

**STANDSTILL AGREEMENT**

DATED

BETWEEN

THE SECRETARY OF STATE FOR ENERGY AND CLIMATE CHANGE

AND

NNB GENERATION COMPANY (HPC) LIMITED

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**THIS AGREEMENT** is dated \_\_\_\_\_ and made as a deed

**BETWEEN:**

- (1) **THE SECRETARY OF STATE FOR ENERGY AND CLIMATE CHANGE** (the **Secretary of State**) and
- (2) **NNB GENERATION COMPANY (HPC) LIMITED**, a company incorporated in England and Wales having its registered office at 40 Grosvenor Place, London SW1X 7EN, United Kingdom, with registered company number 06937084 (the **Company**).

**WHEREAS:**

- (A) The Company intends to carry out the construction and operation of a new build nuclear plant at the Hinkley Point C site, Somerset, UK.
- (B) Pursuant to the requirements of the Energy Act 2008, the Company has entered into various agreements with the FDP Creditors, which together provide for the steps to be taken by the Company to decommission the nuclear plant and manage and dispose of waste from the nuclear plant, and the financing of such steps. As part of those arrangements, the Company has agreed to provide certain Security Interests to the FDP Creditors to secure certain liabilities arising under those arrangements.
- (C) The Parties have therefore agreed to enter into this agreement in order to regulate the enforcement of the Security Interests granted by the Company to the Secretary of State.
- (D) It is intended that this document take effect as a deed notwithstanding the fact that any party may only execute this document under hand.

**IT IS AGREED** as follows:

**1. INTERPRETATION**

**1.1** In this Agreement:

**Acceding Creditor** means any person that has become a party to this Agreement in accordance with Clause 5 (*Accession*).

**Accession Undertaking** means an undertaking substantially in the form set out in Schedule 1 (*Form of Accession Undertaking*).

**Applicable Law(s)** has the meaning given to that term in the FAP.

**Borrowings** has the meaning given to that term in the FAP.

**Business Day** has the meaning given to that term in the FAP.

**Company Security** means any Security Interest created or conferred by the Company.

**Decommissioning** has the meaning given to that term in the FAP.

**Disposal Event** means either (i) any Key Generation Asset, title to the Site or the Non-Voting Operator Share is disposed of to any person except where all the Key Generation Assets, title to the Site and the Non-Voting Operator Share are disposed of to the same person concurrently; or (ii) the Company transfers its rights and obligations to any person and does not transfer any of its share in TNDFC, title to the Site and title to the Key Generation Assets concurrently.

**Document** has the meaning given to that term in the FAP.

**Early Closure Trigger Event** has the meaning given to that term in the FAP.

**FAP** or **Funding Arrangements Plan** means the “Funding Arrangements Plan for Hinkley Point C” between the Company and TNDFC.

**FDP Creditor** means each of the Secretary of State and TNDFC.

**FDP Secured Liabilities** has the meaning given to that term in the FAP.

**Hinkley Point C** has the meaning given to it in the FAP.

**Indexed** has the meaning given to that term in the FAP.

**Key Generation Asset** has the meaning given to that term in the FAP.

**Non-Voting Operator Share** has the meaning given to that term in the FAP.

**Nuclear Site Licence** has the meaning given to that term in the FAP.

**ONR** has the meaning given to it in the FAP.

**Original Parties** means the Secretary of State and the Company.

**Party** means a party to this Agreement.

**Security Interest** means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

**Security Trigger Event** has the meaning given to that term in the FAP.

**Security Trigger Event Action** has the meaning given to that term in the FAP.

**Significant Creditor** has the meaning given to that term in the FAP.

**Site** has the meaning given to that term in the FAP.

**Standstill Period** means, in relation to a Security Trigger Event, the period beginning on the date on which the Security Trigger Event occurs and ending on the earlier of: (i) the date falling twelve (12) months after the Security Trigger Event has been notified to

the Acceding Creditors pursuant to Clause 7.4(b), provided that such period shall be reduced on a day for day basis in the event that the Company fails to give notice by the deadline specified in Clause 7.4(a) on time; or (ii) the date on which the Security Trigger Event ceases to be continuing under the FAP; or (iii) such other date as may be agreed between the Parties as being the date on which the Security Trigger Event was remedied.

**Standstill Period Default** means, during a Standstill Period, the occurrence of any of the following events:

- (a) ONR instructs the Decommissioning of Hinkley Point C or the Company volunteers a commencement of decommissioning under the Nuclear Site Licence in respect of which the Secretary of State has consented and ONR has consented to such decommissioning under the Nuclear Reactors (Environmental Impact Assessment for Decommissioning Regulations) 1999 and in each case the same has not been reversed or suspended within twenty (20) Business Days;
- (b) the Company fails to comply with Clause 3.3(a) unless the Company's failure to comply is caused by an administrative or technical error and such error is rectified within three (3) Business Days;
- (c) any Acceding Creditor enforces or has enforced any Company Security;
- (d) the dissolution of the Company; and/or
- (e) any Disposal Event occurs.

**TNDFC** means The Nuclear Decommissioning Fund Company Limited, a company incorporated in England (registered number 07992648) and whose registered office is c/o BDO LLP, 55 Baker Street, London W1U 7EU.

**WTCs Debt** has the meaning given to that term in the FAP.

## 1.2 Construction

- (a) In this Agreement, except where the context otherwise requires:
  - (i) any reference to this "Agreement" includes a reference to the Schedules and the Annexes, each of which forms part of this Agreement for all purposes;
  - (ii) references to an enactment or statutory provision includes a reference to any repealed statute or statutory provision which it re-enacts (with or without modification);
  - (iii) words importing the singular includes the plural and vice versa;
  - (iv) references to one gender include other genders;

- (v) references to a person shall be construed so as to include its successors in title, 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;
- (vi) a reference to a person shall include a reference to a firm, a body corporate, an unincorporated association, a partnership or to an individual's executors or administrators;
- (vii) a reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated, supplemented or superseded at any time;
- (viii) a reference to a clause, sub-clause, paragraph, section (other than to a section to a statutory provision) or a Schedule (other than to a Schedule to a statutory provision) shall be a reference to a clause, sub-clause, paragraph, section or a Schedule (as the case may be) of or to this Agreement;
- (ix) any reference to a "day" (including within the phrase "Business Day") shall mean a period of 24 hours running from midnight to midnight;
- (x) if a period of time is specified as from a given day, or from the day of an act or event, it shall be calculated exclusive of that day;
- (xi) references to 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 deemed to include what most nearly approximates the English legal term in that jurisdiction and references to any English statute or enactment shall be deemed to include any equivalent or analogous laws or rules in any other jurisdiction;
- (xii) references to writing shall include any modes of reproducing words in any legible form and shall include:
  - 1. email, attachment to an email or publication on a website;
  - 2. material included in a prospectus, an information memorandum or a circular;
  - 3. providing a reference or hyperlink to the relevant material where such reference or hyperlink is set out in a document that is published or addressed to the recipient; and/or
  - 4. providing physical or electronic access to the relevant material,in each case, except where expressly stated otherwise;

- (xiii) a reference to “includes” or “including” shall mean “includes without limitation” or “including without limitation”;
- (xiv) the contents page and headings in this Agreement are for convenience only and shall not affect its interpretation;
- (xv) references to this Agreement include this Agreement as amended or supplemented in accordance with its provisions and Applicable Law;
- (xvi) a reference to “cost” of any person shall not include any amount paid or payable in respect of value added tax that is recoverable by that person or the representation member of its value added tax group registration;
- (xvii) a reference to “assets” includes present and future properties, revenues and rights of every description;
- (xviii) a reference to “disposal” includes a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary, and “dispose” will be construed accordingly;
- (xix) a reference to a “distribution” of or out of the assets of the Company includes a distribution of cash and a distribution of consideration in a form other than cash;
- (xx) a reference to “proceeds” includes proceeds in cash and proceeds in a form other than cash and
- (xxi) a reference to “indebtedness” includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent.

### **1.3 Third party rights**

- (a) Unless expressly provided to the contrary in this Agreement, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 (the **Third Parties Act**) to enforce or to enjoy the benefit of any provision of this Agreement.
- (b) Notwithstanding any provision of this Agreement, the consent of any person who is not a party to this Agreement is not required to rescind or vary this Agreement at any time.

## **2. APPLICATION OF STANDSTILL PROVISIONS**

Clauses 3 (*Restrictions*), 4 (*Turnover*), 7.3 (*Notice of non-compliance with Clause 3.3(a)*) and 7.4 (*Security Trigger Event*) shall not apply:

- (a) prior to the first date on which an Acceding Creditor becomes a Party to this Agreement pursuant to Clause 5 (*Accession*) below; and

- (b) on or after the first date on which an Acceding Creditor becomes a Party to this Agreement pursuant to Clause 5 (*Accession*) below, in any period during which:
- (i) the Company has Borrowings which are secured by the grant of a floating charge in favour of a creditor who is not a Party;
  - (ii) the Company has Borrowings which are unsecured with one or more creditors who are not Parties in an aggregate amount exceeding £2 billion (Indexed); or
  - (iii) the Company has no Borrowings with any Acceding Creditor.

### **3. RESTRICTIONS**

#### **3.1 Restriction on enforcement: Secretary of State**

The Secretary of State undertakes to each Acceding Creditor that, with respect to any Security Trigger Event, it shall only take Security Trigger Event Action during the Standstill Period for that Security Trigger Event if either:

- (a) a Standstill Period Default has occurred and is continuing; or
- (b) the Company has acted with the intent of subverting the restriction contained in Clause 3.3(a).

#### **3.2 Restriction on payments to Acceding Creditors**

In accordance with clause 6 (*Significant Creditors to be Informed of FDP Obligations*) of the FAP, each Acceding Creditor hereby acknowledges the obligations of the Company under clause 5 (*FDP Contributions have priority over debt and dividend payments*) of the FAP.

#### **3.3 Restrictions: Company**

- (a) The Company shall not carry out or procure to be carried out any of the actions listed in clauses 5.1.1 to 5.1.7 (inclusive) of the FAP during any Standstill Period unless agreed otherwise in writing by the Secretary of State.
- (b) Each Acceding Creditor hereby acknowledges and agrees that the Company is subject to the prohibitions contained in Clause 3.3(a) above.

### **4. TURNOVER**

#### **4.1 General Turnover Provisions**

If, at any time, any Acceding Creditor:

- (a) receives any payment (including by way of set off) or distribution in cash or in kind, which constitutes a breach by the Company of Clause 3.3(a); or



- (b) receives any proceeds of enforcement of any Company Security (including by way of set off) prior to the discharge in full of the FDP Secured Liabilities then owing to the FDP Creditors,

then the relevant Acceding Creditor shall:

- (i) within three (3) Business Days of receipt of such payment or proceeds notify details of such receipt or recovery to each FDP Creditor;
- (ii) hold such assets and moneys received or recovered by it (other than any amounts which exceed the FDP Secured Liabilities) on trust for the FDP Creditors;
- (iii) promptly pay an amount equal to such receipt or recovery (other than any amounts which exceed the FDP Secured Liabilities) to the Secretary of State (or such other person as the Secretary of State may direct); and
- (iv) at its own expense do all such things required to transfer to the Secretary of State (or such other person as the Secretary of State may direct) all payments and distributions which must be turned over or to hold all payments and distributions which must be held in trust in accordance with this Agreement and shall pay all costs and stamp duties in connection with these,

provided that nothing in this Clause 4.1 shall create or be deemed to create a Security Interest.

#### **4.2 Payment to TNDFC**

The Secretary of State shall pay or procure the payment of any amount recovered by it pursuant to Clause 4.1 (*General Turnover Provisions*) which exceeds the amount of WTCs Debt to TNDFC within a reasonable time.

#### **4.3 Failure of Trust**

If for any reason, any trust created pursuant to the provisions of this Agreement, is, becomes or is deemed to be, invalid or unenforceable, the Party otherwise obliged to hold any amounts on such trust shall pay and deliver to the Secretary of State (or such other person as the Secretary of State may direct) for application in accordance with the provisions of this Agreement an amount equal to the payment, receipt or recovery in cash or, if in kind, the value conferred which it would otherwise have been bound to hold on trust for or as property of the relevant persons.

### **5. ACCESSION**

The following persons may become a Party by means of an Accession Undertaking which is identical (save as for administrative provisions) to the form set out in Schedule 1 (*Form of Accession Undertaking*):

- (a) any person to whom the Company has granted a floating charge;
- (b) any person who has been granted a Security Interest in relation to the shares of the Company;
- (c) any person who would need to accede in order for the standstill provisions to apply pursuant to Clause 2(b); and
- (d) any other person as agreed between the Company and the Secretary of State from time to time.

## **6. SECRETARY OF STATE: ACTION**

Notwithstanding any provision of this Agreement, the Secretary of State may, during any Standstill Period:

- (a) take any action pursuant to, exercise any right under or do any thing pursuant to the provisions of any agreement which is not a Document; or
- (b) take any action against any person in connection with any fraud.

## **7. GENERAL PROVISIONS**

### **7.1 Duration**

- (a) This Agreement will remain in effect until the date on which the Secretary of State provides notice in writing to the Company that the WTCs Debt has been discharged to the satisfaction of the Secretary of State.
- (b) The perpetuity period for each trust created by this Agreement shall be one hundred and twenty-five years.

### **7.2 Exercise of Secretary of State's discretion**

Notwithstanding any other provision of this Agreement to the contrary, nothing in this Agreement shall apply to the exercise of any rights, discretions or obligations of the Secretary of State granted pursuant to any agreement, other than the FAP, or to the exercise of any right, power or discretion accorded to the Secretary of State pursuant to the terms of the Energy Act 2008.

### **7.3 Notice of non-compliance with Clause 3.3(a)**

The Company shall notify the Secretary of State as soon as it becomes aware of any non-compliance with Clause 3.3(a).

#### **7.4 Security Trigger Event**

- (a) The Company undertakes to the Secretary of State that it shall notify the Secretary of State of the occurrence of any Security Trigger Event promptly and in any event:
- (i) in the case of paragraphs (a) and (b) of the definition of Security Trigger Event, within three (3) Business Days of its occurrence; or
  - (ii) in the case of limb (c) of the definition of Security Trigger Event, within three (3) Business Days of the date on which the Company reasonably believes that the Early Closure Trigger Event has occurred.
- (b) The Secretary of State shall notify, or procure that TNDFC notifies, the Acceding Creditors as soon as reasonably practicable of the occurrence of any Security Trigger Event of which the Secretary of State is aware, provided that the Secretary of State may lawfully give such information and it is reasonable for the Secretary of State to do so.
- (c) The Secretary of State agrees to provide, or procure that TNDFC provides, to an Acceding Creditor such information as any Acceding Creditor may reasonably request in connection with a Security Trigger Event provided that the Secretary of State may lawfully give such information and it is reasonable for the Secretary of State to do so.
- (d) The time period for the bringing of any action within paragraph (c) of the exclusions to the definition of Security Trigger Event Action shall commence from the date on which any cure or remedy period granted either under the provisions of this Agreement or the provisions of the FAP terminates. No Party may advance the argument that action falling within paragraph (c) of the exclusions to the definition of Security Trigger Event Action is time barred before the termination of all applicable cure and remedy periods under the provisions of this Agreement and the provisions of the FAP.

#### **7.5 Notices**

- (a) Any notice (including any approval, consent or other communication) given by one Party to another Party in connection with this Agreement:
- (i) must be in writing in the English language;
  - (ii) must be served by one of the following methods:
    - (A) hand delivery to the address of the addressee; and/or
    - (B) first or second class post to the address of the addressee (or airmail if posted to or from a place outside the United Kingdom); and/or

(C) any alternative method agreed in writing between the Parties from time to time; and

(iii) must be given in accordance with the notice delivery detailed specified by the relevant Party from time to time in accordance with this Clause 7.5.

(b) This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

(c) The relevant details of each Party to this Agreement are as follows:

(i) to the Secretary of State at:	(ii) to the Company at:
Department of Energy and Climate Change 3 Whitehall Place London SW1A 2AW Marked for the attention of Permanent Secretary	40 Grosvenor Place London SW1X 7EN Marked for the attention of Chief Executive

or, in the case of each Acceding Creditor, the address specified next to its name in Schedule 1 (*Form of Accession Undertaking*), or at such other address or email address as it may have notified to the other parties in accordance with this clause.

(d) Each Party may notify alternative notice delivery details to the other Parties in accordance with Clause 7.5(a) above, if, at any time, the notice delivery details specified in this Agreement or most recently notified to the other Parties in accordance with this Clause 7.5(d) are no longer appropriate for the service of notice to such Party.

(e) In the absence of evidence of earlier receipt, any notice shall take effect from the time that it is deemed to be received in accordance with Clause 7.5(f) below.

(f) Subject to Clause 7.5(g) below, a notice is deemed to be received:

(i) in the case of a notice delivered by hand to the address of the addressee, upon delivery at that address;

(ii) in the case of a posted letter within the United Kingdom, by first class post, 24 hours after posting or in the case of second class post within the United Kingdom or airmail, if posted to or from a place outside the United Kingdom, 48 hours after posting; or

(iii) in respect of any other agreed method of notice, at the time agreed between the Parties.

- (g) A notice that would otherwise be deemed in accordance with Clause 7.5(f) above to be received either on a day which is not a Business Day or after 5 p.m. on any Business Day according to local time in the place of receipt, shall be deemed to be received on the next following Business Day.

## **8. PRESERVATION**

### **8.1 Partial invalidity**

If, at any time, any provision of this Agreement 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 nor the legality, validity or enforceability of that provision under the law of any other jurisdiction will in any way be affected or impaired.

### **8.2 No impairment**

If, at any time after its date, any provision of this Agreement is not binding on or enforceable in accordance with its terms against a person expressed to be a party to this Agreement neither the binding nature nor the enforceability of that provision or any other provision of this Agreement will be impaired as against the other party(ies) to this Agreement.

### **8.3 Remedies and waivers**

No failure to exercise, nor any delay in exercising, on the part of any Party, any right or remedy under the FAP shall operate as a waiver of any such right or remedy or constitute an election to affirm the FAP. No election to affirm the FAP on the part of an FDP Creditor shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in the FAP are cumulative and not exclusive of any rights or remedies provided by law.

## **9. AMENDMENTS AND WAIVERS**

This Agreement may be amended or waived only with the written consent of each of the Original Parties. For the avoidance of doubt, the consent of any Acceding Creditor shall not be required in order to amend or waive this Agreement. The Company shall provide notice to any Acceding Creditor of any amendment or waiver as soon as reasonably practicable after the written consent of both Parties is obtained.

## **10. GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

**11. JURISDICTION**

- (a) The English courts have exclusive jurisdiction to settle any dispute including a dispute relating to any non-contractual obligations arising out of or in connection with this Agreement and each party submits to the exclusive jurisdiction of the English courts.
  
- (b) The English courts are the most appropriate and convenient courts to settle any such dispute.

**IN WITNESS** of which this Agreement has been executed as deed and has been delivered on the date which appears first on page 1.



**SIGNATORIES TO THE AGREEMENT**

**The 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

**The Company**

**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: .....

Address: .....



**SCHEDULE 1  
FORM OF ACCESSION UNDERTAKING**

To: The Secretary of State for Energy and Climate Change (the “**Secretary of State**”) and  
NNB Generation Company Limited (the “**Company**”)

From: [*Acceding Creditor*] of [*address*]

THIS UNDERTAKING is made on [*date*] by [*Insert full name of new Acceding Creditor*] (the “**Acceding Creditor**”) in relation to the standstill agreement (the “**Standstill Agreement**”) dated [ ] between, [among others,] the Company and the Secretary of State. Terms defined in the Standstill Agreement shall, unless otherwise defined in this Undertaking, bear the same meanings when used in this Undertaking.

In consideration of the Acceding Creditor being accepted as an Acceding Creditor for the purposes of the Standstill Agreement, the Acceding Creditor confirms that, as from [*date*], it intends to be party to the Standstill Agreement as an Acceding Creditor and undertakes to perform all the obligations expressed in the Standstill Agreement to be assumed by an Acceding Creditor and agrees that it shall be bound by all the provisions of the Standstill Agreement, as if it had been an original party to the Standstill Agreement.

This Undertaking and any non-contractual obligations arising out of or in connection with it are governed by English law.

**THIS UNDERTAKING** has been entered into on the date stated above

**EXECUTED** as a **DEED**

[*insert full name of Acceding Creditor*]

By:

Address:

Fax: