*) and paragraph 11 (*Stapling*) of Annex 3 (*Equity Gain Share Rules*), an Investor TopCo may transfer all or part of its Economic Interests in NNB HoldCo provided that prior to and as a condition of such transfer the Transferor Investor TopCo, the Investor Super TopCo and Investor which hold (and/or whose Associated persons hold) their Economic Interests in NNB HoldCo through the Transferor Investor TopCo shall jointly and severally procure that:
 - (i) if not already a Party as an Investor TopCo, the Transferee Investor TopCo shall execute and deliver a Deed of Accession and become a Party as an Investor TopCo;
 - (ii) if a new Investor Super TopCo is to be introduced with respect to, and at the same time as, the Transferee Investor TopCo, the Transferee Investor

Super TopCo shall execute and deliver a Deed of Accession and become a Party as an Investor Super TopCo;

(iii) if a new Investor is to be introduced with respect to, and at the same time as, the Transferee Investor TopCo and Transferee Investor Super TopCo, the Transferee Investor shall execute and deliver a Deed of Accession and become a Party as an Investor;

(iv) if not already Associated with:

(a) an Investor, the Transferee Investor TopCo shall become Associated with an Investor, provided that if Clause 35.4(A)(iii) applies, the Transferee Investor TopCo shall be Associated with such Transferee Investor; and

(b) an Investor Super TopCo, the Transferee Investor TopCo shall become Associated with an Investor Super TopCo provided that, if Clause 35.4(A)(ii) applies, the Transferee Investor TopCo shall be Associated with such Transferee Investor Super TopCo,

and notice shall be given to the CfD Counterparty accordingly;

(v) the Investor Super TopCo and, if Clause 35.4(A)(ii) applies, the Transferee Investor Super TopCo shall:

(a) if it has not already executed a Security Document in its capacity as an existing Investor Super TopCo, enter into a Security Document in favour of the CfD Counterparty as security for the Secured Sums with respect to that Transferee Investor Super TopCo; and

(b) if it has already executed a Security Document in its capacity as an existing Investor Super TopCo and if required to do so by the CfD Counterparty (acting reasonably), confirm that its Security Document in favour of the CfD Counterparty stands as security for the Secured Sums as amended with respect to the Economic Interests in NNB HoldCo transferred to the Transferee Investor TopCo pursuant to this Clause 35.4; and

(vi) the CfD Counterparty and Secretary of State shall receive (in form and substance satisfactory to them, acting reasonably) all of the documents and other evidence listed in Part 2 (*Accession Conditions Precedent*) of Annex 1 (*Conditions Precedent*) in relation to the Transferee Investor TopCo and any Transferee Investor Super TopCo and Transferee Investor.

(B) Following:

(i) completion of the transfer of all or part of the Investor TopCo's Economic Interests in NNB HoldCo;

- (ii) the satisfaction of all the conditions referred to in Clause 35.4(A); and
- (iii) the satisfaction or discharge in full of all obligations and liabilities of:
 - (a) the Transferor Investor TopCo;
 - (b) if Clause 35.4(A)(ii) applies, the Investor Super TopCo referred to in paragraph (2) below (including in its capacity as a Responsible Investor Super TopCo); and
 - (c) if Clause 35.4(A)(iii) applies, the Investor referred to in paragraph (3) below,

in each case, outstanding under or pursuant to the Transaction Documents as at the date of such completion in respect of the Economic Interests in NNB HoldCo so transferred,

the CfD Counterparty and the Secretary of State shall provide a release of:

- (1) the Transferor Investor TopCo;
- (2) if Clause 35.4(A)(ii) applies and the Investor Super TopCo Associated with the Transferor Investor TopCo no longer has an Economic Interest in NNB HoldCo, such Investor Super TopCo; and
- (3) if Clause 35.4(A)(iii) applies and the Investor Associated with the Transferor Investor TopCo no longer has an Economic Interest in NNB HoldCo, such Investor,

in each case from all its (or, as the case may be, their respective) obligations in respect of the Economic Interests in NNB HoldCo so transferred.

35.5 Sale of Economic Interests in Investor TopCo by an Investor Super TopCo

- (A) Notwithstanding Clause 35.2 (*Restrictions on Transfers*) but subject to Clauses 12.1(F) (*Investor undertakings*) and 35.3 (*General Principle*) and paragraph 11 (*Stapling*) of Annex 3 (*Equity Gain Share Rules*), an Investor Super TopCo may transfer all (but not part) of its Economic Interests in NNB HoldCo provided that prior to and as a condition of such transfer the Transferor Investor Super TopCo and the Investor which holds its (and/or whose Associated persons hold their) Economic Interests in NNB HoldCo through the Transferor Investor Super TopCo shall jointly and severally procure that:
 - (i) if not already a Party as an Investor Super TopCo, the Transferee Investor Super TopCo shall execute and deliver a Deed of Accession and become a Party as an Investor Super TopCo;
 - (ii) if a new Investor is to be introduced with respect to, and at the same time as, the Transferee Investor Super TopCo, the Transferee Investor shall

execute and deliver a Deed of Accession and become a Party as an Investor;

- (iii) if not already Associated with an Investor, the Transferee Investor Super TopCo shall become Associated with an Investor, provided that if Clause 35.5(A)(ii) applies, the Transferee Investor Super TopCo shall be Associated with such Transferee Investor and notice shall be given to the CfD Counterparty accordingly;
- (iv) the Transferee Investor Super TopCo shall:
 - (a) if it has not already executed a Security Document in its capacity as an existing Investor Super TopCo, enter into a Security Document in favour of the CfD Counterparty as security for the Secured Sums with respect to the Transferee Investor Super TopCo; and
 - (b) if it has already executed a Security Document in its capacity as an existing Investor Super TopCo and if required to do so by the CfD Counterparty (acting reasonably), confirm that its Security Document in favour of the CfD Counterparty stands as security for the Secured Sums as amended with respect to the Economic Interests in NNB HoldCo transferred to it pursuant to this Clause 35.5; and
- (v) the CfD Counterparty and Secretary of State shall receive (in form and substance satisfactory to them, acting reasonably) all of the documents and other evidence listed in Part 2 (*Accession Conditions Precedent*) of Annex 1 (*Conditions Precedent*) in relation to the Transferee Investor Super TopCo and any Transferee Investor.

(B) Following:

- (i) completion of the transfer of all of the Investor Super TopCo's Economic Interests in NNB HoldCo;
- (ii) the satisfaction of all the conditions referred to in Clause 35.5(A); and
- (iii) the satisfaction or discharge in full of all obligations and liabilities of:
 - (a) the Transferor Investor Super TopCo (including in its capacity as a Responsible Investor Super TopCo); and
 - (b) if Clause 35.5(A)(ii) applies, the Investor referred to in paragraph (2) below,

in each case, outstanding under or pursuant to the Transaction Documents as at the date of such completion in respect of the Economic Interests in NNB HoldCo so transferred,

the CfD Counterparty and the Secretary of State shall provide a release of:

- (1) the Transferor Investor Super TopCo; and
- (2) if Clause 35.5(A)(ii) applies and the Investor Associated with the Transferor Investor Super TopCo no longer has an Economic Interest in NNB HoldCo, such Investor,

in each case from all its (or, as the case may be, their respective) obligations in respect of the Economic Interests in NNB HoldCo so transferred.

35.6 Sale of Economic Interests in or above Investor Super TopCo

(A) Notwithstanding Clause 35.2 (*Restrictions on Transfers*) but subject to Clauses 12.1(F) (*Investor undertakings*) and 35.3 (*General Principle*), a holder of Economic Interests in NNB HoldCo (other than those persons who satisfy the Threshold Test or any person to which either of Clauses 35.4 (*Sale of Economic Interests in NNB HoldCo by an Investor TopCo*) or 35.5 (*Sale of Economic Interests in Investor TopCo by an Investor Super TopCo*) apply) may transfer all or part of its Economic Interests in NNB HoldCo provided that prior to and as a condition of such transfer the Investor and Investor Super TopCo through which such person holds its (and/or its Associated persons hold their) Economic Interests in NNB HoldCo shall jointly and severally procure that:

- (i) if a new Investor is to be introduced with respect to, and at the same time as, the transferee, the Transferee Investor shall execute and deliver a Deed of Accession and become a Party as an Investor;
- (ii) if not already Associated with:
 - (a) an Investor, the transferee shall become Associated with an Investor provided that, if Clause 35.6(A)(i) applies, the transferee shall be Associated with such Transferee Investor; and
 - (b) an Investor Super TopCo, the transferee shall be Associated with an Investor Super TopCo,

and notice shall be given to the CfD Counterparty accordingly; and

(iii) the CfD Counterparty and Secretary of State shall receive (in form and substance satisfactory to them) all of the documents and other evidence listed in Part 2 (*Accession Conditions Precedent*) of Annex 1 (*Conditions Precedent*) in relation to the Transferee Investor.

(B) If Clause 35.6(A)(i) applies, following:

- (i) completion of the transfer of all or part of the transferor's Economic Interests in NNB HoldCo;
- (ii) the satisfaction of all the conditions referred to in Clause 35.6(A); and

- (iii) the satisfaction or discharge in full of all obligations and liabilities of the Investor Associated with the transferor outstanding under or pursuant to the Transaction Documents as at the date of such completion in respect of the Economic Interests in NNB HoldCo so transferred,

the CfD Counterparty and the Secretary of State shall provide a release of such Investor from all its obligations in respect of the Economic Interests in NNB HoldCo so transferred and which are now held by the Transferee Investor and/or persons Associated with the Transferee Investor.

35.7 **Issues of new Economic Interests below Investor Super TopCos**

Subject to Clause 35.3 (*General Principle*), either of NNB HoldCo or an Investor TopCo (each, an **"Issuing Entity"**) may issue new Economic Interests in NNB HoldCo provided that prior to and as a condition of any such issue the Issuing Entity, the Investor Super TopCo and Investor which hold their (and/or whose Associated persons hold their) Economic Interests in NNB HoldCo through such Issuing Entity shall jointly and severally procure that:

- (A) if a new Investor TopCo is to be introduced with respect to and at the same time as the issue of new Economic Interests, the Transferee Investor TopCo shall execute and deliver a Deed of Accession and become a Party as an Investor TopCo;
- (B) if a new Investor Super TopCo is to be introduced with respect to and at the same time as the issue of new Economic Interests, the Transferee Investor Super TopCo shall execute and deliver a Deed of Accession and become a Party as an Investor Super TopCo;
- (C) if a new Investor is to be introduced with respect to and at the same time as the issue of new Economic Interests, the Transferee Investor shall execute and deliver a Deed of Accession and become a Party as an Investor;
- (D) if not already Associated with:
 - (i) an Investor, the Transferee Investor TopCo shall become Associated with an Investor, provided that if Clause 35.7(C) applies, the Transferee Investor TopCo shall be Associated with such Transferee Investor; and
 - (ii) an Investor Super TopCo, the Transferee Investor TopCo shall become Associated with an Investor Super TopCo, provided that if Clause 35.7(B) applies, the Transferee Investor TopCo shall be Associated with such Transferee Investor Super TopCo,

and the CfD Counterparty shall be notified accordingly;

- (E) the Investor Super TopCo and, if Clause 35.7(B) applies, the Transferee Investor Super TopCo shall:

- (i) if it has not already executed a Security Document in its capacity as an existing Investor Super TopCo, enter into a Security Document in favour of the CfD Counterparty as security for the Secured Sums with respect to that Transferee Investor Super TopCo; and
 - (ii) if it has already executed a Security Document in its capacity as an existing Investor Super TopCo and if required to do so by the CfD Counterparty (acting reasonably), confirm that its Security Document in favour of the CfD Counterparty stands as security for the Secured Sums as amended with respect to the Economic Interests in NNB HoldCo issued pursuant to this Clause 35.7; and
- (F) the CfD Counterparty and Secretary of State shall receive (in form and substance satisfactory to them, acting reasonably) all of the documents and other evidence listed in Part 2 (*Accession Conditions Precedent*) of Annex 1 (*Conditions Precedent*) in relation to any Transferee Investor TopCo, Transferee Investor Super TopCo and Transferee Investor.

35.8 Issues of new Economic Interests in or above Investor Super TopCos

Subject to Clause 35.3 (*General Principle*), any Investor Super TopCo and any direct or indirect shareholder in an Investor Super TopCo (other than those persons who satisfy the Threshold Test) may issue new Economic Interests in NNB HoldCo provided that prior to and as a condition of any such issue the Investor Super TopCo and Investor through which such shareholder holds its (and/or whose Associated persons hold their) Economic Interests in NNB HoldCo shall jointly and severally procure that:

- (A) if a new Investor is to be introduced with respect to and at the same time as the issue of new Economic Interests, the Transferee Investor shall execute and deliver a Deed of Accession and become a Party as an Investor;
- (B) if not already Associated with an Investor and Investor Super TopCo, the person(s) to whom such new Economic Interests are issued shall become Associated with an Investor and an Investor Super TopCo, provided that if Clause 35.8(A) applies, the person(s) to whom such new Economic Interests are issued shall be Associated with such Transferee Investor and the CfD Counterparty shall be notified accordingly; and
- (C) the CfD Counterparty and Secretary of State shall receive (in form and substance satisfactory to them, acting reasonably) all of the documents and other evidence listed in Part 2 (*Accession Conditions Precedent*) of Annex 1 (*Conditions Precedent*) in relation to any Transferee Investor.

35.9 Transfer by the Secretary of State

Notwithstanding Clause 35.2 (*Restrictions on Transfers*), the Secretary of State may, subject to the consent of the Investors (not to be unreasonably withheld):

- (A) assign to any person all or any of its rights or benefits under this Agreement; or

- (B) make a declaration of trust in respect of or enter into any arrangement whereby it agrees to hold in trust for any person all or any of its rights or benefits under this Agreement,

provided that no consent will be required if the assignment is to, the declaration of trust is in respect of or the other arrangement is in trust for, a Government Authority or Government Entity.

35.10 **Transfer by the CfD Counterparty**

Notwithstanding Clause 35.2 (*Restrictions on Transfers*), a Transfer of the CfD Counterparty's rights or obligations under this Agreement may be effected, without the consent of any other Party, to any person by or by virtue of a transfer scheme made under paragraph 1(1) of schedule 1 or paragraph 16 of schedule 2 to the EA 2013.

35.11 **Financing Representative accession**

- (A) The Parties acknowledge and agree that the Financing Representative holds all of its rights and benefits under this Agreement for itself and any Financing Party for which it is an agent or security trustee, as applicable.
- (B) Notwithstanding Clause 35.2 (*Restrictions on Transfers*), upon the resignation or removal of the Financing Representative pursuant to the Finance Documents:
- (i) the resigning or removed, as applicable, Financing Representative shall be automatically discharged from any further obligations under this Agreement;
 - (ii) its successors and the other Parties shall have the same rights and obligations among themselves as they would have had if the successor had been an original Party to this Agreement; and
 - (iii) this Agreement shall be construed as if all references to the former Financing Representative were replaced by references to the successor Financing Representative.
- (C) If there are no Finance Documents in place, the Financing Representative may be discharged from any further obligations under this Agreement with the prior written consent of the CfD Counterparty.

36. **DIRECT AGREEMENT**

The CfD Counterparty and the Secretary of State shall enter into a direct agreement relating to this Agreement (which may be by way of amendment to the Direct Agreement) on terms and conditions mutually acceptable to all parties to such direct agreement (acting reasonably) with, and at the request of, any Financing Party (or any agent or security trustee on its behalf) with the benefit of first ranking security, or security ranking first only behind the FDP Implementation Company's security, over all or substantially all of the assets of the Generator (including its rights in respect of the Facility and under the HPC CfD).

37. COSTS

- (A) Each Party shall bear all costs and expenses incurred by it in connection with the entry into this Agreement, including all costs and expenses incurred in connection with the negotiation, preparation, execution, performance and carrying into effect of, and compliance with, this Agreement.
- (B) Clause 37(A) is subject to any provision of this Agreement or any other Transaction Document to which that person is a Party which expressly provides for any Party to bear the costs and expenses of any other Party (or to pay or reimburse or indemnify any other Party in respect of such costs and expenses) in respect of which such costs and expenses shall comprise all out-of-pocket costs and expenses (including all legal and other advisory and consultants' fees) properly incurred by that Party in relation to the relevant matter.

38. CONSENTS

- (A) Any consents, confirmations, approvals, waivers or agreements to be given by a Party pursuant to this Agreement:
 - (i) shall be effective only if given in writing; and
 - (ii) except as otherwise expressly provided in this Agreement, may be given or withheld by the relevant Party in its sole and absolute discretion and, if given, may be given on and subject to such terms and/or conditions as such Party may in its sole and absolute discretion determine.
- (B) The exercise of discretion by such Party (including in respect of the grant or withholding of any consent, confirmation, approval, waiver or agreement) shall in no way limit the manner in or extent to which that discretion may be exercised in future or give rise to any amendment or modification to this Agreement or any other Transaction Document.

39. GOVERNING LAW

- (A) This Agreement shall be governed by English law.
- (B) Any Dispute shall be governed by and determined in accordance with English law.

40. NO WAIVER

- (A) No waiver by a Party of any breach by any other Party of this Agreement shall operate unless expressly made in writing, and no such waiver shall be construed as a waiver of any other breach.
- (B) No delay or omission by a Party in exercising any right, power or remedy provided by law or pursuant to this Agreement shall:
 - (i) affect that right, power or remedy; or

- (ii) operate as a waiver of it.
- (C) The single or partial exercise by any Party of any right, power or remedy provided by law or pursuant to this Agreement shall not, unless otherwise expressly stated, preclude any other or further exercise of it or the exercise of any other right, power or remedy.
- (D) Any legal privilege attaching to information or documents that are made available by a Party or its Representatives to any other Party or its Representatives pursuant to this Agreement remains for the benefit of the Party making that information or those documents available and disclosure is not intended to amount to a waiver of legal privilege.

41. PRIVATE LAW CONTRACT

This Agreement will be entered into on the basis of all Parties agreeing that it is a private law contract intended to give rise to rights for any Party to seek contractual redress for breach of undertakings or obligations set out in this Agreement for its benefit.

42. SOVEREIGN IMMUNITY

Each Party waives all immunity, whether from service of process, suit, against execution of any judgment or otherwise, that it or its property may have. In particular, each Party:

- (A) consents to the issue of any process in connection with Proceedings;
- (B) consents to the giving of any relief or remedy including by way of injunction or order for specific performance or for the recovery of land or other property; and
- (C) consents to the issue of any process against its property for the enforcement of a judgment or, in an action *in rem*, for the arrest, detention or sale of any of its property.

43. AGENT FOR SERVICE

- (A) Each of EDF SA and CGNPC (each, an “**Appointor**”) irrevocably appoints EDF Energy Holdings and International Nuclear Investment, respectively, to be its agent for the receipt of Service Documents. Each Appointor agrees that any Service Document may be effectively served on it in connection with Proceedings in England by service on its agent effected in any manner permitted by the Civil Procedure Rules.
- (B) If an agent at any time ceases for any reason to act as such, the relevant Appointor shall appoint a replacement agent having an address for service in England and shall notify all other Parties of the name and address of the replacement agent. Failing such appointment and notification, the Secretary of State shall be entitled by notice to the relevant Appointor to appoint a replacement agent to act on behalf of such Appointor. The provisions of this Clause 43 applying to service on an agent apply equally to service on a replacement agent.

- (C) A copy of any Service Document served on an agent shall be sent by post to the relevant Appointor. Failure or delay in so doing shall not prejudice the effectiveness of service of the Service Document.

44. GENERAL MITIGATION AND COMPENSATION

44.1 Interpretation

- (A) Any and all compensation in respect of any event to be calculated, agreed or determined and paid, commenced or effected pursuant to this Agreement shall be reduced to the extent that the Non-Government Party claiming compensation has not:
- (i) complied, or there is no reasonable prospect of the relevant Non-Government Party complying, with the general mitigation obligation set out in Clause 44.2 (*Mitigation*); and
 - (ii) complied, or there is no reasonable prospect of the relevant Non-Government Party complying, with the Reasonable and Prudent Standard, including with respect to the incurrence of costs in relation to the Project.
- (B) Any notification by any Non-Government Party to the CfD Counterparty and/or the Secretary of State of the mitigating steps that that Non-Government Party has taken, or proposes to take, in order to comply with the general mitigation obligation set out in Clause 44.2 (*Mitigation*), or the Reasonable and Prudent Standard, shall be of indicative value only and, as such, shall not be determinative of whether it has complied, or will comply, with such general mitigation obligation or Reasonable and Prudent Standard.

44.2 Mitigation

- (A) Each Non-Government Party shall promptly take all reasonable steps to mitigate any loss or, as the case may be, maximise any benefit, in respect of which a claim could be brought under this Agreement or any other Transaction Document to which it is a party, provided that this obligation to mitigate shall not be construed as relieving that Non-Government Party from complying in full with its obligations under this Agreement or any other Transaction Document.
- (B) The relevant Non-Government Party or Non-Government Parties shall give notice as soon as reasonably practicable to the CfD Counterparty and the Secretary of State of the mitigating steps that it has taken or procured, is taking or procuring and proposes to take or procure and shall promptly provide such Supporting Information regarding such mitigation as the CfD Counterparty or the Secretary of State may reasonably request.

45. NO DOUBLE RECOVERY

- (A) Each of the Non-Government Parties may recover only once in respect of the same loss. Neither the CfD Counterparty nor the Secretary of State shall be liable

to pay any compensation under any term of this Agreement to any Non-Government Party to the extent that the subject of the claim has been compensated for, or the same loss has been recovered by that Non-Government Party under any other term of this Agreement or any other Transaction Document or any Law, treaty or international convention.

- (B) If any Non-Government Party is at any time entitled to recover from a third party any sum in respect of any matter or circumstance giving rise to a claim under this Agreement or any other Transaction Document, the relevant Non-Government Party shall take all necessary steps to enforce such recovery.
- (C) If any Non-Government Party (or its nominee) recovers any amount from (x) the CfD Counterparty or the Secretary of State as a consequence of any other FiT Contract for Difference or any connected agreement (as defined in the Supplier Obligation Regulations) to any other FiT Contract for Difference to which it is a party, or (y) a third party referred to in Clause 45(B) (such amount to be calculated net of any associated reconciliation payments to such third party):
 - (i) such amount shall be taken into account in the calculation of any compensation payable pursuant to this Agreement or any other Transaction Document;
 - (ii) no claim shall be made by the relevant Non-Government Party pursuant to this Agreement or any other Transaction Document in respect of the amounts so recovered; and
 - (iii) if the relevant Non-Government Party has previously received compensation in relation to the same claim, it shall pay promptly to the CfD Counterparty (to the extent that it previously received compensation from the CfD Counterparty) or the Secretary of State (to the extent that it previously received compensation from the Secretary of State) an amount equal to the lesser of (a) the amount so recovered; and (b) the amount so previously received.

46. GENERAL LIMITATION ON LIABILITY

- (A) Subject to Clause 46(B), no Party shall be liable to another Party pursuant to this Agreement, in tort (including negligence and/or breach of statutory duty) or otherwise at law for:
 - (i) any loss, damage, cost or other expense to the extent that the same does not arise naturally from the breach and cannot reasonably be supposed to have been in the contemplation of the Parties at the Agreement Date as the probable result of such breach; or
 - (ii) any special, indirect or consequential loss including any such loss which constitutes loss of use, loss of goodwill, loss of profit or loss of revenue,

in each case incurred by any other Party in respect of the breach of the terms of this Agreement.

- (B) Clause 46(A) shall not operate so as to prejudice or override:
- (i) the express terms of any obligation to pay or guarantee or indemnity or costs reimbursement provision contained within this Agreement; or
 - (ii) the express terms relating to the calculation of any Qualifying Exit Event Compensation or the obligation of any Party to pay any Qualifying Exit Event Compensation to the other Party or Parties (as relevant) (or to commence or effect such compensation) in each case in accordance with Part 7 (*Qualifying Exit Events*).

47. PAYMENT DISRUPTION EVENT

47.1 Relief due to Payment Disruption Event

Subject to Clause 47.2 (*Conditions to Payment Disruption Event relief*), a Party affected by a Payment Disruption Event (a “**PDE Affected Party**”) shall be relieved from liability, and deemed not to be in breach of this Agreement, for any failure to pay (or delay in paying) to any other Party any sum due and payable pursuant to this Agreement (whether pursuant to an obligation to pay, an indemnity, a costs reimbursement provision or otherwise) (such obligations “**PDE Obligations**”) if and to the extent that such failure is directly attributable to the occurrence and continuance of such Payment Disruption Event.

47.2 Conditions to Payment Disruption Event relief

The PDE Affected Party’s relief from liability pursuant to Clause 47.1 (*Relief due to Payment Disruption Event*) is subject to and conditional upon:

- (A) the PDE Affected Party giving notice promptly to the other Parties of the nature and extent of the Payment Disruption Event causing its failure or delay in performance; and
- (B) the PDE Affected Party using reasonable endeavours:
 - (i) to mitigate the effects of the Payment Disruption Event;
 - (ii) to carry out and perform its obligations under this Agreement in any way that is reasonably practicable; and
 - (iii) to pay the sum due and payable immediately upon cessation of the Payment Disruption Event.

48. FORCE MAJEURE

48.1 Relief due to Force Majeure

- (A) Subject to the provisions of this Clause 48, a Party affected by Force Majeure (a “**FM Affected Party**”) shall be relieved from liability, and deemed not to be in breach of this Agreement, for any failure or delay in the performance of any of its

obligations under this Agreement if and to the extent such failure or delay is directly attributable to the occurrence and continuance of such Force Majeure.

- (B) Nothing in this Clause 48 shall relieve a Party from its obligations to perform or comply with any PDE Obligations.

48.2 **Conditions to Force Majeure Relief**

The FM Affected Party's relief from liability pursuant to Clause 48.1(A) (*Relief due to Force Majeure*) is subject to and conditional upon:

- (A) the FM Affected Party giving notice promptly to the other Parties upon becoming aware of the nature and extent of the Force Majeure causing its failure or delay in performance; and
- (B) the FM Affected Party using reasonable endeavours to mitigate the effects of the Force Majeure (subject to the general duty to mitigate pursuant to this Clause 48.2), to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations under this Agreement as soon as reasonably practicable.

48.3 **Provision of Force Majeure Information**

- (A) In addition to its notification obligation pursuant to Clause 48.2 (*Conditions to Force Majeure Relief*), the FM Affected Party shall give notice promptly to the other Parties (to the extent that such Information is available to the FM Affected Party) of:
 - (i) the steps being taken by the FM Affected Party to remove or mitigate the effect of the Force Majeure and to carry out its obligations under this Agreement;
 - (ii) the anticipated date of resumption of performance of its obligations under this Agreement; and
 - (iii) such other details relating to the Force Majeure and its effects as may be reasonably requested by the other Parties,

and, to the extent that such Information is not available at the time a notice is given, the FM Affected Party shall provide such Information to the other Parties as soon as it becomes available to it.

- (B) The FM Affected Party shall give notice to the other Parties every twenty (20) Business Days after any update to the Information provided pursuant to Clause 48.3(A) and shall give notice promptly to the other Parties upon it becoming aware of any material developments or additional material Information relating to the Force Majeure and its effects.

49. NOTICES

49.1 Form of Notices

Any notice to be given pursuant to this Agreement shall be effective only if it is in writing and is in English. For the purposes of this Agreement, faxes are not permitted and, unless otherwise expressly stated, emails and website publication are not permitted.

49.2 Notice Details

The address and (where such communication is expressly permitted by email) email address, and the department or officer (if any) for whose attention the notice is to be made, of each Party for any notice to be given under this Agreement is:

(A) in the case of the Secretary of State, that identified with its name below:

The Secretary of State for Energy and Climate Change
3 Whitehall Place
London
SW1A 2AW

Attention: The Secretary of State for Energy and Climate Change

Email: ond@decc.gsi.gov.uk;

(B) in the case of the CfD Counterparty, that identified with its name below:

Low Carbon Contracts Company Ltd
Fleetbank House
2-6 Salisbury Square
London
EC4Y 8JX

Attention: Head of Commercial

Email: hpc.cm@lowcarboncontracts.uk;

(C) in the case of NNB HoldCo, that identified with its name below:

NNB Holding Company (HPC) Limited
40 Grosvenor Place
London
SW1X 7EN

Attention: Company Secretary

Email: guido.santi@edfenergy.com
with a copy to lesley.thomson@edfenergy.com

with a copy to:

NNB Generation Company (HPC) Limited
The Qube
90 Whitfield Street
London
W1T 4EZ

Attention: Institutional Contracts Management team
with a copy to the Company Secretary

Email: institutional.contracts@edf-energy.com
with a copy to chris.hamill@edf-energy.com and
sara.davison@edf-energy.com;

(D) in the case of the Generator, that identified with its name below:

NNB Generation Company (HPC) Limited
The Qube
90 Whitfield Street
London
W1T 4EZ

Attention: Institutional Contracts Management team
with a copy to the Company Secretary

Email: institutional.contracts@edf-energy.com
with a copy to chris.hamill@edf-energy.com and
sara.davison@edf-energy.com;

(E) in the case of NNB FinCo, that identified with its name below:

NNB Finance Company (HPC) Ltd
40 Grosvenor Place
London
SW1X 7EN

Attention: Company Secretary

Email: chris.hamill@edf-energy.com
with a copy to sara.davison@edf-energy.com

with a copy to:

NNB Generation Company (HPC) Limited
The Qube
90 Whitfield Street
London
W1T 4EZ

Attention: Institutional Contracts Management team
with a copy to the Company Secretary

Email: institutional.contracts@edf-energy.com
with a copy to chris.hamill@edf-energy.com and
sara.davison@edf-energy.com;

(F) in the case of EDF Energy, that identified with its name below:

EDF Energy plc
40 Grosvenor Place
London
SW1X 7EN

Attention: Company Secretary

Email: lisa.deverick@edfenergy.com
with a copy to lisa.hartwell@edfenergy.com

with a copy to:

NNB Generation Company (HPC) Limited
The Qube
90 Whitfield Street
London
W1T 4EZ

Attention: Institutional Contracts Management team
with a copy to the Company Secretary

Email: institutional.contracts@edf-energy.com
with a copy to chris.hamill@edf-energy.com and
sara.davison@edf-energy.com;

(G) in the case of EDF SA, that identified with its name below:

Électricité de France S.A.
22-30, Avenue de Wagram
75008
Paris
France

Attention: Group General Counsel
with a copy to
the Senior Vice President – Nuclear Development

Email: olivier.fauqueux@edf.fr
with a copy to vakis.ramany@edf.fr

with a copy to:

NNB Generation Company (HPC) Limited
The Qube

90 Whitfield Street
London
W1T 4EZ

Attention: Institutional Contracts Management team
with a copy to the Company Secretary

Email: institutional.contracts@edf-energy.com
with a copy to chris.hamill@edf-energy.com and
sara.davison@edf-energy.com;

(H) in the case of CGNPC, that identified with its name below:

First Floor
Stratton House
5 Stratton Street
Mayfair
London
W1J 8LA

Attention: Company Secretary

Email: GNI@cgnpc.com.cn;

(I) in the case of EDF Energy Holdings, that identified with its name below:

EDF Energy Holdings Limited
40 Grosvenor Place
London
SW1X 7EN

Attention: Company Secretary

Email: guido.santi@edfenergy.com
with a copy to lesley.thomson@edfenergy.com

with a copy to:

NNB Generation Company (HPC) Limited
The Qube
90 Whitfield Street
London
W1T 4EZ

Attention: Institutional Contracts Management team
with a copy to the Company Secretary

Email: institutional.contracts@edf-energy.com
with a copy to chris.hamill@edf-energy.com and
sara.davison@edf-energy.com;

- (J) in the case of International Nuclear Investment, that identified with its name below:

First Floor
Stratton House
5 Stratton Street
Mayfair
London
W1J 8LA

Attention: Company Secretary

Email: GNI@cgnpc.com.cn;

- (K) in case of NNB Top Company HPC (B) Ltd, that identified with its name below:

NNB Top Company HPC (B) Ltd
40 Grosvenor Place
London
SW1X 7EN

Attention: Company Secretary

Email: chris.hamill@edf-energy.com
with a copy to sara.davison@edf-energy.com

with a copy to:

NNB Generation Company (HPC) Limited
The Qube
90 Whitfield Street
London
W1T 4EZ

Attention: Institutional Contracts Management team
with a copy to the Company Secretary

Email: institutional.contracts@edf-energy.com
with a copy to chris.hamill@edf-energy.com and
sara.davison@edf-energy.com;

- (L) in case of Libra International Limited, that identified with its name below:

First Floor
Stratton House
5 Stratton Street
Mayfair
London
W1J 8LA

Attention: Company Secretary

Email: GNI@cgnpc.com.cn;

- (M) in case of NNB Top Company HPC (A) Ltd, that identified with its name below:

NNB Top Company HPC (A) Ltd
40 Grosvenor Place
London
SW1X 7EN

Attention: Company Secretary

Email: chris.hamill@edf-energy.com
with a copy to sara.davison@edf-energy.com

with a copy to:

NNB Generation Company (HPC) Limited
The Qube
90 Whitfield Street
London
W1T 4EZ

Attention: Institutional Contracts Management team
with a copy to the Company Secretary

Email: institutional.contracts@edf-energy.com
with a copy to chris.hamill@edf-energy.com and
sara.davison@edf-energy.com;

- (N) in case of Sagittarius International Limited, that identified with its name below:

First Floor
Stratton House
5 Stratton Street
Mayfair
London
W1J 8LA

Attention: Company Secretary

Email: GNI@cgnpc.com.cn; and

- (O) in the case of the Original Financing Representative, that identified with its name below:

NNB Finance Company (HPC) Ltd
40 Grosvenor Place

London
SW1X 7EN

Attention: Company Secretary

Email: chris.hamill@edf-energy.com
with a copy to sara.davison@edf-energy.com

with a copy to:

NNB Generation Company (HPC) Limited
The Qube
90 Whitfield Street
London
W1T 4EZ

Attention: Institutional Contracts Management team
with a copy to the Company Secretary

Email: institutional.contracts@edf-energy.com
with a copy to chris.hamill@edf-energy.com and
sara.davison@edf-energy.com.

49.3 Changes to Notice Details

A Party may change its notice details on giving notice to the other Parties in accordance with this Clause 49.3. Such notice shall be effective only from:

- (A) the date specified in such notice (being not less than three (3) Business Days after the date of delivery or deemed delivery of such notice); or
- (B) (if no date is specified in such notice or the date specified is less than three (3) Business Days after the date of delivery or deemed delivery of such notice) the date falling three (3) Business Days after the notification has been received.

49.4 Deemed Delivery

Any notice given pursuant to this Agreement shall, without evidence of earlier receipt, be deemed to have been received:

- (A) if delivered by hand, on the Business Day of delivery or, if delivered on a day other than a Business Day, on the next Business Day after the date of delivery;
- (B) if sent by first class post within the United Kingdom, on the third (3rd) Business Day after the day of posting;
- (C) if sent from one country to another, on the fifth (5th) Business Day after the day of posting; or

- (D) if sent by email (where such notice is expressly permitted by email), when sent except that an email shall be deemed not to have been sent if the sender receives a delivery failure notification,

provided that any notice given outside Working Hours in the place to which it is addressed (or, in the case of a notice sent by email, the location of the person to whom it is addressed) shall be deemed not to have been given until the start of the next period of Working Hours in such place. References in this Agreement to delivery or receipt of any notice given pursuant to this Agreement shall include deemed delivery or receipt, as the case may be, under this Clause 49.4.

49.5 **Notice Requirements**

Except where expressly stated to the contrary, each notice given by one Party to any other Party or Parties pursuant to this Agreement must be duly signed:

- (A) in the manner, and by or on behalf of the person, specified in the relevant provision of this Agreement; or
- (B) (where no such requirement is specified) by an authorised signatory of the relevant Party.

49.6 **Disapplication of Notice Provisions**

This Clause 49 shall not apply in relation to any document relating to service of process (including in respect of the service of Service Documents).

50. **NO VARIATION**

- (A) Without prejudice to Clauses 30.1(E)(ii)(e) and 30.1(J) (*Expert Determination Procedure – General*) and 30.2 (*Expedited Expert Determination Procedure*), any provision of this Agreement may be amended if in writing and signed by each Party.
- (B) The Parties agree that it is their intention that, in the absence of their ability to agree any required amendment to this Agreement, this Agreement should continue and should not come to an end or be deemed void or voidable in accordance with the doctrine of frustration, or any other legal theory.

51. **SEVERABILITY**

51.1 **Invalidity**

If any provision or part of a provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect in any jurisdiction, that shall not affect or impair:

- (A) the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or

- (B) the legality, validity or enforceability in other jurisdictions of that or any other provision of this Agreement.

51.2 **Lack of authority**

Without prejudice to any right or remedy which any other Party may otherwise have, if a Party's performance of this Agreement or any other Transaction Document or any obligation under this Agreement or any other Transaction Document is or becomes illegal, invalid or unenforceable in any respect in any jurisdiction for want of capacity, power or authority:

- (A) this shall not affect the performance by the relevant Party of its other obligations under this Agreement or any other Transaction Document; and
- (B) no other member of its Group shall be relieved from performing its obligations under this Agreement or any other Transaction Document.

52. **THIRD PARTY RIGHTS**

- (A) The Clauses set out in Part 7 (*Qualifying Exit Events*) (such provisions being "**Third Party Provisions**") confer benefits on those who are not a party to this Agreement (each, a "**Third Party**").
- (B) Subject to the remaining provisions of this Clause 52, the Third Party Provisions are intended to be enforceable by the relevant Third Parties by virtue of the C(RTP) Act.
- (C) The Parties do not intend that any term of this Agreement, other than the Third Party Provisions, should be enforceable, by virtue of the C(RTP) Act, by any person who is not a Party.
- (D) Notwithstanding this Clause 52, this Agreement may be varied in any way and at any time by the Parties without the consent of any Third Party.

53. **NO PARTNERSHIP**

Nothing in this Agreement and no action taken by the Parties pursuant to this Agreement shall constitute a partnership, joint venture or agency relationship between the Parties.

54. **SET-OFF**

Each of the CfD Counterparty and the Secretary of State may set off any matured obligation due by the Generator, NNB HoldCo, NNB FinCo, an Investor TopCo, an Investor Super TopCo (including in its capacity as a Responsible Investor Super TopCo) or an Investor to the CfD Counterparty or the Secretary of State pursuant to this Agreement against any matured obligation owed by the CfD Counterparty or the Secretary of State, as applicable, to such person (but not any other of those persons).

55. FURTHER ASSURANCE

Each Party shall at its own cost do or procure the doing of all things and execute or procure the execution of all further documents necessary to give full force and effect to, and securing to the other Parties the full benefit of, the rights, powers and benefits conferred upon them under or pursuant to all Transaction Documents to which those Parties are parties save that neither the CfD Counterparty nor the Secretary of State shall be required pursuant to this Clause 55 to exercise or perform any statutory power or duty.

56. INCONSISTENCY

The Parties acknowledge and agree that the express or implied terms and conditions of this Agreement shall, in the event of any inconsistency or conflict with the express or implied terms and conditions of the HPC CfD, prevail over the relevant terms and conditions of the HPC CfD to the extent of such inconsistency or conflict.

57. ENTIRE AGREEMENT

- (A) This Agreement, together with the other Transaction Documents, constitutes the entire agreement, understanding and representations of the Parties in respect of its subject matter and supersedes and extinguishes any agreements, understandings and/or representations previously given or made in respect thereof other than those included in this Agreement and the other Transaction Documents.
- (B) Each Party acknowledges that in entering into this Agreement it has not relied on, and shall have no right or remedy in respect of, any draft, agreement, undertaking, representation, warranty, promise, assurance, arrangement or public statement of any nature whatsoever, whether or not in writing, relating to the subject matter of this Agreement or any other Transaction Document made or given by or on behalf of any other Party or the Delivery Body at any time prior to the Agreement Date (whether made negligently or innocently) other than as expressly set out in this Agreement or any other Transaction Document.
- (C) Nothing in this Clause 57 shall limit or exclude liability for fraud.

58. LANGUAGE**58.1 English language**

All information provided by any Party pursuant to this Agreement shall be in English unless otherwise agreed by the CfD Counterparty.

58.2 Translations

- (A) In the case of any information which is translated into English, prior to its being delivered to the CfD Counterparty or the Secretary of State pursuant to this Agreement, the Party responsible for delivering that information shall ensure that any such translation is carried out (at that Party's cost) by a recognised and appropriately qualified and skilled translation agent.

- (B) Each of the CfD Counterparty and the Secretary of State shall be entitled to assume the accuracy of and rely upon the English translation of any information provided pursuant to Clause 58.2(A).

59. COUNTERPARTS

This Agreement may be executed in any number of counterparts and by the Parties to it on separate counterparts, but shall not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original but all of the counterparts together shall constitute one and the same instrument.

IN WITNESS whereof this Agreement has been duly executed and delivered as a deed on the date first stated on page 1 above.

EXECUTION PAGE

THE SECRETARY OF STATE FOR ENERGY AND CLIMATE CHANGE

THE CORPORATE SEAL of THE)
SECRETARY OF STATE FOR ENERGY)
AND CLIMATE CHANGE)
hereunto affixed was)
authenticated by:)

Greg Clark, Secretary of State / Hugo Robson (authorised by the Secretary of State)

LOW CARBON CONTRACTS COMPANY LTD

EXECUTED and delivered as a)
DEED by **LOW CARBON CONTRACTS**)
COMPANY LTD acting by its)
director(s) Director(s)

in the presence of:

Witness's signature:

Name (print):

Address:

.....

.....

NNB HOLDING COMPANY (HPC) LIMITED

EXECUTED as a)	
DEED by NNB HOLDING COMPANY)	
(HPC) LIMITED)	
acting by)	
)	
.....)
(Name of authorised director/duly appointed attorney)		(Signature of authorised director/duly appointed attorney)
		Director/Attorney

in the presence of:

Witness's signature:

Name (print):

Address:
.....
.....

NNB GENERATION COMPANY (HPC) LIMITED

EXECUTED as a)	
DEED by NNB GENERATION COMPANY)	
(HPC) LIMITED)	
acting by)	
)	
.....)
(Name of authorised director/duly appointed attorney)		(Signature of authorised director/duly appointed attorney)
		Director/Attorney

in the presence of:

Witness's signature:

Name (print):

Address:
.....

NNB FINANCE COMPANY (HPC) LTD

EXECUTED as a)
DEED by **NNB FINANCE COMPANY**)
(HPC) LTD)
acting by)
)
.....)

(Name of authorised director/duly appointed attorney)

(Signature of authorised director/duly appointed attorney)
Director/Attorney

in the presence of:

Witness's signature:

Name (print):

Address:
.....
.....

EDF ENERGY PLC

EXECUTED as a)
DEED by **EDF ENERGY PLC**)
acting by)
)
.....)

(Name of authorised director/duly appointed attorney)

(Signature of authorised director/duly appointed attorney)
Director/Attorney

in the presence of:

Witness's signature:

Name (print):

Address:
.....
.....

ÉLECTRICITÉ DE FRANCE S.A.

EXECUTED as a **DEED** by)
)
)
(Name of director for ÉLECTRICITÉ DE) (Signature of director)
FRANCE S.A.) As director for Électricité de France S.A.

in the presence of:

Witness's signature:

Name (print):

Address:

.....

.....

CHINA GENERAL NUCLEAR POWER CORPORATION

EXECUTED as a **DEED** by)
CHINA GENERAL NUCLEAR POWER)
CORPORATION)
 acting by)
)
)

[duly authorised under the laws of the People's
 Republic of China] / [under a power of attorney
 dated] for and on
 behalf of **CHINA GENERAL NUCLEAR
 POWER CORPORATION**

in the presence of:

Witness's signature:

Name (print):

Address:

.....

.....

EDF ENERGY HOLDINGS LIMITED

EXECUTED as a)
DEED by **EDF ENERGY HOLDINGS LIMITED**)
 acting by)
)
)
(Name of authorised director/duly) **(Signature of authorised director/duly**
appointed attorney) **appointed attorney)**
 Director/Attorney

in the presence of:

Witness's signature:

Name (print):

Address:

.....

.....

INTERNATIONAL NUCLEAR INVESTMENT LIMITED

EXECUTED as a **DEED** by)
)
)
 for and on behalf of) **(Signature of authorised director/duly**
INTERNATIONAL NUCLEAR INVESTMENT **appointed attorney)**
LIMITED Director/Attorney

in the presence of:

Witness's signature:

Name (print):

Address:

.....

NNB TOP COMPANY HPC (B) LTD

EXECUTED as a)
DEED by **NNB TOP COMPANY HPC (B) LTD**)
 acting by)
)
(Name of authorised director/duly appointed attorney)) **(Signature of authorised director/duly appointed attorney)**
 Director/Attorney

in the presence of:

Witness's signature:

Name (print):

Address:

.....

.....

LIBRA INTERNATIONAL LIMITED

EXECUTED as a **DEED** by)
)
 for and on behalf of)
LIBRA INTERNATIONAL LIMITED) **(Signature of authorised director/duly appointed attorney)**
 Director/Attorney

in the presence of:

Witness's signature:

Name (print):

Address:

.....

NNB TOP COMPANY HPC (A) LTD

EXECUTED as a)
DEED by **NNB TOP COMPANY HPC (A) LTD**)
acting by)

.....)

(Name of authorised director/duly appointed attorney)

.....
(Signature of authorised director/duly appointed attorney)
Director/Attorney

in the presence of:

Witness's signature:

.....

Name (print):

.....

Address:

.....
.....
.....

SAGITTARIUS INTERNATIONAL LIMITED

EXECUTED as a **DEED** by)

.....)

.....)

for and on behalf of)
SAGITTARIUS INTERNATIONAL LIMITED

.....
(Signature of authorised director/duly appointed attorney)
Director/Attorney

in the presence of:

Witness's signature:

.....

Name (print):

.....

Address:

.....
.....
.....

NNB FINANCE COMPANY (HPC) LTD

as Original Financing Representative

EXECUTED as a)
DEED by **NNB FINANCE COMPANY (HPC)**)
LTD)
acting by)
)

.....
**(Name of authorised director/duly
appointed attorney)**

.....
**(Signature of authorised director/duly
appointed attorney)**
Director/Attorney

in the presence of:

Witness's signature:

.....

Name (print):

.....

Address:

.....

.....

.....

ANNEX 1
CONDITIONS PRECEDENT

PART 1
AGREEMENT DATE CONDITIONS PRECEDENT

1. Delivery to the CfD Counterparty and the Secretary of State by each of the Generator, NNB HoldCo, NNB FinCo, EDF Energy, the Original Investor TopCos, the Original Investor Super TopCos, the Original Investors and the Ultimate Investors of the following:
 - (A) a copy of its constitutional documents, its certificate of incorporation and any certificate of incorporation on change of name;
 - (B) a copy of a resolution or resolutions of its board or, if applicable, a committee of its board of directors:
 - (i) approving the terms of, and the transactions contemplated by the Transaction Documents (other than any direct agreement referred to in paragraph (E) of the definition of "Transaction Documents" in Clause 1.1 (*Definitions*)) to which it is a party (and additionally, in the case of EDF SA, the EDF SA Letters and the commitments therein) and resolving that it execute, deliver and perform those documents;
 - (ii) authorising a specified person or persons to execute the Transaction Documents (other than any direct agreement referred to in paragraph (E) of the definition of "Transaction Documents" in Clause 1.1 (*Definitions*)) to which it is a party (and additionally, in the case of EDF SA, the EDF SA Letters); and
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Transaction Documents (other than any direct agreement referred to in paragraph (E) of the definition of "Transaction Documents" in Clause 1.1 (*Definitions*)) to which it is a party (and additionally, in the case of EDF SA, the EDF SA Letters);
 - (C) if applicable, a copy of a resolution of its board of directors establishing the committee referred to in paragraph (B) above;
 - (D) a specimen of the signature of each person authorised by the resolution referred to in paragraph (B) above in relation to the Transaction Documents (other than any direct agreement referred to in paragraph (E) of the definition of "Transaction Documents" in Clause 1.1 (*Definitions*)) to which it is a party (and additionally, in the case of EDF SA, the EDF SA Letters);
 - (E) a legal opinion addressed to the CfD Counterparty and the Secretary of State from its legal advisers confirming that such person:
 - (i) is duly formed and validly existing under the laws of its jurisdiction of incorporation; and

(ii) has the power to enter into and perform, and has taken all necessary action to authorise its entry into and performance of the Transaction Documents (other than any direct agreement referred to in paragraph (E) of the definition of “Transaction Documents” in Clause 1.1 (*Definitions*)) to which it is a party (and additionally, in the case of EDF SA, the EDF SA Letters);

(F) a group structure chart for each Investor Super TopCo in compliance with the Investment Structure Chart;

(G) an electronic copy and a copy on an electronic storage device formatted ready for printing of a pro forma Equity IRR Model, capable of complying with the requirements of Clause 13.1 (*Description of the Equity IRR Model*), together with a copy of the model assumptions book, in each case in a form capable of being audited on terms to be discussed and agreed with the model auditor, which shall be a firm of independent and internationally reputable auditors of good standing agreed between the Generator and the CfD Counterparty (each acting reasonably), and a set of illustrative, non-binding, worked examples of Gain Shares as they affect Investor TopCo Tranches; and

(H) a Directors’ Certificate for each member of the NNB HoldCo Group, each Original Investor, each Original Investor TopCo, each Original Investor Super TopCo, EDF Energy and each Ultimate Investor certifying that each copy document relating to it specified in this Annex 1, Part 1 is a correct, complete and true copy of the original and that the original is in full force and effect and has not been amended or superseded, in each case as at a date no earlier than the Agreement Date,

in each case in form and content satisfactory to the CfD Counterparty and the Secretary of State, each acting reasonably.

2. Delivery to the CfD Counterparty by each Investor Super TopCo of a Security Document duly executed by the relevant Investor Super TopCo together with all share certificates, transfers and stock transfer forms or equivalent duly executed by such Investor Super TopCo in blank in relation to the assets subject to, or expressed to be subject to, the security created or constituted by the Security Document.
3. Delivery to the CfD Counterparty of evidence in form and content satisfactory to the CfD Counterparty and the Secretary of State, each acting reasonably, of the Acceptable Credit Standing of CGNPC and each Original Investor.
4. Satisfaction of the Initial Conditions Precedent (under and as defined in the HPC CfD) in accordance with the HPC CfD.
5. Delivery to the CfD Counterparty and the Secretary of State of a Directors’ Certificate from each of EDF SA and CGNPC containing confirmation and evidence in form and substance satisfactory to the CfD Counterparty and the Secretary of State that, as at the date of the Directors’ Certificate, all loans and other financial accommodation made in respect of the Project have been routed through the following corporate structure: namely between (i) an Investor Super TopCo and its Investor TopCo; (ii) that Investor TopCo and NNB HoldCo; and (iii) NNB HoldCo and the Generator.

6. Delivery to the CfD Counterparty and the Secretary of State of a Directors' Certificate from each of EDF SA and CGNPC containing confirmation that there have not been any transfers of Economic Interests in NNB Top Company HPC (A) Ltd or Sagittarius International Limited, respectively, or any Relevant Sales from (and including) the Agreement Date to (and including) the date of fulfilment of all the Agreement Date Conditions Precedent save as strictly necessary to enable the confirmation referred to in paragraph 5 above to be given.

PART 2
ACCESSION CONDITIONS PRECEDENT

1. Delivery to the CfD Counterparty and the Secretary of State by each of (as applicable) the Transferee Investor TopCo, the Transferee Investor Super TopCo and/or the Transferee Investor of the following:
 - (A) a copy of its constitutional documents, its certificate of incorporation and any certificate of incorporation on change of name;
 - (B) a copy of a resolution of its board or, if applicable, a committee of its board of directors:
 - (i) approving the terms of, and the transactions contemplated by the Transaction Documents and any Deed of Accession to which it is a party and resolving that it execute, deliver and perform those documents;
 - (ii) authorising a specified person or persons to execute the Transaction Documents and any Deed of Accession to which it is a party; and
 - (iii) authorising a specified person or persons, on its behalf, to sign and/or despatch all documents and notices to be signed and/or despatched by it under or in connection with the Transaction Documents and any Deed of Accession to which it is a party;
 - (C) if applicable, a copy of a resolution of its board of directors establishing the committee referred to in paragraph (B) above;
 - (D) a specimen of the signature of each person authorised by the resolution referred to in paragraph (B) above in relation to the Transaction Documents and any Deed of Accession to which it is a party;
 - (E) a legal opinion addressed to the CfD Counterparty and the Secretary of State from its legal advisers confirming that such person:
 - (i) is duly formed and validly existing under the laws of its jurisdiction of incorporation; and
 - (ii) has the power to enter into and perform, and has taken all necessary action to authorise its entry into and performance of the Transaction Documents and any Deed of Accession to which it is a party;
 - (F) a group structure chart in compliance with the Investment Structure Chart; and
 - (G) a Directors' Certificate for each Transferee Investor TopCo, Transferee Investor Super TopCo and/or Transferee Investor certifying that each copy document relating to it specified in this Annex 1, Part 2 is a correct, complete and true copy of the original and that the original is in full force and effect and has not been amended or superseded, in each case as at a date no earlier than the date of the Deed of Accession of such person,

in each case in form and content satisfactory to the CfD Counterparty and the Secretary of State, acting reasonably.

2. If applicable, Deed(s) of Accession executed by each of the relevant parties.
3. If applicable, delivery to the CfD Counterparty by the Investor Super TopCo or, as the case may be, the Transferee Investor Super TopCo of a Security Document duly executed by the relevant Investor Super TopCo or, as the case may be, the Transferee Investor Super TopCo together with all share certificates, transfers and stock transfer forms or equivalent duly executed by such Investor Super TopCo or, as the case may be, the Transferee Investor Super TopCo in blank in relation to the assets subject to, or expressed to be subject to, the security created or constituted by the Security Document.
4. In respect of a Transferee Investor, a Directors' Certificate setting out the division of Economic Interests between the existing Investor(s) and the Transferee Investor(s).
5. In respect of a Transferee Investor, delivery to the CfD Counterparty of evidence in form and content satisfactory to the CfD Counterparty and the Secretary of State, each acting reasonably, of the Acceptable Credit Standing of such Transferee Investor.
6. A Directors' Certificate for each Transferee Investor TopCo, Transferee Investor Super TopCo and/or Transferee Investor (as applicable) addressed to each of the CfD Counterparty and the Secretary of State certifying that, as at the date of the relevant Deed of Accession, the representations and warranties set out in Clause 26 (*Representations and Warranties*) are true, accurate and not misleading with respect to it.
7. A copy of any other document, opinion or assurance which the CfD Counterparty or the Secretary of State considers to be necessary or desirable (if it has notified the relevant Parties accordingly) in connection with the entry into and performance of the transactions contemplated by any of the Transaction Documents or for the validity and enforceability of any of the Transaction Documents.

ANNEX 2
AVOIDANCE EVENT AND ABUSIVE ARRANGEMENTS

1. Avoidance Event

- (A) An “**Avoidance Event**” means, subject to paragraph (C) below, any contract, arrangement, scheme, transaction or series of transactions which (when taken together) and whether real, virtual, hybrid or synthetic, entered into or facilitated or participated in, directly or indirectly, by any of the Generator, NNB HoldCo, NNB FinCo, the Investor TopCos, the Investor Super TopCos or the Investors or any Tracked Person, or any organising, structuring or restructuring by any such person of its capital or debt or business or affairs (or the conducting of the same) or the undertaking by any such person of any act or the making by any such person of any omission, in any such case which is designed to or a main purpose of which is to:
- (i) evade, avoid, circumvent, frustrate or reduce in whole or in part the payment to or receipt by the CfD Counterparty of amounts which might otherwise be payable to the CfD Counterparty under Clause 9 (*Equity Gain Share: Project Gain Share Provisions*) or Clause 10 (*Equity Gain Share: Sale Gain Share Provisions*);
 - (ii) remove, extract or leak value from any such person so as to reduce in whole or in part the payment to or receipt by the CfD Counterparty of amounts which might otherwise be payable to the CfD Counterparty under Clause 9 (*Equity Gain Share: Project Gain Share Provisions*) or Clause 10 (*Equity Gain Share: Sale Gain Share Provisions*);
 - (iii) satisfy the Threshold Test and avoid a transferee of Economic Interests in NNB HoldCo being a Tracked Person; or
 - (iv) avoid a sale of Economic Interests being a Relevant Sale.
- (B) Provided that they satisfy the criteria set out in paragraph (A) above, Avoidance Events may be or involve (without limitation):
- (i) any reorganisation of the direct or indirect shareholding structure in, of, or relating to, any member of the NNB HoldCo Group or the Project;
 - (ii) any issue, raising or grant of any Economic Interest at less than fair market value;
 - (iii) any issue, raising or grant of any Economic Interest other than for the purpose of funding the Project (and, for this purpose, funding the Project shall not include any voluntary cash collateralisation);
 - (iv) any securitisation of cash or cash flows or moneys standing to the credit of any bank account, in any such case of, from or relating to any member of the NNB HoldCo Group or the Project;

- (v) any borrowing using as collateral cash or moneys standing to the credit of any bank account of, from or relating to any member of the NNB HoldCo Group or the Project;
 - (vi) any over-provision made in excess of the requirements of the FAP; or
 - (vii) any borrowing of Economic Interests relating to any member of the NNB HoldCo Group from any holder of such Economic Interests, whether or not for consideration.
- (C) The following shall not constitute Avoidance Events:
- (i) the entry into a Related Party Transaction for goods or services which complies with the Agreed Principles under and as defined in the Contracting Policy;
 - (ii) the entry into any transaction with any person to dispose of an Economic Interest in NNB HoldCo for fair market value and which is subject to the equity sales gain share mechanism in Clause 10 (*Equity Gain Share: Sale Gain Share Provisions*);
 - (iii) without prejudice to paragraph (B)(i) above, Clause 12.1(D) (*Investor undertakings*) and paragraph 14 (*Group Structure*) of the Equity Gain Share Rules, the corporate restructuring within any Investor Group or the transfer of shares within such group of companies where the Ultimate Investor in respect of such Investor Group or, where there is no Ultimate Investor, the ultimate holding company in respect of such Investor Group remains the same;
 - (iv) to the extent entered into on arm's length terms, complying with any third party financing made available other than by a member of the Shareholder Group (except where that member is a state-owned bank or financial institution) to the Generator or to NNB HoldCo or NNB FinCo for on-lending to the Generator for the purposes of the Project; or
 - (v) taking prudent steps necessary to increase Available Cash Flow or Distributions from the amount that it or they would otherwise be,
- unless, in each case, it is demonstrated that the relevant event does in fact satisfy the criteria set out in paragraph (A) above.

2. **Abusive arrangements**

An arrangement is "**Abusive**" if it is an arrangement the entering into or carrying out of which cannot reasonably be regarded as a reasonable course of action in relation to the gain share provisions set out in Part 5 (*Equity Gain Share*) (including the determination of the Gain Share Amounts due to the CfD Counterparty) having regard to all the circumstances including:

- (A) whether the substantive results of the arrangements are consistent with any principles on which those gain share provisions are based (whether express or implied);
- (B) whether the means of achieving those results involves one or more contrived or abnormal steps; and
- (C) whether the arrangements are intended to exploit any shortcomings in those provisions.

ANNEX 3
EQUITY GAIN SHARE RULES

The following constitute the Equity Gain Share Rules:

1. **Avoidance Event**

The Generator, NNB HoldCo, the Investor TopCos, the Investor Super TopCos, the Investors and any Tracked Persons shall not undertake an Avoidance Event or enter into any Abusive arrangements.

2. **Single purpose**

- (A) The Generator shall be a Single Purpose Company.
- (B) NNB HoldCo shall be solely an investment holding company which takes decisions in respect of the investments it holds and performs its obligations and responsibilities under the Transaction Documents and the Finance Documents to which it is a party.
- (C) NNB HoldCo shall hold shares only in the Generator and NNB FinCo.
- (D) Save in accordance with Clauses 21 (*Transfer of Ownership following a Qualifying Effective Shutdown Event*) and 22 (*Call and Put Options*), NNB HoldCo shall not dispose of any shares in the Generator.
- (E) Each Investor TopCo shall be solely an investment holding company holding shares only in NNB HoldCo and performing its obligations and responsibilities under the Transaction Documents and the Finance Documents to which it is a party.
- (F) Each Investor Super TopCo shall be solely an investment holding company holding shares only in its Investor TopCo and performing its obligations and responsibilities under the Transaction Documents and the Finance Documents to which it is a party.

3. **Business and liabilities**

- (A) NNB HoldCo shall not carry on any business, own any assets or incur any liabilities except for those necessary for the purposes set out in paragraphs 2(B) and (C) above.
- (B) Each Investor TopCo shall not carry on any business, own any assets or incur any liabilities except for those necessary for the purposes set out in paragraph 2(E) above.
- (C) Each Investor Super TopCo shall not carry on any business, own any assets or incur any liabilities except for those necessary for the purposes set out in paragraph 2(F) above.

4. **Status**

The Generator, NNB HoldCo, each Investor TopCo and each Investor Super TopCo shall maintain its respective status as a limited liability company incorporated under the laws of England.

5. **Centre of main interests**

For the purposes of the Insolvency Regulations, each of the Generator, NNB HoldCo, each Investor TopCo and each Investor Super TopCo shall ensure that its respective centre of main interests (as that term is used in article 3(1) of the Insolvency Regulations) is situated in England.

6. **Tax residency**

The Generator, NNB HoldCo, each Investor TopCo and each Investor Super TopCo shall not cease to be resident for tax purposes in England or establish or maintain any place of business or permanent establishment outside England.

7. **No loans or credit**

The Generator, NNB HoldCo, each Investor TopCo and each Investor Super TopCo shall not be a creditor in respect of any Financial Indebtedness incurred by any person (other than (i) in the ordinary course of trading; (ii) any Financial Indebtedness under and in accordance with a Finance Document for the purposes of the Project; and (iii) Financial Indebtedness for the purposes of the Project advanced to an entity in which the Generator, NNB HoldCo, each Investor TopCo or each Investor Super TopCo (as applicable) has a direct or indirect shareholding).

8. **No guarantees or indemnities**

The Generator, NNB HoldCo, each Investor TopCo and each Investor Super TopCo shall not incur or grant or allow to remain outstanding any guarantee or indemnity in respect of any obligation or liability of any person (other than (i) a guarantee or indemnity the provision of which is reasonably required in relation to the Project; and (ii) any guarantee or indemnity provided under, and in accordance with, a Finance Document for the purposes of the Project).

9. **Negative pledge**

The Generator, NNB HoldCo, each Investor TopCo and each Investor Super TopCo shall not create or permit to subsist any Security Interest on, over or affecting the whole or any part of its respective undertakings or assets as security for the Financial Indebtedness of any other person (other than (i) a Security Interest granted by such person reasonably required in relation to the Project; (ii) any Security Interest required under, and in accordance with, the FDP Documents; and (iii) any Security Interest provided under, and in accordance with, a Finance Document for the purposes of the Project).

10. **No grant of Economic Interests**

The Generator, NNB HoldCo, each Investor TopCo and each Investor Super TopCo shall not issue, raise or grant any Economic Interests except as necessary for the funding of Project costs.

11. **Stapling**

No Investor TopCo or Investor Super TopCo shall, and shall procure that none of its Tracked Persons shall, effect or seek to effect a sale or transfer in respect of its Economic Interests in NNB HoldCo unless a pro rata amount of all such Economic Interests is comprised within such sale or transfer, and for this purpose:

- (A) shares or other securities or other equity, partnership or other ownership interests shall be taken at their par value;
- (B) loans, loan capital and other debt instruments shall be taken at their principal amount plus accrued, unpaid interest; and
- (C) other Economic Interests shall be taken at the nearest equivalent to that in paragraph (A) or (B) above.

12. **Funding**

All Economic Interests issued, raised or granted for the funding of Project costs shall be routed through the following corporate structure, namely between (i) an Investor Super TopCo and its Investor TopCo, (ii) that Investor TopCo and NNB HoldCo and (iii) NNB HoldCo and the Generator.

13. **Compliance with Laws, Directives and Industry Documents**

The Generator, NNB HoldCo, each Investor TopCo and each Investor Super TopCo shall comply with all Laws, Directives and Industry Documents to which it is a party or may be subject or by which it is bound if failure to do so would have or would reasonably be expected to have a material adverse effect on its ability to perform or comply with its obligations under Clause 9 (*Equity Gain Share: Project Gain Share Provisions*), Clause 10 (*Equity Gain Share: Sale Gain Share Provisions*) and Clause 11 (*Equity Gain Share: Security and Enforcement*) or any of them.

14. **Group structure**

The Generator, NNB HoldCo, each Investor TopCo and each Investor Super TopCo shall conform to the Investment Structure Chart.

ANNEX 4
TRANSITIONAL SERVICES

1. The Transitional Services Providers and the Government Parties agree that the Government Parties may, at any stage during the Transition Period and, in the case of those Transitional Services that constitute Unique Transitional Services only, at any stage following the expiry of the Transition Period, request the provision to any member of the NNB HoldCo Group of those services which meet any of the following criteria:
 - (A)
 - (i) if at the start of the Transition Period the Project is in its construction phase, any goods or services which were provided by any Transitional Services Provider (or any member of its Group), or which any Transitional Services Provider (or any member of its Group) was contracted to provide, in respect of any aspect of the Project during that construction phase;
 - (ii) if at the start of the Transition Period the Project is in its operational phase, any goods or services which were provided by any Transitional Services Provider (or any member of its Group), or which any Transitional Services Provider (or any member of its Group) was contracted to provide, in respect of any aspect of the Project during that operational phase;
 - (B) fuel, spare parts or any other goods which any Transitional Services Provider (or any member of its Group) is able to supply in the ordinary course of its business or any services, in any such case which are reasonably necessary:
 - (i) to maintain the safety of, and the activity preparatory to the decommissioning and the cleaning up of, the Site, the Facility, the Associated Facilities (as such term is defined in the HPC CfD) or the Reactors; or
 - (ii) in connection with the performance or completion of any aspect of the Project; or
 - (C) any services as the Government Parties or the Generator are or will be unable (acting reasonably) to provide themselves, or procure from an acceptable third party, on acceptable terms in respect of the Site or any aspect of the Project,

in each case, if applicable, to include any such goods or services, as applicable, which were provided by any third party to any Transitional Services Provider or any member of its Group (the “**Transitional Services**”). In such request, the Government Parties will specify whether such Transitional Service is to be provided as a Standard Transitional Service or a Unique Transitional Service. Promptly following the date on which the Government Parties request any Transitional Services pursuant to this paragraph 1, the Transitional Services Providers shall provide to the Government Parties a list of any third party consents required to be obtained in order for the Transitional Services Providers to provide the Transitional Services.

2. Where the Government Parties have requested the provision of a service as a Unique Transitional Service pursuant to paragraph 1 above, and the Transitional Service Providers do not agree that the requested service is a Unique Transitional Service, the Dispute will be treated as an Expert Dispute and will be referred for determination in accordance with the provisions of Clause 30 (*Expert Determination Procedure*).
3. From the date on which the list of third party consents is provided pursuant to paragraph 1 above, the Government Parties and the Transitional Services Providers shall each use, and each of the Transitional Services Providers shall procure that any relevant member of its Group shall use, all reasonable endeavours to obtain such third party consents. The Transitional Services Providers shall not be required to provide any Standard Transitional Services which are provided to the Transitional Services Providers by a third party or which require a third party consent pursuant to law to the extent that any necessary consent of the relevant third party has been refused. The Transitional Service Providers shall not be relieved of their obligation to provide any Unique Transitional Services that are requested by the Government Parties as a result of a failure of the Transitional Service Providers to obtain any relevant consent from any member of an Investor Super TopCo Group, any member of the NNB HoldCo Group or any member of any Shareholder Group (as defined in the Contracting Policy).
4. The Transitional Services Providers shall continue to provide any Transitional Services that were provided by any Transitional Services Provider (or any member of its Group) referred to in paragraph 1(A) above without further request by the Government Parties and shall provide any Transitional Services requested by the Government Parties pursuant to paragraph 1 above by no later than the date specified by the Government Parties in the request for the commencement of such Transitional Service, and shall continue to provide such Transitional Services:
 - (A) in the case of Standard Transitional Services, for the remainder of the Transition Period or, if earlier, until such Standard Transitional Service is transitioned to an alternative replacement service provider in accordance with paragraph 6 below (unless such Standard Transitional Services are terminated pursuant to paragraph 11 or 12 below); and
 - (B) in the case of Unique Transitional Services, until those Unique Transitional Services are terminated pursuant to paragraph 11 or 12 below or, if earlier in the case where the Government Parties agree in writing that a Unique Transitional Service has ceased to be such, until the Transitional Service is transitioned to an alternative service provider in accordance with paragraph 6 below.

Service levels

5. The Transitional Services Providers shall ensure that the Transitional Services they provide:
 - (A) shall be provided to the same standard as such services were received or would have been received by the Generator;
 - (B) shall be carried out with all due skill and care; and

- (C) shall be carried out so as not to contravene any applicable Law, Directives, Industry Documents or Required Authorisations, including the Nuclear Site Licence.

Transition to new service provider

6. The Transitional Services Providers shall provide any additional assistance and support that the Generator reasonably requires to ensure the effective transition to alternative replacement service providers as soon as reasonably practicable (and in any event prior to the end of the Transition Period), provided that the Generator will reimburse the Transitional Service Providers in respect of any such reasonable costs that the Transitional Service Providers incur providing such assistance and support.

Payment and invoicing

7. The Government Parties shall pay the Transitional Services Providers an arm's length market rate for the Transitional Services (the "**Service Charges**") as agreed between the Transitional Service Providers and the Government Parties or, where such agreement cannot be reached, as shall be determined by an Expert in accordance with the provisions of Clause 30 (*Expert Determination Procedure*).
8. The Transitional Services Providers shall provide the Government Parties with a single invoice in respect of the aggregate Service Charges for each quarter in arrears, on the last Business Day of each quarter which shall be due and payable by the Government Parties (unless disputed) no later than thirty (30) days from the relevant invoice date by way of credit transfer to the United Kingdom bank account(s) nominated by the Transitional Service Providers in pounds and in immediately available funds.
9. Each invoice submitted by the Transitional Services Providers shall include a breakdown of the Service Charges being invoiced.
10. The Transitional Services Providers undertake to keep, or cause to be kept, such records as are reasonably necessary to show the basis for calculation of the Service Charges relating to the provision of the Transitional Services, or any costs charged pursuant to paragraph 6 above. The Transitional Services Providers shall grant reasonable access to the Government Parties and their professional advisers to such records for the purpose of verifying the accuracy of any invoice.

Suspension and termination of Transitional Services

11. The Transitional Services Providers shall have the right to suspend provision of the Transitional Services if the Government Parties fail to make payment of a material amount which is properly due and payable within sixty (60) Business Days after the due date therefor in respect of the Service Charges (but only to the extent such amounts are not disputed by the Government Parties) until such payment is made. If, within forty-five (45) Business Days of suspension of the provision of the Transitional Services, the Government Parties have failed to make payment of such material amount and such amount is properly due and payable, the Transitional Services Providers may terminate the relevant Transitional Services.

12. The Government Parties shall have the right to terminate at any time and for any reason the provision of any or all of the Transitional Services on not less than three (3) months' written notice to the relevant Transitional Service Provider (but without prejudice to the Government Parties' obligation to make payment for any Transitional Services ordered by, or provided to, the Government Parties prior to such termination in accordance with the terms and conditions applicable to such Transitional Service).

Access to personnel and information and data protection

13. Without limiting the generality of Clause 14.4 (*Co-operation, Access and Information*), each of the Government Parties and the Transitional Services Providers shall (at its own expense) provide the other and the other's contractors, agents and employees (including, for the avoidance of doubt, personnel of any third party provider to the Transitional Services Providers) with such data, information, records and assistance as the other may reasonably request for the purpose of performing or receiving any Transitional Services and (upon request and with reasonable notice) afford the other or the other's contractors, agents or employees (including personnel of any third party provider to the Transitional Services Providers) with reasonable access to its personnel during Working Hours (to the extent legally able to do so).
14. Each of the Government Parties and the Transitional Services Providers undertakes to the other that each will comply with, and the Transitional Services Providers shall procure that each member of its Group and its or their contractors, agents and employees will comply with, the Data Protection Act 1998 and all other applicable data protection legislation in connection with the performance of its obligations and the exercise of its rights in relation to the provision and receipt of the Transitional Services. Each of the Government Parties and the Transitional Services Providers undertakes that it shall only process any relevant personal data (for the purposes of such Act) in accordance with the other's lawful instructions and shall take all appropriate technical and organisational measures against unauthorised or unlawful processing or disclosure of such data and against accidental loss or destruction of, or damage to, such data.

IT separation

15. (A) Each of the Government Parties and the Transitional Services Providers shall work together following the start of the Transition Period (or, to the extent that it is reasonably foreseeable that Transitional Services will be required prior to commencement of the Transition Period, as soon as reasonably practicable prior to the start of the Transition Period) to establish an information technology separation plan which will, when completed, enable the Generator to migrate and/or separate the relevant information technology systems from those of the Transitional Services Providers and the existing third party providers' arrangements. The objective of the Government Parties and the Transitional Services Providers is to achieve an organised, efficient and prompt separation causing minimal disruption and interruption to the business of the Generator and at the lowest reasonable cost.
- (B) Promptly after the start of the Transition Period, each of the Government Parties and the Transitional Services Providers shall use reasonable endeavours to:

- (i) establish a project team or teams to carry out such information technology separation projects as are agreed between such Parties (acting reasonably) ("**Separation Projects**");
- (ii) agree appropriate processes and methods of working; and
- (iii) agree a timetable for each Separation Project that provides for the Separation Project to be completed by the relevant expiry date of any Transitional Service,

in each case to ensure that separation occurs in an organised, efficient and prompt manner.

- (C) Each of the Government Parties and the Transitional Service Providers shall agree a written detailed plan in respect of each Separation Project (each, a "**Separation Project Plan**") within at least one (1) month prior to the relevant expiry date of any of the Transitional Services involving any information technology systems. Such Separation Project Plan shall include, among other things, how any data or information used in the business of the Generator is to be migrated onto any replacement systems.
- (D) Each of the Government Parties and the Transitional Service Providers shall perform such obligations as are necessary to execute such Separation Project Plan.
- (E) The costs incurred by each of the Government Parties and the Transitional Services Providers in connection with this paragraph 15 shall be shared equally between the Government Parties (on the one hand) and the Transitional Services Providers (on the other hand), or otherwise as agreed in writing between such parties.

Limitations on liability

- 16. Subject to paragraphs 17 and 18 below, the maximum liability of each of the Transitional Service Providers whether in contract, tort (including negligence and breach of statutory duty) or otherwise arising out of or in connection with the provision of the Transitional Services shall in amount and scope be commensurate with that of an arm's length market agreement for the provision of the relevant Transitional Service, as agreed between the Transitional Service Providers and the Government Parties or, where such agreement cannot be reached, as shall be determined by an Expert in accordance with the provisions of Clause 30 (*Expert Determination Procedure*).
- 17. The Transitional Service Providers shall not be liable to the Government Parties whether in contract, tort (including negligence and breach of statutory duty) or otherwise for:
 - (A) any indirect or consequential loss or damage;
 - (B) any loss of profits, loss of anticipated savings, loss of goodwill or loss of contracts (in each case whether direct or indirect or consequential); or

(C) any punitive or exemplary damages.

18. The Transitional Service Providers do not exclude or limit their liability for wilful default, fraud or for death or personal injury caused by its negligence or that of any of their employees or agents or for breach of the obligations arising from section 12 of the Sale of Goods Act 1979.

Further assurance

19. Each of the Government Parties and the Transitional Services Providers undertakes to perform all such acts and do all such other things as may be incidental to, or necessary to give effect to, this Annex 4.

ANNEX 5
VALUATION PROCEDURE

1. Appointment of Valuer

- 1.1 Unless otherwise agreed in writing by the CfD Counterparty (including, for example, where it is agreed that the relevant Economic Interest is not a Qualifying Economic Interest), for the purposes of determining whether an Economic Interest in any person is a Qualifying Economic Interest, the Responsible Investor Super TopCo shall, as soon as reasonably practicable following completion of a potential Relevant Sale, notify the CfD Counterparty of the person the Responsible Investor Super TopCo proposes shall be a Valuer to undertake the valuation in accordance with this Annex 5.
- 1.2 The CfD Counterparty may object to the person proposed by the Responsible Investor Super TopCo pursuant to paragraph 1.1 above on the basis that the proposed Valuer is:
- (A) not a bank or accounting firm of good repute with demonstrable expertise in the valuation of businesses such as that of the person which is the subject of the potential sale of Economic Interests (in this Annex 5, the “**Subject Entity**”), the relevant Investor Group or the Generator;
 - (B) not regulated by an appropriate regulator in the UK; or
 - (C) not sufficiently independent of the Subject Entity and the relevant Investor Group, for reasons such as:
 - (i) the Selling Shareholder, the Subject Entity, the relevant Investor or a member of the relevant Investor Group exercises control over, or is controlled by, that entity; or
 - (ii) it acts as the auditor of the Selling Shareholder, the Subject Entity or the relevant Investor; or
 - (iii) the Selling Shareholder, the Subject Entity, the relevant Investor or a member of the relevant Investor Group has an existing business relationship with that entity which is likely to affect the entity’s ability to exercise independent judgment.
- 1.3 If the CfD Counterparty, in accordance with paragraph 1.2 above, objects to the person proposed by the Responsible Investor Super TopCo pursuant to paragraph 1.1 above within fifteen (15) Business Days of the notice referred to in paragraph 1.1 above, either the Responsible Investor Super TopCo or the CfD Counterparty may request that the President from time to time of the Institute of Chartered Accountants in England and Wales appoints the Valuer, having regard to the criteria set out in paragraph 1.2 above, and such appointment shall be binding on the parties to the valuation.
- 1.4 The Responsible Investor Super TopCo shall request that the Valuer:
- (A) determines the Valuation Percentage within forty (40) Business Days (or such other period, if any, as the Responsible Investor Super TopCo and the CfD

Counterparty may agree in writing) after its appointment in accordance with this Annex 5;

- (B) makes its assessment as at the date of the relevant sale of Economic Interests in NNB HoldCo; and
- (C) notifies that Responsible Investor Super TopCo and the CfD Counterparty in writing of its final reasoned determination (which shall include an explanation of the rationale for the selected valuation metric and of the underlying assumptions used).

2. Information

- 2.1 The relevant Investor shall procure that the Valuer is given all reasonable access to such of the accounting records, business plans, budgets and other information of or relating to the Selling Shareholder and the Subject Entity as are relevant to the Valuer's determination of the Valuation Percentage in accordance with this Annex 5.
- 2.2 The relevant Investor shall procure that the Selling Shareholder and the Subject Entity shall promptly provide all reasonable assistance required by the Valuer in order to make its determination.

3. Valuation Percentage

- 3.1 The "**Valuation Percentage**" means the percentage of the value of the Subject Entity that is derived from the business of the Generator calculated in accordance with this paragraph 3 or as otherwise agreed in writing between the CfD Counterparty and the Responsible Investor Super TopCo.
- 3.2 The Valuer shall determine the Valuation Percentage as:

- (A) the fair market value of the Subject Entity derived from the business of the Generator

divided by

- (B) the fair market value of the Subject Entity,

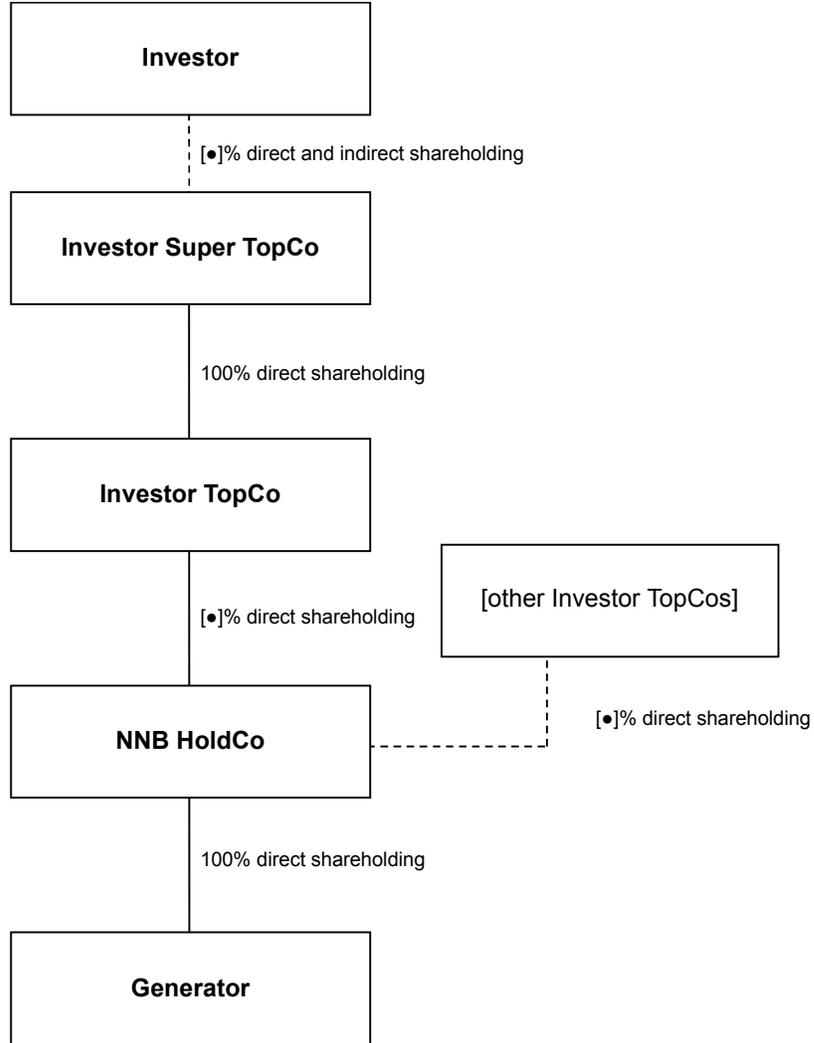
as determined in accordance with generally accepted valuation principles and procedures for businesses of a similar size and in a similar business sector to that of the person which is the subject of the Relevant Sale.

- 3.3 The determination of the Valuation Percentage by the Valuer shall be a single percentage figure, and not a range, quoted as a percentage.

4. Acting as Expert

The Valuer shall act as expert and not as arbitrator and shall act within the scope of its appointment, and otherwise exercise its discretion as it sees fit, and its determination shall be final and binding on the parties (in the absence of fraud or manifest error).

**ANNEX 6
INVESTMENT STRUCTURE CHART**



**ANNEX 7
FORM OF OPTION EXERCISE NOTICE**

To: [insert counterparty]

For the attention of: [insert recipient]

Dated: [●]

Dear Sirs,

Secretary of State Investor Agreement dated [date to be inserted] 2016 between, among others, The Secretary of State for Energy and Climate Change, Low Carbon Contracts Company Ltd, NNB Holding Company (HPC) Limited, NNB Generation Company (HPC) Limited and the Investors named therein (the “Agreement”)

We refer to the Agreement. Terms defined in the Agreement shall have the same meaning when used in this letter.

We hereby:

- (A) give notice in accordance with clause [22.1 (Call Option)] / [22.2 (Put Option)]¹ of the Agreement that we are exercising the [Call] / [Put]² Option; and
- (B) acknowledge that this notice is irrevocable.

The proposed date of Option Completion shall be [insert date].

Please date, sign and return the Acknowledgement below.

This letter is governed by English law and we hereby irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales.

Yours faithfully,

.....

Duly authorised for and on behalf of
[●]

¹ Note: delete as appropriate.

² Note: delete as appropriate.

ACKNOWLEDGEMENT

[●] acknowledges that it has received the [Call] / [Put] Option Exercise Notice from [●] given pursuant to the Secretary of State Investor Agreement dated [*date to be inserted*] 2016 between, among others, the Secretary of State for Energy and Climate Change, Low Carbon Contracts Company Ltd, NNB Holding Company (HPC) Limited, NNB Generation Company (HPC) Limited and the Investors named therein (the “**Agreement**”) and that there subsists a binding contract for the sale and purchase of the Option Shares between [●] and [●] on such terms and subject to such conditions as set out in the Agreement.

Dated: [●]

Signed by.....

Duly authorised for and on behalf of [●]

**ANNEX 8
PROTECTIVE PROVISIONS**

The Protective Provisions are that:

- (A) **Single purpose:**
- (i) the Generator shall be a Single Purpose Company;
 - (ii) NNB HoldCo shall be solely an investment holding company which takes decisions in respect of the investments it holds and performs its obligations and responsibilities under the Transaction Documents to which it is a party;
 - (iii) NNB HoldCo shall hold shares only in the Generator and NNB FinCo; and
 - (iv) save in accordance with Clause 21 (*Transfer of Ownership following a Qualifying Effective Shutdown Event*) and Clause 22 (*Call and Put Options*), NNB HoldCo shall not dispose of any shares in the Generator;
- (B) **Business and liabilities:** NNB HoldCo shall not carry on any business, own any assets or incur any liabilities except for those necessary for the purposes set out in paragraphs (A)(ii) and (A)(iii) above;
- (C) **Corporate structure (NNB HoldCo):** NNB HoldCo shall be the sole legal and beneficial owner of the entire share capital in the Generator;
- (D) **Corporate structure (Generator):** the Generator shall not be a shareholder in or member of any body corporate other than holding:
- (i) a single share in the FDP Implementation Company; and
 - (ii) if the CfD Counterparty has given its prior written consent, shares in Resource Co;
- (E) **Status:** each of the Generator and NNB HoldCo shall maintain its status as a limited liability company incorporated under the laws of England;
- (F) **Centre of main interests:** for the purposes of the Insolvency Regulations, the centre of main interests (as that term is used in article 3(1) of the Insolvency Regulations) of each of the Generator and NNB HoldCo shall be situated in England;
- (G) **No guarantees or indemnities:** the Generator shall not incur or grant or allow to remain outstanding any guarantee or indemnity in respect of any obligation or liability of any person (other than (i) a guarantee or indemnity the provision of which is reasonably required in relation to the Project; and (ii) any guarantee or indemnity provided under, and in accordance with, a Finance Document for the purposes of the Project);
- (H) **Negative pledge:** the Generator shall not create or permit to subsist any Security Interest on, over or affecting the whole or any part of its undertaking or assets as security for the Financial Indebtedness of any other person (other than (i) a Security Interest granted by

such person reasonably required in relation to the Project; (ii) any Security Interest required under, and in accordance with, the FDP Documents; and (iii) any Security Interest provided under, and in accordance with, a Finance Document for the purposes of the Project);

- (I) **No Distributions:** neither the Generator nor NNB HoldCo shall make or pay Distributions or amounts representing the same, save in accordance with Clause 9.4 (*Distributions*);
- (J) **Compliance with Laws, Directives and Industry Documents:** the Generator shall comply with all Laws, Directives and Industry Documents to which it is a party or may be subject or by which it is bound if failure to do so would have or would reasonably be expected to have a Material Adverse Effect;
- (K) **Required Authorisations:** the Generator shall (i) promptly obtain all Required Authorisations; (ii) at all times perform, comply with and satisfy all conditions of, and all obligations and liabilities under, all Required Authorisations; and (iii) do all that is necessary to maintain in full force and effect all Required Authorisations, to the extent, in each case, that failure to do so would have or would reasonably be expected to have a Material Adverse Effect;
- (L) **Permitted Gearing:** the Generator shall not exceed the Permitted Gearing Level;
- (M) **Asset disposal:** the Generator shall not sell, lease, transfer or otherwise dispose of any asset other than (i) in the ordinary course of trading and where the asset is no longer required for the purposes of the Project; or (ii) as otherwise directed by Her Majesty's Government of the United Kingdom;
- (N) **Insurances:** the Generator shall maintain in force insurances in respect of its assets, business and the Project in accordance with the Reasonable and Prudent Standard and shall not knowingly do or omit to do anything to make any policy of insurance void or voidable (except as a direct consequence of a Qualifying Effective Shutdown Event);
- (O) **Shares:** each of the Generator and each Investor TopCo shall ensure that its shares are fully paid;
- (P) **No refusal to register:** the Generator shall ensure that there is no ability for its directors to refuse to register a transfer of the Option Shares; and
- (Q) **No amendments to constitutional documents:** the Generator shall not amend its constitutional documents so as to give its directors the ability to refuse to register a transfer of Option Shares.

ANNEX 9
CONTRACTING POLICY

1. INTRODUCTION

- 1.1 This document is the Contracting Policy referred to in the Secretary of State Investor Agreement in relation to the nuclear power plant at Hinkley Point C dated 29 September 2016 and made between, among others, the Secretary of State for Energy and Climate Change, Low Carbon Contracts Company Ltd, NNB Holding Company (HPC) Limited and the Investors named therein (the “**Secretary of State Investor Agreement**”) and the HPC CfD (as defined therein).
- 1.2 The provisions of this Contracting Policy are without prejudice and are subject to the terms of the Secretary of State Investor Agreement and the HPC CfD.
- 1.3 In the event of any conflict or inconsistency between this Contracting Policy and Annex 4 (*Transitional Services*) of the Secretary of State Investor Agreement as regards the terms upon which Transitional Services are to be provided, the provisions of that Annex shall prevail.
- 1.4 For the purposes of this Contracting Policy, the Generator may make available to the CfD Counterparty copies of any Transactions or details relating to Transactions by uploading the relevant information to a virtual data room or equivalent storage facility which the Generator shall, at its own cost and expense, establish, maintain and administer in accordance with the protocol referred to in clause 22(A) (*Virtual Data Room*) of the HPC CfD throughout the period for which this Contracting Policy applies and to which throughout such period the CfD Counterparty, the Secretary of State and its and the Secretary of State’s respective Representatives shall have unrestricted access (and for this purpose, and without prejudice to the generality of the foregoing, the Generator shall promptly provide users with any required user ID, passwords and other log-in details). Upon reasonable request of the CfD Counterparty or the Secretary of State, as the case may be, and at the Generator’s own cost and expense, the Generator shall allow the CfD Counterparty’s or, as the case may be, the Secretary of State’s external professional advisers (acting on a legally privileged basis and/or with a duty of confidentiality to the Generator, to the Generator’s reasonable satisfaction) to inspect hard copies of the information and documents referred to in this paragraph 1.4 at the Generator’s offices or other location chosen by the Generator (acting reasonably).
- 1.5 If the Generator has made or shall make available to the Secretary of State, DECC or the CfD Counterparty any information or document whether through a virtual data room or equivalent storage facility or otherwise howsoever, the act of making that information or document available (whether for the purposes of due diligence, the cost discovery and verification process or otherwise) shall neither be construed as an agreement, acceptance or approval by the Secretary of State, DECC or the CfD Counterparty of such information or document or of its terms or of any liabilities, costs or expenses disclosed thereby nor as prohibiting or restricting the right of the Secretary of State, DECC or the CfD Counterparty to make further enquiry as to, or to challenge, the same.

2. DEFINITIONS

2.1 Definitions

Unless a contrary intention appears, in this Contracting Policy:

“Agreed Principles” means:

- (A) in relation to any Related Party Transaction, that:
- (i) the Related Party Transaction:
 - (a) will not be structured or operated in a manner that is designed, or a main purpose of which is, to; and
 - (b) will not,
 - leak value from the Generator to a Shareholder Group or any member thereof;
 - (ii) the Related Party Transaction:
 - (a) and its terms are considered by the Generator, acting in accordance with the Reasonable and Prudent Standard, to be required for the Project and in the best interests of the Generator in connection with the Project; and
 - (b) is charged for at Cost,
 - and is formally minuted by the directors of the Generator accordingly, provided that paragraph (A)(ii)(b) of this definition will not be applicable in the case of the NSSS Contract, as the price of such contract has been negotiated and agreed between the Generator and the counterparty acting at arm’s length;
 - (iii) either:
 - (a) the terms of the Related Party Transaction are documented in all material respects at an appropriate level of detail for an intra-group contract of the relevant size and cover all material terms that a contract with a third party supplier would include, except for terms relating to liability and dispute resolution, and provided that the pricing and other commercial terms of the Related Party Transaction will be appropriate for an intra-group arrangement charged for at Cost; or
 - (b) the terms of the Related Party Transaction are not materially less favourable to the Generator (either individually or in the aggregate) than those which would be negotiated and agreed between parties acting at arm’s length and having regard, where

[REDACTED]

[REDACTED]

[REDACTED]

(b)

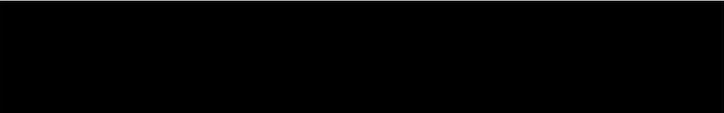
[REDACTED] and

(c)

[REDACTED] provided that under the Responsible Designer Contract, the Generator's liability at any given point will not exceed the sum of: (i) what would have been the Termination Compensation Amount, had such agreement been terminable for convenience; and (ii) any accrued earned incentive fee (as set out in such agreement);

(v) upon acquisition of the Generator or any other member of the NNB HoldCo Group by the CfD Counterparty, the Secretary of State or its or the Secretary of State's nominee and/or upon the occurrence of a Qualifying Exit Event (other than (a) in respect of an acquisition which is agreed or determined to constitute nationalisation or expropriation or a measure equivalent to nationalisation or expropriation (it being recognised that a Permitted Transfer Scheme, as defined in the Secretary

of State Investor Agreement, does not constitute in and of itself nationalisation or expropriation or a measure equivalent to nationalisation or expropriation); or (b) as agreed or notified in writing by the CfD Counterparty), there will be no consequential introduction or withdrawal of or change in the terms of the Related Party Transaction including, without limitation, any increase in Costs charged, reduction in scope, quality or timing of any goods or services provided, or consequential termination of the Related Party Transaction save as agreed in writing with the Government Parties as part of the provision of Transitional Services in accordance with Annex 4 (*Transitional Services*) of the Secretary of State Investor Agreement;

- (vi) the terms of the Related Party Transaction provide for monitoring by the Generator of the execution and performance of the Related Party Transaction in a manner which is appropriate to the size and nature of the relevant Related Party Transaction (and with no adverse change to such monitoring rights upon acquisition of the Generator or any other member of the NNB HoldCo Group by the CfD Counterparty, the Secretary of State or its or the Secretary of State's nominee); and
- (B) in relation to any Third Party Transaction, that:
- (i) the terms of the Third Party Transaction are not materially less favourable to the Generator (either individually or in the aggregate) than those which would be negotiated and agreed between parties acting at arm's length and having regard, where appropriate, to contract terms negotiated and agreed in the civil generation nuclear industry in North America and/or EU Member States;
 - (ii) the terms of the Third Party Transaction do not lack a main business or commercial purpose and do not involve contrived, abnormal, arbitrary or commercially unnecessary steps;
 - (iii) without limitation to the generality of paragraph (B)(ii) of this definition, the terms of the Third Party Transaction shall permit the Generator to terminate such Third Party Transaction for convenience on reasonable notice and the consequences for such termination shall be limited to the costs reasonably incurred by the counterparty to such Third Party Transaction to the effective date of termination of the Third Party Transaction and the costs reasonably incurred by such counterparty to the Third Party Transaction in demobilising following the effective date of termination of the Third Party Transaction, in each case, for the avoidance of doubt, excluding any amounts in respect of loss of profits, loss of opportunity, indirect loss or consequential loss of or incurred or suffered by the counterparty to such Third Party Transaction provided that:
 - (a) 

[REDACTED] and

(b)

[REDACTED]

[REDACTED]; and

- (iv) upon acquisition of the Generator or any other member of the NNB HoldCo Group by the CfD Counterparty, the Secretary of State or its or the Secretary of State's nominee and/or upon the occurrence of a Qualifying Exit Event (other than (a) in respect of an acquisition which is agreed or determined to constitute nationalisation or expropriation or a measure equivalent to nationalisation or expropriation (it being recognised that a Permitted Transfer Scheme, as defined in the Secretary of State Investor Agreement, does not constitute in and of itself nationalisation or expropriation or a measure equivalent to nationalisation or expropriation); or (b) as agreed or notified in writing by the CfD Counterparty), there will be no consequential introduction or withdrawal of or change in the terms of the Third Party Transaction including, without limitation, any increase in costs charged, reduction in scope, quality or timing of any goods or services provided, or consequential termination of the Third Party Transaction, save as agreed in writing with the Government Parties as part of the provision of Transitional Services in accordance with Annex 4 (*Transitional Services*) of the Secretary of State Investor Agreement;

“Assay” means the total weight of U235 isotope divided by the total weight of all uranium isotopes expressed as a weight per cent. (wt% U235);

“**Auditor**” means the auditors of the Generator which shall be:

- (A) PricewaterhouseCoopers LLP;
- (B) the UK member firm of Ernst & Young Global Limited;
- (C) KPMG LLP;
- (D) the UK member firm of Deloitte Touche Tohmatsu Limited; or
- (E) another firm of independent and internationally reputable auditors of good standing;

“**CGNPC**” means China General Nuclear Power Corporation;

“**CGNPC Group**” means CGNPC and each of its parent undertakings for the time being together with each of their respective subsidiary undertakings and associated undertakings for the time being (excluding the Generator and any member of the Chinese Government Group);

“**China Nuclear Operation Company**” means China Nuclear Power Operation Co., Ltd, a company duly organised under the laws of the People’s Republic of China whose registered address is at Science and Technology Building, No. 1001 ShangbuZhong Road, Futian District, Shenzhen, People’s Republic of China 518028;

“**Chinese Government Group**” means, for such time as CGNPC is under the Control of SASAC, any parent undertaking of CGNPC and any subsidiary undertaking of such parent undertaking (other than CGNPC and its subsidiary undertakings) but including any parent undertaking of CGNPC which became such a parent undertaking as a consequence of a restructuring transaction pursuant to which such parent undertaking has substantially the same shareholders and assets as CGNPC had immediately prior to such transaction, disregarding its ownership of CGNPC itself;

“**Control**” means:

- (A) the power (whether acting alone or Acting in Concert (as defined in the City Code on Takeovers and Mergers), whether directly or indirectly and whether by the ownership of share capital, the possession of voting rights, contract or otherwise) to appoint and/or remove all or such of the members of the board of directors or other governing body of that person as are able to cast the majority of the votes capable of being cast by the members of that board or body on all, or substantially all, matters, or otherwise to control or have the power to control the policies and affairs of that person (and for the purposes of determining whether the power to appoint or remove directors exists, the provisions of section 1159 of, and schedule 6 to, the Companies Act 2006 (as amended) shall apply); and/or
- (B) the power (whether acting alone or Acting in Concert (as defined in the City Code on Takeovers and Mergers), whether directly or indirectly and whether by the ownership of share capital, the possession of voting rights, contract or otherwise) to direct the voting in respect of more than 50 per cent. (50%) of the total voting

rights exercisable at general meetings of that person on all, or substantially all, matters,

and “**Controlled**” shall be construed accordingly;

“**Cost**” means costs and expenditure directly and reasonably incurred by the non-IST Group Member which is the counterparty to a Related Party Transaction (including, for the avoidance of doubt, the procurement of fuel) with respect to the relevant Related Party Transaction together with:

- (A) a contribution to the reasonable overhead of the relevant non-IST Group Member which is the counterparty to the extent that the same is properly attributable to such Related Party Transaction; and
- (B) if required by such non-IST Group Member, a reasonable margin in relation to such Related Party Transaction to compensate for the transaction structure, capital employed and the risks and liabilities that the non-IST Group Member is required to accept under such Related Party Transaction,

but in each case shall not include any Inappropriate Cost;

“**Daily Discount Amount**” has the meaning given to that term in Condition 3.3(C)(ii)(b) (*Audit*);

“**Discount Amount**” has the meaning given to that term in Condition 3.3(C)(ii)(a) (*Audit*);

“**EDF Energy Group**” means EDF Energy Holdings and each of its parent undertakings for the time being together with each of their respective subsidiary undertakings and associated undertakings for the time being (excluding the Generator and any member of the French Government Group);

“**EDF Energy Holdings**” means EDF Energy Holdings Limited, a company incorporated in England and Wales (registered number 06930266) whose registered office is at 40 Grosvenor Place, London SW1X 7EN;

“**EDF SA**” means Électricité de France joint-stock company (SA) whose registered office is at 22-30 Avenue de Wagram, Paris, 75008, France, entered in the Companies register of Paris under number 552 081 317;

“**French Government Group**” means, for such time as EDF SA is under the Control of the government of the French Republic, any parent undertaking of EDF SA and any subsidiary undertaking of such parent undertaking (other than EDF SA and its subsidiary undertakings) but including any parent undertaking of EDF SA which became such a parent undertaking as a consequence of a restructuring transaction pursuant to which such parent undertaking has substantially the same shareholders and assets as EDF SA had immediately prior to such transaction, disregarding its ownership of EDF SA itself;

“**Fuel Contract**” means the contract for the supply of nuclear fuel entered into between the Generator and EDF SA on or around the Agreement Date;

“Inappropriate Cost” means costs which are inappropriate and/or not justifiable as being in the best interests of the Project and shall include, without limitation:

- (A) costs which are in excess of the arm’s length or market value of the applicable consideration provided by the non-IST Group Member, including (but not limited to) disproportionate fees or costs;
- (B) costs incurred pursuant to wasteful, unnecessary or extravagant outlays (including entertainment and hospitality);
- (C) extraordinary compensation payments (but not, for the avoidance of doubt, including bonuses paid in the ordinary course of employment);
- (D) political subscriptions and donations;
- (E) excessive break costs; and/or
- (F) excessive costs associated with termination periods;

“Intellectual Property Licence Agreements” means the two (2) Intellectual Property Licence Agreements in relation to the Project entered into between the Generator and EDF SA and EDF Energy respectively on or around the Agreement Date;

“IST Group Member” means any Investor Super TopCo, its Investor TopCo or any member of the NNB HoldCo Group;

“JO” means the date of completion of the second pour of nuclear concrete in respect of the common foundation raft at Hinkley Point C as more particularly described in the Generator’s integrated work schedule as the same may be updated from time to time;

“Mechanical Contract” means the contract to be entered into between Cavendish Boccard Nuclear Limited (registered number 08335068) and the Generator in respect of the “Mechanical Erection Works”;

“Natural Uranium” means uranium in the form of uranium hexafluoride (UF₆) with a natural U235 Assay in the range of 0.707 to 0.715 weight per cent., which has not been exposed in a neutron irradiation facility;

“NSSS Contract” means the contract dated on or around the Agreement Date and made between Areva NP and the Generator in respect of the “Design, Manufacture, Install and Commission of Nuclear Steam Supply and Instrumentation & Control Systems” together with any associated Long Term Supply Contracts entered into under and in accordance with such contract;

“Related Party Transaction” means any agreement or arrangement entered into between (i) any IST Group Member; and (ii) any member of any Shareholder Group (and whether or not including other persons to that agreement or arrangement);

“**Responsible Designer Contract**” means the Responsible Designer Agreement in relation to the Project entered into between the Generator and EDF SA on or around the Agreement Date;

“**SASAC**” means the State-owned Assets Supervision and Administration Commission of the State Council of the People’s Republic of China;

“**Services Expert**” means an expert appointed under Condition 3.2 (*Determination*);

“**Shareholder Groups**” means the EDF Energy Group, the French Government Group, the CGNPC Group, the Chinese Government Group and any Investor Group and “**Shareholder Group**” shall mean any or a particular one of them as the context requires or permits;

“**Technical Services Agreements**” means the technical services agreements in relation to the Project entered into between (i) the Generator and EDF SA on or around the Agreement Date and (ii) the Generator and China Nuclear Operation Company on or around the Agreement Date;

“**Third Party Transaction**” means any agreement or arrangement entered into by any IST Group Member which is not a Related Party Transaction;

“**Transaction**” means any Related Party Transaction and/or any Third Party Transaction;

“**Turbine Contract**” means the contract dated 13 May 2016 and made between Alstom Power Systems SA and Alstom Power Limited (acting as a consortium) and the Generator in respect of the “Turbine Hall” together with any associated Long Term Supply Contracts entered into under and in accordance with such contract;

“**Unit**” means the Works for the first nuclear power plant, or Works for the second nuclear power plant, in each case such nuclear power plant to be constructed at Hinkley Point C using the UK EPR Technology;

“**UOC**” means Natural Uranium ore concentrate, in the form of U308 (or triuranium octoxide); and

“**Works**” means the works to be executed by the counterparty to the Turbine Contract under and pursuant to the terms of such contract.

2.2 Interpretation

- (A) Unless otherwise defined in this Contracting Policy or the context requires otherwise, words and expressions defined in the Secretary of State Investor Agreement or the HPC CfD shall have the same meaning when used in this Contracting Policy.
- (B) References to “**Conditions**” are to the Conditions of this Contracting Policy.

3. TRANSACTIONS

3.1 Transactions

- (A) As soon as reasonably practicable (and in any event within twenty (20) Business Days) following the Agreement Date and, thereafter, no less frequently than annually, the Generator shall consider whether the Agreed Principles have been and are being applied in relation to all Transactions and whether the Transactions comply with the Agreed Principles and shall provide the CfD Counterparty with a Directors' Certificate certifying whether or not that is the case, together with reasonable details in support.
- (B) The Generator shall provide to the CfD Counterparty copies (or, if not in writing, full details) of:
- (i) any and all Related Party Transactions; and
 - (ii) any and all Third Party Transactions:
 - (a) with an individual annual payment value (or, if the Third Party Transactions are connected, an aggregate annual payment value) in excess of fifty million pounds (£50,000,000) (or its equivalent in any other currency or currencies); and/or
 - (b) with a total contract value (or, if the Third Party Transactions are connected, an aggregate total contract value) in excess of fifty million pounds (£50,000,000) (or its equivalent in any other currency or currencies); and/or
 - (c) in respect of which the aggregate liability (or, if the Third Party Transactions are connected, the aggregate liability under all such Third Party Transactions) of the Generator exceeds or may reasonably be expected to exceed fifty million pounds (£50,000,000) (or its equivalent in any other currency or currencies),
- entered into by any IST Group Member after the Agreement Date, and copies of any amendments to, or waivers or side letters in respect of, any such Transactions, in each case on a semi-annual basis.
- (C) Without prejudice to the generality of paragraph (B) above, the Generator shall, within a reasonable period of a request by the CfD Counterparty, provide to the CfD Counterparty copies (or, if not in writing, full details) of any Transactions entered into by any IST Group Member (or, if already provided, as amended since the last time provided).
- (D) It is acknowledged that any task order or work order (or equivalent) which is issued pursuant to a Transaction which is in the form of a framework agreement will not constitute an amendment to the relevant Transaction.

3.2 Determination

- (A) Subject to paragraph (B) below, if the CfD Counterparty does not consider, acting reasonably, that the Agreed Principles have been and/or are being applied in relation to a Transaction or the Transaction does not comply with the Agreed Principles, it shall be entitled to request, by written notice to the Generator, that a Services Expert be appointed to review the terms of the Transaction to determine whether the Agreed Principles have been and/or are being applied in relation thereto or the Transaction does or does not comply with the Agreed Principles.
- (B) The CfD Counterparty shall not be entitled to require any Transaction to be referred to a Services Expert more than once prior to the date when such Transaction is amended or a waiver in relation thereto is given, and not more than once following such amendment or waiver (but without prejudice to any further reference following any subsequent amendment or waiver).
- (C) The Services Expert shall be an independent expert appointed by agreement between the Generator and the CfD Counterparty or, failing agreement as to such appointment within ten (10) Business Days of receipt by the Generator of a notice referred to in paragraph (A) above, within a further ten (10) Business Days of such receipt (or such longer period, if any, as the Generator and the CfD Counterparty may agree) by the President for the time being of the Law Society of England and Wales on the application of either the Generator or the CfD Counterparty, and the Services Expert's terms of appointment shall oblige the Services Expert to keep confidential the terms of the relevant Transaction and any further information provided.
- (D) Within twenty (20) Business Days of its appointment (or such longer period, if any, as the Generator and the CfD Counterparty may agree), the Services Expert shall state in writing whether, in its opinion, the Agreed Principles have been and/or are being applied in relation to the Transaction specified in the notice given pursuant to paragraph (A) above and whether the Transaction complies with the Agreed Principles. If the Services Expert determines that the Agreed Principles have not been and/or are not being applied in relation to the Transaction and/or the Transaction does not comply with the Agreed Principles in any respect, the Services Expert shall also state in writing the nature and extent of such non-compliance.
- (E) In so stating its opinion the Services Expert shall be deemed to act as an expert and not as an arbitrator and, save in the case of fraud or manifest error, its determination shall be final and binding on all concerned.
- (F) The Generator shall provide to the Services Expert sufficiently detailed information to enable the Services Expert to understand the application (or otherwise) of the Agreed Principles to the relevant Transaction. The Services Expert shall be entitled, acting reasonably having regard to its terms of reference, to appoint other professional advisers (including, but without limitation, accountants) in order to assist with the review of the relevant Transaction.

- (G) The terms of reference of the Services Expert shall provide that the Services Expert (and any professional adviser appointed by the Services Expert) shall enter into such confidentiality arrangements as the Generator (acting reasonably) may require and shall otherwise be on such terms (if any) as agreed between the Generator and the CfD Counterparty.
- (H) If the Services Expert states that the Agreed Principles have not been and/or are not being applied in relation to the Transaction specified in the notice given pursuant to paragraph (A) above and/or that the Transaction does not comply with the Agreed Principles (or, in the case of paragraph (A)(iii)(a) of the definition of "Agreed Principles" in Condition 2.1 (*Definitions*), does not comply with the Agreed Principles other than in any immaterial respect), the CfD Counterparty shall have a right to request an audit in accordance with Condition 3.3 (*Audit*).
- (I) If the Services Expert determines that:
 - (i) the Agreed Principles have not been and/or are not being applied in relation to the reviewed Transaction and/or that the reviewed Transaction does not comply with the Agreed Principles, the Generator shall bear the costs of the Services Expert (including the costs of any professional adviser appointed by the Services Expert) and, if required by the CfD Counterparty pursuant to paragraph (H) above, the Auditor; and
 - (ii) the Agreed Principles have been and are being applied in relation to the reviewed Transaction and that the reviewed Transaction complies with the Agreed Principles, the CfD Counterparty shall bear the costs of the Services Expert (including the costs of any professional adviser appointed by the Services Expert).

3.3 **Audit**

- (A) In accordance with a determination by the Services Expert under Condition 3.2(H) (*Determination*), the CfD Counterparty may by notice to the Generator require that a Transaction is audited in accordance with this Condition 3.3. An Auditor shall be appointed by agreement between the Generator and the CfD Counterparty within ten (10) Business Days of receipt by the Generator of such notice or, failing agreement, within a further ten (10) Business Days of such receipt (or such longer period, if any, as the Generator and the CfD Counterparty may agree) by the President for the time being of the Institute of Chartered Accountants in England and Wales on the application of either the Generator or the CfD Counterparty.
- (B) The Generator shall provide to the Auditor sufficiently detailed information to enable the Auditor to:
 - (i) understand the application (or otherwise) of the Agreed Principles to the relevant Transaction;
 - (ii) understand the charging basis underlying the cost of the relevant Transaction; and

- (iii) give its opinion and prepare and deliver its report referred to in Condition 3.3(C).
- (C) The terms of reference of the Auditor shall provide that the Auditor shall:
- (i) enter into such confidentiality arrangements as the Generator (acting reasonably) may require;
 - (ii) give its opinion as to the amount of money (if any):
 - (a) which would put the Generator into the position that it would have been in if the Agreed Principles had been applied in relation to the relevant Transaction and such Transaction had at all times complied with the Agreed Principles (the “**Discount Amount**”); and
 - (b) which the Generator would be likely to incur on a forward-looking daily basis by reason of the Agreed Principles not being applied in relation to the Transaction and/or such Transaction not complying with the Agreed Principles (“**Daily Discount Amount**”); and
 - (iii) report in writing accordingly to the Generator and the CfD Counterparty,
- and shall otherwise be on such terms (if any) as agreed between the Generator and the CfD Counterparty.

3.4 Corrective Action

- (A) If the Services Expert determines that the Agreed Principles have not been and/or are not being applied in relation to the relevant Transaction and/or that the relevant Transaction does not comply with the Agreed Principles, the Corrective Action required shall be, and the Investors shall procure:
- (i) in relation to any Related Party Transaction, that the terms of such Transaction are amended as soon as practicable; and
 - (ii) in relation to any Third Party Transaction, that reasonable endeavours are used to amend the terms of such Transaction as soon as practicable,
- in each case such that the Agreed Principles are applied in relation to it and that such Transaction complies with the Agreed Principles (the “**Corrective Action**”).
- (B) If the terms of the relevant Transaction have not been amended such that the Agreed Principles are applied in relation to it and that such Transaction complies with the Agreed Principles before a Qualifying Exit Event occurs, the Investors agree that in respect of each day between:
- (i) the date of the Qualifying Exit Event; and

- (ii) the date on which the terms of the relevant Transaction are so amended (or, if the relevant Transaction is not so amended, the due date for final payment of any Final Investor Shutdown Payment(s)),

(both dates inclusive) the Daily Discount Amount and any outstanding Discount Amounts shall be deducted from any Final Investor Shutdown Payment(s) payable by the CfD Counterparty in accordance with the Secretary of State Investor Agreement.

3.5 **Miscellaneous**

- (A) No Services Expert or Auditor appointed pursuant to Condition 3.2 (*Determination*) or Condition 3.3 (*Audit*) shall have the power to require disclosure of documents or information other than as provided for in this Contracting Policy and each Services Expert or Auditor shall provide written reasons in support of any determination or opinion pursuant to this Condition 3.
- (B) The CfD Counterparty shall not be entitled pursuant to this Contracting Policy to access any documents or information, or working papers of, any Services Expert or Auditor appointed pursuant to Condition 3.2 (*Determination*) or Condition 3.3 (*Audit*).

4. **TRANSITIONAL ARRANGEMENTS**

- (A) If the CfD Counterparty approves the matters which are the subject of a Qualifying Effective Shutdown Event Notice or a QCiL Cessation Event Notice or a Positive QESE Determination or a Positive QCiL Cessation Determination or a Permitted Transfer Scheme is made, the CfD Counterparty may (but shall not be obliged to) require by notice in writing to the relevant IST Group Member that the terms of any Related Party Transactions with the Generator are amended (in a form and content satisfactory to the CfD Counterparty) to:
 - (i) increase the fees and charges payable by the Generator for the relevant goods and/or services to an arm's length market rate; and
 - (ii) increase the quantum and scope of liability for the IST Group Member party to such Related Party Transaction with the Generator to an amount and scope commensurate with that of an arm's length market agreement for the provision of the relevant goods and/or services, in each case, with effect from the date of such CfD Counterparty's approval, Positive QESE Determination or Positive QCiL Cessation Determination or the date such Permitted Transfer Scheme becomes effective, as applicable.
- (B) Save as provided in Condition 4(A), the terms of any and all Related Party Transactions shall continue in accordance with their existing terms and conditions.

ANNEX 10
FORM OF DEED OF ACCESSION

To: [Each party to the Secretary of State Investor Agreement]

From: [Company]

Dated: [●]

Dear Sirs,

Secretary of State Investor Agreement dated [date to be inserted] 2016 between, among others, The Secretary of State for Energy and Climate Change, Low Carbon Contracts Company Ltd, NNB Holding Company (HPC) Limited, NNB Generation Company (HPC) Limited and the Investors named therein (the “Agreement”)

1. We refer to the Agreement. This is a Deed of Accession. Terms defined in the Agreement have the same meaning in this Deed of Accession unless given a different meaning in this Deed of Accession.
2. With effect on and from the date of this Deed of Accession (the “**Accession Date**”), [Company] agrees to become an [Investor TopCo] / [Investor Super TopCo] / [Investor] and to be bound by the terms of the Agreement as an [Investor TopCo] / [Investor Super TopCo] / [Investor] pursuant to clause 35 (*Changes to the Parties*) of the Agreement and undertakes to each other party to the Agreement that it will, with effect from the Accession Date, assume, perform and comply with each of the obligations of an [Investor TopCo] / [Investor Super TopCo] / [Investor] under the Agreement as if it had been a party to the Agreement in that capacity at its date of execution.
3. [Company] represents and warrants on the Accession Date to each of the CfD Counterparty and the Secretary of State in the terms set out in clause 26 (*Representations and Warranties*) of the Agreement.
4. [Company’s] administrative details for the purposes of the Agreement are as follows:

Address:

Attention:

Email:
5. [Company] acknowledges that it has received a copy of the Agreement together with all other information which it requires in connection with the Agreement.
6. This Deed of Accession and any non-contractual obligations arising out of or in connection with it are governed by and shall be construed in accordance with English law.
7. This Deed of Accession may be executed in any number of counterparts and by the parties to it on separate counterparts, but shall not be effective until each party has

executed at least one counterpart. Each counterpart shall constitute an original but all of the counterparts together shall constitute one and the same instrument.

This Deed of Accession is entered into by deed.

[Company]

EXECUTED and delivered as a)
DEED by [•] **LIMITED**)
acting by its [director] / [duly)
appointed attorney])
[Director] / [Attorney]

in the presence of:

Witness's signature:

Name (print):

Address:
.....
.....

Occupation:

[Each party to the Secretary of State Investor Agreement]³

EXECUTED and delivered as a)
DEED by [•] **LIMITED**)
acting by its [director] / [duly)
appointed attorney])
[Director] / [Attorney]

in the presence of:

Witness's signature:

Name (print):

Address:

³ Note: repeat and conform to appropriate execution formalities as necessary.

Occupation:

.....

.....

.....

**ANNEX 11
FORM OF SECURITY DOCUMENT**

DATED [●]

[●]
as Chargor

and

LOW CARBON CONTRACTS COMPANY LTD
as Secured Party

**SECURITY DOCUMENT
RELATING TO HINKLEY POINT C**

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THIS DEED is dated [●]

BETWEEN:

- (1) [●], a company incorporated in England and Wales (registered number [●]) whose registered office is at [●] (the “**Chargor**”); and
- (2) **LOW CARBON CONTRACTS COMPANY LTD**, a company incorporated in England and Wales (registered number 08818711) whose registered office is at Fleetbank House, 2-6 Salisbury Square, London EC4Y 8JX (the “**Secured Party**”).

BACKGROUND

- (1) The Chargor enters into this Deed in connection with the Secretary of State Investor Agreement for Hinkley Point C.
- (2) It is intended that this document takes effect as a deed notwithstanding the fact that a party may only execute this document under hand.

IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions

In this Deed:

“**Act**” means the Law of Property Act 1925;

“**Business Day**” means a day (other than a Saturday or a Sunday) on which banks are open for general business in London;

“**Costs and Expenses**” means costs, charges, losses, liabilities, expenses and other sums (including legal, accountants’ and other professional fees) and any Tax payable thereon;

“**Discharge Date**” means the fifth (5th) anniversary of the date on which the Facility has permanently ceased commercial nuclear generation;

“**Dissolution**” of a person includes the amalgamation, reconstruction (other than as part of a solvent reconstruction or amalgamation the terms of which have been approved by the Secured Party), reorganisation, administration, administrative or other receivership or dissolution or liquidation of that person or the entry by that person into a voluntary arrangement or composition or similar arrangement with any of its creditors, and any equivalent or analogous proceeding or arrangement in any jurisdiction by whatever name known and any step taken (including, the giving or filing of notice in relation to the appointment of an administrator or the making of an application or formal request or the presentation of a petition or the passing of a resolution or the making of an order or any other measures as may be competent) for or with a view to any of the foregoing;

“Eligible Company” means a company which satisfies the requirements of paragraph 2 of schedule A1 to the Insolvency Act 1986 on the date the documents required by paragraph 7 of that schedule are filed with the court;

“Facility” means the nuclear generating facility commonly known as Hinkley Point C;

“Generator” means NNB Generation Company (HPC) Limited, a company incorporated in England and Wales (registered number 06937084) whose registered office is at 40 Grosvenor Place, Victoria, London SW1X 7EN;

“Investments” means the Chargor’s interest in all shares, stocks, debentures, bonds or other securities and the Related Rights;

“Legal Reservations” means:

- (A) the principle that equitable remedies may be granted or refused at the discretion of a court and the limitation of enforcement by laws relating to insolvency, reorganisation and other laws generally affecting the rights of creditors; and
- (B) the time barring of claims under the Limitation Act 1980, the possibility that an undertaking to assume liability for or indemnify a person against non-payment of UK stamp duty may be void and defences of set-off or counterclaim;

“Receiver” means a receiver appointed under this Deed;

“Related Rights” means:

- (A) any dividend or interest paid or payable in relation to any Share; and
- (B) any right, money or property accruing or offered at any time in relation to any Share by way of redemption, substitution, exchange, bonus or preference, under option rights or otherwise;

“Relevant Transaction” has the meaning given to that term in Clause 14.3(A);

“Retention Period” has the meaning given to that term in Clause 14.3(C);

“Secretary of State Investor Agreement” means the agreement dated [*date to be inserted*] 2016 between, among others, the Secretary of State for Energy and Climate Change, the CfD Counterparty, NNB Holding Company (HPC) Limited, the Generator, each Original Investor, each Original Investor Super TopCo and each Original Investor TopCo;

“Secured Sums” means each amount agreed or determined as due to the CfD Counterparty and payable by the Chargor under or in connection with clause 9.5 (*Project Gain Share with the CfD Counterparty*) or clause 10.4 (*Sale Gain Share with the CfD Counterparty*) of the Secretary of State Investor Agreement (as such agreement may be varied, amended, waived, released, novated, supplemented, extended, restated or replaced from time to time, in each case, however fundamentally and including by way of accession of new parties to such Agreement and as the Economic Interests in NNB

HoldCo may be transferred, acquired or supplemented from time to time, in each case, however fundamentally);

“**Security**” means any Security Interest created, evidenced or conferred by or under this Deed;

“**Security Assets**” means all assets of the Chargor which are the subject of any Security;

“**Security Interest**” means any mortgage, pledge, lien, charge, assignment, hypothecation or other security interest or any other agreement or arrangement having a similar effect;

“**Security Period**” means the period beginning on the date of this Deed and ending on the Discharge Date;

“**Shares**” means the shares identified in the Schedule (*Shares*) and any additional shares issued by any Subject Company after the date of this Deed;

“**Subject Company**” means each company identified in the Schedule (*Shares*) under the heading “Subject Company”;

“**Tax**” includes any present or future tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest in connection with any failure to pay or delay in paying any of the same); and

“**Transaction Documents**” means:

- (A) the Secretary of State Investor Agreement;
- (B) the HPC CfD;
- (C) the State Aid Side Letter;
- (D) the Direct Agreement;
- (E) any direct agreement referred to in clause 36 (*Direct Agreement*) of the Secretary of State Investor Agreement; and
- (F) any other document that the Chargor and the Secured Party agree to be a Transaction Document.

1.2 Construction

- (A) Capitalised terms defined in the Secretary of State Investor Agreement (including by incorporation) shall, unless expressly defined in this Deed, have the same meaning in this Deed.
- (B) A document, agreement or instrument includes (without prejudice to any prohibition on amendments) any amendment to that document, agreement or instrument.

- (C) Unless the context otherwise requires, a reference to a Security Asset includes:
 - (i) any part of that Security Asset;
 - (ii) the proceeds of sale of that Security Asset; and
 - (iii) any present and future assets of that type.
- (D) The term “**this Security**” means any security created by or pursuant to this Deed.
- (E) Any covenant of the Chargor under this Deed remains in force during the Security Period and is given for the benefit of the Secured Party.

1.3 Interpretation

- (A) Unless a contrary indication appears, a reference to any party or person shall be construed as including its and any subsequent successors in title, permitted transferees and permitted assigns, in each case in accordance with their respective interests.
- (B) The terms “**include**”, “**includes**” and “**including**” shall be construed without limitation.
- (C) Unless otherwise specified, references in this Deed to any Clause or Schedule shall be to a clause or schedule contained in this Deed.
- (D) Clause and Schedule headings are for ease of reference only and shall be ignored in construing this Deed.
- (E) Unless a contrary indication appears, references to any provision of any law are to be construed as referring to that provision as it may have been, or may from time to time be, amended or re-enacted, and as referring to all bye-laws, instruments, orders, decrees, ordinances and regulations for the time being made under or deriving validity from that provision.

1.4 Third Party Rights

- (A) Save as otherwise provided in this Deed, a person who is not a party to this Deed has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed.
- (B) Notwithstanding any term of this Deed, the consent of any person who is not a party is not required to rescind or vary this Deed at any time.

2. PAYMENT OF SECURED SUMS

2.1 Covenant to pay

The Chargor shall pay and discharge the Secured Sums by the Project Gain Share Payment Deadline or the Sale Gain Share Payment Deadline, as the case may be, in

accordance with the Secretary of State Investor Agreement or, as the case may be, this Deed.

2.2 Interest on demands

If the Chargor fails to pay any sum payable by it pursuant to the Secretary of State Investor Agreement or this Deed by the Project Gain Share Payment Deadline or the Sale Gain Share Payment Deadline, as the case may be, interest shall accrue on the overdue amount from the due date until the date of actual payment (both before and after judgment) calculated on a daily basis of the prevailing rate of interest published by the Bank of England as its base rate plus five per cent. (5%) per annum, compounded daily for the relevant period.

3. CREATION OF SECURITY

3.1 General

All the Security created under this Deed:

- (A) is created in favour of the Secured Party;
- (B) is created over present and future assets of the Chargor;
- (C) is security for the payment of the Secured Sums; and
- (D) is made with full title guarantee in accordance with the Law of Property (Miscellaneous Provisions) Act 1994.

3.2 Consents

If the rights of a Chargor under a document cannot be secured without the consent of a party to that document:

- (A) that Chargor must notify the Secured Party promptly;
- (B) this Security will secure all amounts which that Chargor may receive, or has received, under that document but exclude the document itself; and
- (C) unless the Secured Party otherwise requires, that Chargor must use reasonable endeavours to obtain the consent of the relevant party to that document being secured under this Deed.

3.3 Shares

- (A) The Chargor charges by way of a first fixed charge, its interest in all Shares owned by it or held by any nominee on its behalf.
- (B) A reference in this Clause 3 to a charge of any Share includes any Related Right.

3.4 Credit balances

The Chargor charges by way of a first fixed charge all of its rights in respect of any amount standing to the credit of any account it has with any person and the debt represented by that account.

3.5 Book debts

The Chargor charges by way of a first fixed charge:

- (A) all of its book and other debts;
- (B) all other moneys due and owing to it; and
- (C) the benefit of all rights, securities or guarantees of any nature enjoyed or held by it in relation to any item under Clause 3.5(A) or (B).

3.6 Floating charge

- (A) The Chargor charges by way of a first floating charge and with full title guarantee all its present and future assets, property, business undertakings and any rights in the foregoing not at any time otherwise effectively charged under this Clause 3.
- (B) Except as provided in Clause 3.6(C), the Secured Party may by notice to the Chargor convert the floating charge created by this Clause 3.6 into a fixed charge as regards any of the Chargor's assets specified in that notice, if:
 - (i) any part of the Secured Sums is not paid by the Project Gain Share Payment Deadline or the Sale Gain Share Payment Deadline, as the case may be;
 - (ii) the Secured Party considers those assets to be in danger of being seized or sold under any form of distress, attachment, execution or other legal process or to be otherwise in jeopardy;
 - (iii) the Secured Party reasonably considers that it is desirable in order to protect the priority of the Security; or
 - (iv) the Chargor fails to comply or takes or threatens to take any action which in the reasonable opinion of the Secured Party is likely to result in the Chargor failing to comply with any of its obligations under Clause 4, 5 or 6 of this Deed.
- (C) If the Chargor is an Eligible Company, the floating charge created by this Clause 3.6 may not be converted into a fixed charge solely by reason of:
 - (i) the obtaining of a moratorium; or
 - (ii) anything done with a view to obtaining a moratorium,

under section 1A of the Insolvency Act 1986.

- (D) The floating charge created under this Clause 3.6 will (in addition to the circumstances in which the same will occur under general law) automatically convert into a fixed charge over all of the Chargor's assets if:
- (i) the Chargor creates or permits to subsist any Security Interest other than in accordance with this Deed on, over or with respect to any of the Security Assets, or attempts to do so;
 - (ii) an administrator of the Chargor is appointed or the Secured Party receives notice of an intention to appoint an administrator of the Chargor; or
 - (iii) any person levies or attempts to levy any form of distress, attachment, execution or other legal process against any of the Security Assets.
- (E) The floating charge created by this Clause 3.6 is a qualifying floating charge for the purpose of paragraph 14 of schedule B1 to the Insolvency Act 1986.

4. REPRESENTATIONS AND WARRANTIES

4.1 Nature of Security

The Chargor represents and warrants to the Secured Party that:

- (A) this Deed creates the Security Interests it purports to create having the priority and ranking that they are expressed to have; and
- (B) subject to the Legal Reservations, this Deed is its legal, valid and binding obligation and is enforceable against it in accordance with its terms.

4.2 Corporate authority

The Chargor represents and warrants to the Secured Party that it has taken all necessary action to authorise its entry into, and the creation of Security and the performance of all its obligations under, this Deed and the transactions contemplated by this Deed.

4.3 Non-conflict with laws and other obligations

The Chargor represents and warrants to the Secured Party that the entry into and performance by it of, the creation of Security under, and the transactions contemplated by, this Deed do not and will not conflict with:

- (A) any law or regulation applicable to it;
- (B) its constitutional documents; or
- (C) any agreement or instrument binding upon it or any of its assets.

4.4 No existing security

The Chargor represents and warrants to the Secured Party that, other than the Security created by this Deed, no security exists on, over or with respect to any of the Security Assets.

4.5 Dissolution

The Chargor represents and warrants to the Secured Party that no Dissolution has occurred in relation to it.

4.6 Insolvency

The Chargor represents and warrants to the Secured Party that it is not insolvent or unable to pay its debts and could not be deemed by a court to be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 nor will it become so in consequence of entering into this Deed.

4.7 Single Purpose Company

The Chargor is solely an investment holding company and shall hold only the Shares and the Related Rights and perform its obligations and responsibilities under this Deed and the Transaction Documents and the Finance Documents to which it is a party.

4.8 Times for making representations and warranties

- (A) The representations and warranties set out in this Deed are made on the date of this Deed.
- (B) Unless a representation and warranty is expressed to be given at a specific date, each representation and warranty under this Deed is deemed to be repeated by the Chargor on each date a Secured Sum is agreed or determined to be due and payable to the CfD Counterparty.
- (C) When a representation and warranty is repeated, it is deemed to be made by reference to the circumstances existing at the time of repetition.

5. RESTRICTIONS ON DEALINGS

The Chargor must not, without the Secured Party's prior written consent:

- (A) create or permit to subsist any Security Interest (excluding this Deed) on any Security Asset excluding any account netting or set-off arrangements entered into by the Chargor in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
- (B) sell, transfer, license, lease or otherwise dispose of any Shares or Investments, save where such sale, transfer, licence, lease or disposal is made in the ordinary course of business of the disposing entity, in respect of assets which are not

expressed to be subject to any fixed charge created or evidenced by or pursuant to this Deed; or

- (C) close any account(s) in which credit balances referred to in Clause 3.4 are held, unless permitted under, or effected pursuant to the terms of, this Deed.

6. INVESTMENTS

6.1 Representations and warranties

The Chargor represents and warrants to the Secured Party that:

- (A) the Investments are duly authorised, validly issued and fully paid and are not subject to any option to purchase or similar right;
- (B) it is the sole legal and beneficial owner of the Investments; and
- (C) the constitutional documents of each Subject Company do not and could not restrict or inhibit any transfer of the Investments on creation or enforcement of the Security.

6.2 Deposit of Investments

The Chargor must:

- (A) as soon as practicable, deposit with the Secured Party or, as the Secured Party may direct, all certificates and other documents of title or evidence of ownership in relation to any of the Investments; and
- (B) promptly execute and deliver to the Secured Party all executed undated stock transfer forms and other documents which may be requested by the Secured Party in order to enable the Secured Party or its nominees to be registered as the owner or otherwise obtain legal title to any of the Investments.

6.3 Changes to rights

The Chargor may not take, or allow the taking on its behalf of, any action which may result in the rights attaching to any Investment being altered in a way which would, or would reasonably be expected to, materially prejudice the rights of the Secured Party under this Deed.

6.4 Calls

- (A) The Chargor must pay all calls or other payments due and payable in respect of any of its Investments.
- (B) If the Chargor fails to do so, the Secured Party may (but shall not be obliged to) pay such calls or other payments on behalf of the Chargor. The Chargor must immediately on request reimburse the Secured Party for any payment made by

the Secured Party under this Clause 6.4 and, pending reimbursement, that payment will constitute part of the Secured Sums.

6.5 Other obligations in respect of Investments

- (A) The Chargor must promptly provide a copy to the Secured Party of material information issued by it to, or received by it from, a Competent Authority that relates to the Shares.
- (B) The Chargor must comply with all conditions and obligations assumed by it in respect of the Shares.

6.6 Voting rights

- (A) Before this Security becomes enforceable pursuant to Clause 8, the voting rights, powers and all other rights in respect of the Investments and the right to receive any dividends or other distributions in the form of cash shall be exercised by the Chargor to the extent permitted by law and otherwise (if exercisable by the Secured Party), shall be exercised in any manner which the Chargor may direct in writing.
- (B) The Chargor must indemnify the Secured Party against any loss or liability incurred by the Secured Party as a consequence of the Secured Party acting in respect of the Investments at the direction of the Chargor.
- (C) After this Security has become enforceable pursuant to Clause 8, the Secured Party may exercise (in the name of the Chargor and without any further consent or authority on the part of the Chargor) any voting rights and any powers or rights which may be exercised by the legal or beneficial owner of any Investment, any person who is the holder of any Investment or otherwise.

7. PERFORMANCE OF THE CHARGOR'S OBLIGATIONS

- (A) The Chargor shall remain at all times bound by and liable to perform all of the obligations and liabilities assumed by it under or in respect of the Security Assets to the same extent as if the Security created pursuant to this Deed had not been created.
- (B) The exercise by the Secured Party, any Receiver, any delegate or sub-delegate or any of its or their agents or nominees, of any of the rights, benefits, interests or claims created pursuant to this Deed shall not release the Chargor from any of its obligations towards the Secured Party.
- (C) The Secured Party shall not, by reason of this Deed or anything arising out of this Deed or anything done or in connection with it, have any obligation or liability whatsoever to any person (including the Chargor) to:
 - (i) perform any of the obligations assumed by the Chargor under or in respect of the Security Assets; or

- (ii) make any enquiry as to the nature or sufficiency of any payment received by it under or in respect of this Deed or any of the Security Assets or to make any claim or take any action to collect any moneys or to exercise any of the rights assigned to the Secured Party to which the Secured Party may be at any time entitled pursuant to this Deed, or to make any payment in respect of the Security Assets.
- (D) The provisions of this Clause 7 shall apply notwithstanding any other provision of this Deed or any contrary or inconsistent provision of any other agreement or document.

8. WHEN SECURITY BECOMES ENFORCEABLE

8.1 Timing

This Security will become immediately enforceable if:

- (A) any of the Secured Sums are not paid by the Project Gain Share Payment Deadline or the Sale Gain Share Payment Deadline, as the case may be;
- (B) the Chargor breaches any of its obligations under Clause 4, 5 or 6 of this Deed where such breach is not remedied within five (5) days of the earlier of the Chargor becoming aware of such breach and the Secured Party notifying the Chargor of such breach; or
- (C) any person makes an application or presents a petition for an administration order in relation to the Chargor, or gives or files a notice in relation to the appointment of an administrator of the Chargor.

8.2 Discretion

After this Security has become enforceable, the Secured Party may, in its absolute discretion, enforce all or any part of the Security in any manner it sees fit and in accordance with the terms of this Deed.

9. ENFORCEMENT OF SECURITY

9.1 General

- (A) The powers conferred by section 101 of the Act as varied and extended by this Deed shall be deemed to arise (and the Secured Sums shall be deemed due and payable for that purpose) immediately on execution of this Deed.
- (B) The power of sale and any other power conferred on a mortgagee by law (including under section 101 of the Act and the power to appoint an administrator) will be immediately exercisable at any time after this Security has become enforceable.

- (C) Any restriction on the power of sale (including under section 103 of the Act) or the right of a mortgagee to consolidate mortgages conferred by law (including under section 93 of the Act) does not apply to this Security.

9.2 Privileges

Each Receiver and the Secured Party is entitled to all the rights, powers, privileges and immunities conferred by law (including the Act) on mortgagees and receivers duly appointed under any law (including the Act).

9.3 Protection of third parties

No person (including a purchaser) dealing with the Secured Party or a Receiver or its or his agents will be concerned to enquire:

- (A) whether the Secured Sums have become payable;
- (B) whether any power which the Secured Party or a Receiver is purporting to exercise has become exercisable or is being properly exercised;
- (C) whether any Secured Sums remain due; or
- (D) how any money paid to the Secured Party or to that Receiver is to be applied.

9.4 Redemption of prior Security Interests

- (A) At any time after this Security has become enforceable, the Secured Party may:
 - (i) redeem any prior Security Interest against any Security Asset; and/or
 - (ii) procure the transfer of that Security Interest to itself; and/or
 - (iii) settle and pass the accounts of the prior mortgagee, chargee or encumbrancer; any accounts so settled and passed will be, in the absence of manifest error, conclusive and binding on each Chargor.
- (B) The Chargor must pay to the Secured Party, immediately on demand, the costs and expenses incurred by the Secured Party in connection with any such redemption and/or transfer, including the payment of any principal or interest.

9.5 Contingencies

The Secured Party may place and retain on a suspense account, for as long as it reasonably considers appropriate, any moneys received, recovered or realised under or in connection with this Deed in an amount no greater than the Secured Sums, without any obligation on the part of the Secured Party to apply such moneys in or towards the discharge of such Secured Sums.

10. RECEIVER

10.1 Appointment of Receiver

- (A) Except as provided below, the Secured Party may appoint any one or more persons to be a Receiver of all or any part of the Security Assets if:
 - (i) the Security has become enforceable; or
 - (ii) the Chargor so requests the Secured Party in writing at any time.
- (B) Any appointment under Clause 10.1(A) may be by deed, under seal or in writing under its hand.
- (C) Any restriction on the right of a mortgagee to appoint an administrative receiver and manager or other receiver conferred by law shall not apply to this Deed.
- (D) If the Chargor is an Eligible Company, the Secured Party is not entitled to appoint a Receiver solely as a result of the obtaining of a moratorium (or anything done with a view to obtaining a moratorium) under section 1A of the Insolvency Act 1986.

10.2 Removal

The Secured Party may by writing under its hand remove any Receiver appointed by it and may, whenever it thinks fit, appoint a new Receiver in the place of any Receiver whose appointment may for any reason have terminated.

10.3 Remuneration

The Secured Party may fix the remuneration of any Receiver appointed by it and the maximum rate specified in section 109(6) of the Act will not apply. The Secured Party may direct payment of such remuneration out of the monies accruing to the Receiver, but the Chargor alone shall be liable for the payment of such remuneration and for all other costs, charges and expenses of the Receiver.

10.4 Agent of the Chargor

- (A) A Receiver will be deemed to be the agent of the Chargor for all purposes and accordingly will be deemed to be in the same position as a Receiver duly appointed by a mortgagee under the Act. The Chargor alone is responsible for the contracts, engagements, acts, omissions, defaults and losses of a Receiver and for liabilities incurred by a Receiver.
- (B) The Secured Party will not incur any liability (either to the Chargor or to any other person) by reason of the appointment of a Receiver or for any other reason.

10.5 Relationship with Secured Party

To the fullest extent permitted by law, any right, power or discretion conferred by this Deed (either expressly or impliedly) or by law on a Receiver may, after the Security becomes enforceable, be exercised by the Secured Party in relation to any Security Asset, without first appointing a Receiver and notwithstanding any prior appointment of a Receiver.

11. POWERS OF RECEIVER

11.1 General

- (A) A Receiver has all of the rights, powers and discretions set out below in this Clause 11 in addition to those conferred on it by any law; this includes all the rights, powers and discretions conferred on a receiver under the Act and under the Insolvency Act 1986.
- (B) If there is more than one Receiver holding office at the same time, each Receiver may (unless the document appointing him states otherwise) exercise any of the powers conferred on a Receiver under this Deed, individually and to the exclusion of any other Receiver.

11.2 Possession

A Receiver or the Secured Party may take immediate possession of, get in and collect any Security Asset.

11.3 Carry on business

A Receiver or the Secured Party may carry on the business of the Chargor in any manner he thinks fit.

11.4 Borrow money

A Receiver or the Secured Party may raise and borrow money (either unsecured or on the security of any Security Asset) either in priority to this Security or otherwise and generally on any terms and for whatever purpose which he thinks fit.

11.5 Sale of assets

- (A) A Receiver or the Secured Party may sell, exchange, convert into money and realise any Security Asset by public auction or private contract and generally in any manner and on any terms which he thinks fit.
- (B) The consideration for any such transaction may consist of cash, debentures or other obligations, shares, stock or other valuable consideration and any such consideration may be payable in a lump sum or by instalments spread over any period which he thinks fit.
- (C) Fixtures, other than landlord's fixtures, may be severed and sold separately from the property containing them without the consent of the Chargor.

11.6 Compromise

A Receiver or the Secured Party may settle, adjust, refer to arbitration, compromise and arrange any claim, account, dispute, question or demand with or by any person, relating in any way to any Security Asset.

11.7 Legal actions

A Receiver or the Secured Party may bring, prosecute, enforce, defend and abandon any action, suit or proceedings in relation to any Security Asset which he thinks fit.

11.8 Receipts

A Receiver or the Secured Party may give a valid receipt for any moneys and execute any assurance or thing which may be proper or desirable for realising any Security Asset.

11.9 Subsidiary

A Receiver or the Secured Party may form a subsidiary of the Chargor and transfer to that subsidiary any Security Asset.

11.10 Delegation

A Receiver or the Secured Party may delegate his powers in accordance with this Deed.

11.11 Protection of assets

A Receiver or the Secured Party may:

- (A) effect any repair or insurance and do any other act which the Chargor might do in the ordinary conduct of its business to protect or improve any Security Asset;
- (B) commence and/or complete any building operations; and
- (C) apply for and maintain any planning permission, building regulation approval or any other authorisation,

in each case as he thinks fit.

11.12 Other powers

A Receiver or the Secured Party may:

- (A) do all other acts and things which he may consider desirable or necessary for realising any Security Asset or incidental or conducive to any of the rights, powers or discretions conferred on a Receiver under or by virtue of this Deed or law;
- (B) exercise in relation to any Security Asset all the powers, authorities and things which he would be capable of exercising if he were the absolute beneficial owner of that Security Asset; and

(C) use the name of the Chargor for any of the above purposes.

12. APPLICATION OF PROCEEDS

Unless otherwise determined by the Secured Party or a Receiver, and subject to Clauses 9.5 and 14.6, any moneys received by the Secured Party or that Receiver after this Security has become enforceable must be applied by the Secured Party in accordance with the Secretary of State Investor Agreement in or towards satisfaction or payment of the Secured Sums.

13. POWER OF ATTORNEY

The Chargor, by way of security, irrevocably and severally appoints the Secured Party, each Receiver and each of their respective delegates and sub-delegates to be its attorney to take any action which the Chargor is obliged to take under this Deed and to take whatever action may be required for enabling the Secured Party and any Receiver and their respective delegates and sub-delegates to exercise all or any of the rights, powers, authorities and discretions conferred on them by or pursuant to this Deed or by law. The Chargor ratifies and confirms whatever any attorney does or purports to do under its appointment under this Clause 13.

14. PRESERVATION OF SECURITY

14.1 Continuing security

This Security is a continuing security and will extend to the ultimate balance of the Secured Sums to which the Chargor is, will be or may become, liable to pay, regardless of any intermediate payment or discharge.

14.2 Reinstatement

(A) If any discharge (whether in respect of the obligations of the Chargor or any security for those obligations, or otherwise) or arrangement is made in whole or in part on the basis of any payment, security or other disposition which is avoided or must be restored on insolvency, liquidation, administration or otherwise without limitation, the liability of the Chargor under this Deed will continue or be reinstated as if the discharge or arrangement had not occurred.

(B) The Secured Party may concede or compromise any claim that any payment, security or other disposition is liable to avoidance or restoration.

14.3 Retention of Security Assets

(A) If the Secured Party reasonably considers that any payment, security or guarantee in respect of the Secured Sums provided or to be provided to it (a "**Relevant Transaction**") by any person is capable of being avoided, reduced or invalidated by virtue of applicable law, the Secured Party shall be entitled to retain and shall not be obliged to release any of the relevant Security Assets until the expiry of the Retention Period in relation to that Relevant Transaction.

- (B) In the event of the Dissolution of such person at any time before the expiry of that Retention Period, the Secured Party:
- (i) may continue to retain the relevant Security Assets and the Security for a further period expiring on the later of the expiry of the Retention Period and the date on which all proceedings relating to such Dissolution are determined; and
 - (ii) shall not be obliged during such period to release any of the relevant Security Assets from the Security.
- (C) For the purpose of this Clause 14.3, "**Retention Period**" means, in relation to any Relevant Transaction, the period which commences on the date when that Relevant Transaction was made or given, and which ends on the date falling one month after the expiration of the maximum period within which that Relevant Transaction can be avoided, reduced or invalidated by virtue of any applicable law.

14.4 Waiver of defences

The obligations of the Chargor under this Deed will not be affected by any act, omission or thing which, but for this provision, would reduce, release or prejudice any of its obligations under this Deed (whether or not known to it or to the Secured Party). This includes:

- (A) any time or waiver granted to, or composition with, any person;
- (B) any release of any person under the terms of any composition or arrangement;
- (C) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce by any person, any rights against, or security over assets of, any person;
- (D) any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any security;
- (E) any incapacity or lack of power, authority or legal personality of or Dissolution, amalgamation, merger, reconstruction or change in the members or status of any person;
- (F) any amendment, variation, waiver, release, supplement, extension or restatement or replacement of this Deed, the Secretary of State Investor Agreement or any other document or security;
- (G) any unenforceability, illegality, invalidity or non-provability of any obligation of any person under this Deed, the Secretary of State Investor Agreement or any other document or security or the failure by any person to enter into or be bound by this Deed or the Secretary of State Investor Agreement;
- (H) any insolvency or similar proceedings;

- (I) the making or absence of any demand for payment or discharge of any part of the Secured Sums; or
- (J) any change in the identity of the Secured Party.

14.5 Immediate recourse

- (A) The Chargor waives any right it may have of first requiring the Secured Party (or any trustee or agent on its behalf) to proceed against or enforce any other right or security or claim payment from any person or file any proof or claim in any insolvency, administration, winding-up or liquidation proceedings relative to any person before claiming from the Chargor under this Deed.
- (B) This waiver applies irrespective of any law or contractual provision to the contrary.

14.6 Appropriations

Until all the Secured Sums which may be or become payable have been irrevocably paid in full, the Secured Party (or any trustee or agent on its behalf) may without affecting the liability of the Chargor under this Deed:

- (A) either:
 - (i) refrain from applying or enforcing any other moneys, security or rights held or received by the Secured Party (or any trustee or agent on its behalf) against those amounts; or
 - (ii) apply and enforce them in such manner and order as it sees fit (whether against those amounts or otherwise); and
- (B) hold in an interest-bearing suspense account any moneys received from the Chargor or on account of the Chargor's liability under this Deed.

14.7 Non-competition

Unless:

- (A) all Secured Sums which may be or become payable by the Chargor have been irrevocably paid in full; or
- (B) the Secured Party otherwise directs in writing,

the Chargor will not, after a claim has been made or by virtue of any payment or performance by it under this Deed:

- (i) be subrogated to any rights, security or moneys held, received or receivable by the Secured Party (or any trustee or agent on its behalf);

- (ii) be entitled to any right of contribution or indemnity in respect of any payment made or moneys received on account of the Chargor's liability under this Deed;
- (iii) claim, rank, prove or vote as a creditor of any other party to any of the Transaction Documents or any member of its Group or its estate in competition with the Secured Party (or any trustee or agent on its behalf); or
- (iv) receive, claim or have the benefit of any payment, distribution guarantee, indemnity or security from or on account of such party or any member of its Group, or exercise any right of set-off or counterclaim as against any such party or the Secured Party.

The Chargor must hold in trust for and must immediately pay or transfer to the Secured Party any payment or distribution or benefit of security received by it contrary to this Clause 14.7 or in accordance with any directions given by the Secured Party under this Clause 14.7 to the extent necessary to enable all amounts in respect of the Secured Sums which may be or become payable to be repaid in full.

14.8 Additional security

- (A) This Deed is in addition to and is not in any way prejudiced by any other security now or subsequently held by the Secured Party.
- (B) No prior security held by the Secured Party (in its capacity as such or otherwise) over any Security Asset will merge into this Security.

15. EXPENSES AND INDEMNITY

The Chargor must:

- (A) immediately on demand pay:
 - (i) all Costs and Expenses properly incurred in connection with the perfection, enforcement of, or the preservation of any rights under this Deed and any documents entered into pursuant hereto by the Secured Party, Receiver, attorney, agent or other person appointed by the Secured Party under or pursuant to this Deed, including any arising from any actual or alleged breach by any person other than the Secured Party of any law or regulation; and
 - (ii) all Costs and Expenses properly incurred in relation to all other matters in connection with this Deed (including in connection with any amendment of this Deed) and any documents entered into pursuant hereto by the Secured Party, Receiver, attorney, agent or other person appointed by the Secured Party under or pursuant to this Deed; and
- (B) keep each of those persons referred to in Clause 15(A)(i) and (A)(ii) indemnified against any failure or delay in paying those respective Costs and Expenses.

16. DELEGATION

16.1 Power of Attorney

The Secured Party or any Receiver may delegate by power of attorney or in any other manner to any person any right, power or discretion exercisable by it under this Deed.

16.2 Terms

Any such delegation may be made upon any terms (including power to sub-delegate) which the Secured Party or any Receiver may think fit.

16.3 Liability

Neither the Secured Party nor any Receiver will be in any way liable or responsible to any party (including the Chargor) for any loss or liability arising from any act, default, omission or misconduct on the part of any delegate or sub-delegate.

17. FURTHER ASSURANCES

In addition and without prejudice to any other provision of this Deed, the Chargor must, upon request by the Secured Party or the Receiver, at its own expense, take whatever action the Secured Party or a Receiver may reasonably require for:

- (A) creating, perfecting or protecting any security intended to be created by this Deed;
- (B) facilitating the realisation of any Security Asset;
- (C) facilitating the exercise of any right, power or discretion exercisable, by the Secured Party or any Receiver or any of their respective delegates or sub-delegates in respect of any Security Asset; or
- (D) creating and perfecting security in favour of the Secured Party (equivalent to the security intended to be created by this Deed) over any assets of the Chargor located in any jurisdiction outside England.

This includes:

- (i) the re-execution of this Deed;
- (ii) the execution of any legal mortgage, transfer, conveyance, assignment or assurance of any property, whether to the Secured Party or to its nominee; or
- (iii) the giving of any notice, order or direction and the making of any filing or registration,

which, in any such case, the Secured Party may think expedient.

18. FINANCIAL COLLATERAL

- (A) To the extent that the Security Assets constitute “financial collateral” and this Deed and the obligations of the Chargor under this Deed constitute a “security financial collateral arrangement” (in each case for the purpose of and as defined in the Financial Collateral Arrangements (No. 2) Regulations 2003 (SI 2003 No. 3226)) the Secured Party shall have the right after this Security has become enforceable to appropriate all or any part of that financial collateral in or towards the satisfaction of the Secured Sums.
- (B) For the purpose of Clause 18(A), the value of the financial collateral appropriated shall be such amount as the Secured Party reasonably determines having taken into account advice obtained by it from an independent investment or accountancy firm of national standing selected by it.

19. RELEASE

Subject to Clauses 14.2 and 14.3, at the end of the Security Period, the Secured Party must, at the request and cost of the Chargor, take whatever action is reasonably necessary to release (and where applicable, reassign) the Security Assets from this Security.

20. ASSIGNMENT**20.1 Assignment by the Secured Party**

The Secured Party may, at any time, without the consent of the Chargor, assign or transfer any of its rights and obligations under this Deed where required under the EA 2013 or pursuant to or by virtue of a Transfer Scheme or otherwise with the prior written consent of the Chargor.

20.2 Assignment by the Chargor

The rights, interests and obligations of the Chargor under this Deed are personal to it. Accordingly, they are not capable of being assigned, transferred or delegated in any manner. The Chargor undertakes that it shall not at any time assign or transfer, or attempt to assign or transfer, any of its rights, interests or obligations under or in respect of this Deed to any person.

21. COUNTERPARTS

This Deed may be executed in any number of counterparts and all of those counterparts taken together shall be deemed to constitute one and the same instrument.

22. AMENDMENTS

This Deed may not be amended, modified or waived in any respect whatsoever without the prior written consent of the Secured Party given with express reference to this Clause 22 and expressly stated to be intended to operate as the Secured Party’s consent to such amendment, modification or waiver.

23. NOTICES

23.1 Communications in writing

Any communication to be made under or in connection with this Deed shall be in writing and in English and, unless otherwise expressly stated, may be made by email or letter.

23.2 Addresses

The address and email address (and the department or officer, if any, for whose attention the communication is to be made) of each party to this Deed for any communication or document to be made or delivered under or in connection with this Deed is:

(A) in the case of the Chargor: [●]; and

(B) in the case of the Secured Party:

Low Carbon Contracts Company Ltd
Fleetbank House
2-6 Salisbury Square
London
EC4Y 8JX

Attention: Head of Commercial
Email: hpc.cm@lowcarboncontracts.uk

or any substitute address, email address or department or officer as the party may notify to the other party by not less than five (5) Business Days' notice.

23.3 Delivery

(A) Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective:

- (i) if by way of letter, when it has been left at the relevant address or five (5) Business Days after being deposited in the post, postage prepaid, in an envelope addressed to it at that address; or
- (ii) if sent by email, when sent, except that an email shall be deemed not to have been sent if the sender receives a delivery failure notification,

and, if a particular department or officer is specified as part of its address details provided under Clause 23.2 (*Addresses*), if addressed to that department or officer.

(B) Any communication or document to be made or delivered to the Secured Party will be effective only when actually received by the Secured Party and then only if it is expressly marked for the attention of the department or officer specified in Clause 23.2 (*Addresses*) (or any substitute department or officer as the Secured Party shall specify for this purpose).

24. REMEDIES AND WAIVERS

No delay or omission by the Secured Party in exercising any right provided by law or under this Deed shall impair, affect, or operate as a waiver of, that or any other right. The single or partial exercise by the Secured Party of any right shall not preclude or prejudice any other or further exercise of that, or the exercise of any other, right. The rights of the Secured Party under this Deed are in addition to and do not affect any other rights available to it by law including, without limitation, the right to appoint an administrator under the Insolvency Act 1986.

25. PARTIAL INVALIDITY

- (A) If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions under the law of that jurisdiction or any other jurisdiction, nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.
- (B) The Parties shall enter into good faith negotiations, but without any liability whatsoever in the event of no agreement being reached, to replace any illegal, invalid, or unenforceable provision with a view to obtaining the same commercial effect as this Deed would have had if such provision had been legal, valid and enforceable.

26. GOVERNING LAW AND JURISDICTION**26.1 Governing law**

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

26.2 Exclusive jurisdiction

The English courts have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to any non-contractual obligations arising out of or in connection with this Deed) and the parties submit to the exclusive jurisdiction of the English courts.

**THE SCHEDULE
SHARES**

Name of Subject Company (registered number) in which shares are held	Class of share held	Number of shares held

THIS DEED has been executed and delivered as a deed on the date stated at the beginning of this Deed.

EXECUTED and delivered as a)
DEED by [•] **LIMITED**)
acting by its [director] / [duly)
appointed attorney])
[Director] / [Attorney]

in the presence of:

Witness's signature:

Name (print):

Address:
.....
.....

Occupation:

EXECUTED and delivered as a)
DEED by **LOW CARBON**)
CONTRACTS COMPANY LTD)
acting by its [director] / [duly)
appointed attorney])

[Director] / [Attorney]

in the presence of:

Witness's signature:

.....

Name (print):

.....

Address:

.....

.....

.....

Occupation:

.....

ANNEX 12
FORM OF PRELIMINARY EQUITY IRR REPORT

To: [●] (the “CfD Counterparty”)

[Address]

From: [●] (“NNB HoldCo”)

[Address]

Dated: [●]

SECRETARY OF STATE INVESTOR AGREEMENT – PRELIMINARY EQUITY IRR REPORT

Dear Sirs,

1. We refer to the Secretary of State Investor Agreement relating to Hinkley Point C dated *[date to be inserted]* 2016 between, among others, The Secretary of State for Energy and Climate Change, you as the CfD Counterparty, NNB Generation Company (HPC) Limited as Generator and us as NNB HoldCo (the “**Agreement**”). Terms and expressions defined in or incorporated into the Agreement have the same meaning when used in this report.
2. This is the Preliminary Equity IRR Report relating to the Project Gain Share Calculation Period (the “**Subject Project Gain Share Calculation Period**”) ending on the Project Gain Share Calculation Date falling on [●] (the “**Subject Project Gain Share Calculation Date**”).
3. We refer to clause 9.1(C) (*Preliminary Equity IRR Report*) of the Agreement.
4. The Available Cash Flow in respect of the Subject Project Gain Share Calculation Period is [●]. [This amount has been calculated as follows [●]] / [Details of the calculation of this amount are set out in Annex [●] to this report].
5. [Details as of the Subject Project Gain Share Calculation Date of the amount[s] retained by the Generator referred to in paragraph (A)(i) of the definition of “Available Cash Flow” and the calculation thereof are set out [below] / [in Annex [●] to this report]. The reasons for the making of such retentions are as follows [●].]
6. We hereby confirm that there has been no failure to perform or comply with any of the Equity Gain Share Rules or clause 9.4 (*Distributions*) of the Agreement [other than [●]⁴]. This failure has given rise to Deemed Available Cash Flow of [●]. Details of the calculation of the Deemed Available Cash Flow are set out [below] / [in Annex [●] to this report].]

⁴ Note: full details of the failure and its consequences to be provided.

7. We hereby confirm that there has been no failure to perform or comply with the Contracting Policy [other than [●]⁵. The Related Party Discount Amount is [●]. Details of the calculation of the Related Party Discount Amount are set out [below] / [in Annex [●] to this report].]
8. Details of all Project Cash Flows and Real Project Cash Flows for the Subject Project Gain Share Calculation Period (including dates of receipt or payment and forecast dates of receipt or payment) in respect of each Investor TopCo Tranche are set out in Annex [●] to this report.
9. Annex [●] to this report sets out the Equity IRR (and its calculation) as at the Subject Project Gain Share Calculation Date in respect of the Subject Project Gain Share Calculation Period for each Investor TopCo Tranche (taking into account the information referred to in paragraph 8. above) and confirms whether and, if so, the extent to which each such Equity IRR (a) exceeds the First Equity IRR Threshold but is less than or equal to one or both of the Second Equity IRR Thresholds, or (b) exceeds one or both of the Second Equity IRR Thresholds.
10. Set out in Annex [●] to this report are details of the administrative costs and expenses of NNB HoldCo incurred since the Project Gain Share Calculation Date immediately preceding the Subject Project Gain Share Calculation Date and those administrative costs and expenses that NNB HoldCo forecasts that it will incur before it receives a Distribution from the Generator to meet them.
11. [We set out [below] / [in Annex [●] to this report] details of the Distributions we propose to make to Investor TopCos and (where relevant) the Project Gain Share Amount to be paid to the CfD Counterparty consequent upon the Project Cash Flows in relation to the Subject Project Gain Share Calculation Period (including the amount and calculation thereof). NNB HoldCo's estimate of the Project Gain Share Due Date is [●].]⁶
12. Accompanying this report are copies of the documents referred to in clause 9.1(D)(i), 9.1(D)(ii), 9.1(D)(iii)[, 9.1(D)(iv)] [and 9.1(D)(v)]⁷ (*Preliminary Equity IRR Report*) of the Agreement.

Yours faithfully,

.....
 Duly authorised for and on behalf of
NNB Holding Company (HPC) Limited

⁵ Note: full details of the failure and its consequences to be provided.

⁶ Note: to be deleted as appropriate. As appropriate, to show that there is no plausible circumstance as referred to in Clause 9.4(D)(iii) (*Distributions*).

⁷ Note: to be deleted as appropriate.

[ANNEXES TO THE PRELIMINARY EQUITY IRR REPORT]

[To be included.]

**ANNEX 13
REDACTED TERMS**

[REDACTED]

[REDACTED]