

## Section 46 Agreement

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

Dated [●] 2025

THE SECRETARY OF STATE FOR ENERGY SECURITY AND  
NET ZERO

and

NNB GENERATION COMPANY (SZC) LIMITED

and

SZC NUCLEAR DECOMMISSIONING FUND COMPANY  
LIMITED

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This Deed is made on [●]

Between:

- (1) **THE SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO** (the “**Secretary of State**”);
- (2) **SIZEWELL C LIMITED**, a company incorporated in England (registered number 09284825) and whose registered office is at 25 Copthall Avenue, London, England, EC2R 7BP (the “**Operator**”); and
- (3) **SZC NUCLEAR DECOMMISSIONING FUND COMPANY LIMITED**, a company incorporated in England and Wales (registered number [●]) and whose registered office is [●] (the “**FDP Company**”).

Whereas:

- (A) The Operator intends to construct the Facility at Sizewell 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 Sizewell 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, their 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 their powers under Section 48, the extent to which the Secretary of State will exercise them and the limits which the Secretary of State will observe in exercising them.

## 1 Definitions and Interpretations

### 1.1 Definitions

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;

“**Authority**” means the Gas and Electricity Markets Authority, being the “Authority” under the Operator’s Electricity Generation Licence;

**"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 8.3.12;

**"Compliance Event"** has the meaning given to that term in the FAP, as of the Effective Date;

**"Determined Modification"** has the meaning given in Clauses 8.3.10(ii) and 8.3.11;

**"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 8.3.10(i);

**"Dispute Notice"** has the meaning given in Clause 8.1.1;

**"Early Termination Event"** has the meaning given in Clause 5.1 (*Early Termination Events*);

**"Effective Date"** means the date on which the FDP becomes effective following approval by the Secretary of State;

**"Facility"** means the Sizewell C nuclear power generation facility;

**"FAP"** means the Operator's funding arrangements plan which forms part of the FDP;

**"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 and the provisions of this Deed;

**"FDP Allowance Building Block"** has the meaning given in the Operator's Electricity Generation Licence;

**"FDP Final Amount"** has the meaning given to that term in the Operator's Electricity Generation Licence, as of the Effective Date;

**"Final Modification Determination"** means an SoS Proposed Modification or a Determined Modification to which Clause 6.9.3 applies;

**"Fixed Assumption"** has the meaning given in Clause (ii)(a);

**"Fixed Parameters"** means:

- (a) the methodology pursuant to which the Contributions are calculated in accordance with any Quinquennial Review as set out in the FAP, including:
  - (i) the processes and criteria for calculation and verification of the Key Assumptions in accordance with paragraphs 1.16 and 1.17 of Schedule 9 (*Quinquennial Review Process*) and Part B (*Key Assumptions Verification*) of Schedule 11 (*Financial Verification*) of the FAP; and
  - (ii) the Approved P Value, provided that the Costs of Decommissioning and the Costs of Spent Fuel Management are funded with a 25% contingency;
- (b) the duration of the Primary Funding Period shall be no less than fifty (50) years from the First Criticality Payment Date;

- (c) no Spreading Period during the Primary Funding Period shall be less than five (5) years;
  - (d) Contributions shall be invested pursuant to the Investment Rules and any Investment Strategy in effect from First Criticality up to prior to FYE EPFP – 2 shall be consistent with the Growth Portfolio; and
  - (e) no amendments shall be made to Section I (*Disbursements Period and Decommissioning Period Procedures*) of the FAP which would have the effect of materially increasing actual costs,
- (and, any reference to the FAP or any clause of the FAP in this defined term "Fixed Parameters" shall be construed as a reference to the FAP or such clause as of the Effective Date);

**"FOIA"** means the Freedom of Information Act 2000;

**"Foreseen Events"** has the meaning given in Clause 7.1 (*Foreseen Events*);

**"Funding Outcomes Report"** has the meaning given to it in the FAP;

**"Funding Outcomes Report Period"** has the meaning given to it in the FAP;

**"Funding Outcomes Report Trigger Date"** means the date on which the Secretary of State initiates a process in accordance with Clause 6.1.15;

**"Invalid Proposal"** has the meaning given in Clause 8.3.9(i)

**"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, 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;

**"Licence Modification Date"** means the date on which the Secretary of State modifies the Operator's Electricity Generation Licence to incorporate the Special Conditions;

**"Limited Fixed Parameters"** means:

- (a) the processes and criteria for calculation and verification of the Key Assumptions shall remain as set out in paragraphs 1.16 and 1.17 of Schedule 9 (*Quinquennial Review Process*) and Part B (*Key Assumptions Verification*) of Schedule 11 (*Financial Verification*) of the FAP; and
- (b) the Approved P Value provided that the contingency applied on the estimated End of Generation Spent Fuel Disposal Target and the End of Generation Decommissioning Target shall not exceed 40%,

(and, any reference to the FAP or any clause of the FAP in this defined term "Limited Fixed Parameters" shall be construed as a reference to the FAP or such clause as of the Effective Date);

**"Material and Adverse Effect"** means an event or circumstance having a material and adverse impact on:

- (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 Section J (Payment and Disbursement Policy) of the FDP; or

(c) the Operator's entitlement to recover Contributions in accordance with the Operator's Electricity Generation Licence;

**"Modification Proposal Objection Notice"** has the meaning given in Clause 6.8.1;

**"NASTA"** has the meaning given to the term "Nuclear Administration and Statutory Transfers Agreement" in the FAP;

**"Nominated Tribunal"** has the meaning given in Clause 8.4.1;

**"Nuclear Assets"** means any assets which are required to be decommissioned under the FDP (including the nuclear island, the nuclear store for low level waste and any nuclear fuel);

**"Nuclear Liabilities"** means any liability for, or in respect of, decommissioning the Nuclear Assets as set out under the FDP;

**"Operator Led Modification Trigger"** has the meaning given to that term in Clause 6.5.1;

**"Operator Modification Proposal"** means a modification proposal submitted by the Operator in connection with Clause 6.2.2 or Clause 6.5.2;

**"Operator Remedy Period"** has the meaning given in Clause 5.2 (*Operator Remedy Period*);

**"Operator's Electricity Generation Licence"** means the electricity generation licence issued to the Operator under Section 6 of the Electricity Act 1989;

**"Partial Revocation Period"** has the meaning given to that term in the Operator's Electricity Generation Licence, as of the Effective Date;

**"Process Initiation Notice"** has the meaning given in Clause 6.2.1;

**"Process Initiation Right"** has the meaning given in Clause 6.1 (*Conditions for Process Initiation Right*);

**"Process Trigger Event"** has the meaning given in Clause 6.1 (*Conditions for Process Initiation Right*);

**"Proposed Modification Notice"** has the meaning given in Clause 6.3.3;

**"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 Clause 11.1;

**"Remedy"** for the purposes of Clause 5 (*Early Termination*) has the meaning given in Clause 5.3 (*Operator Remedy*);

**"Second Invalidity Dispute"** has the meaning given in Clause 11.6;

**“Second Proposed Modification”** has the meaning given in Clause 8.3.9(ii);

**“Senior Representative”** means the senior employee or officer selected by a Party to represent it in relation to Clause 8.2.1;

**“SoS Proposed Modification”** has the meaning given in Clause 6.3.2;

**“Specified Compliance Event”** means a breach of the FAP by the Operator which constitutes the occurrence of a Compliance Event within the meaning of sub-clauses 47.2.1(a) to 47.2.1(d) of the FAP, taken as of the Effective Date;

**“Special Conditions”** means the special conditions added to the Operator’s Electricity Generation Licence by the Secretary of State on the Licence Modification Date pursuant to Section 6 of the Nuclear Energy (Financing) Act, 2022, as such terms and conditions are modified by either the Secretary of State or the Authority;

**“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:

- (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.

**“Tribunal”** has the meaning given in Clause 8.3.3;

**“Waste Transfer Contracts”** means each of:

- (a) 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
- (b) the Waste Transfer Agreement between the Secretary of State and the Operator relating to the transfer of spent fuel arising from the Site.

**“Working Hours”** means 9.30 a.m. to 5.30 p.m. on a Business Day.

### 1.3 Interpretation

In this Deed, unless otherwise specified:

- 1.3.1 references to Clauses, paragraphs and Schedules are to clauses, paragraphs of, and schedules to, this Deed;
- 1.3.2 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;
- 1.3.3 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;

- 1.3.4 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;
- 1.3.5 references to a **"company"** shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.3.6 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;
- 1.3.7 use of any gender includes the other genders and use of the singular only also includes the plural and vice versa;
- 1.3.8 the expressions **"body corporate"** and **"subsidiary"** shall have the meaning given in the Companies Act 2006;
- 1.3.9 any reference to a **"day"** (including within the phrase "Business Day") shall mean a period of 24 hours running from midnight to midnight;
- 1.3.10 references to times of the day are to London time;
- 1.3.11 references to writing shall include any modes of reproducing words in a legible and non-transitory form;
- 1.3.12 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;
- 1.3.13 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
- 1.3.14 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*), Clauses 7.2.1(ii)(b), 7.2.1(ii)(c) and 7.2.1(ii)(d) (*Other limitations*), Clause 7.2.1(ii)(f) (to the extent only that it relates to Clauses 7.2.1(ii)(b), 7.2.1(ii)(c) and 7.2.1(ii)(d)), Clause 7.3 (*Limitations for the benefit of the FDP Company*), Clause 13 (*Announcements*), Clause 14 (*Confidentiality*), Clause 21 (*Costs*), Clause 22 (*Third Party Rights*), Clause 23 (*Waiver of Sovereign Immunity*), and Clause 27 (*Governing Law*) which shall continue without limit in time.

### 3 Prudent Provision

The Secretary of State acknowledges that the Secretary of State 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:

- 3.1.1 the DWMP has been costed in line with a P80 calculated on the basis of a hybrid model;
- 3.1.2 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%;
- 3.1.3 the target Fund Assets Value is designed to ensure that the: (1) End of Primary Funding Period Target is reached by the FYE of Primary Funding Period; and (2) the End of Generation Target is reached in accordance with the Funding Path by FYE End of Secondary Funding Period, in each case in accordance with the Funding Path and the Investment Rules;
- 3.1.4 the approach and timings of the Growth Portfolio, Long Term Portfolio and De-Risking Period phases of the Investment Strategy required by the Investment Rules;
- 3.1.5 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;
- 3.1.6 the Spreading Period set out within the FAP;
- 3.1.7 the calculation of liabilities for waste disposal and management are derived from the Waste Transfer Contracts; and
- 3.1.8 under the Operator's Electricity Generation Licence, the Operator is entitled to an allowed revenue which includes a specific FDP Allowance Building Block, which is sized to cover (i) the Contributions that the Operator is required to make to the FDP Company in accordance with the FAP; and (ii) the operating costs of the FDP Company.

### 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 their 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**”:

- 5.1.1 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;
- 5.1.2 conviction of the Operator or any Associated Person (excluding the FDP Company) for fraud, 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;
- 5.1.3 a Specified Compliance Event having occurred; or
- 5.1.4 pursuant to a Nuclear Transfer Scheme, the completion of a transfer of the Nuclear Assets and Nuclear Liabilities:
  - (i) to the extent effected by way of a share transfer, through a transfer of GenCo’s entire issued share capital away from existing shareholders; and
  - (ii) to the extent effected by way an asset transfer, away from the Operator to the Nuclear Decommissioning Authority or another nuclear site licensee on behalf of the Secretary of State.

### 5.2 Operator Remedy Period

- 5.2.1 The “**Operator Remedy Period**” in respect of an Early Termination Event shall be:
  - (i) in respect of an Early Termination Event described in Clause 5.1.2 a period of three (3) calendar months from the date of conviction; and
  - (ii) in respect of an Early Termination Event described in Clause 5.1.3, 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.
- 5.2.2 An Early Termination Event described in Clause 5.1.1 shall not be capable of remedy.

### 5.3 Operator Remedy

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

- 5.3.1 in respect of an Early Termination Event described in Clause 5.1.2, 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; and
- 5.3.2 in respect of an Early Termination Event described in Clause 5.1.3, 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*):

- 5.4.1 if an Early Termination Event referred to in any of Clauses 5.1.2 and 5.1.3 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 terminate this Deed by giving not less than ten (10) Business Days' notice of termination to the Operator and the FDP Company; and
- 5.4.2 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 Clauses [5.1.1 and 5.1.4]<sup>1</sup>.

## 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 8.1 (*Initiation of Dispute Resolution Procedure*).

## 6 Process Initiation

### 6.1 Conditions for Process Initiation Right

Subject to the limitations set out in this Deed, 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**"):

- 6.1.1 termination of the Nuclear Site Licence granted to the Operator without a new, replacement or substitute Nuclear Site Licence being granted in respect of Sizewell C to the Operator or to another person;
- 6.1.2 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 55.3 (*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;
- 6.1.3 in respect of a relevant period, the Operator requests an FDP Annual Contribution (as defined in the Special Conditions) which is not in compliance with the Contributions Notices for such relevant period on more than two occasions, but provided that any proposed modification of the Secretary of State as a result of such event shall be limited alignment of the terms of the FAP with the Special Conditions to ensure Contributions Notices comply with the FDP Annual Contribution;
- 6.1.4 the auditors of the FDP Company qualify any of its audited financial statements due to any event or circumstance which has or is likely to have a material and adverse impact on the ability of the FDP Company to comply with any provision of Section J (*Payments and Disbursements Policy*) of the FAP;

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<sup>1</sup> Draft Note: Cross reference to be updated based on the final list of termination events.

- 6.1.5** a Compliance Event occurs and is continuing and:
- (i) such Compliance Event has or is reasonably likely to have a Material and Adverse Effect;
  - (ii) such Compliance Event is not remedied within any remedy period specified in respect of it in the FAP; and
  - (iii) 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;
- 6.1.6** the Operator does not credit the FDP Account (as defined in the Special Conditions) in any month pursuant to and in accordance with the Operator's Electricity Generation Licence and such failure has occurred on more than two occasions (for the avoidance of doubt, save to the extent the Operator is required or permitted to utilise the relevant funds for another purpose in accordance with the FAP);
- 6.1.7** 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;
- 6.1.8** the Operator is obliged to propose a modification in accordance with Special Condition 13 (*Funded Decommissioning Programme*) of the Special Conditions and fails to do in accordance with and in the time required by the Special Conditions;
- 6.1.9** the Operator is obliged to propose a modification in accordance with clause 48 (*Unlawful Obligations*) or clause 49 (*Force Majeure*) of the FAP and fails to do so in accordance with those clauses;
- 6.1.10** 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 (save if such event or circumstance is an Unplanned Early Permanent Shutdown or Single Reactor Early Shutdown, in respect of which, Clause 6.1.11 and Clause 6.1.12 shall apply respectively);
- 6.1.11** 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, and where the Operator has become obliged to propose a Modification in accordance with the FAP and has failed to do so in the time required under the FAP;
- 6.1.12** a Single Reactor Early Shutdown occurs or the Operator notifies any of the ONR, the FDP Company or the Secretary of State that it has decided to undertake a Single Reactor Early Shutdown and where the Operator has become obliged to propose a Modification in accordance with the FAP and has failed to do so in the time required under the FAP;
- 6.1.13** 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;

**6.1.14** without prejudice to the Secretary of State's rights under Clause 5 (*Early Termination*), the occurrence of an Early Termination Event; or

**6.1.15** following receipt of a Funding Outcomes Report, the Secretary of State determines that such Funding Outcomes Report demonstrates that the FDP no longer provides prudent provision for the Technical Matters (including the financing of the Designated Technical Matters),

(save in respect of Clause 6.1.10 and Clause 6.1.15, any reference to the FAP or any clause of the FAP in this Clause 6.1 shall be construed as a reference to the FAP or such clause as of the Effective Date).

## **6.2 Opportunity for Operator to submit an Operator Modification Proposal**

**6.2.1** 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*), they 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**").

**6.2.2** 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 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).

**6.2.3** 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 prepared in connection with this Clause 6.2.3 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**

**6.3.1** If a Process Trigger Event or an Operator Led Modification Trigger has occurred and the Operator has submitted an Operator Modification Proposal, the Secretary of

State shall, if applicable, give due consideration to such Operator Modification Proposal 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 6.2.3) propose their own modification proposal.

**6.3.2** Where the Secretary of State:

- (i) proposes amendments to the Operator Modification Proposal; or
- (ii) proposes their own modification proposal in accordance with Clause 6.3.1(iii),

the modification proposed by the Secretary of State pursuant to Clause 6.3.1(ii) or Clause 6.3.1(iii) shall be an “**SoS Proposed Modification**” and shall be treated as a modification proposed by the Secretary of State for the purposes of Section 49 of the Act.

**6.3.3** The Secretary of State shall notify the Operator and the FDP Company of an SoS Proposed Modification (a “**Proposed Modification Notice**”). Any Proposed Modification Notice shall contain:

- (i) full particulars of the SoS 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 SoS 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 SoS 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**

Subject to the limitations set out in this Deed, any Operator Modification Proposal arising out of Clause 6.2.3 or an SoS Proposed Modification should be:

- 6.4.1** 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
- 6.4.2** reasonable having regard to the nature and consequences of the Process Trigger Event that has occurred.

**6.5 Operator modifications required by the FAP and the Operator Electricity Generation Licence**

- 6.5.1** It is acknowledged that the terms of the FAP and the Operator Electricity Generation Licence require the Operator to propose modifications in certain circumstances ("**Operator Led Modification Trigger**").
- 6.5.2** Subject to Clause 6.5.3 and the limitations set out in this Deed, a proposed modification by the Operator following an Operator Led Modification Trigger should be:
- (i) appropriate to remedy the effect or likely effect of the relevant event giving rise to such Operator Led Modification Trigger or to prevent a recurrence of such event; and
  - (ii) reasonable having regard to the nature and consequences of the Operator Led Modification Trigger that has occurred.
- 6.5.3** A proposed modification by the Operator, following an Operator Led Modification Trigger shall, to the extent reasonably practicable, contain:
- (i) particulars of the proposal, provided that it is acknowledged and agreed that any such particulars may need further development over time after the initial submission of a proposed modification (including as a result of any necessary DWMP updates and technical verification); and
  - (ii) a statement that the Operator reasonably believes that the Proposed Modification is consistent with the provisions of Clause 6.5;
  - (iii) details of any areas of the proposal which may require further development or verification before a modification can be properly effected.
- 6.5.4** Any proposed modification by the Operator as a result of an Operator Led Modification Trigger, shall be subject to Clause 6.3.

## **6.6 Costs of funding a Modification**

Without prejudice to the generality of Clause 7.2.2, during any period when the Special Conditions are incorporated in the Operator's Electricity Generation Licence (including during a Partial Revocation Period), if a modification (whether initiated or effected in accordance with this Deed or the Energy Act 2008 more generally) requires or is reasonably expected to require an increase in the amounts of Contributions payable in a given year:

- 6.6.1** subject to limb (ii) below, any such modification shall be subject to such increase in the amounts of Contributions payable commencing from the first Charging Year (as defined in the Operator's Electricity Generation Licence) to occur after the modification is effected in respect of which such increased amount of Contribution being capable of being recognised and accepted in accordance with the Operator's Electricity Generation Licence as forming part of the FDP Allowance Building Block recoverable within such Charging Year; and
- 6.6.2** in respect of any modification in connection with Special Condition 13.23 of the Operator's Electricity Generation Licence, any such modification shall become effective for purpose of determining payment obligations of the Operator or the FDP Company at the point in time when such increased amount (including any amounts constituting the FDP Final Amount) is recognised and accepted in accordance with the Operator's Electricity Generation Licence as forming part of the FDP Allowance Building Block.

## 6.7 Limitations on scope of Proposed Modifications relating to certain Process Trigger Events

Where a Process Initiation Right arises as a result of the Process Trigger Event in Clause 6.1.7, any SoS Proposed Modification made as a result may relate only to:

- 6.7.1 the estimates of the DTM Costs likely to be incurred; or
  - 6.7.2 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.

## 6.8 Right to object to SoS Proposed Modification

6.8.1 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 SoS Proposed Modification. The procedure set out in this Clause 6.8.1 shall constitute the Operator’s and, if applicable, the FDP Company’s opportunity to make representations regarding the SoS Proposed Modification pursuant to Section 49(5) of the Act.

- 6.8.2 If the Operator or, if applicable, the FDP Company delivers a Modification Proposal Objection Notice under Clause 6.8.1, this shall be treated as a Dispute Notice and the dispute resolution procedure in Clause 8 (*Dispute Resolution*) shall apply.

## 6.9 Effect of a proposal to modify pending and following dispute resolution process

- 6.9.1 Where a Modification Proposal Objection Notice has been delivered in accordance with Clause 6.8.1, the relevant SoS Proposed Modification will not be made while its compliance with this Deed is subject to any dispute resolution proceeding in accordance with Clause 8 (*Dispute Resolution*);
- 6.9.2 Once any dispute resolution proceedings under Clause 8 (*Dispute Resolution*) have come to an end on the basis set out in Clause 6.9.3, the Secretary of State will (to the extent that the Secretary of State 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 SoS Proposed Modification or Determined Modification (as appropriate) in accordance with Section 49(6) of the Act;



**6.9.3** Without prejudice to any other means by which the dispute resolution proceedings may come to an end, a SoS Proposed Modification or Determined Modification shall be deemed for the purposes of Clauses 6.9.1 and 6.9.2 no longer to be subject to any dispute resolution proceeding in accordance with Clause 8 (*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 SoS 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.

**6.9.4** If the Tribunal has made a Final Modification Determination in relation to either:

- (i) an SoS Proposed Modification; or
- (ii) (following an Invalid Proposal) a Second Proposed Modification Notice,

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 SoS 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**

**7.1.1** It is acknowledged and agreed that notwithstanding the occurrence of a Process Trigger Event or an Operator Led Modification Trigger, the FDP may still make prudent provision for the Technical Matters (including the financing of the Designated Technical Matters) and therefore a modification may not be required nor be an appropriate measure to be taken. The Parties shall have due regard to this when proposing a modification, including the basis on which prudent provision has been assessed and determined when the FDP was approved.

**7.1.2** Without prejudice to the generality of Clause 7.1.1, 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 6.1.10 cannot give the

Secretary of State a Process Initiation Right on the occurrence of any of the following Foreseen Events:

- (i) changes to estimates of DTM Costs;
- (ii) changes in operational strategy at Sizewell 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;
- (iii) all acquisitions and disposals of Permitted Investments;
- (iv) any change (directly or indirectly) in the ownership, including any change of control, of the Operator;
- (v) change in the ownership and governance of the FDP Company in accordance with the FDP;
- (vi) differences of opinion arising between the Operator, the FDP Company and relevant verifier;
- (vii) expropriation of the Fund Assets or all or a substantial part of the Operator's assets or undertakings 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; and
- (viii) the performance by either the Operator or the FDP Company of any obligation under the FDP in accordance with its terms,

(save in respect of paragraph (viii), any reference to the FAP or any clause of the FAP in clause 7.1.2 shall be construed as a reference to the FAP or such clause as of the Effective Date).

## 7.2 Other limitations

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

- (i) Clause 6.3 (*Secretary of State decides on SoS Proposed Modification*); or
- (ii) as regards items (b), (c), (d), and (f) below only, in the event that this Deed is terminated following an Early Termination Event, Section 48(2) of the Act,

shall:

- (a) 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:
  - (1) clauses 27 and 28 of the FAP;
  - (2) the Operator Undertakings and the Operator Business Restrictions;
  - (3) the Approved Operator Business Scope;
  - (4) the first Funding Outcomes Report Period shall not be earlier than the date specified in the FAP; and

- (5) clauses 25 (Operator Insolvency Event and Nuclear Transfer Scheme) to 32 (Fund Assets to be used for Funding the Designated Technical Matters Despite Insolvency of the Operator or transfer) of the FAP;
- (b) 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;
- (c) 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;
- (d) 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;
- (e) propose a modification to the definition of Allowable Costs;
- (f) 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 (a) to (e) above; or
- (g) 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:
  - (1) prior to the Funding Outcomes Report Trigger Date, the Fixed Parameters; and
  - (2) following the Funding Outcomes Report Trigger Date, the Limited Fixed Parameters.

**7.2.2** Save to the extent the Special Conditions have been revoked in full in accordance with the terms of the Operator's Electricity Generation Licence (and not replaced), any SoS Proposed Modification must be capable of satisfying the requirements of the FDP Funding Principles and, accordingly, the Secretary of State's right to propose or impose a Modification in accordance with this Deed shall be limited to Modifications which do not undermine, contradict or cause the Operator or the FDP Company to incur any liabilities which are inconsistent with the FDP Funding Principles. The **"FDP Funding Principles"** are:

- (i) payments and liabilities of the Operator and the FDP Company in respect of the FDP (including the costs associated with a relevant Modification) are recoverable in full by the Operator in accordance with the Special Conditions;
- (ii) by the time the Operator is obliged to make payments under the FDP in respect of any FDP liabilities (including the costs arising from a relevant Modification), the Operator will have received sufficient amounts in connection with the FDP Allowance Building Block in order to make such payments; and
- (iii) there shall be no increase of FDP liabilities of the Operator or the FDP Company in connection with the FDP unless the same is recoverable in full in accordance with the Operator's Electricity Generation Licence.

### 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:

- 7.3.1 impose any additional liability on the Independent Directors or Independent Director Shareholders in those respective capacities;
- 7.3.2 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;
- 7.3.3 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
- 7.3.4 impose obligations on the FDP Company which the FDP Company could not reasonably be expected to fulfil.

## 8 Dispute Resolution

### 8.1 Initiation of Dispute Resolution Procedure

- 8.1.1 A Party shall refer a Dispute to the dispute resolution procedure as set out in this Clause 8 (*Dispute Resolution*) by serving a notice (a "**Dispute Notice**") on the other Party or Parties.
- 8.1.2 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.

### 8.2 Discussions before dispute resolution

- 8.2.1 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.
- 8.2.2 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 8.2.2.

- 8.2.3** 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 8.2.2) made by a Party in the course of discussions pursuant to this Clause 8.2 (*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.

### **8.3 Arbitration**

- 8.3.1** 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 8.3 (*Arbitration*)).
- 8.3.2** 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 8.3 (*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).
- 8.3.3** 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 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.
- 8.3.4** The seat, or legal place, of arbitration shall be London.
- 8.3.5** The language to be used in the arbitration shall be English.
- 8.3.6** The law of the arbitration agreement shall be the law of England and Wales.
- 8.3.7** 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) whether an Operator Modification Proposal is in compliance with this Deed;
  - (iv) 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 SoS 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 SoS Proposed Modification proposed by the Secretary of State is consistent with Clause 7.3 (*Limitations for the benefit of the FDP Company*).

**8.3.8** Subject to Clauses 8.3.9, 8.3.10 and 8.3.11 below, the Tribunal shall not have the power to determine whether any proposal to modify the FDP other than an SoS Proposed Modification under Clause 6.3 (*Secretary of State decides on Proposed Modification*) is in accordance with this Deed.

**8.3.9** If:

- (i) the Tribunal determines that an SoS Proposed Modification is not in accordance with this Deed (an “**Invalid Proposal**”);
- (ii) the Secretary of State proposes subsequently an SoS Proposed Modification under Clause 6.3.2 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 6.8.1; and
- (iv) the Dispute concerning the Second Proposed Modification is, in compliance with this Clause 8, referred to arbitration under this Clause 8.3,

then the Tribunal shall have the power to determine the Dispute in accordance with Clauses 8.3.10 and 8.3.11 below.

**8.3.10** If the conditions set out at Clause 8.3.12 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 SoS 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*) (Clause 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**”).

8.3.11 If, having used reasonable endeavours to arrive at a determination under Clause 8.3.10(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 6.1.11, 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.

8.3.12 Notwithstanding any other provision of this Clause 8 (*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 Clause 8.3.9(i) or (ii) above shall be a (“**Court Matter**”).

8.3.13 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.

## 8.4 Joinder and Consolidation

8.4.1 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;

**8.4.2** 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.

## **9 Consents by Secretary of State Under the FDP**

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

## **10 Notices**

**10.1** A notice under this Deed shall only be effective if it is in writing. E-mail is permitted. Faxes are not permitted.

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

| <b>Party</b>       | <b>Address</b>   | <b>E-mail address</b>                |
|--------------------|--|--------------------------------------|
| Secretary of State | Department of Energy<br>Security and Net Zero<br>3 Whitehall Place<br>London<br>SW1A 2AW | None – notices to be sent<br>by post |
| Operator           | 25 Copthall Avenue,<br>London, England,<br>EC2R 7BP                                      | [●]                                  |
| FDP Company        | [●]  | [●]                                  |

provided that a Party may change its notice details on giving notice to the other Parties of the change in accordance with this Clause 10 (*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.

**10.3** 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.

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

**10.4.1** if delivered personally, on delivery;

**10.4.2** if sent by first class post, two (2) clear Business Days after the date of posting; and

**10.4.3** if sent by e-mail, when sent.

**10.5** 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.



- 10.6** 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.

## **11 Invalidity Resolution Process and Secretary of State Consent**

- 11.1** If any event or circumstance occurs (including any change in applicable Law or change in the Operator's Electricity Generation Licence) 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).

- 11.2** Without prejudice to Clause 11.3, 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 11.4, Clause 11.5 and Clause 11.6) by the dispute resolution procedure set out in Clause 8 (*Dispute Resolution*) and on the basis as set out in this Clause 11 (*Invalidity Resolution Process and Secretary of State Consent*):

**11.2.1** 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

**11.2.2** 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.

- 11.3** Where under Clause 11.2 or Clause 11.6 a Dispute is referred to arbitration in accordance with Clause 8 (*Dispute Resolution*):

**11.3.1** 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 11.2, such inability to agree shall not affect or impair the legality, validity or enforceability of any other provision of this Deed;

**11.3.2** 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;

**11.3.3** the Tribunal shall use reasonable endeavours to arrive at a final determination which adopts one party's proposed amendments submitted in accordance with Clause 11.3.4, 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;

**11.3.4** 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;

**11.3.5** the Parties agree that the Tribunal has the power to make the final determination (including drafting amendments) and (subject to Clause 11.5) the final determination of the Tribunal of any Dispute relating to Clause 11.2 shall be legally binding.

**11.4** The Secretary of State will notify the Operator in writing within twenty (20) Business Days of a determination under Clause 11.3, giving reasons, as to whether or not the Secretary of State 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.

**11.5** No amendment to this Deed resulting from a determination under Clause 11.3 shall be valid, binding or effective unless the Secretary of State shall have confirmed in writing in accordance with Clause 11.4 that the Secretary of State 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.

**11.6** In the event that the Secretary of State notifies the Operator in accordance with Clause that the Secretary of State 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 11.2 to be finally settled and determined (subject to Clause 11.4 and Clause 11.5) by the dispute resolution procedure set out in Clause 8 (*Dispute Resolution*) and on the basis as set out in this Clause 11 (a "**Second Invalidity Dispute**"). If, following a determination of a Second Invalidity Dispute under Clause 11.3, the Secretary of State notifies the Operator in accordance with Clause 11.4 that the Secretary of State is not satisfied with the Deed as amended, then this Clause 11 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.

## **12 Invalidity**

Save to the extent resolved in accordance with Clause 11 (*Invalidity Resolution Process and Secretary of State Consent*):

**12.1** 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

**12.2** 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.

## **13 Announcements**

**13.1** Subject to Clause 13.2, 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.

**13.2** 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:

**13.2.1** Law or Regulation; or

**13.2.2** 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.

## **14 Confidentiality**

### **14.1 Applicable Law**

This Clause 14 (*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.

### **14.2 Confidential Information**

The Parties agree that the provisions of this Deed shall not be treated as Confidential Information and may (subject to Clause 13.1) be disclosed without restriction.

### **14.3 Maintaining confidentiality**

Each Party shall:

**14.3.1** 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

**14.3.2** 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 14 (*Confidentiality*) as if such person were a party to this Deed.

### **14.4 Permitted disclosures**

Clause 14.3 (*Maintaining confidentiality*) shall not apply to:

**14.4.1** 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;

**14.4.2** 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;

- 14.4.3 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 14 (*Confidentiality*);
- 14.4.4 any disclosure to enable a determination to be made under the dispute resolution procedure;
- 14.4.5 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;
- 14.4.6 any disclosure of information which is already lawfully in the possession of the receiving Party, before its disclosure by the disclosing Party;
- 14.4.7 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;
- 14.4.8 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;
- 14.4.9 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 their resources.

#### **14.5 Third party compliance**

Where disclosure is permitted under Clause 14.4 (*Permitted disclosures*), other than paragraphs 14.4.2, 14.4.5, 14.4.6 and 14.4.9 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.

#### **14.6 Miscellaneous**

- 14.6.1 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;
- 14.6.2 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;

- 14.6.3 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;
- 14.6.4 The provisions of this Clause 14 (*Confidentiality*) are without prejudice to the application of the Official Secrets Acts 1911 to 1989.

## **15 Freedom of Information**

### **15.1 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 their information disclosure obligations.

### **15.2 Requests for information**

- 15.2.1 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;
- 15.2.2 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;
- 15.2.3 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.
- 15.2.4 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.
- 15.2.5 Notwithstanding Clause 15.2.4, the Secretary of State shall be responsible for determining, in their 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;

- 15.2.6** 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.

### **15.3 Acknowledgement as to disclosure of information generally**

Each of the Operator and the FDP Company acknowledges that, notwithstanding the provisions of Clause 14 (*Confidentiality*), the Secretary of State may be obliged under the FOIA to disclose information concerning that Party or this Deed:

- 15.3.1** in certain circumstances without consulting that Party; or

- 15.3.2** following consultation with that Party and having taken its views into account,

provided always that where Clause 15.3.1 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.

## **16 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 their applicable obligations under the data protection legislation.

## **17 Record Keeping**

### **17.1 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.

### **17.2 Information in relation to this Deed**

- 17.2.1** Without prejudice to Clause 17.1 (*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;

- 17.2.2** The Secretary of State shall have the right to inspect such documents and records during Working Hours upon reasonable notice.

## **18 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.

## **19 Entire Agreement**

- 19.1** This Deed constitutes the whole and only agreement between the Parties relating to the subject matter of this Deed.
- 19.2** 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.
- 19.3** 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.
- 19.4** For the purposes of this Clause 19 (*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.
- 19.5** Without prejudice to Clause 11 (*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 6.8 (*Right to object to Proposed Modification*) or (iii) which imposes any new obligation on, or alters any of the obligations of, the FDP Company.

## **20 Assignment**

- 20.1** [Except as explicitly permitted in accordance with the terms of the Operator’s Electricity Generation Licence and the FAP,] 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.
- 20.2** Except as explicitly permitted in accordance with the terms of the Operator’s Electricity Generation Licence and the FAP, 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.

## **21 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.

**22 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.

**23 Waiver of Sovereign Immunity**

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

**24 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.

**25 Counterparts**

**25.1** 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.

**25.2** Each counterpart shall constitute an original of this Deed, but all the counterparts shall together constitute one and the same instrument.

**26 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 their powers under Section 48 of the Act) or any other rights of the Secretary of State which do not derive from this Deed.

**27 Governing Law**

**27.1** This Deed is to be governed by and construed in accordance with English law.

**27.2** 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.

*[insert signature blocks]*