

DATED

2016

(1) THE SECRETARY OF STATE FOR ENERGY AND CLIMATE CHANGE

- and -

(2) NNB GENERATION COMPANY (HPC) LIMITED

- and -

(3) THE NUCLEAR DECOMMISSIONING FUND COMPANY LIMITED

SECTION 46 AGREEMENT

**pursuant to which the Secretary of State agrees to regulate
the exercise of her powers to propose a modification to the
Hinkley Point C Funded Decommissioning Programme in
accordance with Section 46(3A) of the Energy Act 2008**

Slaughter and May
One Bunhill Row
London EC1Y 8YY

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THIS DEED is made on

2016

BETWEEN:

1. **THE SECRETARY OF STATE FOR ENERGY AND CLIMATE CHANGE** (the “**Secretary of State**”);
2. **NNB GENERATION COMPANY (HPC) LIMITED**, a company incorporated in England and Wales (registered number 6937084) and whose registered office is at 40 Grosvenor Place, London SW1X 7EN (the “**Operator**”); and
3. **THE NUCLEAR DECOMMISSIONING FUND COMPANY LIMITED**, a company incorporated in England and Wales (registered number 07992648) and whose registered office is c/o PKF (UK) LLP, Farringdon Place, 20 Farringdon Road, London EC1M 3AP (the “**FDP Company**”).

WHEREAS

- (A) The Operator intends to construct the Facility at Hinkley Point C and has been granted a Nuclear Site Licence.
- (B) The Act requires the Operator to submit a funded decommissioning programme for approval by the Secretary of State, prohibits use of Hinkley Point C by virtue of a Nuclear Site Licence until that approval has been given and requires the Operator to comply with the approved funded decommissioning programme thereafter.
- (C) Sections 48, 49 and 51 of the Act confer powers on the Secretary of State to propose modifications to an approved funded decommissioning programme and provide for such proposed modifications to become effective without the consent of the nuclear site operator. The Secretary of State must exercise the power to propose modifications with the aim of ensuring that prudent provision is made for the Technical Matters under that funded decommissioning programme (including the Designated Technical Matters).
- (D) Section 46(3A) of the Act enables the Secretary of State to agree to exercise, or not to exercise, her powers under Section 48 of the Act in a particular manner or within a particular period.
- (E) This Deed constitutes an agreement under Section 46(3A) of the Act and sets out the circumstances in which the Secretary of State may exercise her powers under Section 48, the extent to which she will exercise them and the limits which she will observe in exercising them.

1. DEFINITIONS AND INTERPRETATIONS

Definitions

- 1.1 Capitalised expressions which are defined in the FAP shall have the same meanings when used in this Deed or its recitals unless a different definition is given to them in this Clause.

1.2 In this Deed and its recitals:

- “Act”** means the Energy Act 2008.
- “Associated Person”** means a body corporate which is associated with the Operator for the purposes of the Act, as determined in accordance with Section 67 of the Act.
- “Business Day”** means a day (other than a Saturday or a Sunday) on which banks are open for general business in London.
- “Court Matter”** has the meaning given in Clause 9.3(L) (Arbitration).
- “Determined Modification”** has the meaning given in Clauses 9.3(J)(ii) and 9.3(K).
- “Discounted”** means, in respect of any calculation performed under this Deed as at any date (the **“Calculation Date”**) discounted on an annual compound basis:
- (A) in respect of the cashflows from the Draft DWMP which relate to the Costs of Decommissioning other than Pre Closure Planning Costs, from the first (1st) day of the Financial Period during which the relevant amount is to be incurred (as scheduled in the relevant Draft DWMP) to the Calculation Date, at one (1) plus the Long Term Discount Rate (as expressed as a decimal);
 - (B) in respect of the cashflows from the Draft DWMP which relate to the Costs of Spent Fuel Management:
 - (i) from the first (1st) day of the Financial Period during which the relevant amount is to be incurred (as scheduled in the relevant Draft DWMP) to the SF Transfer Date, at one (1) plus the SFTC Discount Rate (as expressed as a decimal); and then
 - (ii) from the SF Transfer Date to the Calculation Date, at one (1) plus the Long Term Discount Rate (as expressed as a decimal);
 - (C) in respect of the cashflows from the Draft DWMP which relate to the SF Transfer Payment:
 - (i) from the first (1st) day of the Financial Period during which the relevant amount is to be incurred (as scheduled in the

Draft DWMP reflecting the SF Disposal Dates) to the SF Transfer Date, at one (1) plus the SFTC Discount Rate (as expressed as a decimal); and then

- (ii) from the SF Transfer Date to the Calculation Date, at one (1) plus the Long Term Discount Rate (as expressed as a decimal);
- (D) in respect of the cashflows from the Draft DWMP which relate to the aggregate of the ILW Transfer Payments, from the first (1st) day of the Financial Period during which the relevant amount is to be incurred (as scheduled in the Draft DWMP reflecting the ILW Transfer Dates) to the Calculation Date, at one (1) plus the Long Term Discount Rate (as expressed as a decimal); and
- (E) in respect of the Additional Storage Amount, from FYE End of Generation to the Calculation Date, at one (1) plus the Long Term Discount Rate (as expressed as a decimal).

“Dispute” means any dispute or claim relating to or arising out of this Deed, 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 under it; or
- (C) breach or termination of it.

“Dispute Modification Proposal” has the meaning given in Clause 9.3(J)(i).

“Dispute Notice” has the meaning given in Clause 9.1(A) (*Dispute Resolution*).

“Early Termination Event” has the meaning given in Clause 5.1 (*Early Termination*).

“Effective Date” means the date on which the FDP becomes effective following approval by the Secretary of State.

“Facility” means the Hinkley Point C nuclear power generation facility.

“FAP” means the Operator's funding arrangements plan which forms part of the FDP from time to time.

“FDP”	means the Operator’s funded decommissioning programme for the Site as approved by the Secretary of State under Section 46 of the Act and as may be amended from time to time in accordance with Section 48 of the Act.
“Final Funding Notice”	has the meaning given to it in the Secretary of State Investor Agreement.
“Final Modification Determination”	means a Proposed Modification or a Determined Modification to which Clause 6.7(C) applies.
“Fixed Assumption”	has the meaning given in <u>Clause 7.2(B)(i)</u> .
“FOIA”	means the Freedom of Information Act 2000.
“Foreseen Event”	has the meaning given in <u>Clause 7.1</u> (<i>Foreseen Events</i>).
“Invalid Proposal”	has the meaning given in <u>Clause 9.3(I)(i)</u> .
“Investors”	has the meaning given to that term in the Secretary of State Investor Agreement.
“Law”	means any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, any enforceable community 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 or enforceable or both against private persons within the United Kingdom) any obligations arising from a treaty or international convention to which the United Kingdom is a signatory.
“Material and Adverse Effect”	means an event or circumstance having a material and adverse impact on: <ul style="list-style-type: none"> (A) the Operator’s ability to make the Annual Contributions as they fall due; or (B) the ability of the FDP Company or the Operator to comply with any provision of <u>Section J</u> (<i>Payment and Disbursement Policy</i>) of the FDP.
“Modification Proposal Objection Notice”	has the meaning given in <u>Clause 6.6(A)</u> .
“Nominated Tribunal”	has the meaning given in <u>Clause 9.4(A)</u> .
“Operator Modification Proposal”	has the meaning given in <u>Clause 6.2(B)</u> .

“Operator Remedy Period”	has the meaning given in <u>Clause 5.2</u> .
“Orderly Handover of HPC Provisions”	means the provisions set out in clause 14 of the Secretary of State Investor Agreement.
“Portfolio Concentration Restrictions”	means the portfolio concentration restrictions set out in paragraph 4 (<i>Portfolio Concentration Restrictions and Minimum Allocations</i>) of Schedule 7 to the FAP.
“Process Initiation Notice”	has the meaning given in <u>Clause 6.2(A)</u> .
“Process Initiation Right”	has the meaning given in <u>Clause 6.1</u> .
“Process Trigger Event”	has the meaning given in <u>Clause 6.1</u> (<i>Conditions for Process Initiation Right</i>).
“Proposed Modification”	has the meaning given in <u>Clause 6.3(B)</u> .
“Proposed Modification Notice”	has the meaning given in <u>Clause 6.3(C)</u> .
“QQR”	means a quinquennial review, as more particularly defined in the FDP.
“Regulation”	means any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, which is generally complied with by those to whom it is addressed) of any governmental, intergovernmental or supranational body, agency, department or regulatory or self-regulatory body or other authority or organisation.
“Related Contract”	means each of this Deed and the FAP.
“Relevant Change”	has the meaning given in <u>Clause 12.1</u> .
“Remedy”	for the purposes of: <ul style="list-style-type: none"> (A) <u>Clause 5</u> has the meaning given in <u>Clause 5.3</u>; (B) <u>Clause 8.2 (A)</u> has the meaning given in <u>Clause 8.4</u>.
“Second Invalidity Dispute”	has the meaning given in <u>Clause 12.6</u> .
“Second Proposed Modification”	has the meaning given in <u>Clause 9.3(I)(ii)</u> .

“Secretary of State Investor Agreement”	means the agreement between, among others, the Secretary of State and the Operator.
“Security Trustee Remedy Notice”	has the meaning given in <u>Clause 8.2(A)(iii)</u> .
“Security Trustee Remedy Period”	means, where there is a Security Trustee, a period commencing on the date of receipt by the Security Trustee of a Security Trustee Remedy Notice and expiring: <ul style="list-style-type: none"> (A) where the notice relates to an Early Termination Event in respect of which there is an Operator Remedy Period, the date falling one month after the expiry of the Operator Remedy Period; and (B) where the notice relates to a Process Trigger Event, three months following the date of that notice, <p>(save that there shall be no Security Trustee Remedy Period in respect of an Early Termination Event under <u>Clause 5.1(A)</u>).</p>
“Senior Representative”	means the senior employee or officer selected by a Party to represent it in relation to <u>Clause 9.2(A)</u> .
“Specified Compliance Event”	has the meaning given to it in the FAP as at the Effective Date.
“Tax”	means all forms of tax, levy, duty, rate, charge or other imposition or withholding in the nature of or in respect of taxation whenever and by whatever authority imposed.
“Termination Date”	means the earlier of: <ul style="list-style-type: none"> (A) the date on which the FDP terminates in accordance with its terms; (B) the date on which notice is given by the Secretary of State pursuant to Section 64(3) of the Act to each person with obligations under the FDP releasing each of them from any and all obligations in respect of the FDP; or (C) the date (if any) on which this Deed is terminated following the occurrence of an Early Termination Event.
“Transaction Obligor Secured Creditor”	means any person who is described as a transaction obligor secured creditor under an FDP Direct Agreement.

“Tribunal”	has the meaning given in <u>Clause 9.3(C)</u> .
“Waste Transfer Contracts”	<p>means each of:</p> <p>(i) the Waste Transfer Agreement between the Secretary of State and the Operator relating to the transfer of intermediate level waste arising from the Site; and</p> <p>(ii) the Waste Transfer Agreement between the Secretary of State and the Operator relating to the transfer of spent fuel arising from the Site.</p>
“Working Hours”	means 9.30 a.m. to 5.30 p.m. on a Business Day.

Interpretation

1.3 In this Deed, unless otherwise specified:

- (A) references to Clauses, paragraphs and Schedules are to clauses, paragraphs of, and schedules to, this Deed;
- (B) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted and shall include any subordinate legislation made from time to time under that statute or statutory provision;
- (C) references to any agreement or document include a reference to that agreement or document as amended, varied, supplemented, substituted, novated or assigned from time to time (but, in the case of the FDP, only if done in accordance with the Act);
- (D) references to a **“Party”** or to the **“Parties”** (other than in the expressions “third party” or “third parties”) means a party or the parties to this Deed;
- (E) references to a **“company”** shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (F) references to a **“person”** shall be construed so as to include any individual, firm, company, trust, agency, government, state or agency of a state, local or municipal authority or government body, unincorporated body of persons or association, any organisations having legal capacity or any joint venture, association or partnership (whether or not having separate legal personality) and shall include their successors and permitted assignees;
- (G) use of any gender includes the other genders and use of the singular only also includes the plural and vice versa;

- (H) the expressions “**body corporate**” and “**subsidiary**” shall have the meaning given in the Companies Act 2006;
- (I) any reference to a “**day**” (including within the phrase “Business Day”) shall mean a period of 24 hours running from midnight to midnight;
- (J) references to times of the day are to London time;
- (K) references to writing shall include any modes of reproducing words in a legible and non-transitory form;
- (L) the rule known as the ejusdem generis rule shall not apply and accordingly general words introduced by the word “**other**”, “**including**” or “**in particular**” 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;
- (M) 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; and
- (N) a Specified Compliance Event or Compliance Event is “continuing” if it (or the adverse effect created by it) has not been remedied or if it has not been waived.

1.4 Headings to Clauses are for convenience only and do not affect the interpretation of this Deed.

1.5 This Deed is without prejudice to, and shall not be regarded as limiting, the Secretary of State’s powers under any provision of the Act other than Section 48.

2. TERM

2.1 Term

This Deed shall take effect on the Effective Date and, subject to Clause 2.2 (Survival), shall continue until the Termination Date.

2.2 Survival

On termination of this Deed, all rights and obligations of the Parties under this Deed shall end other than those contained in Clause 1 (Definitions and Interpretation), this Clause 2.2 (Survival), sub-clauses 7.2 (ii),(iii) and (iv) (Other limitations), sub-clause 7.2 (vi) (to the extent only that it relates to sub-clauses 7.2 (ii),(iii) and (iv)), sub-clause 7.3 (Limitations for the benefit of the FDP Company), Clause 12 (Announcements), Clause 15 (Confidentiality), Clause 22 (Costs), Clause 23 (Third Party Rights), Clause 24 (Waiver of Sovereign Immunity), and Clause 28 (Governing Law) which shall continue without limit in time.

3. PRUDENT PROVISION

The Secretary of State acknowledges that she has approved the FAP as making

prudent provision for the Technical Matters (including the financing of the Designated Technical Matters) having regard to, inter alia, the following factors:

- (A) the DWMP has been costed to P80;
- (B) the target Fund Assets Value represents a P80 assessment of the DTM Costs as they are reviewed and verified through the mechanisms set out in the FAP, plus, in respect of the Costs of Decommissioning and the Costs of Spent Fuel Management, a further contingency of 25%;
- (C) the target Fund Assets Value is designed to ensure that the expected costs are fully funded in accordance with the Primary Funding Path by FYE Year 37 and in accordance with the Investment Rules;
- (D) the FAP is designed to adjust required Contributions to the Fund Assets in response to increases in DTM Costs and in response to lower than anticipated Fund Asset growth;
- (E) the periods of time within which deficits in the Fund Assets are made up, being initially 10 years, reducing in accordance with the terms of the FAP; and
- (F) the calculation of liabilities for waste disposal and management are derived from the Waste Transfer Contracts.

4. SECRETARY OF STATE'S POWER TO PROPOSE MODIFICATIONS

- 4.1 The Secretary of State hereby agrees pursuant to Section 46(3A) of the Act to exercise her powers under Section 48 of the Act to propose modifications to the FDP without the consent of the Operator and the FDP Company only in the circumstances, to the extent and subject to the limitations provided for in this Deed.
- 4.2 Notwithstanding any provision of this Deed, the Secretary of State may propose any modification to the FDP at any time with the prior written consent of the Operator and, if applicable, the FDP Company.

5. EARLY TERMINATION

5.1 Early Termination Events

Each of the following shall be an "**Early Termination Event**":

- (A) termination of the Nuclear Site Licence granted to the Operator for reasons attributable to the Operator's conduct without a new, replacement or substitute Nuclear Site Licence being granted to the Operator or to another person;
- (B) conviction of the Operator or any Associated Person (excluding the FDP Company) for fraud carried out by the Operator or that Associated Person in relation to the FDP, the effect of which has or will have a Material and Adverse Effect;

- (C) at an Annual Review or QQR which occurs:
- (i) after the end of the Operational Period; and
 - (ii) prior to the Secretary of State becoming entitled to take a Security Trigger Event Action under Clause 32 of the FAP,

the P50 value of the DTM Costs (as shown by the relevant Annual Report or Quinquennial Report (as applicable)), Discounted, is greater than the Fund Assets Value as at the end of the Annual Reporting Period or the Quinquennial Reporting Period (as specified in the relevant Annual Fund Assets Report); or

- (D) a Specified Compliance Event having occurred.

5.2 Operator Remedy Period

The “**Operator Remedy Period**” in respect of an Early Termination Event shall be:

- (A) in respect of an Early Termination Event described in Clause 5.1(B) a period of three (3) calendar months from the date of conviction;
- (B) in respect of an Early Termination Event described in Clause 5.1(C), a period of six (6) calendar months from the date of the relevant Annual Report or Quinquennial Report; and
- (C) in respect of an Early Termination Event described in Clause 5.1(D), a period of three (3) calendar months from the date on which the relevant Specified Compliance Event is notified to the Operator by the Secretary of State.

An Early Termination Event described in Clause 5.1(A) shall not be capable of remedy.

5.3 Operator Remedy

For the purposes of this Clause, “**Remedy**” shall mean:

- (A) in respect of an Early Termination Event described in Clause 5.1(B), making full restoration in respect of any financial impact of the Early Termination Event and taking all such steps as shall be appropriate to prevent any recurrence of an Early Termination Event under that sub-clause;
- (B) in respect of an Early Termination Event described in Clause 5.1(C), procuring that the total value of the Fund Assets is at least equal to the P50 DTM Costs, Discounted;
- (C) in respect of an Early Termination Event described in Clause 5.1(D), making full restoration in respect of any financial impact of the Early Termination Event, remedying any other adverse consequence of the Early Termination Event and taking all such steps as shall be appropriate to prevent any recurrence of the Specified Compliance Event,

and “**Remedied**” shall be construed accordingly.

5.4 Termination

Without prejudice to Clause 2.2 (*Survival*):

- (A) if an Early Termination Event referred to in any of sub-clauses 5.1(B) to 5.1(D) occurs and has not been waived by the Secretary of State or Remedied by the Operator within the Operator Remedy Period applicable to it, the Secretary of State may (subject to any additional remedy right which may have been granted to any Security Trustee in accordance with Clause 8.2 of this Deed (*Creditor Rights*)) terminate this Deed by giving not less than ten (10) Business Days’ notice of termination to the Operator and the FDP Company; and
- (B) the Secretary of State may terminate this Deed by giving notice of termination to the Operator and the FDP Company at any time following the occurrence of the Early Termination Event described in Clause 5.1(A).

5.5 Early Termination Dispute Notice

If the Operator disputes that an Early Termination Event has occurred or has not been Remedied it may serve a Dispute Notice for the purpose of, and in accordance with, Clause 9.1 (*Initiation of Dispute Resolution Procedure*).

6. PROCESS INITIATION

6.1 Conditions for Process Initiation Right

Subject to the limitations set out below (and to any additional remedy right which may have been granted to any Security Trustee in accordance with Clause 8.2 of this Deed (*Creditor Rights*)), the Secretary of State has the right to initiate a process with the Operator and, if applicable, the FDP Company under which the Secretary of State may propose a modification to the terms of the FDP under Section 48 of the Act (a “**Process Initiation Right**”) following the occurrence of any of the following events (each a “**Process Trigger Event**”):

- (A) termination of the Nuclear Site Licence granted to the Operator without a new, replacement or substitute Nuclear Site Licence being granted in respect of Hinkley Point C to the Operator or to another person;
- (B) the Fund Assets Value has been more than fifty (50) per cent. below the relevant Annual Milestone for five (5) successive Annual Reporting Periods (as shown by the Annual Fund Assets Reports for the relevant Annual Reporting Periods) and the Operator fails to remedy this within six (6) months of the relevant Annual Report or Quinquennial Report (as appropriate) being submitted to the Secretary of State;
- (C) if, at three (3) or more successive Annual Reviews or Quinquennial Reviews which occur after the end of the Operational Period, the DTM Costs (as set out

in the relevant Draft DWMP) are greater than the Fund Assets Value as specified in the relevant Annual Fund Assets Report and the Operator fails to remedy this within six (6) months of the Annual or Quinquennial Report (as appropriate) being submitted to the Secretary of State in respect of the third of such Reviews;

- (D) if, for three (3) successive years after the second anniversary of the end of the Operational Period, it is shown at an Annual Review or Quinquennial Review that the DTM Payments made by the Operator during those years have not resulted in a decrease in the DTM Costs of at least eighty (80) per cent. of the aggregate amount of such DTM Payments;
- (E) the Operator uses or applies all or part of a DTM Payment to fund Disallowable Costs (as shown by the Annual Reconciliation Review for the relevant Financial Period);
 - (i) in relation to Material Affiliate Contracts:
 - (a) in excess of an aggregate amount of £1 million (Indexed) per year in three (3) consecutive Financial Periods; or
 - (b) in excess of an aggregate amount of £10 million (Indexed) in any Financial Period; or
 - (ii) in relation to any other contracts:
 - (a) in excess of an aggregate amount of £1.5 million (Indexed) per year in three (3) consecutive Financial Periods; or
 - (b) in excess of an aggregate amount of £20 million (Indexed) in any Financial Period,

and the Operator does not remedy this within six (6) months by paying an amount equal to the amount of such Disallowable Costs to the FDP Company to be held as part of the Fund Assets;

- (F) a change in Law occurs and is continuing which has the effect that the FDP Company's corporate structure is no longer compliant with Clause 60.3 (*Obligation to maintain an insolvency remote structure*) of the FAP and the Operator or the FDP Company does not take all steps within its power (which, for the avoidance of doubt, does not include steps which require the co-operation of the Secretary of State or any third parties unless and until such co-operation is provided) to remedy such change in Law as soon as reasonably practicable and in any event within twelve (12) months of such change in Law occurring;
- (G) the auditors of the FDP Company qualify any of its audited financial statements due to an event or circumstance which has or is likely to have a Material and Adverse Effect;

- (H) a Compliance Event (with the exception of a Payment Default) occurs and is continuing where:
- (i) such Compliance Event has or is reasonably likely to have a Material and Adverse Effect; and
 - (ii) it is not remedied within any remedy period specified in respect of it in the FAP; and
- three (3) calendar months following the Secretary of State providing a notice in relation to such circumstances, the Operator has failed to (i) make full restoration in respect of any financial impact of such Compliance Event, (ii) remedy any other adverse consequence of such Compliance Event; and (iii) take all such steps as shall be appropriate to prevent any recurrence of such Compliance Event;
- (I) the Secretary of State does not approve a modification to the DWMP proposed by the Operator under Section 48 of the Act on the basis that (and having identified the reasons why) the proposed modification is demonstrably unreasonable;
- (J) the Operator is obliged to propose a modification in accordance with Clause 53 (Unlawful Obligations) or Clause 54 (Force Majeure) of the FAP and fails to do so in accordance with those clauses;
- (K) the terms of the FDP no longer provide prudent provision for the Technical Matters (including the financing of the Designated Technical Matters) as a consequence of any event or circumstance which has occurred;
- (L) an Unplanned Early Permanent Shutdown occurs or the Operator notifies any of the ONR, the FDP Company or the Secretary of State that it has decided to undertake an Unplanned Early Permanent Shutdown;
- (M) either:
- (i) the application of any term of the FDP results in outcomes or has consequences which are so unreasonable in the context of the terms of the FDP that no rational party could have intended them; or
 - (ii) the application of the procedures in the FDP is or has become unworkable or unsuitable in the context of the terms of the FDP except as a result of the Secretary of State not having approved a modification to the DWMP proposed by the Operator under Section 48 of the Act;
- (N) the Investors issue a Final Funding Notice in accordance with the Orderly Handover of HPC Provisions; or
- (O) without prejudice to the Secretary of State's rights under Clause 5 (Early Termination), the occurrence of an Early Termination Event.

6.2 Opportunity for Operator to submit an Operator Modification Proposal

- (A) If a Process Trigger Event has occurred and the Secretary of State determines to initiate a process in accordance with Clause 6.1 (*Conditions for Process Initiation Right*), she shall (subject to the requirements of Section 49 of the Act) notify the Operator in writing (with a copy to the FDP Company) and invite the Operator to propose a modification to address the relevant Process Trigger Event (a “**Process Initiation Notice**”).
- (B) A Process Initiation Notice shall contain:
- (i) a statement of the Process Trigger Event which the Secretary of State believes has occurred;
 - (ii) an invitation to the Operator to propose a modification (an “**Operator Modification Proposal**”) to address such Process Trigger Event; and
 - (iii) a statement of the deadline for the submission of an Operator Modification Proposal by the Operator (to be no earlier than three (3) months after the date of the Process Initiation Notice).
- (C) If the Operator wishes to propose a modification to address the Process Trigger Event specified in the Process Initiation Notice, the Operator shall notify the Secretary of State in writing (with a copy to the FDP) of its intention to do so within ten (10) Business Days of the Process Initiation Notice and shall deliver an Operator Modification Proposal within the deadline specified in the Process Initiation Notice (with a copy to the FDP Company). An Operator Modification Proposal shall contain full particulars of the modifications which the Operator proposes to the FDP, including an explanation of how they appropriately address the relevant Process Trigger Event.

6.3 Secretary of State decides on Proposed Modification

- (A) If a Process Trigger Event has occurred, the Secretary of State shall, if applicable, give due consideration to any Operator Modification Proposal which the Operator submits in accordance with Clause 6.2(C) and may:
- (i) accept the Operator Modification Proposal, in which case the Operator Modification Proposal shall be treated as a modification proposed by the Operator for the purposes of Section 49 of the Act;
 - (ii) propose amendments to the Operator Modification Proposal; or
 - (iii) (including where no Operator Modification Proposal has been received in accordance with Clause 6.2(C)) propose her own modification proposal.
- (B) Where the Secretary of State:
- (i) proposes amendments to the Operator Modification Proposal; or

- (ii) proposes her own modification proposal in accordance with Clause 6.3(A)(iii),

the modification proposed by the Secretary of State pursuant to Clause 6.3(A)(ii) or Clause 6.3(A)(iii) shall be a “**Proposed Modification**” and shall be treated as a modification proposed by the Secretary of State for the purposes of Section 49 of the Act.

- (C) The Secretary of State shall notify the Operator and the FDP Company of a Proposed Modification (a “**Proposed Modification Notice**”). Any Proposed Modification Notice shall contain:
 - (i) full particulars of the Proposed Modification including the reasons for any divergences from or amendments to any Operator Modification Proposal submitted by the Operator;
 - (ii) a statement that the Secretary of State reasonably believes that the Proposed Modification is not inconsistent with Clause 7 (*Limitations on the Right to Impose Additional Obligations*);
 - (iii) a statement that the Secretary of State reasonably believes that the Proposed Modification is consistent with the provisions of Clause 6.4 (*Scope of Operator Modification Proposal or Proposed Modification*); and
 - (iv) a statement of the deadline for the delivery of a Modification Proposal Objection Notice by the Operator or, if applicable, the FDP Company (to be no earlier than ten (10) Business Days after the date of the Proposed Modification Notice).

6.4 **Scope of Operator Modification Proposal or Proposed Modification**

Any Operator Modification Proposal or Proposed Modification should be:

- (A) appropriate to remedy the effect or likely effect of the Process Trigger Event or to prevent a recurrence of the Process Trigger Event or both; and
- (B) reasonable having regard to the nature and consequences of the Process Trigger Event that has occurred.

6.5 **Limitations on scope of Proposed Modifications relating to certain Process Trigger Events**

- (A) Where a Process Initiation Right arises as a result of one of the Process Trigger Events in Clauses 6.1(C), 6.1(D) or 6.1(E), any Proposed Modification made as a result may relate only to the matters set out in the following provisions of the FAP:
 - (i) Section J (*Payment and Disbursement Policy*);

- (ii) Schedule 15 (*Payments and Disbursements Requirements*);
- (iii) Schedule 16 (*Annual Reconciliation Review*); and
- (iv) Schedule 19B (*Annual Work Plan and Budget Independent Expert Referral Procedure*),

in each case, with the Secretary of State proposing the relevant modification with a view to ensuring a more efficient and timely implementation of the Technical Matters and keeping any additional costs to the minimum necessary to ensure such more efficient and timely implementation of the Technical Matters and in particular, the Secretary of State shall take into account:

- (a) any significant increases in the cost of implementing the Technical Matters which are likely to result from the Proposed Modification; and
 - (b) any significant additional administrative burdens on the Operator, the FDP Company or the Verifiers which are likely to result from the Proposed Modification, together with the implications of those additional administrative burdens for the efficient and timely implementation of the Technical Matters.
- (B) Where a Process Initiation Right arises as a result of the Process Trigger Event in Clause 6.1(I), any Proposed Modification made as a result may relate only to:
- (i) the estimates of the DTM Costs likely to be incurred; or
 - (ii) the scope of works set out in the DWMP to be undertaken as the basis for the estimates of the DTM Costs,

and, in each case, must be in accordance with Schedule 8 (*Annual Review Programme*) and Schedule 9 (*Quinquennial Review Programme*) of the FDP.

6.6 Right to object to Proposed Modification

- (A) If:
- (i) the Operator believes that the Secretary of State has purported to propose a modification under Clause 6.3 (*Secretary of State decides on Proposed Modification*) in a manner which is not in accordance with this Deed; or
 - (ii) the FDP Company believes that the Secretary of State has purported to propose a modification under Clause 6.3 (*Secretary of State decides on Proposed Modification*) in a manner which is not in accordance with Clause 7.3 (*Limitations for the benefit of the FDP Company*),

the Operator or, if applicable, the FDP Company must notify the Secretary of State by no later than the deadline specified by the Secretary of State in the

Proposed Modification Notice (a “**Modification Proposal Objection Notice**”). If the Operator or, if applicable, the FDP Company fails to deliver a Modification Proposal Objection Notice by that deadline, the Operator and, if applicable, the FDP Company will be deemed to have agreed that the Process Trigger Event has occurred and to have accepted and agreed with the Proposed Modification. The procedure set out in this Clause 6.6(A) shall constitute the Operator’s and, if applicable, the FDP Company’s opportunity to make representations regarding the Proposed Modification pursuant to Section 49(5) of the Act.

- (B) If the Operator or, if applicable, the FDP Company delivers a Modification Proposal Objection Notice under Clause 6.6(A), this shall be treated as a Dispute Notice and the dispute resolution procedure in Clause 9 (Dispute Resolution) shall apply.

6.7 **Effect of a proposal to modify pending and following dispute resolution process**

- (A) Where a Modification Proposal Objection Notice has been delivered in accordance with Clause 6.6(A), the relevant Proposed Modification will not be made while its compliance with this Deed is subject to any dispute resolution proceeding in accordance with Clause 9 (Dispute Resolution).
- (B) Once any dispute resolution proceedings under Clause 9 (Dispute Resolution) have come to an end on the basis set out in Clause 6.7(C), the Secretary of State will (to the extent that she has not already done so) consult with interested bodies in accordance with Section 49(8) of the Act and will then decide whether or not to make the Proposed Modification or Determined Modification (as appropriate) in accordance with Section 49(6) of the Act.
- (C) Without prejudice to any other means by which the dispute resolution proceedings may come to an end, a Proposed Modification or Determined Modification shall be deemed for the purposes of Clauses 6.7(A) and 6.7(B) no longer to be subject to any dispute resolution proceeding in accordance with Clause 9 (Dispute Resolution) and to have come to an end if:
- (i) the Tribunal or a tribunal appointed under a Related Contract makes an award to the effect that the Proposed Modification in question is in accordance with this Deed or makes a Determined Modification and the time limit has expired for bringing an appeal before the courts of England pursuant to Section 69(1) of the Arbitration Act 1996; or
 - (ii) a Party has appealed on a question of law pursuant to Section 69(1) of the Arbitration Act 1996, the appeal court has delivered its judgment and the time limit for appealing such judgment has expired.
- (D) If the Tribunal has made a Final Modification Determination in relation to either:
- (i) a Proposed Modification; or
 - (ii) (following an Invalid Proposal) a Second Proposed Modification,

then the Secretary of State shall not:

- (a) be bound to make such Final Modification Determination; or
- (b) in relation to the same Process Trigger Event and the same or materially the same facts and circumstances as led to the Process Initiation Right to which the Proposed Modification or Invalid Proposal relate:
 - (1) exercise any Process Initiation Right; or
 - (2) for the avoidance of doubt, propose under Section 48 of the Act any further modification other than the Final Modification Determination.

7. LIMITATIONS ON THE RIGHT TO IMPOSE ADDITIONAL OBLIGATIONS

7.1 Foreseen Events

The Secretary of State and the Operator agree that the occurrence of any of the events listed in this Clause 7.1 ("**Foreseen Events**") cannot cause the FDP to cease to make prudent provision for the Technical Matters (including the financing of the Designated Technical Matters) and therefore that (without prejudice to the Secretary of State's rights under this Deed in relation to any other Process Trigger Event), Clause 6.1(K) cannot give the Secretary of State a Process Initiation Right on the occurrence of any of the following Foreseen Events:

- (A) changes in Decommissioning or waste management and disposal techniques or strategies or timings for any reason;
- (B) changes in operational strategy at Hinkley Point C within the limits of the Approved Operator Business Scope, including changes which affect the volume of ILW Waste or SF Waste expected to be produced by the Reactors during the Operational Period;
- (C) changes to the estimates of the DTM Costs for any reason (including arising from any change in Tax);
- (D) changes in risk and uncertainty of the estimates of the DTM Costs;
- (E) changes to the value of, or volatility in the risk profile of, the Fund Assets for any reason (including arising from any change in Tax);
- (F) DTM Costs Overruns and above-expected inflation in the Decommissioning Period;
- (G) all acquisitions and disposals of Permitted Investments;
- (H) changes in the Operator's business plan and activities within the limits of the Approved Operator Business Scope;

- (I) any outage at Hinkley Point C;
- (J) physical damage to Hinkley Point C which does not result in an Unplanned Early Permanent Shutdown;
- (K) changes in the financial position of the Operator (including, without limitation, where arising from an Operator Insolvency Event, any change in Tax or any change in the structure or framework of the UK electricity market);
- (L) any change (directly or indirectly) in the ownership, including any change of control, of the Operator;
- (M) change in the ownership and governance of the FDP Company in accordance with the FDP;
- (N) increases in the operating costs of the FDP Company;
- (O) the withdrawal of any of the indices specified for Permitted Investments;
- (P) calculations being performed incorrectly;
- (Q) differences of opinion arising between the Operator, the FDP Company and the Verifiers;
- (R) winding up of the FDP Company and return of excess Fund Assets to the Operator in accordance with the terms of the FDP;
- (S) increases in Contributions arising from changes in Tax;
- (T) a downgrade of the rating given to the securities issued by any government or other entity;
- (U) expropriation of the Fund Assets or all or a substantial part of the Operator's assets or undertaking by (i) any government or public authority of the United Kingdom or (ii) any supranational authority on which the power to expropriate has been conferred by the Government of the United Kingdom;
- (V) an event or circumstance which is contemplated by the Process Trigger Events in Clauses 6.1(A) to 6.1(J) (*Conditions for Process Initiation Right*); and
- (W) the performance by either the Operator or the FDP Company of any obligation under the FDP in accordance with its terms.

7.2 Other limitations

The Secretary of State agrees that no Proposed Modification made pursuant to:

- (A) Clause 6.3 (*Secretary of State decides on Proposed Modification*); or
- (B) as regards items (ii), (iii) and (iv) below only, in the event that this Deed is

terminated following an Early Termination Event, Section 48(2) of the Act,

shall:

- (i) propose a modification to any of the following assumptions (each a “**Fixed Assumption**”) or to any other provision of the FDP where the result of that modification would be inconsistent with any Fixed Assumption:
 - (a) the Approved P Value;
 - (b) the Primary Funding Period;
 - (c) the Primary Funding Path and the Secondary Funding Path;
 - (d) the Primary Funding Path Percentages and the Secondary Funding Path Percentages;
 - (e) the Minimum Contribution Calculation Rules;
 - (f) clauses 24 to 28 of the FAP;
 - (g) except where a modification is being proposed pursuant to Clause 6.1(B), the Correction Adjustment Percentage;
 - (h) the Operator Undertakings and the Operator Business Restrictions;
 - (i) the Approved Operator Business Scope;
 - (j) the following elements of the Investment Rules:
 - (1) the definitions of Prohibited Practices and Prohibited Direct Investments;
 - (2) the Portfolio Concentration Restrictions; and
 - (3) the timing of the de-risking requirements during the Final Primary Funding Periods and the Final Secondary Funding Periods,

and if any other elements of the Investment Rules are modified following a Proposed Modification made pursuant to Clause 6.3 (*Secretary of State decides on Proposed Modification*), Clause 14.2.2 of the FAP shall apply; or
 - (k) Clauses 30 to 37 of the FAP;
- (ii) directly or indirectly place any additional obligation, liability or cost on the Operator in relation to the ILW Transfer Contract or the SF Transfer

Contract;

- (iii) result in the performance of any of the Operator's obligations under the FDP constituting a breach of any applicable Law or Regulation to which the Operator is subject;
- (iv) cause the Operator to be unable to comply with any of its obligations under the Nuclear Site Licence, including preventing or materially adversely affecting its ability to discharge the Decommissioning as required under the Nuclear Site Licence;
- (v) propose a modification to the definition of Allowable Costs; or
- (vi) propose a modification the effect of which would be to conflict with, or which would not be consistent with, the intended aim or effect of any of the limitations contained in items (i) to (v).

7.3 Limitations for the benefit of the FDP Company

The Parties agree that in no circumstances, including in the event that this Deed expires or is terminated for any reason (whether following an Early Termination Event or otherwise), shall a modification be made to the FDP which shall:

- (A) impose any additional liability on the Independent Directors or Independent Director Shareholders in those respective capacities;
- (B) adversely affect the FDP Company's access to the Fund Assets in accordance with the provisions of the FAP, the Articles, the FDP Budget and Services Agreement and the Shareholders' Agreement in the event that the Operator does not provide funding to the FDP Company;
- (C) impose additional obligations on the FDP Company without including such rights as are reasonably necessary to enable the FDP Company to carry out those obligations; or
- (D) impose obligations on the FDP Company which the FDP Company could not reasonably be expected to fulfil.

8. CREDITOR RIGHTS

8.1 The Parties acknowledge that, in the future, the Operator may wish to incur debt funding the availability of which may be conditional upon a Security Trustee:

- (A) becoming a party to this Deed; and
- (B) being granted certain rights under this Deed.

8.2 In the event the circumstances outlined in Clause 8.1 arise:

- (A) the Security Trustee shall be entitled to become a party to this Deed,

whereupon this Deed shall have effect as follows:

- (i) Clause 4.2 of this Deed shall be amended to provide that any modification to the FDP proposed under that Clause shall require the consent of the Security Trustee as well as the Operator and (if applicable) the FDP Company;
- (ii) the Security Trustee shall have the same right under Clause 6.6 to object to a Proposed Modification as the Operator;
- (iii) as soon as reasonably practicable after an Early Termination Event or Process Trigger Event has occurred, the Secretary of State shall notify the Security Trustee (with a copy to the FDP Company) of the relevant Early Termination Event or Process Trigger Event, such notification to include a description of the event in question (a "**Security Trustee Remedy Notice**");
- (iv) following the occurrence of an Early Termination Event or Process Trigger Event, the Secretary of State shall not issue a notice of termination under Clause 5.4 in relation to such Early Termination Event or issue a Process Initiation Notice in relation to such Process Trigger Event under Clause 6 (as applicable) unless:
 - (a) the Security Trustee Remedy Period in respect of that Early Termination Event or Process Trigger Event (as applicable) has expired; and
 - (b) upon expiry of such Security Trustee Remedy Period, the relevant Early Termination Event or Process Trigger Event (as applicable) has not been Remedied;
- (v) at any time after the occurrence of an Early Termination Event or Process Trigger Event and during a Security Trustee Remedy Period, the Secretary of State will accept both:
 - (a) performance of any obligation or discharge of any liability by the Operator; and/or
 - (b) Remedy of any breach or failure by the Operator,

by or on behalf of:

- (1) any Security Trustee;
- (2) any Transaction Obligor Secured Creditor;
- (3) a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer appointed in respect of the Operator or any of its assets; or

- (4) any other person approved by the Secretary of State and the FDP Company;
 - (B) this Deed may be amended to grant the Security Trustee such other rights as may be agreed between the Parties and such Security Trustee; and
 - (C) such other amendments shall be made to this Deed as may be necessary or otherwise agreed to reflect the accession of the Security Trustee to this Deed.
- 8.3 The Secretary of State and the FDP Company shall on request by the Operator, do or procure the doing of all acts and/or execute or procure the execution of all documents as is necessary to ensure that the Security Trustee may become a Party to this Deed as agreed in Clause 8.2.
- 8.4 For the purposes of Clause 8.2(A), “**Remedy**” shall:
- (A) in respect of an Early Termination Event, have the meaning given to it in Clause 5.3; and
 - (B) in respect of a Process Trigger Event, mean that such Process Trigger Event has been remedied such as to ensure that it no longer causes the FDP not to make prudent provision for the Technical Matters (including the Designated Technical Matters),

and “**Remedied**” shall be construed accordingly.

9. DISPUTE RESOLUTION

9.1 Initiation of Dispute Resolution Procedure

- (A) A Party shall refer a Dispute to the dispute resolution procedure as set out in this Clause 9 (Dispute Resolution) by serving a notice (a “**Dispute Notice**”) on the other Party or Parties.
- (B) A Dispute Notice shall, insofar as is reasonably possible, include the following details:
 - (i) the subject matter of the Dispute in question and the issues to be resolved;
 - (ii) the identity of the other Party;
 - (iii) the identity of the referring Party’s Senior Representative;
 - (iv) copies of any documents which the referring Party considers to be important or relevant; and
 - (v) a statement of the relief, determination, remedy or recourse which the referring Party seeks.

9.2 Discussions before dispute resolution

- (A) The parties to the Dispute in question shall procure that a Senior Representative of each Party shall meet within twenty (20) Business Days of the delivery of a Dispute Notice and, if necessary, meet more than once to seek to resolve the Dispute by agreement.
- (B) If the Senior Representatives are successful in resolving the Dispute, the agreement reached shall be recorded by way of a settlement agreement. Such settlement agreement shall be in writing and signed by the parties to the Dispute and shall not be legally binding unless and until all parties to the Dispute have observed and complied with this Clause 9.2(B).
- (C) Unless the parties to the Dispute agree otherwise in writing, any statement, concession, waiver or agreement (other than a settlement agreement entered into in accordance with Clause 9.2(B)) made by a Party in the course of discussions pursuant to this Clause 9.2 (*Discussions before dispute resolution*) shall be without prejudice to the Dispute. The Parties agree not to raise, refer to or rely on any such statement, concession, waiver or agreement in any subsequent mediation, adjudication, arbitration or other legal proceedings whether related to the Dispute in question or otherwise.

9.3 Arbitration

- (A) If the Senior Representatives of all parties to the Dispute are unable to resolve the Dispute within twenty (20) Business Days of the delivery of a Dispute Notice, the Dispute shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this Clause (as amended by this Clause 9.3 (*Arbitration*)).
- (B) The following words contained in Article 26.8 of the LCIA Rules (or words of similar effect in any successor provision) shall be deemed to have been deleted from such Article 26.8 and shall not apply to any arbitration under this Clause 9.3 (*Arbitration*): "and the parties also waive irrevocably their right to any form of appeal, review or recourse to any state court or other legal authority, insofar as such waiver shall not be prohibited under any applicable law.". For the avoidance of doubt, the parties to the Dispute may appeal to the courts of England only on a question of law arising out of an award made in the arbitral proceedings in accordance with Section 69(1) of the Arbitration Act 1996 (or any successor provision).
- (C) The number of arbitrators shall be three (3) (together, the "**Tribunal**"). The:
 - (i) Secretary of State (on one side); and
 - (ii) any other party or parties to the dispute (on the other side),

shall represent two separate "sides" for the formation of the Arbitral Tribunal pursuant to Rule 8.1 of the LCIA Rules and each side shall nominate one (1) arbitrator. The two (2) arbitrators so nominated shall jointly select a third (3rd)

arbitrator as the chairman of the arbitral panel. In the event that the nominated arbitrators are unable to agree, the third arbitrator will be appointed by the LCIA Court in accordance with the LCIA Rules.

- (D) The seat, or legal place, of arbitration shall be London.
- (E) The language to be used in the arbitration shall be English.
- (F) The law of the arbitration agreement shall be the law of England and Wales.
- (G) The Tribunal shall have the power to determine all Disputes referred to it, including (but not limited to):
 - (i) whether an Early Termination Event has occurred;
 - (ii) whether a Process Trigger Event has occurred and whether the relevant Process Initiation Right has been exercised in accordance with this Deed;
 - (iii) if a Process Trigger Event has occurred and:
 - (a) if the Operator has made the referral (jointly with the FDP Company or separately), whether the Proposed Modification proposed by the Secretary of State is in accordance with this Deed including being consistent with Clause 6.4 (*Scope of Operator Modification Proposal or Proposed Modification*), Clause 6.5 (*Limitations on scope of Proposed Modifications relating to certain Process Trigger Events*), and Clause 7.2 (*Other Limitations*); and
 - (b) if the FDP Company has made the referral (jointly with the Operator or separately), whether the Proposed Modification proposed by the Secretary of State is consistent with Clause 7.3 (*Limitations for the benefit of the FDP Company*).
- (H) Subject to Clauses (I), (J) and (K) below, the Tribunal shall not have the power to determine whether any proposal to modify the FDP other than a Proposed Modification proposed by the Secretary of State under Clause 6.3 is in accordance with this Deed.
- (I) If:
 - (i) the Tribunal determines that a Proposed Modification is not in accordance with this Deed (an **“Invalid Proposal”**);
 - (ii) the Secretary of State proposes subsequently a Proposed Modification under Clause 6.3(B) which relates to the same Process Trigger Event and the same or materially the same facts and circumstances as led to the Process Initiation Right to which the Invalid Proposal relates (a **“Second Proposed Modification”**);

- (iii) the Operator or the FDP Company objects to the Second Proposed Modification in accordance with the procedure at Clause 6.6(A); and
- (iv) the Dispute concerning the Second Proposed Modification is, in compliance with this Clause 9, referred to arbitration under this Clause 9.3.

then the Tribunal shall have the power to determine the Dispute in accordance with Clauses 9.3(J) and 9.3(K) below.

- (J) If the conditions set out at Clause 9.3(I) are met, the Tribunal shall:
 - (i) as part of the written stage of the arbitration, give each of the Operator and the Secretary of State the opportunity to propose to the Tribunal a revised modification (which must be exchanged simultaneously) which shall be prepared on the same basis as an Operator Modification Proposal or a Proposed Modification (as appropriate) (each a **“Dispute Modification Proposal”**); and
 - (ii) be entitled to determine which of the Operator’s Dispute Modification Proposal and the Secretary of State’s Dispute Modification Proposal is most appropriate to remedy the effect or likely effect of the Process Trigger Event or prevent a recurrence of the Process Trigger Event or both which is compliant with Clauses 6.4 (Scope of Operator Modification Proposal or Proposed Modification), 6.5 (Limitations on scope of Proposed Modifications relating to certain Process Trigger Events) where applicable), 7.2 (Other limitations) and 7.3 (Limitations for the benefit of the FDP Company) (such a determination being a **“Determined Modification”**).
- (K) If, having used reasonable endeavours to arrive at a determination under Clause 9.3(J)(ii) which adopts the Operator’s Dispute Modification Proposal or the Secretary of State’s Dispute Modification Proposal, the Tribunal concludes that neither Dispute Modification Proposal is capable technically of resolving the Dispute (including in relation to complying with the rights and obligations under this Deed and in particular Clauses 7.1 (Foreseen Events), 7.2 (Other limitations) and 7.3 (Limitations for the benefit of the FDP Company)), the Tribunal shall be entitled to draft another modification which contains elements of any or all of the Operator’s Dispute Modification Proposal, the Secretary of State’s Dispute Modification Proposal and the Tribunal’s own amendments (such modification being a **“Determined Modification”**), provided that where a Process Initiation Right arises as a result of the Process Trigger Event in Clause 6.1(I) (Conditions for Process Initiation Right), no modification drafted by the Tribunal shall include estimates of the DTM Costs that are outside the bounds of the Secretary of State's or Operator's Dispute Modification Proposal.
- (L) Notwithstanding any other provision of this Clause 9 (Dispute Resolution), any Party may at any time apply to the English courts to:
 - (i) seek urgent injunctive or other equitable relief, including specific

performance; or

- (ii) seek judicial review (to the extent jurisdiction may exist and save insofar as the existence of alternative remedies under this Deed would under normal principles exclude judicial review)

and in each case, any relief, remedy, enforcement decision or claim sought pursuant to Sub-Clause (L)(i) or (ii) above shall be a (“**Court Matter**”).

- (M) In respect of any Court Matter:
 - (i) the courts of England are to have jurisdiction to settle any Court Matter and any proceeding, suit or action arising out of or in connection with such Court Matter may be brought in the courts of England;
 - (ii) each Party 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. Each Party also agrees that a judgment against it in proceedings brought in England shall be conclusive and binding upon it and may be enforced in any other jurisdiction; and
 - (iii) each Party irrevocably submits and agrees to submit to the jurisdiction of the courts of England.

9.4 Joinder and Consolidation

- (A) Each Party agrees that if the Secretary of State and the Operator agree in writing (such agreement to be signed on behalf of each of the Secretary of State and the Operator) that two or more arbitrations begun under one or more Related Contracts should be heard in a single set of proceedings before a tribunal constituting arbitrators nominated by the Secretary of State and the Operator in their written agreement (the “**Nominated Tribunal**”), the proceedings shall be consolidated before the Nominated Tribunal.
- (B) Each Party agrees that if the Secretary of State and the Operator agree in writing (such agreement to be signed on behalf of each of the Secretary of State and the Operator) that a Party may be joined as an additional party to an arbitration involving other parties under any Related Contract, that Party shall be joined as a party to the arbitration in question.

10. CONSENTS BY SECRETARY OF STATE UNDER THE FDP

The Secretary of State agrees that, where the Operator is obliged to seek her consent or agreement for any matter under the FDP, such consent or agreement will not be unreasonably withheld or delayed.

11. NOTICES

- 11.1 A notice under this Deed shall only be effective if it is in writing. E-mail is permitted.

Faxes are not permitted.

11.2 Notices under this Deed shall be sent to a Party at its address below:

<u>Party</u>	<u>Address</u>	<u>E-mail address</u>
Secretary of State	Department of Energy & Climate Change 3 Whitehall Place London SW1A 2AW	None – notices to be sent by post
Operator	40 Grosvenor Place London SW1X 7EN FAO Institutional Contracts Management Team	nnblegal@edf-energy.com copied to chris.hamill@edf-energy.com and sara.davison@edf-energy.com
FDP Company	c/o BDO 55 Baker Street London W1U 7EU	None – notices to be sent by post

provided that a Party may change its notice details on giving notice to the other Parties of the change in accordance with this Clause 11 (Notices). That notice shall only be effective on the date falling five (5) clear Business Days after the notification has been received or such later date as may be specified in the notice.

11.3 Any Notice sent by post to the Operator for the attention of the Institutional Contracts Management Team shall be copied also to the same address for the attention of the Company Secretary.

11.4 Any notice given under this Deed shall, in the absence of earlier receipt, be deemed to have been duly given:

- (A) if delivered personally, on delivery;
- (B) if sent by first class post, two (2) clear Business Days after the date of posting; and
- (C) if sent by e-mail, when sent.

11.5 Unless the Parties agree otherwise in writing, any notice sent by e-mail shall be confirmed by hard copy delivered personally or sent by first class post but failure to send or receive the hard copy of that e-mail shall not invalidate the notice.

11.6 Any notice given under this Deed outside Working Hours in the place to which it is

addressed shall be deemed not to have been given until the start of the next period of Working Hours in such place.

12. INVALIDITY RESOLUTION PROCESS AND SECRETARY OF STATE CONSENT

- 12.1 If any event or circumstance occurs (including any change in applicable Law) which would render any provision of this Deed invalid, illegal, unenforceable, or impossible to perform (a “**Relevant Change**”), then in such case either the Secretary of State or the Operator may request, by notice to the other, that they meet and use reasonable endeavours to agree any changes to this Deed which are necessary to remedy such invalidity, illegality, unenforceability or impossibility so as to give effect to and preserve the intent of this Deed (as contemplated by the Parties at the Effective Date).
- 12.2 Without prejudice to Clause 12.3, if the Secretary of State and the Operator are unable to agree on the necessary changes within twenty (20) Business Days of the date of receipt of such notice, either of them may refer the matters below to be finally settled and determined (subject to Clause 12.4, Clause 12.5 and Clause 12.6) by the dispute resolution procedure set out in Clause 9 (*Dispute Resolution*) and on the basis as set out in this Clause 12 (*Invalidity Resolution Process and Secretary of State Consent*):
- (A) whether any change should be made to this Deed in order to remedy the circumstances brought about by such Relevant Change and to give effect to and preserve the intent of this Deed (as contemplated by the Parties at the Effective Date); and
 - (B) if a change or changes should be made, the change or changes to be made to this Deed such as are necessary to remedy the circumstances brought about by such Relevant Change and to give effect to and preserve the intent of this Deed (as contemplated by the Parties at the Effective Date) and restore the Secretary of State and the Operator to the greatest extent practicable to the position as if the Relevant Change had not taken place.
- 12.3 Where under Clause 12.2 or Clause 12.6 a Dispute is referred to arbitration in accordance with Clause 9 (*Dispute Resolution*):
- (A) the Secretary of State and the Operator agree that it is their intention that in the absence of their ability to agree any matter arising under Clause 12.2, such inability to agree shall not affect or impair the legality, validity or enforceability of any other provision of this Deed;
 - (B) during such Dispute the Secretary of State and the Operator shall submit to each other and the Tribunal such amendments to this Deed as they deem fit to resolve the Dispute;
 - (C) the Tribunal shall use reasonable endeavours to arrive at a final determination which adopts one party's proposed amendments submitted in accordance with Clause 12.3(D), provided that if neither the Secretary of State's nor the Operator's proposed amendments are capable technically of resolving the Dispute in the opinion of the Tribunal, the Tribunal shall be entitled to draft amendments which contain elements of either of the Secretary of State's or the

Operator's proposed amendments or to substitute the Tribunal's own amendments, in each case as necessary to resolve the Dispute and with due regard to the intent of the parties' proposed amendments;

- (D) prior to making its final determination the Tribunal shall provide the Secretary of State and the Operator with a draft final determination and give each of the Operator and the Secretary of State an additional opportunity to submit to each other and the Tribunal such amendments to this Deed as they deem fit to resolve the Dispute;
- (E) the Parties agree that the Tribunal has the power to make the final determination (including drafting amendments) and (subject to Clause 12.5) the final determination of the Tribunal of any Dispute relating to Clause 12.2 shall be legally binding.

12.4 The Secretary of State will notify the Operator in writing within twenty (20) Business Days of a determination under Clause 12.3 above, giving reasons, as to whether or not she is satisfied that this Deed as so amended would include adequate provision for the modification of the FDP in the event that provision made by it for the Technical Matters (including the financing of the Designated Technical Matters) ceases to be prudent.

12.5 No amendment to this Deed resulting from a determination under Clause 12.3 above shall be valid, binding or effective unless the Secretary of State shall have confirmed in writing in accordance with Clause 12.4 that she is satisfied that this Deed as so amended would include adequate provision for the modification of the FDP in the event that provision made by it for the Technical Matters (including the financing of the Designated Technical Matters) ceases to be prudent.

12.6 In the event that the Secretary of State notifies the Operator in accordance with Clause 12.4 that she is not satisfied with the Deed as amended, then either the Secretary of State or the Operator may, for a second time, refer the same matters as were referred previously under Clause 12.2 to be finally settled and determined (subject to Clause 12.4 and Clause 12.5) by the dispute resolution procedure set out in Clause 9 (*Dispute Resolution*) and on the basis as set out in this Clause 12 (a "**Second Invalidation Dispute**"). If, following a determination of a Second Invalidation Dispute under Clause 12.3, the Secretary of State notifies the Operator in accordance with Clause 12.4 that she is not satisfied with the Deed as amended, then this Clause 12 shall not apply and neither the Secretary of State nor the Operator shall have the right to make a further referral to arbitration in respect of such matters.

13. INVALIDITY

13.1 Save to the extent resolved in accordance with Clause 12 (*Invalidation Resolution Process and Secretary of State Consent*):

- (A) if at any time any provision of this Deed is or becomes invalid, illegal, unenforceable or impossible to perform such provision shall be severed and shall not affect or impair the legality, validity or enforceability of any other provision of this Deed; and

- (B) if any invalid, illegal or unenforceable provision of this Deed would be valid, legal, enforceable and possible to perform if some of it were deleted, the provision shall apply with the minimum deletion necessary to make it valid, legal and enforceable.

14. ANNOUNCEMENTS

- 14.1 Subject to Clause 14.2, no announcement concerning the matters contemplated by this Deed or any directly ancillary matter shall be made by any Party without the prior written approval of the others, that approval not to be unreasonably withheld or delayed.
- 14.2 Any Party may, after written notice to the other Parties, make an announcement concerning the matters contemplated by this Deed or any ancillary matter if required by:
 - (A) Law or Regulation; or
 - (B) any securities exchange or regulatory or governmental body to which that Party is subject or submits, wherever situated, including (amongst other bodies) London Stock Exchange plc, the Prudential Regulation Authority, the Financial Conduct Authority or The Panel on Takeovers and Mergers, whether or not the requirement has the force of law.

15. CONFIDENTIALITY

15.1 Applicable Law

This Clause 15 (*Confidentiality*) is subject to any requirements under the Nuclear Industries Security Regulations 2003 and the Anti-terrorism, Crime and Security Act 2001 and any other applicable Laws (recognised in the United Kingdom) such that any sensitive nuclear information shared with third parties is adequately protected in terms of the confidentiality, integrity and availability of the information.

15.2 Confidential Information

The Parties agree that the provisions of this Deed shall not be treated as Confidential Information and may (subject to Clause 14.1 (*Announcements*)) be disclosed without restriction.

15.3 Maintaining confidentiality

Each Party shall:

- (A) not disclose any Confidential Information to any person other than any of its officers, officials, employees or agents to the extent required to enable such Party to carry out its obligations under this Deed; and
- (B) use all reasonable endeavours to ensure that any person to whom any such Confidential Information is disclosed by it complies with the restrictions contained in this Clause 15 (*Confidentiality*) as if such person were a party to this Deed.

15.4 Permitted disclosures

Clause 15.3 (*Maintaining confidentiality*) shall not apply to:

- (A) any disclosure of information that is reasonably required by any person engaged in the performance of its obligations under this Deed for the performance of those obligations;
- (B) any disclosure of information by the Operator to any actual or prospective lender, credit provider or guarantor of the Operator (or any of its Affiliates), any administrative finance parties and each of their respective advisers provided that such person is under a duty of confidentiality to the Operator;
- (C) any matter which a Party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this Clause 15 (*Confidentiality*);
- (D) any disclosure to enable a determination to be made under the dispute resolution procedure;
- (E) any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or parliamentary obligation placed upon the Party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or, if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;
- (F) any disclosure of information which is already lawfully in the possession of the receiving Party, before its disclosure by the disclosing Party;
- (G) any provision of information to the Parties' own professional advisers or insurance advisers or, on placing or renewing any insurance policies, to a Party's insurer or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to a Party to enable it to carry out its obligations under this Deed, to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
- (H) any disclosure of information by the Secretary of State to any other department, office or agency of the Secretary of State or their respective advisers or to any person engaged in providing services to the Secretary of State for any purpose related to or ancillary to this Deed;
- (I) any disclosure 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 Secretary of State has used her resources.

15.5 Third party compliance

Where disclosure is permitted under Clause 15.4 (*Permitted Disclosures*), other than paragraphs (B), (E), (F) and (I) thereof, the Party providing the information shall procure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Deed.

15.6 Miscellaneous

- (A) For the purposes of the National Audit Act 1983, the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Operator or the FDP Company and may require any of them to produce such oral or written explanations as he considers necessary. For the avoidance of doubt, it is hereby declared that this Deed does not enable an examination under Section 6(3)(d) of the National Audit Act 1983 to be carried out in relation to the Operator or the FDP Company.
- (B) Neither the Operator nor the FDP Company shall make use of this Deed or any information issued or provided by or on behalf of the Secretary of State in connection with this Deed otherwise than for its own purposes except with the prior written consent of the Secretary of State.
- (C) The Operator and the FDP Company acknowledge that the National Audit Office has the right to publish details of this Deed in its relevant reports to Parliament.
- (D) The provisions of this Clause 15 (*Confidentiality*) are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

16. FREEDOM OF INFORMATION

16.1 Co-operation with information disclosure requests

The Operator and the FDP Company acknowledge that the Secretary of State is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Secretary of State to enable the Secretary of State to comply with her information disclosure obligations.

16.2 Requests for information

- (A) Each of the Operator and the FDP Company shall transfer to the Secretary of State all requests for information it receives as soon as practicable and shall not respond directly to a request for information unless expressly authorised to do so by the Secretary of State other than to inform the sender of such request that its request for information must be sent directly to the Secretary of State.
- (B) If the Secretary of State receives a request for information pursuant to an FOIA request or the Environmental Information Regulations, each of the Operator and the FDP Company shall provide the Secretary of State with a copy of all relevant information in its possession, or power, in the form that the Secretary of

State requires as soon as practicable and in any event within ten (10) Business Days (or such other period as the Secretary of State may reasonably specify) of the Secretary of State's request.

- (C) Each of the Operator and the FDP Company shall provide all necessary assistance as is reasonably requested by the Secretary of State to enable the Secretary of State to respond to the request for information within the time for compliance set out in the FOIA or the Environmental Information Regulations, as applicable.
- (D) If the Secretary of State is requested to disclose any Confidential Information of any other Party pursuant to a request for information, the Secretary of State shall (to the extent practicable and permissible under the FOIA, the Environmental Information Regulations and any other guidance then in force applicable to the Secretary of State):
 - (i) inform that other Party as soon as practicable after receipt and in any event within five (5) Business Days of receiving such a request; and
 - (ii) prior to the making of a disclosure pursuant to a request for information, allow that other Party to have a reasonable opportunity to make representations to the Secretary of State as to whether or not Confidential Information and/or any other information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations, as applicable, and on what basis information should be disclosed.
- (E) Notwithstanding paragraph (D) above, the Secretary of State shall be responsible for determining, in her sole and absolute discretion and notwithstanding any other provision in this Deed or any other agreement, whether Confidential Information and/or any other information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations, as applicable, and whether any information is to be disclosed in response to a request for information.
- (F) If the Secretary of State determines that disclosure pursuant to the FOIA, or the Environmental Information Regulations, as applicable, is required and any other Party has objected to such disclosure or to the extent of the proposed disclosure, the Secretary of State shall give that other Party as much prior notice as is reasonably practicable prior to such disclosure being made.

16.3 Acknowledgement as to disclosure of information generally

Each of the Operator and the FDP Company acknowledges that, notwithstanding the provisions of Clause 15 (Confidentiality), the Secretary of State may be obliged under the FOIA to disclose information concerning that Party or this Deed:

- (A) in certain circumstances without consulting that Party; or
- (B) following consultation with that Party and having taken its views into account,

provided always that where paragraph (A) above applies the Secretary of State shall take reasonable steps, where appropriate, to give the relevant Party advance notice or, failing that, to draw the disclosure to that Party's attention after any such disclosure.

17. PROTECTION OF PERSONAL DATA

Each of the Operator and the FDP Company shall comply at all times prior to the Termination Date with data protection legislation and shall not perform its obligations under this Deed in such a way as to cause the Secretary of State to breach any of her applicable obligations under the data protection legislation.

18. RECORD KEEPING

18.1 Records

Each of the Operator and the FDP Company shall retain, maintain, transfer and dispose of all documents of record (including superseded records) in accordance with any and all applicable Laws and Regulations to which it is subject.

18.2 Information in relation to this Deed

- (A) Without prejudice to Clause 18.1 (*Records*), the Parties shall, for a period of at least five (5) years from the date of the relevant document or record, maintain (or cause to be maintained) complete and accurate copies or original versions of all documents and records which are material in the context of the provisions of this Deed.
- (B) The Secretary of State shall have the right to inspect such documents and records during Working Hours upon reasonable notice.

19. FURTHER ASSURANCE

Each Party shall at its own cost, from time to time on request, do or procure the doing of all acts and/or execute or procure the execution of all documents in a form satisfactory to the other Party which another Party may reasonably consider necessary for giving full effect to this Deed and securing to the other Party the full benefit of the rights, powers and remedies conferred upon the other Party in this Deed.

20. ENTIRE AGREEMENT

- 20.1 This Deed constitutes the whole and only agreement between the Parties relating to the subject matter of this Deed.
- 20.2 Except in the case of fraud, each Party acknowledges that in entering into this Deed it is not relying upon any pre-contractual statement which is not set out in this Deed.
- 20.3 Except in the case of fraud, no Party shall have any right of action against any other Party arising out of or in connection with any pre-contractual statement except to the extent that it is repeated in this Deed.

20.4 For the purposes of this Clause 20 (*Entire Agreement*), “**pre-contractual statement**” means any draft, agreement, undertaking, representation, warranty, promise, assurance or arrangement of any nature whatsoever, whether or not in writing, relating to the subject matter of this Deed made or given by any person at any time before this Deed becomes legally binding.

20.5 Without prejudice to clause 12 (*Invalidity Resolution Process and Secretary of State Consent*), this Deed may only be varied by a document expressed to be a variation to this Deed executed as a deed by each of the Parties (provided that the consent of the FDP Company shall not be required except in the case of a variation (i) to Clause 7.3 (*Limitations for the benefit of the FDP Company*), (ii) to the FDP Company’s rights under Clause 6.6 (*Right to object to Proposed Modification*) or (iii) which imposes any new obligation on, or alters any of the obligations of, the FDP Company.

21. ASSIGNMENT

21.1 Neither the Operator nor the FDP Company shall assign or purport to assign all or any part of the benefit of, or its rights or benefits under, this Deed without the prior written consent of the Secretary of State.

21.2 Neither the Operator nor the FDP Company shall make a declaration of trust in respect of or enter into any arrangement whereby it agrees to hold in trust for any other person all or any part of the benefit of, or its rights or benefits under, this Deed.

22. COSTS

Except as otherwise stated in this Deed, the Operator shall pay its own costs and expenses in addition to the Secretary of State’s costs and expenses in relation to the execution and carrying into effect of this Deed. The FDP Company shall be responsible for its own costs and expenses.

23. THIRD PARTY RIGHTS

The Parties to this Deed do not intend that any term of this Deed should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Deed.

24. WAIVER OF SOVEREIGN IMMUNITY

The Secretary of State irrevocably waives all immunity to which she may be or become entitled in relation to this Deed, including immunity from enforcement and all legal proceedings, both in respect of herself and her assets to the fullest extent permitted by Law.

25. EXECUTION AS A DEED

Each of the Parties intends this Deed to be a deed governed by private law and confirms that it is executed and delivered as a deed, notwithstanding the fact that any one or more of the Parties may only execute it under hand.

26. COUNTERPARTS

- 26.1 This Deed may be executed in any number of counterparts, and by the Parties to this Deed on separate counterparts, but will not be effective until each such Party has executed at least one counterpart.
- 26.2 Each counterpart shall constitute an original of this Deed, but all the counterparts shall together constitute one and the same instrument.

27. NO PREJUDICE TO THE SECRETARY OF STATE'S RIGHTS AND POWERS

The terms of this Deed are without prejudice to the statutory powers of the Secretary of State under the Act (with the exception of her powers under Section 48 of the Act) or any other rights of the Secretary of State which do not derive from this Deed.

28. GOVERNING LAW

- 28.1 This Deed is to be governed by and construed in accordance with English law.
- 28.2 Any Dispute arising out of or in connection with this Deed, whether contractual or non-contractual, is to be governed by and determined in accordance with English law.

IN WITNESS of which this document has been executed as a deed by each Party and is delivered on the date stated at the beginning of this Deed.

SIGNATURES

SECRETARY OF STATE

The corporate seal of the **SECRETARY OF STATE FOR ENERGY AND CLIMATE CHANGE** hereunto affixed is authenticated by:

.....

Greg Clark, Secretary of State / Hugo Robson
(authorised by the Secretary of State)

on the day of

EXECUTED as a **DEED** by

**THE NUCLEAR DECOMMISSIONING FUND
COMPANY LIMITED**

acting by

.....

(Name of authorised director)

.....

(Signature of authorised director)

Director

in the presence of

Witness's signature:

.....

Name:

.....

Address:

.....

.....

.....

EXECUTED as a **DEED** by

NNB GENERATION COMPANY (HPC) LIMITED

acting by

.....

(Name of authorised director)

.....

(Signature of authorised director)

Director

in the presence of

Witness's signature:

.....

Name:

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Address:

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