

DATED

THE SECRETARY OF STATE FOR ENERGY AND CLIMATE CHANGE

and

NNB GENERATION COMPANY (HPC) LIMITED

WASTE TRANSFER AGREEMENT
relating to the transfer of spent fuel arising
from Hinkley Point C

Slaughter and May
One Bunhill Row
London EC1Y 8YY

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THIS AGREEMENT is made on

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 (registered number 6937084) and whose registered office is at 40 Grosvenor Place, London SW1X 7EN (the “**Operator**”).

WHEREAS

- (A) The Operator intends to construct nuclear power generation facilities at the Site and has applied for a nuclear site licence.
- (B) The Energy Act 2008 requires the Operator to submit an FDP for approval by the Secretary of State, prohibits use of the Site by virtue of the nuclear site licence until that approval has been given and requires the Operator to comply with the approved FDP thereafter. The Operator will also be required to demonstrate in its FDP that it has a credible route for the disposal of its Spent Fuel.
- (C) Pursuant to the Managing Radioactive Waste Safely White Paper published in June 2008, the Government has decided on a framework for managing higher activity radioactive waste in the long term through geological disposal, coupled with safe and secure interim storage and ongoing research and development to support its optimised implementation.
- (D) The Government expects to take title to and liability for the Operator’s Spent Fuel on a specified Transfer Date aligned with the Operator’s decommissioning timetable. It is currently expected that the Transfer Date will precede the date(s) upon which Spent Fuel is disposed of in the GDF Programme. This is termed “Early Transfer”. In the event of Early Transfer, the Operator’s plans to manage the Spent Fuel prior to its eventual disposal will transfer to Government on the Transfer Date, together with sufficient funds to carry out the plan set out in the Operator’s DWMP. It is the Government’s policy, therefore, that the GDF Programme will also be made available for the disposal of New Build Waste and the Secretary of State has offered a service whereby she will take title to, and liability for, Spent Fuel arising out of the operation of the New Build Fleet in the UK, including at the Site.
- (E) The Government expects the Operator to meet its full share of the waste disposal costs incurred as a result of this service. If Spent Fuel is transferred before its disposal in the GDF Programme commences, the Operator will also pay the Secretary of State for the management of Spent Fuel from the date it is transferred to the Secretary of State to the Assumed Disposal Dates of such Spent Fuel.
- (F) The Government has developed a methodology which explains the approach to be taken when calculating the Operator’s Waste Transfer Price and the waste management costs. This methodology states that the principles underpinning this framework are that:

- (i) The Government's objective is to ensure the safe disposal of ILW and Spent Fuel from new nuclear power stations without cost to the taxpayer and to facilitate investment through providing cost certainty. The Government is not seeking to make profits over and above a level consistent with being compensated for the level of risk assumed, but does expect operators to meet their full share of waste disposal costs.
 - (ii) Prospective new nuclear operators should be provided with certainty over the maximum Waste Transfer Price they will be expected to pay the Government for the provision of a waste disposal service.
 - (iii) The Waste Transfer Price charged by Government should be set at a level over and above expected costs and include a risk premium to compensate the taxpayer for taking on the risk of subsequent cost escalation.
 - (iv) Where possible the Waste Transfer Price should be set in relation to actual cost data, to ensure that any risk premium is proportionate and properly reflects the financial risks being assumed by the Government. Therefore in order to enable greater certainty over expected costs, the setting of the Waste Transfer Price should be deferred for a specified deferral period, provided that in certain circumstances it will be possible for the Waste Transfer Price to be set before the end of the deferral period.
 - (v) During the deferral period the Operator must make prudent provision for its waste disposal liabilities, based on an Expected Waste Transfer Price provided by the Government.
- (G) The Methodology also states that it is necessary to consider the scenario, albeit unlikely in the Government's view, in which progress in the implementation of geological disposal is very much slower than currently anticipated and hence the end of the deferral period falls before the date upon which a site is selected for the GDF. In this case it will not be possible to set a Waste Transfer Price in relation to a GDF Site Specific Cost Estimate and the Default Methodology will apply.
- (H) The Government's methodology anticipates that a "Lump Sum Payment" (as described in the methodology) will be made by operators to the Government in order to compensate the Government for taking over the task of waste management during the period between transfer and disposal of waste. In this Agreement that "Lump Sum Payment" is made up of two amounts, namely an amount equal to the Waste Management Cost Estimate and the Waste Management Risk Premium.
- (I) It is acknowledged that over the long period covered by this Agreement it is conceivable that there might be a change to the Government's policy that geological disposal is the way in which higher activity waste will be managed in the long term, which will constitute a Contract Assumption Deviation under this Agreement. One consequence of such a change would be that it would no longer be appropriate for the Default Methodology to be triggered as a result of GDF site selection not being achieved. In this situation an alternative approach to determining the Waste Transfer Price has been devised and is set out at Schedule 9 (*Contract Assumption Deviation*).

- (J) It is acknowledged that most of the ILW generated at the Site will be generated during the operation and decommissioning of each reactor on the Site. However, it is also acknowledged that a certain amount of ILW will be generated as a consequence of the onsite storage and packaging of Waste long after decommissioning of the reactors on the Site has been completed (such ILW being defined as Tail-End ILW). Title to Tail-End ILW will not need to be transferred by the Operator to the Secretary of State because Tail-End ILW will come into existence during the Secretary of State's period of management of the storage facilities relating to Spent Fuel. For this reason, it is not considered practical for the term of the ILW WTC to continue until the Tail-End ILW is in existence. Therefore, the payment amount due to the Secretary of State in consideration for the management and disposal of Tail-End ILW shall be included in the DWMP and the Waste Management Cost Estimate.
- (K) This Agreement sets out:
- (i) the terms and conditions upon which the Secretary of State has agreed to take title to, and liability for, Waste; and
 - (ii) the basis for determining the price for such transfer of Waste.

1. DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this Agreement and the Schedules to it:

- “Affected Party”** has the meaning given in Clause 20.1;
- “Agreed Standards”** means the standards of conduct set out in Schedule 5 (*Agreed Standards*);
- “Agreement Date”** means the date of this Agreement;
- “Alternative Currency”** has the meaning given in Clause 36.1;
- “Alternative Currency Effective Date”** has the meaning given in Clause 36.1;
- “Annual Report”** has the meaning given in the FDP;
- “Applicable Discount Period”** means the period from and including 1 January of the year after the year in which the Last Emplacement Date will occur to but excluding 1 January of the year in which the GDF Closure Date will occur;
- “Applicable Uplift Period”** means the period from and including 1 January of the year after the year in which the Commencement Date occurred to but excluding

1 January of the year in which the First Emplacement Date will occur;

“Assumed Disposal Dates”	<p>means a series of dates, to be no earlier than the Decommissioning End Date and no later than 31 December 2150, on which it is estimated that disposal of the Operator's Waste in the GDF Programme will occur, as:</p> <p>(A) agreed or determined in accordance with the Agreed Standards pursuant to Clause 10.2 and Clause 10.3 in relation to the most recent WTP Review Start Date or the Price Setting Review Start Date; or</p> <p>(B) if Schedule 8 (<i>GDF Site Selection Delay</i>) applies, as set out in Paragraph 2.2 of such Schedule;</p>
“Assumed Transfer Date”	<p>means the date upon which the Transfer is anticipated to occur, as set out in the DWMP from time to time;</p>
“Base Cost Unit Estimate”	<p>means the initial estimate of the total cost of the GDF Programme per DECC Unit of Waste produced at or from the Site, as calculated in accordance with Schedule 3 (<i>Calculation of Base Cost Unit Estimate</i>);</p>
“Business Day”	<p>means each day (other than Saturdays or Sundays) on which clearing banks in London are open for the transaction of ordinary business and “Business Days” shall be interpreted accordingly;</p>
“Cap”	<p>means £1,159,250/tU of packaged Spent Fuel in December 2012 money values;</p>
“Change”	<p>has the meaning given in Clause 19.1;</p>
“Change in Circumstance”	<p>means any changes to any rules and/or procedures with which either party is required to comply in order to perform its obligations as contemplated by this Agreement (whether made at the direction of any government, governmental body, regulator, competent authority or otherwise) but, for the avoidance of doubt, excluding any Change in Law;</p>
“Change in Law”	<p>means any of the following events occurring after the date of this Agreement:</p> <p>(i) the coming into effect, amendment or repeal of any Law or Directive;</p> <p>(ii) the coming into effect, amendment, supplement, termination, repeal or withdrawal of any Required Authorisation; or</p> <p>(iii) the change in the interpretation or application of any Law, Directive or Required Authorisation by any Competent</p>

Authority,

but, for the avoidance of doubt, excluding any Change in Circumstance;

“Change Request”	has the meaning given in Clause 19.4;
“Clause 22.3 Circumstances”	has the meaning given in Clause 22.3;
“Commencement Date”	means the GDF Site Investigation Start Date. For the avoidance of doubt, the Operator's liability in relation to the fixed costs of the GDF Programme is set out in the definition of Fixed Costs;
“Competent Authority”	means any national, federal, regional, state, local, European Union or other court, arbitrator, tribunal, administrative agency or commission or other governmental, administrative or regulatory body, authority, agency or instrumentality;
“Conditions Precedent”	means the matters listed in Schedule 1 (<i>Conditions Precedent</i>);
“Contract Assumptions”	means the assumptions listed in Schedule 7 (<i>Contract Assumptions</i>) as may be amended from time to time in accordance with Schedule 9 (<i>Contract Assumption Deviation</i>);
“Contract Assumption Deviation”	means a deviation from the Contract Assumptions in accordance with Schedule 9 (<i>Contract Assumption Deviation</i>);
“Contract Assumption Deviation Waste Transfer Price”	has the meaning given in Schedule 9 (<i>Contract Assumption Deviation</i>) and, if Schedule 9 (<i>Contract Assumption Deviation</i>) applies, is the Waste Transfer Price;
“Converted Base Cost Unit Estimate”	has the meaning given in Paragraph 2 of Part A (<i>Primary Methodology</i>) of Schedule 2 (<i>Methodologies</i>);
“Credible Nuclear Power Operator”	means a person who: <ul style="list-style-type: none"> (i) currently operates a nuclear power plant anywhere in the world; and (ii) currently operates an electricity generating station subject to UK health, safety and environmental regulation, or, has made a public commitment to become an operator of an electricity generating station (with a capacity in excess of 50MW) by 31 December 2025 in a market subject to UK health, safety and

environmental regulation;

“DECC Data Package” means the data package setting out the Secretary of State's determination of the cost of the GDF Programme and the Expected Waste Transfer Price or Waste Transfer Price (as applicable), and containing such supporting information as necessary to enable the Operator to review such determination, first sent to the Operator under email cover dated 10 January 2013 and as updated from time to time in accordance with the Review Process;

“DECC Unit” means the unit used by the Secretary of State to estimate the costs of the GDF Programme, being canisters of Spent Fuel;

“Decommissioning End Date” means the date estimated in the DWMP for completion of decommissioning of the Site;

“Decommissioning Start Date” means the date estimated in the DWMP for the start of decommissioning of the Site;

“Default Date” 1 January 2138;

“Default Interest Rate” means the base rate of the Bank of England (or any successor thereof) from time to time plus two (2) per cent.;

“Default Methodology” means the methodology set out in Part C (*Default Methodology*) of Schedule 2 (*Methodologies*);

“Directive” means, in relation to either party, any ordinance, code, decision, directive, order, decree, regulation, determination, award, standard or other rule of any Competent Authority which is legally binding upon it or with which it is otherwise obliged to comply;

“Discount Factor” means:

$$D_F = \frac{1}{(1 + D_R)^N}$$

where:

D_F is the Discount Factor;

D_R is the Discount Rate; and

N is:

- (i) (in relation to a DWMP SF Management Line Item) the number of whole years running from 1 January to 31 December between the Assumed Transfer Date or Transfer Date (as applicable) and the date upon which

such DWMP SF Management Line Item is assumed to be payable;

- (ii) (in relation to a Risk Fee Payment Amount) the number of whole years running from 1 January to 31 December between the Risk Fee Payment Date and the Assumed Disposal Dates; and
- (iii) (in all other cases) the number of whole years running from 1 January to 31 December between the Assumed Transfer Date or Transfer Date (as applicable) and each relevant Assumed Disposal Date;

“Discount Rate”	means one point five per cent. (1.5%);
“Discounted DWMP Waste Management Costs”	means the aggregate value of each DWMP SF Management Line Item multiplied in each case by the Discount Factor relevant to each such DWMP SF Management Line Item;
“Discrete Risk”	means an event, circumstance or condition that may or may not occur, which could influence delivery of a project or operational work scope (including industrial disruptions, supplier failure, discovery of unexpected hazardous conditions on site and increased waste);
“Dispute”	has the meaning given in Clause 23.1;
“Dispute Notice”	has the meaning given in Clause 23.1;
“DTM Costs”	has the meaning given in the FDP;
“DWMP”	means the version of the “Decommissioning and Waste Management Plan” appended to the then most recent Annual Report or FDP Quinquennial Report as independently verified in accordance with the FDP;
“DWMP SF Management Line Item”	has the meaning given in the FDP;
“Early Transfer”	means when a Transfer of Waste occurs in accordance with Clause 8 (<i>Transfer of Waste</i>) before the earliest of the Assumed Disposal Dates;
“Effective Date”	means the date on which the Conditions Precedent are fulfilled or waived in accordance with Clause 2 (<i>Conditions Precedent</i>);
“Environmental Information”	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information

Regulations”	Commissioner or relevant Government department in relation to such regulations;
“Estimated Fixed Costs”	means the Secretary of State's estimate (prepared in accordance with the Agreed Standards) of the total Fixed Costs of the GDF Programme;
“Estimated Inventory of Legacy Waste”	means the Secretary of State's estimate (prepared in accordance with the Agreed Standards) of the inventory of Legacy Waste as used for the purposes of calculating the GDF Programme Cost Estimate in the most recent annual report and accounts of the NDA;
“Estimated Inventory of New Build Waste”	means the Secretary of State's estimate (prepared in accordance with the Agreed Standards) of the inventory of Waste in DECC Units that will be generated by the New Build Fleet (which, for the avoidance of doubt, shall include the Operator's Estimated Waste Inventory);
“Estimated Variable Costs per DECC Unit of ILW”	has the meaning given to “Estimated Variable Costs per DECC Unit of Waste” in the ILW WTC;
“Estimated Variable Costs per DECC Unit of Waste”	means the Secretary of State's estimate (prepared in accordance with the Agreed Standards) of the Variable Costs per DECC Unit of Waste;
“Estimating Uncertainty”	means uncertainty associated with possible (cost) performance for project or operational work scope (including uncertainty in work content, labour rates, outputs, durations, pricing for equipment and material and quantities of material);
“Expected Waste Transfer Price”	means the Secretary of State's estimate of the Waste Transfer Price, as determined in accordance with Clause 11 (<i>Expected Waste Transfer Price</i>), being £585,475/tU of packaged Spent Fuel in September 2012 money values as at the date of this Agreement;
“FDP”	means the Operator's funded decommissioning programme for the Site as most recently approved by the Secretary of State under section 46 of the Energy Act 2008;
“FDP Company”	means the Nuclear Decommissioning Fund Company Limited (registered number 07992648);
“FDP Quinquennial Report “	has the meaning given to the term “Quinquennial Report” in the FDP;
“Financing Charge Uplift Factor”	means the uplift factor to reflect the financing costs that would be incurred in the hypothetical case that the GDF Programme was being implemented to a timetable determined by the needs of new build operators, as determined by the Secretary of State in accordance with

Paragraph 2.2(C) of Schedule 3 (*Calculation of Base Cost Unit Estimate*);

“First Emplacement Date” means the date of first emplacement, following completion of active commissioning of the GDF, of nuclear waste within the GDF Programme, as determined by the Secretary of State (acting in accordance with the Agreed Standards);

“Fixed Costs”¹ means:

- (i) any and all costs of the GDF Programme incurred in respect of the periods from and including the GDF Site Selection Date to and excluding the First Emplacement Date and from and including the Last Emplacement Date to and including the GDF Closure Date (as may be updated from time to time in accordance with Clause 10.4(B));
- (ii) costs incurred in assessing the technical suitability of the GDF site or sites selected by the Secretary of State (including, but not limited to, the drilling of boreholes); and
- (iii) the aggregate amount of the following calculation:

$$A_{GDF1} = (TS_{GDF1} \div TS_{GDFP}) \times GenericCosts_{GDFP}$$

where:

A means the proportion of the *Generic Costs* which are determined by the Secretary of State to be attributable to a particular site;

Generic Costs means costs incurred in relation to the assessment of technical suitability which are not attributable to a specific site, on and from the GDF Site Investigation Start Date, as determined by the Secretary of State acting in accordance with the Agreed Standards;

TS means costs incurred which are attributable to a specific site (including, but not limited to, the drilling of boreholes) and which are incurred in assessing the technical suitability of that site;

GDF1 means the first GDF site selected by the Secretary of State; and

¹ *Explanatory note: It is acknowledged by the parties that the first Expected Waste Transfer Price was calculated in a slightly different manner to that which is required hereunder. This shall not affect the express terms of this Agreement.*

GDFP means the GDF Programme;

“FOIA”

means the Freedom of Information Act 2000;

“Force Majeure Event”

means, in relation to either party, any act, event or circumstance, to the extent to which the cause of such act, event or circumstance is not of such party's making nor within that party's reasonable control, including:

- (i) an act of God;
- (ii) fire, flood, typhoon, tsunami, volcanic activity, earthquake or extreme weather conditions;
- (iii) war (including civil war), hostilities (whether or not war has been declared), invasion, coup, guerrilla activity or blockade;
- (iv) terrorist acts or a threat of a terrorist act;
- (v) riot, insurrection, civil commotion, public demonstration, sabotage, embargo or acts of vandalism;
- (vi) acts of any civil or military authority or direction of any Government Entity;
- (vii) epidemic or pandemic (as classified or advised by the World Health Organization);
- (viii) delay in transportation or communications;
- (ix) the order of any court, arbitral body or Government Entity; and
- (x) any strike, lock out or other industrial trade dispute or action;

“Fund Assets”

has the meaning given in the FDP;

“Funded SF Transfer Fee”

has the meaning given in Paragraph 3.1 of Schedule 10 (*Security Trigger Event Action*);

“Fund Surplus”

means the value of the Fund Assets on the Transfer Date, less the Waste Transfer Payment and the amount equal to the indexed Waste Management Cost Estimate payable pursuant to Clause 7.1;

“GDF”

means a geological disposal facility for the reception and disposal of, among other things, Waste;

“GDF Closure Date”

means the date of closure of the GDF Programme, as determined by the Secretary of State (acting in accordance with the Agreed

Standards);

“GDF Programme”	means the programme to construct, operate, maintain and close one or more GDFs for the disposal of Spent Fuel, ILW and other higher activity waste;
“GDF Programme Cost Apportionment”	means the apportionment of the GDF Programme Cost Estimate between Fixed Costs and Variable Costs and between waste streams;
“GDF Programme Cost Apportionment Amendments”	has the meaning given in Clause 10.4(B);
“GDF Programme Cost Estimate”	means: (i) (before the GDF Site Selection Date) the Generic Base Cost Estimate; or (ii) (on or after the GDF Site Selection Date) the GDF Site Specific Cost Estimate;
“GDF Site Investigation Start Date”	means the date upon which surface investigations begin on candidate sites, equivalent to Stage 5 of the process, detailed in the Managing Radioactive Waste Safety White Paper, published in June 2008;
“GDF Site Selection”	means the selection of a location for the first GDF within the GDF Programme;
“GDF Site Selection Date”	means the date upon which GDF Site Selection occurs;
“GDF Site Specific Cost Estimate”	means the Secretary of State's estimate of the costs of permitting, consenting, licensing, engineering, constructing operating and closing the necessary facilities for the GDF Programme based on the design concept for the location(s) for the GDF Programme announced by the Secretary of State;
“Generic Base Cost Estimate”	means the Secretary of State's estimate of the costs of permitting, consenting, licensing, engineering and constructing the necessary facilities for the GDF Programme based on a reference case programme;
“Generic Waste Package Specification”	means the NDA Report no. NDA/RWM/067 entitled Geological Disposal Generic Waste Package Specification dated March 2012 and the Nirex Report no. N/124 entitled Specification for Waste Packages Containing Vitrified High Level Waste and Spent Nuclear Fuel dated December 2005, each as may be amended, supplemented or replaced from time to time;
“Good Industry Practice”	has the meaning given in the FDP;

“Government Entity”	means: <ul style="list-style-type: none"> (i) a Minister of the Crown; (ii) a government department; (iii) a non-departmental government body; (iv) a body exercising functions on behalf of the Crown; or (v) a body corporate established by statute some or all of the members of which are appointed by a Minister of the Crown;
“High Level Waste”	means radioactive waste (which may include Spent Fuel and which will include radioactive waste created as a result of any reprocessing of Spent Fuel), the heat-generating characteristics of which are required to be accounted for when designing storage and disposal facilities in relation to any such radioactive waste;
“HPC CfD”	has the meaning given in the FDP;
“Identified Matters”	means the matters set out in Clause 5.2;
“ILW”	means radioactive waste the radioactive content of which exceeds four (4) gigabecquerels per tonne of alpha activity or twelve (12) gigabecquerel per tonne of beta and/or gamma activity and which does not need heat to be taken into account in the design of disposal or storage facilities;
“ILW WTC”	means the waste transfer agreement between the Secretary of State and the Operator dated the Agreement Date and relating to the transfer of ILW arising from the Site;
“Indemnified Party”	has the meaning given in Clause 17.6;
“Interim Methodology”	means the methodology set out in Part B (<i>Interim Methodology</i>) of Schedule 2 (Methodologies);
“Interim Risk Adjustment Methodology”	has the meaning given in Paragraph 3 of Part B (<i>Interim Methodology</i>) of Schedule 2 (Methodologies);
“Last Emplacement Date”	means the date of last emplacement of nuclear waste within the GDF Programme, as determined by the Secretary of State (acting in accordance with the Agreed Standards);
“Law”	means any Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, any enforceable community right within the

meaning of section 2 of the European Communities Act 1972, in each case in the United Kingdom, and (to the extent directly binding on or enforceable or both against private persons within the United Kingdom) any obligations arising from a treaty or international convention to which the United Kingdom is a signatory;

“LCIA” means London Court of International Arbitration (and any successor thereof);

“LCIA Rules” means the LCIA Arbitration Rules published and adopted by LCIA from time to time;

“Legacy Waste” means:

- (i) radioactive waste that already exists or that arises in the future due to the operation of a nuclear facility that existed in the UK before 6 April 2009;
- (ii) materials arising due to the operation of a nuclear facility that existed in the UK before 6 April 2009 which are subsequently declared to be radioactive waste;
- (iii) radioactive material that is not New Build Waste which is subsequently declared to be radioactive waste,

in each case that will be disposed of as High Level Waste in the GDF Programme;

“Letter of Compliance Assessment Process” means the letter of compliance assessment process performed from time to time in accordance with Clause 13.1 by the RWM or equivalent process as amended, supplemented or replaced from time to time to assess, among other things, whether waste producers are planning to package Waste in a manner compatible with the Generic Waste Package Specification at the Assumed Disposal Dates;

“Long Stop Date” 1 August 2018;

“Losses” means losses, claims, damages, costs, charges, payments, expenses and liabilities (including reasonable legal fees and disbursements) and **“Loss”** shall be construed accordingly;

“NDA” means the Nuclear Decommissioning Authority (or any successor thereof);

“New Build Fleet” means the new nuclear power stations constructed in the UK which are in operation on the Price Setting Review Start Date and which are generating and producing radioactive material which is expected to be disposed of in the GDF Programme. For the avoidance of doubt, any nuclear power station which would, but for the fact that it is the subject

of an outage on the Price Setting Review Start Date, fall within the ambit of this definition, shall be included within the ambit of this definition;

“New Build Waste” means High Level Waste that arises out of the operations of the New Build Fleet;

“Nominated Tribunal” has the meaning given in Clause 23.24;

“No Realistic Prospect for Delivery” means that there is no realistic prospect of:

(i) the NDA (or any other entity for or on behalf of the Secretary of State) obtaining a site licence for the construction of the first GDF within the GDF Programme on or before the date falling ten (10) years after the Price Setting Review Start Date; and/or

(ii) the NDA (or any other entity for or on behalf of the Secretary of State) obtaining consent from the Office for Nuclear Regulation to commence active commissioning of the first GDF within the GDF Programme, on or before the date falling twenty (20) years after the Price Setting Review Start Date; and/or

(iii) the First Emplacement Date falling on or before the date falling thirty (30) years after the Price Setting Review Start Date;

“Offsite Transfer Principle” means that Waste shall be Transferred either:

(i) simultaneously upon delivery of such Waste at a GDF; or

(ii) simultaneously upon delivery to such other location away from the Site as may be specified by the Secretary of State;

“Onsite Transfer Principle” means that Waste shall be Transferred by way of a Transfer of Stored Waste and Storage Facilities;

“Operator Indemnified Items” has the meaning given in Clause 16.2;

“Operator's Estimated Waste Inventory” means the Operator's estimate (prepared in accordance with the Agreed Standards) of the Site's expected inventory of Waste in DECC Units, as set out in the DWMP;

“Operator's Fixed Costs” has the meaning given in Paragraph 2.1 of Schedule 3 (*Calculation of Base Cost Unit Estimate*);

“Operator’s Total Variable Costs”	has the meaning given in Paragraph 1.3 of Schedule 3 (<i>Calculation of Base Cost Unit Estimate</i>);
“Operator’s Total Variable ILW Costs”	has the meaning given to the term “Operator’s Total Variable Waste Costs” in the ILW WTC;
“Operator’s Total Variable Waste Costs”	has the meaning given in Paragraph 1.2 of Schedule 3 (<i>Calculation of Base Cost Unit Estimate</i>);
“Operator’s Warranties”	means the representations and warranties set out in Part A (<i>Operator’s Warranties</i>) of Schedule 4 (<i>Representations and Warranties</i>);
“P95”	means the value which represents a ninety five per cent. (95%) probability that the final cost will be at or below the relevant estimate;
“Panel”	has the meaning given in Clause 23.31;
“Payee”	has the meaning given in Clause 7.15;
“Payer”	has the meaning given in Clause 7.15;
“Previous Financial Period”	has the meaning given in the FDP;
“Price Setting Date”	means the later of the date on which the Secretary of State: <ul style="list-style-type: none"> (i) delivers a certificate pursuant to Paragraph 3.2(B) of Schedule 11 (<i>Review Process, Notifications and Issue of Certificates</i>); or (ii) (if applicable) as such certificate is finally reissued pursuant to Paragraph 5.2 or Paragraph 5.3 of Schedule 11 (<i>Review Process, Notifications and Issue of Certificates</i>);
“Price Setting Review Start Date”	has the meaning given in Paragraph 2 of Schedule 11 (<i>Review Process, Notifications and Issue of Certificates</i>);
“Price Setting Date Review Items”	has the meaning given in Clause 10.4(C);
“Price Unit”	means tU;
“Pricing Cost Estimate”	has the meaning given in Paragraph 4 of Part A (<i>Primary Methodology</i>) of Schedule 2 (<i>Methodologies</i>);
“Primary Methodology”	means the methodology set out in Part A (<i>Primary Methodology</i>) of Schedule 2 (<i>Methodologies</i>);

“Proceedings”	means any proceeding, suit or action arising out of or in connection with this Agreement or the negotiation, existence, validity or enforceability of this Agreement, whether contractual or non-contractual;
“Projected Converted Base Cost Unit Estimate”	has the meaning given in Paragraph 2 of Part B (<i>Interim Methodology</i>) of Schedule 2 (<i>Methodologies</i>);
“Projected Pricing Cost Estimate”	has the meaning given in Paragraph 4 of Part B (<i>Interim Methodology</i>) of Schedule 2 (<i>Methodologies</i>);
“Reasonable and Prudent Standard”	has the meaning given in the HPC CfD as at the date of this Agreement;
“Reference WTC Fee”	has the meaning given in Paragraph 8 of Schedule 9 (<i>Contract Assumption Deviation</i>);
“Regulatory Requirements”	means any and all requirements of (and, for the purposes of Paragraph 4.2 of Schedule 9 (<i>Contract Assumption Deviation</i>), the consent of) the Office for Nuclear Regulation, Environment Agency and any other governmental or regulatory body (whether in the UK or otherwise) that is responsible for the authorisation, regulation, licensing and/or supervision of matters contemplated by, and contained in, this Agreement;
“Relevant Change”	has the meaning given in Clause 21.1;
“Replacement Inflation Index”	has the meaning given in Clause 37.1;
“Request for Information”	means a request for information, or an apparent request, under the FOIA or the Environmental Information Regulations;
“Requesting Party”	has the meaning given in Clause 19.4;
“Required Authorisation”	means any licence, accreditation, authorisation, permit, consent or other approval of or from any Competent Authority for the development, construction, operation, maintenance or decommissioning of the Site;
“Responding Party”	has the meaning given in Clause 19.4;
“Review Period”	has the meaning given in Clause 14.3;
“Review Process”	means the process set out at Clause 14 (<i>Review Process</i>);
“Revised Policy”	has the meaning given in Schedule 9 (<i>Contract Assumption</i>

Review Period”	<i>Deviation</i>);
“Revised Policy Waste Criteria”	has the meaning given in Schedule 9 (<i>Contract Assumption Deviation</i>);
“Revised Policy WTC Fee”	has the meaning given in Paragraph 8 of Schedule 9 (<i>Contract Assumption Deviation</i>);
“Risk Adjusted Cost Distribution”	has the meaning given in Paragraph 3 of Part A (<i>Primary Methodology</i>) of Schedule 2 (<i>Methodologies</i>);
“Risk Fee”	means £3,020/tU in December 2012 money values;
“Risk Fee Estimated Future Payment”	means each amount calculated in accordance with the following formula: $Risk_p = Risk_i \times Fuel_{tu} \times Discount_{Risk}$ <p>where:</p> <p><i>Discount_{Risk}</i> means the Discount Factor;</p> <p><i>Risk_p</i> means Risk Fee Estimated Future Payment;</p> <p><i>Risk_i</i> means the indexed Risk Fee; and</p> <p><i>Fuel_{tu}</i> means the mass of Waste that will be disposed of on the relevant Assumed Disposal Dates, expressed in tU;</p>
“Risk Fee Payment Amount”	means the aggregate value of all Risk Fee Estimated Future Payments;
“Risk Fee Payment Date”	means twenty (20) Business Days after the Start Date;
“RPI”	(i) subject to (ii) below, the United Kingdom General Index of Retail Prices (all items) published by the Office for National Statistics (13 January 1987 = 100) or, where the context requires, the percentage change in such index over any period for which a calculation falls to be made; or (ii) the Replacement Inflation Index agreed or determined under Clause 37 (<i>Withdrawal of RPI Index</i>);
“RWM”	means the NDA's Radioactive Waste Management Directorate (and any successor thereof);

“RWM Waste Packaging Advice”	means advice sought from, and given by, RWM in relation to the packaging specification for Waste, including any Letter of Compliance Assessment Process;
“Secretary of State's Warranties”	means the representations and warranties set out in Part B (<i>Secretary of State's Warranties</i>) of Schedule 4 (<i>Representations and Warranties</i>);
“Secured Creditor”	means any lender or credit provider or guarantor of the Operator from time to time who holds or has the benefit of a security interest in the assets or undertaking of the Operator, permitted by the FDP, including any Secured Creditor (as defined in the FDP);
“Security Trigger Event Action”	has the meaning given in the FDP;
“Security Trigger Event Action Fee”	has the meaning given in Paragraph 8 of Schedule 10 (<i>Security Trigger Event Action</i>);
“Senior Representative”	has the meaning given in Clause 23.2(D);
“SF Transfer Payment”	has the meaning given in the FDP;
“Site”	has the meaning given in the FDP;
“Specific Factors”	means, in relation to a particular determination or calculation, the specific factors to be considered by the Secretary of State, as set out in Schedule 6 (<i>Specific Factors</i>);
“Spent Fuel”	means nuclear fuel that has been irradiated in a nuclear reactor and that has been permanently removed from the reactor core, or that is in a nuclear reactor upon the cessation of its operation;
“Start Date”	has the meaning given to the term “Reactor One Start Date” in the HPC CfD;
“State Aid Competent Authority”	has the meaning given in the HPC CfD as at the date of this Agreement;
“State Aid Rules”	has the meaning given in the HPC CfD as at the date of this Agreement;
“Storage Facilities”	means any and all storage facilities on the Site, that are used for the storage of Waste and any Tail-End ILW following the Decommissioning Start Date;

“Stored Waste”	means Waste stored in the Storage Facilities;
“Substituted Rights and Obligations”	has the meaning given in Clause 32.3;
“Successor Government Entity”	has the meaning given in Clause 32.3;
“Tail-End ILW”	means ILW which is generated as a consequence of the onsite storage and packaging of Waste after the date upon which title to, and liability for, Waste has been transferred to the Secretary of State;
“Tax” or “Taxation”	includes all taxes, levies, duties, imposts, charges and withholdings of any nature whatsoever, whether of the UK or elsewhere, together with all penalties, charges and interest relating to any of them or to any failure to file any return required for the purposes of any of them;
“Technical Matters”	has the meaning given in to it under section 45 of the Energy Act 2008;
“Term”	has the meaning given in Clause 4.1;
“Termination Notice”	has the meaning given in Clause 4.2;
“Termination Payment”	means the total aggregated amount of the costs and expenses of the Secretary of State actually incurred (and those incurred on her behalf), and the costs and expenses that the Secretary of State has incurred a liability to pay or bear (and any liability incurred on her behalf), in relation to the GDF Programme directly on behalf of the Operator to the date of termination;
“Third Party”	has the meaning given in Clause 34.1;
“Third Party Claim”	has the meaning given in Clause 6.3(B)(ii);
“Third Party Rights Clause”	has the meaning given in Clause 34.1;
“Total Estimated Inventory of ILW”	has the meaning given in the ILW WTC;
“Total Estimated Inventory of Waste”	has the meaning given in Paragraph 1.1 of Schedule 3 (<i>Calculation of Base Cost Unit Estimate</i>);
“Total Variable Costs”	has the meaning given in Paragraph 1.4 of Schedule 3 (<i>Calculation of Base Cost Unit Estimate</i>);

“Transfer”	means the transfer by the Operator of title to, and liability for, Waste to the Secretary of State in accordance with the terms of this Agreement and “Transferred” shall be construed accordingly;
“Transfer Date”	means the date on which a Transfer occurs as determined in accordance with Clause 8.4;
“Transfer Date Management Target”	has the meaning given in the FDP;
“Transfer of Storage Facilities”	has the meaning given in Clause 8.5;
“Tribunal”	has the meaning given in Clause 23.9;
“tU”	means tonne uranium;
“UK”	means the United Kingdom of Great Britain and Northern Ireland;
“Variable Costs”	means any and all costs of the GDF Programme incurred in respect of the periods from and including the First Emplacement Date to and including the Last Emplacement Date, as may be updated from time to time in accordance with Clause 10.4(B);
“VAT”	means value added Tax;
“Waiver Notice”	has the meaning given in Clause 28.1;
“Warranties”	means the Operator's Warranties and the Secretary of State's Warranties;
“Waste”	means any and all of the Spent Fuel (excluding any reprocessed nuclear fuel and mixed oxide fuel) generated by the first two reactors on the Site from, in respect of such reactor, the date of first criticality to the date that is sixty (60) years from the Start Date;
“Waste Management”	means the management of, and the Technical Matters in relation to: (i) the Waste before, and to the point of, its disposal; and (ii) the Storage Facilities;
“Waste Management Cost Estimate”	means the Discounted DWMP Waste Management Costs, calculated under Clause 7.7 unless: <ul style="list-style-type: none"> (i) Clause 7.8 applies in which case it shall be calculated under Paragraph 3 of Schedule 8 (<i>GDF Site Selection Delay</i>); or

- (ii) Clause 7.2 or Clause 7.3 applies in which case it shall be calculated on the basis set out in Schedule 9 (*Contract Assumption Deviation*) and shall be subsumed within and be succeeded by the Contract Assumption Deviation Payment;

“Waste Management Risk Premium”

means the lesser of:

- (i) twelve point five (12.5) per cent. of the indexed Waste Management Cost Estimate payable pursuant to Clause 7.1; or
- (ii) fifty (50) per cent. of the Fund Surplus;

“Waste Management Service”

has the meaning given in Clause 8.7;

“Waste Specification Warranty”

means the warranty set out in Paragraph 7 of Part A (*Operator’s Warranties*) of Schedule 4 (*Representations and Warranties*);

“Waste Transfer Payment”

means the element of fee to be paid by the Operator to the Secretary of State in respect of a Transfer of Waste related to disposal costs, as calculated in accordance with Clause 7.6;

“Waste Transfer Price”

means the price per Price Unit of Waste, as determined in accordance with Clause 12 (*Waste Transfer Price*);

“Working Hours”

means 9.30 a.m. to 5.30 p.m. on a Business Day;

“WTC Certificate”

has the meaning given in Paragraph 5.1 of Schedule 11 (*Review Process, Notifications and Issue of Certificates*);

“WTC Fee”

means a figure equal to the aggregate of the most recent Transfer Date Management Target and the SF Transfer Payment, each as indexed;

“WTP Review”

has the meaning given in Clause 10.4;

“WTP Review Items”

has the meaning given in Clause 10.4; and

“WTP Review Start Date”

has the meaning given in Paragraph 1 of Schedule 11 (*Review Process Notifications and Issue of Certificates*).

Interpretation

1.2 In this Agreement, unless otherwise specified:

- (A) references to Clauses, Paragraphs and Schedules are to clauses, paragraphs of, and schedules to, this Agreement;
- (B) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted and shall include any subordinate legislation made from time to time under that statute or statutory provision;
- (C) references to any agreement or document include a reference to that agreement or document as amended, varied, supplemented, substituted, novated or assigned;
- (D) references to a “**party**” or to the “**parties**” (other than in the expressions “third party” or “third parties”) means a party or the parties to this Agreement;
- (E) references to a “**company**” shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- (F) references to a “**person**” shall be construed so as to include any individual, firm, company, trust, agency, government, state or agency of a state, local or municipal authority or government body, unincorporated body of persons or association, any organisations having legal capacity or any joint venture, association or partnership (whether or not having separate legal personality) and shall include their successors and permitted assignees;
- (G) use of any gender includes the other genders and use of the singular only also includes the plural and vice versa;
- (H) subject to Clause 17.5(B), references to “**indemnify**” and “**indemnifying**” any person against any circumstance include indemnifying and keeping him harmless from all actions, claims and proceedings from time to time made against that person and all Loss made or incurred by that person as a consequence of or which would not have arisen but for that circumstance;
- (I) references to “**costs**” and/or “**expenses**” incurred by a person shall not include any amount in respect of VAT comprised in such costs or expenses for which either that person or, if relevant, any other member of the VAT group to which that person belongs is entitled to credit as input Tax;
- (J) the expressions “**body corporate**” and “**holding company**” shall have the meanings given in the Companies Act 2006;
- (K) any reference to a “**day**” (including within the phrase “**Business Day**”) shall mean a period of twenty four (24) hours running from midnight to midnight;

- (L) references to times of the day are to London time;
- (M) references to writing shall include any modes of reproducing words in a legible and non-transitory form;
- (N) 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;
- (O) references to the Cap, the Risk Fee, the Waste Transfer Price, the Waste Management Cost Estimate, the SF Transfer Payment, the Transfer Date Management Target or the Contract Assumption Deviation Waste Transfer Price being “**indexed**” shall mean the Cap, the Risk Fee, the Waste Transfer Price, the Waste Management Cost Estimate, the SF Transfer Payment, the Transfer Date Management Target or the Contract Assumption Deviation Waste Transfer Price, as applicable, as adjusted for inflation in accordance with the following formula:

$$A_m = \frac{A_o \times R_m}{R_o}$$

where:

A_m is the relevant amount as adjusted;

A_o is either:

- (i) the Cap or Risk Fee, as applicable, in December 2012 money values; or
- (ii) the Waste Transfer Price in money values at the date of determination by the Secretary of State in accordance with Clause 10 (*Deferral of Setting the Waste Transfer Price*) and/or Clause 12 (*Waste Transfer Price*);
- (iii) the Waste Management Cost Estimate in money values as used in the calculation in:
 - (a) Clause 7.7;
 - (b) Paragraph 3 of Schedule 8 (*GDF Site Selection Delay*); or
 - (c) Paragraph 3.4(B) or 3.5(B) of Schedule 9 (*Contract Assumption Deviation*),

in each case being in the money values at the end of the

relevant Previous Financial Period;

- (iv) the SF Transfer Payment in money values as used in:
 - (a) the definition of WTC Fee;
 - (b) paragraph 3.4(A) or 3.5(A) of Schedule 9 (*Contract Assumption Deviation*);
 - (c) paragraph 2.2(A) or 2.3(A) of Schedule 10 (*Security Trigger Event Action*),

in each case being in the money values at the end of the relevant Previous Financial Period;

- (v) the Transfer Date Management Target in money values as used in:
 - (a) Paragraph 3.4(B) or 3.5(B) of Schedule 9 (*Contract Assumption Deviation*); or
 - (b) Paragraphs 2.2(B) and 2.3(B) of Schedule 10 (*Security Trigger Event Action*),

in each case being in the money values at the end of the relevant Previous Financial Period;

- (vi) the Contract Assumption Deviation Waste Transfer Price in the money values of the same month as applied to the calculation in Paragraph 5.1 of Schedule 9 (*Contract Assumption Deviation*);

R_m is RPI (or the Replacement Inflation Index) for the month most recently published when calculation of the relevant amount is required; and

R_o is RPI (or the Replacement Inflation Index) for the month of the relevant money values listed for **A_o** :

- (P) where an item set out in Paragraph (O) above is stated to be indexed, the calculation of such indexed amount shall be accompanied by a statement confirming the month which the amount is indexed to;
- (Q) unless otherwise expressly stated, where an amount of money is calculated pursuant to this Agreement, it shall be in the money values of the month for which the most recently published RPI (or the Replacement Inflation Index) data is available when the calculation of the amount is carried out and the calculation of such amount shall be accompanied by a statement confirming the month of the money value;

(R) 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.

- 1.3 Headings to Clauses and Schedules are for convenience only and do not affect the interpretation of this Agreement.
- 1.4 The Schedules form part of this Agreement and shall have the same force and effect as if expressly set out in the body of this Agreement, and any reference to this Agreement shall include the Schedules.
- 1.5 All amounts payable pursuant to this Agreement shall be paid in immediately available funds in pounds sterling by CHAPS transfer for same day value to such bank account as shall have been notified in advance to the party making the payment by the party receiving the payment in accordance with Clause 24 (*Notices*).
- 1.6 In this Agreement non-binding explanatory footnotes are set out in italics and are labelled "Explanatory note". These italicised explanatory footnotes are for information only and do not impose any binding obligations on either of the parties.

2. CONDITIONS PRECEDENT

- 2.1 The obligations of the parties under this Agreement (other than those contained in this Clause 2 (*Conditions Precedent*), Clause 3 (*Undertakings*), Clause 15 (*Representations and Warranties*), Clause 17 (*Limitation of Liability*), Clause 19 (*Changes to the Agreement*), Clause 23 (*Dispute Resolution*), Clause 33 (*Costs*) and Clause 39 (*Governing Law and Jurisdiction*), which are unconditional) are in all respects conditional upon the satisfaction or waiver of the Conditions Precedent in accordance with this Clause 2 (*Conditions Precedent*).
- 2.2 The Operator shall use reasonable endeavours to fulfil or procure the fulfilment of the conditions listed in Paragraph 2 of Schedule 1 (*Conditions Precedent*) and shall notify the Secretary of State in writing as soon as reasonably practicable of the satisfaction of such conditions.
- 2.3 The Secretary of State shall notify the Operator in writing as soon as reasonably practicable of the satisfaction of the condition listed in Paragraph 1 of Schedule 1 (*Conditions Precedent*).
- 2.4 Each party shall provide such assistance to the other as is reasonably requested, including the provision of such information as is necessary, to enable the fulfilment of the Conditions Precedent and each of the parties undertakes to disclose in writing to the other anything which will or may prevent any of the Conditions Precedent from being satisfied on or before the Long Stop Date immediately once it comes to their attention.
- 2.5 The Secretary of State may, in her sole and absolute discretion, waive in whole or in part the condition listed in Paragraph 2 of Schedule 1 (*Conditions Precedent*). Any waiver pursuant to this Clause 2.5: (a) may only be effected by the Secretary of State

giving written notice to the Operator; and (b) may be given on such terms and subject to such conditions as are specified in such written notice.

- 2.6 The condition listed in Paragraph 1 of Schedule 1 (*Conditions Precedent*) may not be waived by any party.
- 2.7 The parties may extend the Long Stop Date by agreement between them, such agreement not to be unreasonably withheld or delayed.
- 2.8 If any of the Conditions Precedent are not fulfilled or waived by the Secretary of State on or before 5.00 p.m. on the Long Stop Date, then this Agreement shall terminate and all rights, obligations and liabilities which have accrued before then shall cease to exist other than those contained in Clause 17 (*Limitation of Liability*), Clause 23 (*Dispute Resolution*), Clause 33 (*Costs*) and Clause 39 (*Governing Law and Jurisdiction*), which shall continue without limit in time.

3. UNDERTAKINGS

- 3.1 The parties shall promptly take or refrain from taking all such actions (including promptly providing information and acting in accordance with the Reasonable and Prudent Standard and any standstill requirements) as may be:

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

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

- 3.2 If a State Aid Competent Authority has determined that the United Kingdom must recover any State aid granted or paid in relation to this Agreement and the Secretary of State has decided that the United Kingdom must recover such State aid, the Secretary of State shall, as soon as reasonably practicable, notify the Operator of this and of the amount to be repaid and to whom and all other actions which it is necessary for the Operator to take or procure to ensure compliance with the terms of that decision, determination or ruling and/or the State Aid Rules.
- 3.3 The Operator shall without delay repay or procure repayment of any amount notified to it under Clause 3.2 (provided that such action is in accordance with the State Aid Rules) and, where reasonably practicable, will perform any other necessary actions so notified to it under Clause 3.2 in accordance with the State Aid Rules.

4. TERM

Term

- 4.1 Subject to Clause 2.1, this Agreement shall take effect on the Effective Date and, subject to Clause 4.8, shall continue until the Transfer Date (the "**Term**").

Operator's ability to request termination

- 4.2 The Operator may seek to terminate this Agreement if the Operator has selected an alternative disposal method for the Waste by giving written notice to the Secretary of State (the "**Termination Notice**") requesting that the Secretary of State consent to terminate this Agreement on a date specified by the Operator, such date to be no sooner than 120 Business Days after the date of the notice. Such consent shall be at the sole and absolute discretion of the Secretary of State.
- 4.3 If the Secretary consents to the termination of this Agreement on the terms set out in the Termination Notice pursuant to Clause 4.2:
- (A) the Secretary of State shall determine the Termination Payment; and
 - (B) this Agreement shall terminate, and the Operator shall pay the Termination Payment to the Secretary of State, on the termination date specified in the Termination Notice.
- 4.4 The parties acknowledge and agree that the Termination Payment payable under Clause 4.3 will be a reasonable estimate of the costs and expenses that the Secretary of State has actually incurred (and those incurred on her behalf), and the costs and expenses that the Secretary of State has incurred a liability to pay or bear (and any liability incurred on her behalf), in relation to the GDF Programme directly on behalf of the Operator and is not by way of penalty.

Life extension

- 4.5 At the Agreement Date, the expected economic life of each reactor on the Site is sixty (60) years from the Start Date of the relevant reactor. If the Operator wishes to extend the economic life of a reactor on the Site, the Operator shall notify the Secretary of State of such wish no later than three (3) years before the date identified in the DWMP (before such proposed extension) when the Operator expects to no longer generate electricity at such reactor.
- 4.6 The parties shall (each acting reasonably and in consultation with one another), discuss (including by way of a meeting of appropriately qualified and authorised individuals at least once per month) the effect of the extension of the economic life of a reactor on the Site with the objective of amending this Agreement in a manner that will account for Spent Fuel generated after the first sixty (60) years of operation of such reactor, provided that:
- (A) the final decision whether to extend the services provided under this Agreement to Spent Fuel generated after the first sixty (60) years of operation of such reactor shall be at the sole and absolute discretion of the Secretary of State; and
 - (B) any extension of the services provided under this Agreement shall be conditional on the Operator obtaining any and all of the consents, licences and

approvals (including modification of the FDP) necessary for extending the commercial operation of the reactor for a longer period.

- 4.7 If the parties are unable to agree whether and how to amend this Agreement within one (1) year of the date of the Operator's notification to the Secretary of State under Clause 4.5, either party shall be entitled to end the discussions being held in accordance with Clause 4.6 by giving written notice to the other party of such end.

Survival

- 4.8 Subject to Clause 2.8, if this Agreement is terminated or expires then all the rights and obligations of the parties under this Agreement shall end (other than those contained in this Clause 4.8, Clause 6.3(B), Clause 13.5, Clause 16 (*Indemnities*), Clause 17 (*Limitation of Liability*), Clause 23 (*Dispute Resolution*), Clause 25 (*Freedom of Information*), Clause 33 (*Costs*), Clause 38 (*Waiver of Sovereign Immunity*) and Clause 39 (*Governing Law and Jurisdiction*), which shall continue without limit in time) and the Secretary of State shall have no obligation to accept title to, or liability for, any Waste after the date of termination or expiry provided that:
- (A) all the rights and obligations of the parties which have accrued or become due before termination or expiry shall continue to exist; and
 - (B) any rights, liabilities or remedies arising under this Agreement before such termination shall not be affected.

5. EQUITABLE TREATMENT

- 5.1 Save as provided in Clause 5.3, in respect of the Identified Matters the Secretary of State shall not accord the Operator any less favourable or equitable treatment at the relevant time than it accords to any other holder, owner or operator of or in relation to New Build Waste or Legacy Waste (including Legacy Waste owned, controlled or funded by the Secretary of State).
- 5.2 The "**Identified Matters**" are:
- (A) the criteria and assumptions underlying the requirements for the treatment, storage, transportation and disposal of Waste;
 - (B) the RWM Waste Packaging Advice;
 - (C) the planning, design and operation of the GDF Programme;
 - (D) the emplacement schedule of Spent Fuel in the GDF Programme;
 - (E) the use of the GDF Programme Cost Estimate to assess the costs of disposal for (i) all waste streams (including Spent fuel and ILW); and (ii) Legacy Waste and New Build Waste, including any Estimating Uncertainty and/or Discrete Risks identified in relation thereto;

- (F) in relation to any other holder, owner or operator of, or in relation to, New Build Waste only:
 - (i) the methodology used, and its application to determine, the Waste Transfer Price;
 - (ii) the allocation of costs as either Fixed Costs or Variable Costs; and
 - (iii) the Cap, any initial offer for the Waste Transfer Price made pursuant to Clause 10.6, the method used for determining the Default Date and the Assumed Disposal Dates, the adjustment for risk made to any Waste Management costs to determine the Waste Management Cost Estimate, the Waste Management Risk Premium, the Risk Fee, the Discount Factor and any adjustments for inflation;
- 5.3 The Secretary of State shall not be in breach of its obligations under Clause 5.1 where less favourable or equitable treatment of the Operator:
- (A) arises in relation to differences arising from the age, composition and/or temperature of Waste when compared to Legacy Waste or other New Build Waste but only to the extent due to such differences;
 - (B) arises by virtue of the need to comply with Regulatory Requirements, but only to the minimum extent necessary to comply with such Regulatory Requirements;
 - (C) arises due to the assessment of Discrete Risk and Estimating Uncertainty in relation to Legacy Waste where the Waste Transfer Price is calculated using the Default Methodology; or
 - (D) arises due to allocation of costs as Fixed Costs or Variable Costs in relation to Legacy Waste where the Waste Transfer Price is calculated using the Default Methodology.
- 5.4 Subject to any and all applicable laws and Regulatory Requirements, the Secretary of State shall use reasonable endeavours to provide the Operator with information in relation to the costs and progress of the GDF Programme which the Secretary of State has provided in writing to any other holder, owner or operator of or in relation to New Build Waste or Legacy Waste (other than the Secretary of State) as soon as reasonably practicable following its provision to any such other holder, owner or operator.
- 5.5 If the Secretary of State enters into a waste transfer contract at any time after the date of this Agreement in relation to Legacy Waste or New Build Waste, the Secretary of State shall, within a reasonable period of time, provide the Operator with any information (without redaction) which is requested by the Operator provided such information is reasonably required by the Operator in order to enable the Operator to exercise or to evaluate its rights under Clause 5.1, provided that the provision of such information is not prohibited under applicable law and provided that the provision of such information shall be subject to such restrictions on further disclosure of the same by the Operator as the Secretary of State may determine at that time.

Disputes

5.6 If at any time the Operator considers that the Secretary of State:

- (A) has not acted in accordance with the provisions of this Clause 5 (*Equitable Treatment*); or
- (B) has not provided the Operator with information necessary to enable the Operator to ascertain whether the Secretary of State has acted in accordance with the provisions of this Clause 5 (*Equitable Treatment*),

then the provisions of Clause 23 (*Dispute Resolution*) shall apply.

6. SERVICE***Transfer of title to Waste***

6.1 Subject to Clause 6.2, Clause 20 (*Force Majeure*), Clause 21 (*Relevant Change*) and Clause 22 (*Continuation of Key Obligations*), the Operator shall make the Transfer in accordance with Clause 8 (*Transfer of Waste*), and the Secretary of State shall accept such Transfer.

6.2 Early Transfer shall be conditional on the Site no longer being used for nuclear power generation.

Ongoing obligations of the Secretary of State

6.3 For the avoidance of doubt and subject to any and all applicable laws and Regulatory Requirements at the relevant time, the parties acknowledge and agree that, following the Transfer of Waste:

- (A) the Secretary of State shall not be obliged to: (i) dispose of the Waste in the GDF Programme; or (ii) take any specific action set out in the DWMP in respect of the Waste Management Service; and
- (B) the Operator shall not have any liability:
 - (i) to the Secretary of State; or
 - (ii) pursuant to a claim of any other person (a "**Third Party Claim**"),

in either case as a result of any decision by the Secretary of State: (i) not to dispose of Waste in the GDF Programme; or (ii) not to take any action set out in the DWMP.

7. PAYMENTS

Payment for service

7.1 Subject to Clause 7.2, Clause 7.3 and Clause 7.5, the Operator shall pay the Secretary of State, on the Transfer Date, the aggregate amount of the following in consideration for the Transfer of the Waste:

- (A) the Waste Transfer Payment;
- (B) (in the event of Early Transfer) on the Transfer Date, an amount equal to the indexed Waste Management Cost Estimate; and
- (C) (in the event of Early Transfer) on the Transfer Date, the Waste Management Risk Premium.

7.2 If a Contract Assumption Deviation has occurred and has been notified in accordance with Paragraph 4 of Schedule 11 (*Review Process, Notifications and Issue of Certificates*):

- (A) the Operator's obligations under Clause 7.1; and
- (B) the provisions of Clause 7.7,

shall be fulfilled as specified in Paragraph 5.1 of Schedule 9 (*Contract Assumption Deviation*).

7.3 If: (i) on or before the Price Setting Review Start Date GDF Site Selection has occurred, (ii) no Contract Assumption Deviation has been notified in accordance with Paragraph 4 of Schedule 11 (*Review Process, Notifications and Issue of Certificates*) and (iii) after the Price Setting Review Start Date there is No Realistic Prospect for Delivery:

- (A) the Operator's obligations under Clause 7.1; and
- (B) the provisions of Clause 7.7,

shall be fulfilled as specified in Schedule 9 (*Contract Assumption Deviation*).

7.4 Any disagreement between the parties as to whether or not there is No Realistic Prospect for Delivery shall be resolved in accordance with Clause 23 (*Dispute Resolution*).

7.5 If a Security Trigger Event Action occurs, the Operator's obligations under Clause 7.1 shall be fulfilled as specified in Schedule 10 (*Security Trigger Event Action*).

Waste Transfer Payment

7.6 No later than thirty (30) Business Days before the Transfer Date, the Secretary of State shall calculate:

- (A) (in the event of Early Transfer) the aggregate sum of (for each of the Assumed Disposal Dates): the indexed Waste Transfer Price multiplied by the number of Price Units of Waste on the relevant Assumed Disposal Date multiplied by the relevant Discount Factor; or
- (B) (if Early Transfer does not occur) the indexed Waste Transfer Price, multiplied by the Price Units of Waste being Transferred on the Transfer Date,

to give the “**Waste Transfer Payment**”.

Waste Management Cost Estimate

7.7 Subject to Clause 7.2, Clause 7.3, Clause 7.5 and Clause 7.8, the amount of the Waste Management Cost Estimate shall be calculated by the Secretary of State no later than sixty (60) Business Days after the submission of the last FDP Quinquennial Report before the first date upon which Early Transfer is scheduled to occur.

7.8 If at the Price Setting Review Start Date (i) GDF Site Selection has not occurred and (ii) a Contract Assumption Deviation has not been notified in accordance with Paragraph 4 of Schedule 11 (*Review Process, Notifications and Issue of Certificates*), the Waste Management Cost Estimate shall be calculated on the date specified in Schedule 8 (*GDF Site Selection Delay*).

Risk Fee Payment Amount

7.9 On the Risk Fee Payment Date the Operator shall pay the Risk Fee Payment Amount to the Secretary of State.

Notification of payment amounts

7.10 The Secretary of State shall give written notice to the Operator of the amount of the relevant Waste Transfer Payment, the Waste Management Cost Estimate, the Waste Management Risk Premium and the Risk Fee Payment Amount as soon as reasonably practicable and, in any event, no later than ten (10) Business Days after her calculation of such amounts.

Payment Terms

7.11 The receipt of funds by the Secretary of State pursuant to Clause 7.1(A) in respect of the payment of the Waste Transfer Payment, pursuant to Clause 7.1(B) in respect of the Waste Management Cost Estimate and pursuant to Clause 7.1(C) in respect of the payment of the Waste Management Risk Premium (as applicable), shall constitute a good discharge of the Operator's obligations in relation to the Waste Transfer Payment,

the Waste Management Cost Estimate and the Waste Management Risk Premium respectively.

- 7.12 The parties acknowledge and agree that payment of sums due by the Operator under this Agreement may be made directly to the Secretary of State by a third party and that the payment of any sums due by the Operator by a third party in accordance with the terms of this Agreement satisfies and discharges the Operator's obligation to make such a payment.

No Rebate

- 7.13 For the avoidance of doubt, the Secretary of State shall not be required to rebate to the Operator any amount by which the actual costs covered by the Waste Transfer Payment, the Waste Management Cost Estimate or the Waste Management Risk Premium are less than the estimated costs used to determine the Waste Transfer Payment, the Waste Management Cost Estimate or the Waste Management Risk Premium.

VAT

- 7.14 If anything done under this Agreement is a supply on which VAT is chargeable, the recipient of that supply shall pay to the maker of it (in addition to any other amounts payable under this Agreement) an amount equal to any VAT so chargeable for which the maker of the supply is liable to account.

Set-off, deductions or withholdings

- 7.15 If a party (the "**Payer**") is required to make a payment under this Agreement, the Payer may at any time set off any amount due and payable by the other party (the "**Payee**") to the Payer (whether or not such amount arises under this Agreement) against such payment. If the amounts to be set-off are not denominated in sterling, then the Payer may convert any such amount into sterling at the rate of exchange at which the Payer is able, acting reasonably, to purchase the relevant amount of sterling. Such set-off shall be without prejudice to any other rights of or remedies available to the Payer.
- 7.16 If a Payer is required by law to make a deduction or withholding from any sum payable under this Agreement (other than interest), that party shall, at the same time as the sum that is the subject of the deduction or withholding is payable under this Agreement, pay to the Payee such additional amount as shall be required to ensure that the net amount received by the Payee under this Agreement will equal the full amount that would have been received by it had no such deduction or withholding been required to be made.
- 7.17 If any sum payable by a Payer pursuant to an indemnity under this Agreement (other than an amount of interest) shall be subject to Taxation in the hands of the Payee, the Payer shall be under the same obligation to pay an additional amount in relation to that Taxation as if the liability were a deduction or withholding required by law.
- 7.18 If the Payee receives a credit for or refund of any Taxation or any other Taxation benefit by reason of:

- (A) any deduction or withholding for or on account of Taxation or the matter giving rise to (or to the receipt by the Payee of) an additional payment under Clause 7.16; or
- (B) in the case of a sum payable pursuant to an indemnity, the matter giving rise to the indemnity payment or the receipt of the indemnity payment,

it shall reimburse to the Payer such amount as the Payee certifies to the Payer will leave it (after such reimbursement) in no better and no worse position than it would have been if, in the case of (A), the Payer had not been required to pay any additional amount pursuant to Clauses 7.15 to 7.17 and, in the case of (B), the matter giving rise to the requirement to make the relevant indemnity payment had not occurred. The Payee shall use reasonable endeavours to obtain any such available credit or refund of any Taxation or other Taxation benefit.

8. TRANSFER OF WASTE

Transfer of Waste in accordance with Onsite Transfer Principle

- 8.1 Unless the Operator makes a proposal to Secretary of State that the Offsite Transfer Principle should apply, all Waste shall be Transferred in accordance with the Onsite Transfer Principle. If the Operator makes a proposal to the Secretary of State that the Transfer of Waste should take place in accordance with the Offsite Transfer Principle, the Operator must make a Change Request in accordance with Clause 19 (*Changes to the Agreement*) in order to propose the necessary changes to be made to this Agreement in order to ensure that the transfer of Waste in accordance with the Offsite Transfer Principle will be practically effective, including in order to incorporate a mechanism for agreeing a schedule for effecting the physical Transfer of Waste in accordance with the Offsite Transfer Principle (and related mechanisms for amending and finally determining such schedule from time to time).
- 8.2 From the date falling five years before the Assumed Transfer Date, the Operator grants the Secretary of State the right to inspect any Waste and enter the Site for the purposes of exercising this right, subject to the giving of reasonable prior written notice of the intention to exercise this right.
- 8.3 Without prejudice to Clause 16.1 and other remedies available to the Secretary of State, the parties acknowledge and agree that the failure by the Operator to comply with this Agreement (excluding any payment obligation) shall not relieve the Secretary of State from the performance of her obligations under Clause 6.1 and the Secretary of State shall take title to, and liability for, the Waste in any event.
- 8.4 The parties intend that title to, and liability for all Stored Waste shall pass to the Secretary of State at 00:01 on the Assumed Transfer Date. Notwithstanding the previous sentence, title to, and liability for, all Stored Waste shall pass to the Secretary of State on the earlier of:

- (A) (if applicable) the date on which the Operator's payment obligations under Paragraph 6.1 of Schedule 10 (*Security Trigger Event Action*) have been satisfied.
- (B) the date upon which the Transfer of Storage Facilities actually occurs; and
- (C) the date falling three years after the date upon which the Operator substantively commences its attempt to complete the Transfer of Storage Facilities,

provided that:

- (D) such date is a Business Day, failing which title to, and liability for all Stored Waste shall pass to the Secretary of State at 00:01 on the first Business Day following the earlier of the dates referenced in Paragraph (B) and Paragraph (C) above; and
- (E) the Operator shall, for the duration of the three (3) year period referenced at Paragraph (C) above, continue to use all reasonable endeavours to complete the Transfer of Storage Facilities.

8.5 The Operator shall ensure that such rights in relation to any Storage Facilities are granted to the Secretary of State, on such terms, subject to any and all applicable laws and Regulatory Requirements, that provide the Secretary of State with such rights, powers and assets in relation to such Storage Facilities that are reasonably necessary for the continued and efficient management and operation of such facilities and the Stored Waste by the Secretary of State in accordance with the DWMP (the "**Transfer of Storage Facilities**"). For the avoidance of doubt, any and all costs and expenses associated with the construction of the Storage Facilities prior to the Transfer Date shall be for the account of the Operator, and any and all costs and expenses arising from or in relation to the ownership, operation, maintenance, repair, transfer, removal or decommissioning of the Storage Facilities on and after the Transfer Date shall be for the account of the Secretary of State.

8.6 Without prejudice to Clause 30 (*Further Assurance*), the Operator shall at its own cost, do or procure the doing of all acts and/or execute or procure the execution of all documents in a form satisfactory to the Secretary of State which the Secretary of State may reasonably consider necessary for giving full effect to, and securing to the Secretary of State, the benefit of the rights, powers and assets in relation to such Storage Facilities that are reasonably necessary for the continued and efficient management and operation of such facilities and the Stored Waste by the Secretary of State in accordance with the DWMP.

Waste Management

8.7 In the event of Early Transfer, following the Transfer of Waste the Secretary of State shall take over from the Operator:

- (A) Waste Management in respect of such Transferred Waste; and

- (B) Waste Management and waste disposal in respect of all Tail-End ILW,
(the “**Waste Management Service**”).

9. WASTE REQUIREMENTS

Authorisations

- 9.1 The Operator undertakes to obtain, maintain and comply with all licences, consents and other permissions, authorisations and approvals required for, or in connection with, the carrying on of any and all parts of the Operator's activities, operations and business at the Site and the Operator's obligations under this Agreement and the DWMP.

Assessing Waste specification

- 9.2 The Operator shall provide, as soon as reasonably practicable following a written request from the Secretary of State, to the Secretary of State a copy of all reports, safety cases, certifications and supporting evidence (including through the Letter of Compliance Assessment Process) produced or obtained by the Operator in respect of the Waste and the Storage Facilities (if any).
- 9.3 The Operator shall notify the Secretary of State of: (i) any determination by or notification from any regulator that any material Regulatory Requirement has not been met where such a failure has a material adverse effect on the Waste and/or the Storage Facilities (if any); and (ii) any remedial action required to be undertaken by or on behalf of the Operator by a regulator as a result of any of the foregoing.

10. DEFERRAL OF SETTING THE WASTE TRANSFER PRICE

Setting the Waste Transfer Price and the Assumed Disposal Date

- 10.1 Subject to Clause 10.8 and Clause 10.11, the Secretary of State shall, following the WTP review conducted in accordance with Clause 14 (*Review Process*), commencing on the Price Setting Review Start Date, determine the Assumed Disposal Dates and the Waste Transfer Price in accordance with this Clause 10 (*Deferral of Setting the Waste Transfer Price*) and Clause 12 (*Waste Transfer Price*) respectively.
- 10.2 The Operator shall propose the Assumed Disposal Dates in accordance with the Review Process. If the Operator does not propose the Assumed Disposal Dates by the WTP Review Start Date or the Price Setting Review Start Date (as applicable), the Secretary of State shall determine the Assumed Disposal Dates (as applicable) and notify the Operator in accordance with Clause 10.3.
- 10.3 If the Operator does propose Assumed Disposal Dates in accordance with the terms of this Agreement, but:
- (A) the Secretary of State reasonably believes, with regard to an estimated emplacement schedule for waste in the GDF Programme and an estimated

waste inventory, that it will not be possible to begin emplacement of the Waste in the GDF on the proposed Assumed Disposal Dates; and/or

- (B) the proposed Assumed Disposal Dates are not confirmed as being reasonable on or before the Price Setting Date by the RWM to the Secretary of State in writing,

the Secretary of State may determine and move the Assumed Disposal Dates to a later (but, for the avoidance of doubt, not an earlier) date than that which has been proposed by the Operator, provided that such date may not be later than 31 December 2150. As soon as reasonably practicable and, in any event, no later than thirty (30) Business Days after the WTP Review Start Date or the Price Setting Review Start Date (as applicable) following the agreement or determination of the Assumed Disposal Dates in accordance with Clause 10.2 or this Clause 10.3, the Secretary of State shall deliver a certificate to the Operator setting out the Assumed Disposal dates to be used by the Operator in updating the next version of the DWMP.

WTP Reviews

10.4 Subject to Clause 14.8, before the Price Setting Date, the Secretary of State shall carry out a review (a “**WTP Review**”) in accordance with the Review Process, beginning on each WTP Review Start Date and on the Price Setting Review Start Date, as applicable in order to:

- (A) (for each WTP Review Start Date only) review and, if necessary, revise the Expected Waste Transfer Price and the Assumed Disposal Date (the “**WTP Review Items**”), in accordance with Clause 11 (*Expected Waste Transfer Price*);
- (B) (for each WTP Review Start Date only) consider whether any improvements and/or refinements could be made in respect of the GDF Programme Cost Apportionment (the “**GDF Programme Cost Apportionment Amendments**”); and
- (C) (for the Price Setting Review Start Date only) determine the Waste Transfer Price in accordance with Clause 12 (*Waste Transfer Price*) (the “**Price Setting Date Review Items**”).

Operator's ability to request early determination of the Waste Transfer Price

10.5 At each WTP Review, the Operator may request that the Secretary of State make an offer for the Waste Transfer Price by giving written notice to the Secretary of State of such request no later than sixty (60) Business Days before the WTP Review Start Date or the Price Setting Review Start Date.

10.6 The Secretary of State shall provide the Operator with an initial offer for the Waste Transfer Price at the end of the Review Period and such initial offer shall be determined by the Secretary of State in her absolute discretion provided that it shall not exceed the indexed Cap.

- 10.7 The Operator shall have a period of ten (10) Business Days in which to accept or reject the Secretary of State's offer and shall be deemed to have rejected it if the Operator does not respond within that period.
- 10.8 If the Operator accepts the Secretary of State's offer, the Secretary of State shall deliver a certificate to the Operator setting out the Waste Transfer Price to be used for the purposes of the FDP, in the money values of the month of the relevant WTP Review Start Date, within twenty (20) Business Days of the Operator's Request.
- 10.9 The Operator may not Dispute the Secretary of State's offer for the Waste Transfer Price requested under Clause 10.5 in any circumstance, provided that the offer shall not in any circumstance exceed the Cap.

Operator's ability to fix the Waste Transfer Price at the Cap

- 10.10 At any time before the Price Setting Date, the Operator may request that the Waste Transfer Price is set at the Cap by giving written notice to the Secretary of State of such request.
- 10.11 Any request made by the Operator under Clause 10.10 shall be irrevocable upon receipt of such notice by the Secretary of State in accordance with Clause 24 (*Notices*) and the Secretary of State shall deliver a certificate to the Operator setting out the Waste Transfer Price to be used for the purposes of the FDP within twenty (20) Business Days of the Operator's request.

11. EXPECTED WASTE TRANSFER PRICE

- 11.1 Where the Expected Waste Transfer Price is required to be determined by the Secretary of State under Clause 10.4, the Expected Waste Transfer Price shall be determined by the Secretary of State:
- (A) using the Interim Methodology on each occasion when such determination occurs before the GDF Site Selection Date; or
 - (B) using the Primary Methodology on each occasion when such determination occurs on or after the GDF Site Selection Date.

12. WASTE TRANSFER PRICE

- 12.1 Subject to Clause 12.3, if, sixty (60) Business Days before the Price Setting Review Start Date: (i) GDF Site Selection has occurred; (ii) a Contract Assumption Deviation has not been notified in accordance with Clause 14.1(B); and (iii) a Waste Transfer Price has not already been determined under either Clause 10.8 or Clause 10.11, the Waste Transfer Price shall be determined using the Primary Methodology.
- 12.2 Subject to Clause 12.3 if, sixty (60) Business Days before the Price Setting Review Start Date: (i) GDF Site Selection has not occurred; (ii) a Contract Assumption Deviation has not been notified in accordance with Clause 14.1(B); and (iii) a Waste Transfer Price has not already been determined under either Clause 10.8 or Clause 10.11, the Waste

Transfer Price shall be determined in accordance with Schedule 8 (*GDF Site Selection Delay*).

- 12.3 If a Contract Assumption Deviation has occurred and has been notified in accordance with Paragraph 4 of Schedule 11 (*Review Process, Notifications and Issue of Certificates*), the Waste Transfer Price shall be determined in accordance with Schedule 9 (*Contract Assumption Deviation*) and shall be the Contract Assumption Deviation Waste Transfer Price.
- 12.4 If: (i) on or before the Price Setting Review Start Date GDF Site Selection has occurred; (ii) no Contract Assumption Deviation has been notified in accordance with Paragraph 4 of Schedule 11 (*Review Process, Notifications and Issue of Certificates*); and (iii) after the Price Setting Review Start Date there is No Realistic Prospect for Delivery, then the Waste Transfer Price shall be determined in accordance with Schedule 9 (*Contract Assumption Deviation*) and shall be the Contract Assumption Deviation Waste Transfer Price.

13. WASTE PACKAGE SPECIFICATION

- 13.1 The Operator shall, from time to time and in accordance with Regulatory Requirements, seek RWM Waste Packaging Advice. Promptly following receipt of the same, the Operator shall send a copy of any letter of compliance, procured from RWM as a result of any Letter of Compliance Assessment Process, to the Secretary of State.
- 13.2 The steps to be taken in relation to Waste Management in the DWMP shall be based on the need to ensure that the Waste will, on the Assumed Disposal Dates, comply with any RWM Waste Packaging Advice.
- 13.3 The Operator shall, until the Transfer Date, maintain a DWMP covering the period up to and including the Assumed Disposal Dates, unless at the Price Setting Review Start Date GDF Site Selection has not occurred, in which case Paragraph 5 of Schedule 8 (*GDF Site Selection Delay*) shall apply.
- 13.4 Neither Clause 13.2 nor Clause 13.3 shall apply in the event that a Contract Assumption Deviation has occurred and has been notified in accordance with Paragraph 4 of Schedule 11 (*Review Process, Notifications and Issue of Certificates*) and Schedule 9 (*Contract Assumption Deviation*) shall apply.
- 13.5 Any and all costs and expenses incurred by the Operator or any liabilities arising in relation to any Waste, before the Transfer Date in relation to Waste Management or compliance from time to time with Clause 13.2 and the DWMP, shall be for the account of the Operator. Without prejudice to Clause 16 (*Indemnities*), the Operator will have no liability for any such costs and expenses which are incurred, or any liabilities arising in relation to that Waste, after the Transfer Date, except for the payment of an amount equal to the Waste Management Cost Estimate and the Waste Management Risk Premium.

14. REVIEW PROCESS

14.1 No later than sixty (60) Business Days before each WTP Review Start Date and the Price Setting Review Start Date, as applicable:

- (A) the Operator shall provide to the Secretary of State:
 - (i) the Operator's Estimated Waste Inventory, proposed Assumed Disposal Dates and any other information that may be required for the determination of the WTP Review Items or the Price Setting Date Review Items, as applicable; and
 - (ii) (for each WTP Review Start Date only) its representations (if any) with respect to the GDF Programme Cost Apportionment;
- (B) (only at the times further specified in Paragraph 4(A) of Schedule 11 (*Review Process, Notifications and Issue of Certificates*) the Secretary of State shall (if applicable) notify the Operator of the occurrence of a Contract Assumption Deviation and any replacement assumption.

14.2 The Secretary of State (acting in accordance with the Agreed Standards) shall provide to the Operator within ten (10) Business Days either before or after each WTP Review Start Date and the Price Setting Review Start Date, as applicable, drafts of:

- (A) the DECC Data Package; and
- (B) (for each WTP Review Start Date only) the GDF Programme Cost Apportionment Amendments.

14.3 Following delivery of the draft items by the Secretary of State in accordance with Clause 14.2, the Operator shall have the opportunity to review such items for a period of sixty (60) Business Days (or by such other period as the Secretary of State and the Operator may agree) following their delivery (the "**Review Period**").

14.4 During the Review Period each party shall:

- (A) take into account the representations of the other in relation to the items delivered;
- (B) provide such assistance to the other as is reasonably requested, including the provision of such information as is reasonably necessary; and
- (C) consult together to agree in writing what adjustments (if any) need to be made to the items delivered with the objective of resolving any disputed items.

14.5 No later than thirty (30) Business Days following the end of the Review Period, the Secretary of State shall deliver to the Operator:

- (A) the DECC Data Package; and

- (B) (for each WTP Review Start Date only) the GDF Programme Cost Apportionment Amendments (if any),

in the money values of the month of the relevant WTP Review Start Date or the Price Setting Review Start Date, as applicable.

14.6 Any remaining Disputes after the delivery of the items under Clause 14.5 shall be resolved in accordance with Clause 23 (*Dispute Resolution*) provided that such DECC Data Package and the GDF Programme Cost Apportionment Amendments (if any) shall be final and binding on the parties if a Dispute Notice has not been delivered in respect of such items within fifteen (15) Business Days of such delivery, and provided further that the Expected Waste Transfer Price or Waste Transfer Price (as applicable) shall not in any circumstances exceed the Cap.

14.7 As soon as reasonably practicable following the agreement or determination in relation to the relevant WTP Review of the DECC Data Package, the Secretary of State shall notify the Operator in accordance with the requirements of Schedule 11 (*Review Process, Notifications and Issue of Certificates*).

14.8 If, at any time:

- (A) a Contract Assumption Deviation has been notified in accordance with Clause 14.1(B); and/or

- (B) Clause 10.8 or Clause 10.11 applies,

Clauses 14.1 to 14.7 shall cease to apply and, in relation to Paragraph (A) above only, Schedule 9 (*Contract Assumption Deviation*) shall apply.

15. REPRESENTATIONS AND WARRANTIES

Operator's and Secretary of State's Warranties

15.1 The:

- (A) Operator represents and warrants to the Secretary of State that each of the Operator's Warranties; and

- (B) Secretary of State represents and warrants to the Operator that each of the Secretary of State's Warranties,

is accurate in all respects and not misleading at the date of this Agreement.

15.2 The representations and warranties given in Clause 15.1 above shall be deemed to be repeated immediately before:

- (A) (in respect of the Secretary of State's Warranties and the Operator's Warranties set out at Paragraphs 1 to 4 (inclusive) of Part A (*Operator's Warranties*) of

Schedule 4 (*Representations and Warranties*) the date of this Agreement, at the Effective Date and at the Transfer Date; and

- (B) (in respect of the Operator's Warranties set out at Paragraphs 5 to 8 (inclusive) of Part A (*Operator's Warranties*) of Schedule 4 (*Representations and Warranties*) the Transfer Date,

as applicable, by reference to the facts and circumstances subsisting at the relevant date on the basis that any reference in the Warranties, whether express or implied, to the Agreement Date is substituted by a reference to the Effective Date or the Transfer Date, as applicable.

General

- 15.3 Each party undertakes to disclose in writing to the other party anything that is or may constitute a material breach of or be inconsistent with any of the Warranties immediately when it comes to its notice.
- 15.4 Each of the Warranties shall be construed as a separate and independent warranty and (except where expressly provided to the contrary) shall not be limited or restricted by reference to or inference from the terms of any other Warranty.

16. INDEMNITIES

- 16.1 Subject to Clause 17 (*Limitation of Liability*), the Operator undertakes to indemnify the Secretary of State for, and hold the Secretary of State harmless against, any and all actions, claims and proceedings from time to time made against the Secretary of State and against any and all Losses made, suffered or incurred by the Secretary of State arising out of or in connection with:

- (A) any breach by the Operator of the Waste Specification Warranty on the Transfer Date; and
- (B) the negligent acts or omissions, default or the wilful misconduct of the Operator before the Transfer Date in performing this Agreement and any document entered into pursuant to the terms of this Agreement.

- 16.2 Subject to Clause 17 (*Limitation of Liability*), the Secretary of State undertakes to indemnify the Operator for, and hold the Operator harmless against, any and all actions, claims and proceedings from time to time made against the Operator and against any and all Losses made, suffered or incurred by the Operator (together, the "**Operator Indemnified Items**") arising out of or in connection with:

- (A) the negligent acts or omissions, default or the wilful misconduct of the Secretary of State after the Transfer Date in performing this Agreement and any document entered into pursuant to the terms of this Agreement;
- (B) (subject to Clause 16.3 below) any Third Party Claim; and

- (C) (subject to the provisions of Clause 16.5 below) if Clause 22.3 Circumstances apply, any delay in the transfer to the Secretary of State of title to, and of liability for, the Waste.

16.3 If the Operator becomes aware of any Third Party Claim, it shall:

- (A) notify the Secretary of State within thirty (30) Business Days of receipt by the Operator of such Third Party Claim;
- (B) provide such information and assistance as the Secretary of State may reasonably require and comply with the Secretary of State's reasonable instructions in relation to such Third Party Claim, provided that Losses reasonably incurred by the Operator in so doing shall be Losses for the purposes of Clause 16.2(B); and
- (C) not without the prior written consent of the Secretary of State compromise, settle or submit any appeal in relation to any such Third Party Claim.

16.4 The Secretary of State may take over the conduct of proceedings in relation to any Third Party Claim, provided that the Secretary of State shall:

- (A) inform the Operator promptly of all matters arising in relation to such proceedings;
- (B) consult with the Operator prior to taking substantive action in relation to such proceedings; and
- (C) not compromise or settle any claim in any way which may result in a Loss for the Operator not covered by the indemnity in Clause 16.2 without the prior written consent of the Operator.

16.5

- (A) Notwithstanding the provisions of Clause 22.3, Clause 16.2(C) shall not apply in respect of any Operator Indemnified Items:
 - (i) which result from the Operator failing to take reasonable steps to mitigate, including in accordance with this Clause 16.5, provided that Losses reasonably incurred by the Operator in so mitigating shall be Losses for the purposes of Clause 16.2(C);
 - (ii) which arise or are incurred during any period in which the Operator is in breach of its obligation to pay amounts payable to the Secretary of State in accordance with Clause 7 (*Payments*);
- (B) the parties shall meet in order to discuss and agree (each acting reasonably and in consultation with one another), as soon as reasonably practicable and from time to time thereafter, upon the actions which may reasonably be taken in order to:

- (i) overcome the Clause 22.3 Circumstances; and/or
- (ii) enable the Operator to transfer title to, and liability for, the Waste to a third party,

in each case in the most timely and efficient manner reasonably practicable; and

- (C) if at any time Clause 22.3 Circumstances cease to apply and title to, and liability for, Waste has not already passed to a third party, the Secretary of State shall, as soon as reasonably practicable, take title to, and liability for all Waste which, but for the Clause 22.3 Circumstances, would already have Transferred.

17. LIMITATION OF LIABILITY

Time limit for claims

- 17.1 No claim in respect of the indemnity in Clause 16.1(A) shall be brought by the Secretary of State against the Operator more than one (1) year after the Transfer Date.
- 17.2 No claim in respect of the indemnity in Clause 16.1(B) shall be brought by the Secretary of State against the Operator more than six (6) years after the Transfer Date.

Limitation of liability

- 17.3 Without prejudice to Clause 17.4, Clause 17.5, Clause 17.6 or Clause 17.7, the Operator's liability under or in connection with any breach by the Operator of:

- (A) the Waste Specification Warranty on the Transfer Date;
- (B) the Waste Specification Warranty (as defined in the ILW WTC) on the Transfer Date (as defined in the ILW WTC); and/or
- (C) Clause 9.1,

shall be limited in the aggregate to twelve point five (12.5) per cent. of the indexed Waste Management Cost Estimate. This limit shall not apply where that liability arises due to the wilful misconduct of the Operator in performing this Agreement, but shall apply in all other instances including, without limitation, a liability arising by breach of contract, arising by tort (including, without limitation, the tort of negligence) or arising by breach of any statutory duty.

- 17.4 Nothing in this Agreement shall exclude or limit the liability of a party for:
 - (A) death and/or personal injury resulting from the negligence of that party or its directors, officers, employees, contractors or agents;
 - (B) fraud and/or fraudulent misrepresentation; or

- (C) any other act or omission, liability for which may not be limited under applicable law.
- 17.5 Subject to Clause 17.3, neither party shall be liable to the other party in contract, tort (including negligence), misrepresentation or for breach of any duty (including strict liability) for:
- (A) subject to Clause 16.1 and Clause 16.2, any indirect, special or consequential Loss; or
- (B) any loss of profits (whether direct or indirect), business opportunities, revenue or damage to goodwill.
- 17.6 Subject to Clause 17.3, neither party shall be liable to the other party (the “**Indemnified Party**”) in respect of the indemnities in Clause 16 (*Indemnities*) to the extent that any Loss arises due to the negligent acts or omissions, default or the wilful misconduct of the Indemnified Party.
- 17.7 Nothing in this Agreement shall in any way diminish any general duty at common law to mitigate Losses suffered by a party.

NDA

- 17.8 It is anticipated that the Secretary of State may procure some of the estimates and information to be included in the DECC Data Package from the NDA (or where the NDA's duties in this regard are assumed by another Government Entity, such Successor Government Entity) pursuant to separate arrangements between the NDA (or Successor Government Entity) and the Secretary of State. The NDA will not be a party to, and shall not have any obligations or liabilities under, this Agreement and the Operator acknowledges and agrees that it shall have no right to bring Proceedings against the NDA in respect of any matter arising out of or in connection with this Agreement.
- 17.9 For the avoidance of doubt, the Secretary of State shall be liable under this Agreement for estimates and information provided by the NDA (or any successor Government Entity) and included in the DECC Data Package.

18. DEFAULT INTEREST

- 18.1 Either party that fails to pay any sum payable by it under this Agreement on the due date for payment (whether determined by agreement or pursuant to an order of a court or otherwise) shall pay interest, accruing from day to day and compounded monthly, on that sum from the date when such sum is due until the date of actual payment (after as well as before determination or judgment) at the Default Interest Rate.
- 18.2 Any amount previously paid that, following resolution of any Dispute, shall be found to have not been payable shall be returned to the relevant party together with interest thereon at the Default Interest Rate from and including the date on which payment was

made to, but excluding, the date on which any overpayment is returned to the relevant party.

- 18.3 The parties acknowledge and agree that the interest payable under this Clause 18 (*Default Interest*) will be a reasonable pre-estimate of the loss that the party receiving such interest would suffer in light of the difficulty of estimating or calculating the actual Loss suffered and is not by way of penalty.
- 18.4 Without limiting Clause 28 (*Remedies and Waivers*), the right to receive interest under this Clause 18 (*Default Interest*) in respect of any unpaid sum is not exclusive of any rights, powers and remedies provided by law in respect of the failure to pay the relevant sum on the due date or at all.

19. CHANGES TO THE AGREEMENT

Principles

- 19.1 If either party wishes to amend this Agreement (a “**Change**”), the provisions of this Clause 19 (*Changes to the Agreement*) shall apply.
- 19.2 Until a Change is made in accordance with this Clause 19 (*Changes to the Agreement*), the parties shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms before such Change.
- 19.3 The parties acknowledge and agree that any discussions that take place between the parties in accordance with this Clause 19 (*Changes to the Agreement*) before the authorisation of a Change shall be without prejudice to the rights of either party.

Change Procedure

- 19.4 Either party (the “**Requesting Party**”) may, at any time during the Term, request a Change by giving written notice to the other party (the “**Responding Party**”) of the proposed Change (a “**Change Request**”).
- 19.5 Each Change Request shall contain to the extent reasonably practicable at the time:
- (A) the title of the Change;
 - (B) the originator and date of the request or recommendation for the Change;
 - (C) the reasons for, and full details and the cost/price (if any) of, the Change;
 - (D) a timetable for implementation, together with any proposals for acceptance of, the Change;
 - (E) a schedule of payments, if appropriate;
 - (F) details of the likely effect (if any) of the Change on other aspects of this Agreement;

- (G) the date of expiry of validity of the Change Request; and
 - (H) provisions for signature.
- 19.6 Following a Change Request, the parties shall meet as soon as reasonably practicable and, in any event, no later than thirty (30) Business Days after the date of the Change Request to consider and discuss (by way of a meeting of appropriately qualified and authorised individuals) the Change Request with the objective of agreeing the Change Request or such amendments needed to make the Change Request acceptable to the Responding Party.
- 19.7 Subject to Clause 19.8, each party shall act reasonably in proposing and in considering any Change Request.
- 19.8 If the parties are unable to agree the Change Request, the Responding Party may, at its discretion:
- (A) request such further information from the Requesting Party as is reasonably necessary to assess the effect of the Change Request; or
 - (B) reject the Change Request by providing written notice to that effect giving details of the reason for such rejection.
- 19.9 A Change Request signed by both parties will constitute an amendment to this Agreement and shall take effect immediately unless otherwise specified in the Change Request.

20. FORCE MAJEURE

Suspension of obligations for Force Majeure Event

- 20.1 If either party (the “**Affected Party**”) is prevented, hindered or delayed from performing any of its obligations under this Agreement due to a Force Majeure Event, such obligations of the Affected Party and any related obligations of the other party shall remain in effect but shall be suspended without liability for so long as the Force Majeure Event prevents the Affected Party from performing its obligations, provided that:
- (A) the Affected Party shall give notice to the other party as soon as possible after the Force Majeure Event has occurred setting out (to the extent such information is reasonably available):
 - (i) the date and cause of the suspension of its obligations under this Agreement;
 - (ii) the date the suspension of the Affected Party's obligations under this Agreement is reasonably expected to be removed;
 - (iii) the steps being taken to remove or mitigate the suspension of the Affected Party's obligations under this Agreement; and

- (iv) any other details reasonably requested by the other party;
- (B) to the extent that such information is not reasonably available at the time a notice is given pursuant to Clause 20.1(A), such information shall be notified by the Affected Party to the other party as soon as possible after it becomes reasonably available; and
- (C) the party whose obligations have been suspended pursuant to this Clause 20.1 shall use reasonable endeavours to mitigate the effects of such suspension and resume the performance of the suspended obligations as soon as practicable and shall notify the other party accordingly.

Amendment will be proposed in respect of a long term Force Majeure Event

- 20.2 As soon as reasonably practicable after the other party becomes aware that a Force Majeure Event has persisted for a continuous period of twelve (12) months, the other party shall propose an amendment to this Agreement with the aim of substituting the affected obligations with alternative obligations which the Affected Party will be able to perform and which the other party considers, acting reasonably, will have the same effect (to the extent practicable or possible).
- 20.3 Subject to Clause 20.4, if within twenty (20) Business Days of the other party proposing such an amendment to this Agreement the parties have not agreed on the amendment to be made to this Agreement, either party shall refer to be finally settled and determined by the dispute resolution procedure set out in Clause 23 (*Dispute Resolution*) below the matters of:
- (A) whether a Force Majeure Event has persisted for a continuous period of twelve (12) months; and
 - (B) if a Force Majeure Event has persisted for a continuous period of twelve (12) months, the changes to be made to this Agreement (if any) such as are necessary to remedy the circumstances brought about by such Force Majeure Event and to give effect to and preserve the commercial intent of this Agreement (as contemplated by the parties at the date of this Agreement) and restore the parties to the greatest extent practicable to the position as if the Force Majeure Event had not taken place.
- 20.4 Each party shall use all reasonable endeavours to obtain any regulator's consents or approvals that are required by it as a result of any changes to this Agreement and the other party shall use reasonable endeavours to assist in obtaining such regulator's consents or approvals. Neither party shall be obliged to implement any changes to this Agreement that would require it to obtain any regulator's consents or approvals unless and until it has obtained them. If any regulator's consents or approvals that are required by a party as a result of changes made to this Agreement have not been obtained within ninety (90) days of the changes being agreed or determined by the Dispute resolution procedure, at the request of either party the parties shall meet and use reasonable endeavours to agree on such alternative changes to this Agreement which would achieve the requirements of Clause 20.3(B) and which would avoid the requirement to

obtain such regulator's consent or approval. If the parties are unable to agree on such alternative changes within thirty (30) days of the receipt of such request from either party, either party may refer the matter to be finally settled and determined by the Dispute resolution procedure as set out in Clause 23 (*Dispute Resolution*) on the basis that any change to be made to this Agreement shall not require either party to obtain any regulator's consents or approvals which have not yet been obtained.

20.5 Where under Clause 20.3 or Clause 20.4 a Dispute is referred to expert determination or arbitration in accordance with Clause 23 (*Dispute Resolution*):

- (A) the parties agree that it is their intention that in the absence of their ability to agree any matter arising under Clause 20.3 or Clause 20.4, this Agreement should continue and should not come to an end or be deemed void or voidable in accordance with the doctrine of frustration or any other legal theory;
- (B) during such Dispute the parties shall submit to each other and the Panel or Tribunal (as the case may be) such amendments to this Agreement as they deem fit to resolve the Dispute;
- (C) the Panel or Tribunal (as the case may be) shall use reasonable endeavours to arrive at a determination which adopts one party's proposed amendments submitted in accordance with Clause 20.5(B), provided that if neither party's proposed amendments are capable technically of resolving the Dispute in the opinion of the Panel or the Tribunal (as the case may be), the Panel or the Tribunal (as the case may be) shall be entitled to draft amendments which contain elements of either of the parties' proposed amendments or to substitute the Panel's or Tribunal's (as the case may be) own amendments, in each case as necessary to resolve the Dispute and with due regard to the intent of the parties' proposed amendments;
- (D) if, in the opinion of the Panel or Tribunal (as the case may be), it is not possible for any determination of the Dispute to achieve the requirements of Clause 20.3(B), this shall not affect the continuing application of Clause 22.3; and
- (E) the parties agree that the determination of the Panel or Tribunal (as the case may be) of any Dispute relating to Clause 20.3 or Clause 20.4, as applicable, shall be legally binding.

21. RELEVANT CHANGE

21.1 Subject to Clause 22.1, in the event that any event or circumstance occurs (including any Change in Circumstance or Change in Law) which would render any provision of this Agreement impossible or unlawful to perform (a "**Relevant Change**"), then in such case either party may request, by notice to the other party that the parties shall meet and use reasonable endeavours to agree any necessary changes to this Agreement.

21.2 Without prejudice to Clause 21.4, if the parties are unable to agree on the necessary changes within twenty (20) Business Days of the date of receipt of such notice, either

party shall refer the matters below to be finally settled and determined by the Dispute resolution procedure as set out in Clause 23 (*Dispute Resolution*):

- (A) whether any change should be made to this Agreement in order to remedy the circumstances brought about by such Relevant Change and to give effect to and preserve the commercial intent of this Agreement (as contemplated by the parties at the Agreement Date); and
- (B) if a change or changes should be made, the change or changes to be made to this Agreement such as are necessary to remedy the circumstances brought about by such Relevant Change and to give effect to and preserve the commercial intent of this Agreement (as contemplated by the parties at the Agreement Date) and restore the parties to the greatest extent practicable to the position as if the Relevant Change had not taken place.

21.3 Each party shall use all reasonable endeavours to obtain any regulator's consents or approvals that are required by it as a result of any changes to this Agreement and the other party shall use reasonable endeavours to assist in obtaining such regulator's consents or approvals. Neither party shall be obliged to implement any changes to this Agreement that would require it to obtain any regulator's consents or approvals unless and until it has obtained them. If any regulator's consents or approvals that are required by a party as a result of changes made to this Agreement have not been obtained within ninety (90) days of the changes being agreed or determined by the Dispute resolution procedure, at the request of either party the parties shall meet and use reasonable endeavours to agree on such alternative changes to this Agreement which would achieve the requirements of Clause 21.2(B) and which would avoid the requirement to obtain such regulator's consent or approval. If the parties are unable to agree on such alternative changes within thirty (30) days of the receipt of such request from either party, either party may refer the matter to be finally settled and determined by the Dispute resolution procedure as set out in Clause 23 (*Dispute Resolution*) on the basis that any change to be made to this Agreement shall not require either party to obtain any regulator's consents or approvals which have not yet been obtained.

21.4 Where under Clause 21.2 or Clause 21.3 a Dispute is referred to expert determination or arbitration in accordance with Clause 23 (*Dispute Resolution*):

- (A) the parties agree that it is their intention that in the absence of their ability to agree any matter arising under Clause 21.2 or Clause 21.3, this Agreement should continue and should not come to an end or be deemed void or voidable in accordance with the doctrine of frustration or any other legal theory;
- (B) during such Dispute the parties shall submit to each other and the Panel or Tribunal (as the case may be) such amendments to this Agreement as they deem fit to resolve the Dispute;
- (C) the Panel or Tribunal (as the case may be) shall use reasonable endeavours to arrive at a determination which adopts one party's proposed amendments submitted in accordance with Clause 21.4(B), provided that if neither party's proposed amendments are capable technically of resolving the Dispute in the

opinion of the Panel or the Tribunal (as the case may be), the Panel or the Tribunal (as the case may be) shall be entitled to draft amendments which contain elements of either of the parties' proposed amendments or to substitute the Panel's or Tribunal's (as the case may be) own amendments, in each case as necessary to resolve the Dispute and with due regard to the intent of the parties' proposed amendments;

- (D) if, in the opinion of the Panel or Tribunal (as the case may be), it is not possible for any determination of the Dispute to achieve the requirements of Clause 21.2(B), this shall not affect the continuing application of Clause 22.3; and
- (E) the parties agree that the determination of the Panel or Tribunal (as the case may be) of any Dispute relating to Clause 21.2 or Clause 21.3, as applicable, shall be legally binding.

22. CONTINUATION OF KEY OBLIGATIONS

- 22.1 The parties acknowledge and agree that inconvenience, hardship or financial loss on the part of either party shall not relieve either party from performing its obligations under this Agreement and this Agreement shall continue and shall not come to an end or be deemed void or voidable in accordance with the doctrine of frustration or any other legal theory due to any such circumstance.
- 22.2 Notwithstanding any other provision of this Agreement, nothing (including any inability to obtain any necessary consents (regulatory or otherwise), any Force Majeure Event, Relevant Change or any other circumstance whatsoever) shall have the effect of relieving:
 - (A) the Secretary of State from accepting, in consideration for the amount payable under Clause 7 (*Payments*), title to, and liability for, all Waste on a date no later than 31 December 2150; or
 - (B) the Operator from the obligation to pay amounts payable to the Secretary of State in accordance with Clause 7 (*Payments*).
- 22.3 If any obligation of the Secretary of State described in Clause 22.2(A) above is unlawful or otherwise impossible at the relevant time (as specified in Clause 22.2(A) (the "**Clause 22.3 Circumstances**")), the Operator shall not be relieved of any obligation described in Clause 22.2(B) above, and Clause 16.2(C) shall apply (subject to the provisions of Clause 16.5(A) above).²

² *Explanatory note: This Clause is intended to make clear that notwithstanding anything that might happen over the term of this Agreement the transfer of title to and liability for the Waste on the basis of a price determined in accordance with the Agreement by a long stop date is not something that either party can be relieved from. In the highly unlikely circumstance that such obligations became impossible or illegal then the Operator would pay the price in accordance with the Agreement and then the Secretary of State would indemnify the Operator for the costs associated with having*

23. DISPUTE RESOLUTION

Notice and scope of Disputes

- 23.1 Subject to Clause 10.9 and Clause 14.6 and Paragraph 2.3 of Schedule 8 (*GDF Site Selection Delay*), either party may refer any matter, claim, disagreement, failure to agree, dispute or controversy arising out of or in connection with this Agreement, including any dispute regarding the existence, validity or termination of this Agreement (a “**Dispute**”), to the dispute resolution procedure as set out in this Clause 23 (*Dispute Resolution*) by serving a notice (a “**Dispute Notice**”) on the other party.
- 23.2 A Dispute Notice shall, insofar as is reasonably practicable, include the following details:
- (A) the subject matter of the Dispute and the issues to be resolved;
 - (B) the position the referring party believes is correct and the referring party's reasons for that position;
 - (C) the identity of the other party;
 - (D) the identity of the senior representative of the referring party that will engage in discussions under Clauses 23.5 to 23.7 below (“**Senior Representative**”);
 - (E) if the referring party is the Operator, and if the Operator so wishes, details of any other disputes that the Operator is reasonably aware of that may be consolidated/joined;
 - (F) copies of any documents which the referring party considers to be important and/or relevant; and
 - (G) a statement of the relief, determination, remedy or recourse which the referring party seeks.

Parties' continuing obligations

- 23.3 The parties shall continue to comply with, observe and perform all their obligations under this Agreement regardless of the nature of the Dispute and notwithstanding the referral of the Dispute for resolution.

to continue to be responsible for the Waste after the point at which it should have transferred to the Secretary of State. The Secretary of State and the Operator would then work together in good faith to transfer the Waste to the Secretary of State as soon as possible or, failing that, to a third party, in the most timely and efficient manner reasonably practicable.

- 23.4 Pending agreement or determination of any Dispute, the Operator shall continue to use such prices or dates or data as determined in accordance with the Agreement before the Dispute for the purposes of its FDP.

Discussions before Dispute resolution

- 23.5 The parties to the Dispute shall procure that the Senior Representatives of each party to the Dispute shall meet during the period within twenty (20) Business Days from the date of delivery of the Dispute Notice, and if necessary meet more than once, to seek to resolve the Dispute by agreement.
- 23.6 If the Senior Representatives are successful in resolving the Dispute, the agreement reached by the Senior Representatives 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 the requirements of this Clause 23.6 have been complied with.
- 23.7 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 23.6) made by a party in the course of discussions pursuant to these Clauses 23.5 to 23.7 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 adjudication, arbitration or other legal proceedings whether related to the Dispute or otherwise.

Arbitration

- 23.8 If, within twenty (20) Business Days of the date of delivery of a Dispute Notice, the Senior Representatives are unable to resolve the Dispute, either party may refer the Dispute to be finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause (as amended by these Clauses 23.1 to 23.17).
- 23.9 The number of arbitrators shall be three (3) (together, the “**Tribunal**”).
- 23.10 Each party shall nominate in the Request for Arbitration and the Response respectively one (1) arbitrator, and the two (2) arbitrators nominated by the parties (the “**Initial Arbitrators**”) shall within fifteen (15) days of the appointment of the second Initial Arbitrator agree upon a third arbitrator who shall act as chairman of the Tribunal. Notwithstanding anything to the contrary in the LCIA Rules, in agreeing upon the chairman, the Initial Arbitrators may communicate directly with each other and with their respective appointing parties. If no agreement is reached upon the chairman within fifteen (15) days of the appointment of the second Initial Arbitrator, the LCIA Court shall expeditiously nominate and appoint a third arbitrator to act as chairman of the Tribunal.
- 23.11 The following words contained in Article 26.9 of the LCIA Rules (or words of similar effect in any successor provision) shall be deemed to have been deleted from such Article 26.9 and shall not apply to any arbitration under these Clauses 23.1 to 23.17: “and the parties also waive irrevocably their right to any form of appeal, review, or

recourse to any state court or other judicial authority, insofar as such waiver may be validly made". For the avoidance of doubt the parties to the Dispute may appeal to the courts of England 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).

- 23.12 The Tribunal shall be entitled to take the initiative to ascertain the facts and the law relating to the matters referred to the Tribunal, and to settle them as shall seem best in the Tribunal's absolute discretion.
- 23.13 The Tribunal shall be entitled to draft amendments binding on the parties to this Agreement in order to resolve such dispute.
- 23.14 Where a Dispute arises out of Clause 20.3, Clause 20.4, Clause 21.2, Clause 21.3 or Clause 37.3 and is referred to arbitration under Clause 23.8, the Panel shall comply with and shall be entitled to act in accordance with the provisions of Clause 20.5 and Clause 21.4 (as applicable).
- 23.15 The seat, or legal place, of arbitration shall be London.
- 23.16 The language to be used in the arbitration shall be English.
- 23.17 The law of the arbitration agreement shall be the law of England and Wales.

Expert determination

- 23.18 Notwithstanding Clause 23.7, the parties may agree in writing (to be signed by each party) to resolve the Dispute by expert determination using the procedure set out in Clauses 23.19 to 23.32, or such other procedure as they may agree in writing (to be signed by each party).
- 23.19 If, within twenty (20) Business Days of the date of delivery of a Dispute Notice, the Senior Representatives are unable to resolve the Dispute, either of the parties shall refer the matter to an expert determination notifying the other party to the dispute (an "**Independent Expert Referral Notice**").
- 23.20 Each of the Operator and the Secretary of State shall act in good faith in determining whether to refer the matter to expert determination and in identifying an independent expert for this purpose.
- 23.21 The Operator and the Secretary of State shall seek to agree whether one (1) or a panel of three (3) independent experts shall be appointed to resolve the Dispute. If agreement is not reached within five (5) Business Days of the delivery of the Independent Expert Referral Notice under Clause 23.8, a panel of three (3) independent experts shall be appointed to resolve the Dispute in accordance with the provisions below.
- 23.22 Any independent expert appointed under these Clauses 23.19 to 23.32 shall be qualified by education and experience to determine the matter and shall act impartially

and fairly. The fact that an individual has been previously employed by a party (directly or indirectly) or has previously acted as an adviser or consultant to a party shall not, unless there is actual partiality, prevent such individual from being appointed as an independent expert.

Appointment of single independent expert

23.23 In the event that the Operator and the Secretary of State have agreed that a single independent expert should be appointed to resolve the Dispute, the independent expert shall be appointed by agreement between the parties to the Dispute within five (5) Business Days of the agreement of the parties in accordance with Clause 23.21 to appoint a single independent expert. If such independent expert has not been appointed by agreement within five (5) Business Days of the receipt of the Independent Expert Referral Notice, the independent expert shall be appointed by the LCIA on the application of either party to the Dispute in accordance with the provisions below.

23.24 If an independent expert has been appointed but fails to complete, or refuses to proceed with, the reference, an alternative independent expert shall be appointed by the parties. If such alternative independent expert has not been appointed within five (5) Business Days of receipt, by the non-requesting party, of the request to appoint an alternative Independent Expert, the alternative independent expert shall be appointed by the LCIA on the application of either party to the Dispute in accordance with the provisions below.

Appointment of panel of three independent experts

23.25 In the event that:

- (A) the Operator and the Secretary of State have agreed in accordance with Clause 23.21 that a panel of three (3) independent experts should be appointed to resolve the Dispute in question; or
- (B) the parties have not reached agreement over whether one (1) or a panel of three (3) independent experts should be appointed to resolve the Dispute in accordance with Clause 23.21,

the Operator and the Secretary of State shall each within five (5) Business Days of either the agreement to appoint a panel of three (3) independent experts in accordance with Clause 23.21 or the lapse of the five (5) Business Day period for agreement under Clause 23.21, appoint an independent expert each (the “**Initial Independent Experts**”). The two (2) Initial Independent Experts appointed by the parties shall, within five (5) Business Days of their appointment, appoint a third independent expert to act as chairman of the panel. In the event that either party fails to appoint an Initial Independent Expert or the Initial Independent Experts fail to agree on the identity of the chairman within five (5) Business Days of the date on which the last of them was appointed, the relevant Initial Independent Expert or chairman shall be appointed by the LCIA on the application of either party to the Dispute in accordance with the provisions below.

Application to the LCIA as appointing authority

- 23.26 If a party wishes to apply to the LCIA to appoint a single independent expert, Initial Independent Expert or chairman (as appropriate), it shall apply in writing to the LCIA, enclosing a copy of this Agreement and a brief statement describing the nature and circumstances of the Dispute and setting out any matters which such party wishes to bring to the attention of the LCIA for the purposes of selecting the single independent expert, Initial Independent Expert or chairman (as appropriate), with a copy of such application being sent simultaneously to the other party.
- 23.27 Within five (5) Business Days of service of an application in accordance with Clause 23.26, the other party shall send a reply to any matters raised in such application to the LCIA, with a copy of such application being sent simultaneously to the other party.
- 23.28 The LCIA shall endeavour to appoint the single independent expert, Initial Independent Expert or chairman (as appropriate) within five (5) Business Days of service of the reply in accordance with Clause 23.27, or as soon as reasonably practicable thereafter.
- 23.29 The LCIA's charges for acting as appointing authority shall be in accordance with its schedule of arbitration fees and costs in force at the time of the application under Clause 23.26.
- 23.30 None of the LCIA, the LCIA Court (including its president, vice-presidents and individual members), the registrar, any deputy registrar, or any independent expert, acting pursuant to these Clauses 23.26 to 23.30 shall be liable to either party to this Agreement howsoever for any act or omission in so acting, save where the act or omission is shown by a party to constitute conscious and deliberate wrongdoing committed by the body or person alleged to be liable to that party. If (notwithstanding such exclusion of liability) any of the abovementioned bodies and officers should be held liable to any third person, the parties shall hold harmless and indemnify such body or officer in full (including reasonable legal costs), save where conscious and deliberate wrongdoing, committed by that body or officer, is shown.

Role and duties of the independent expert(s)

- 23.31 In respect of any such matter referred to an independent expert or to a panel of independent experts, appointed in accordance with the provisions of Clauses 23.23 to 23.25 (in each case, the "**Panel**"):
 - (A) any independent expert appointed under this Clause 23 (*Dispute Resolution*) shall act as an independent expert and not as an arbitrator, and the law relating to arbitration shall not apply;
 - (B) the parties to the Dispute shall each have the right to make representations to the Panel;
 - (C) the parties to the Dispute shall provide any such documents, data, calculations and information to the Panel as may be requested, save that the parties shall

not be obliged to supply, to the Panel or the other party, any documents which would be privileged from production in court proceedings;

- (D) the Panel shall be entitled to take the initiative to ascertain the facts and the law relating to the matters referred to the Panel, and to settle them as shall seem best in the Panel's absolute discretion;
- (E) The Panel shall be entitled to draft amendments which contain elements of either of the parties' proposed amendments or to substitute the Panel's own amendments in each case as necessary to resolve the Dispute and with due regard to the intent of the parties' proposed amendments;
- (F) where a Dispute arises out of Clause 20.3, Clause 20.4, Clause 21.2, Clause 21.3 or Clause 37.3 and is referred to expert determination in accordance with Clause 23.18, the Panel shall comply with and shall be entitled to act in accordance with, the provisions of Clause 20.5 and Clause 21.4 (as applicable);
- (G) the Panel shall, in the absence of agreement of the parties, determine the procedure to be followed in the determination (but shall not extend the time for the publication of the Panel's determination, unless agreed by the parties);
- (H) the Panel shall proceed with the determination even if a party fails to comply with any direction issued by Panel;
- (I) the Panel shall have the power to instruct technical advisers, including legal advisers if required, but shall not delegate any decision-making functions to them;
- (J) the procedure shall be conducted, and the determination of the Panel shall be written, in the English language;
- (K) the determination of the Panel shall be made and published to the parties by the Panel within sixty (60) Business Days of the Panel's appointment;
- (L) the determination of the Panel shall include reasons for the Panel's decision;
- (M) for the avoidance of doubt, the parties acknowledge that no determination of a Panel (or part thereof, including a determination on a question of law or contractual construction) shall be binding by way of precedent or otherwise on any Panel, arbitral tribunal, adjudicator, Court or other tribunal when resolving a subsequent Dispute under this Agreement;
- (N) in the event that a panel of three (3) independent experts has been appointed to resolve the Dispute, the determination shall be made by a majority decision. If there is no majority, the decision shall be made by the chairman;
- (O) once made and published to the parties, in the absence of fraud or manifest error, the determination of the Panel shall be final and binding on the parties (subject to any challenges or appeals made pursuant to Clause 23.8), provided

that the Panel shall have the power, on the application of either party, to correct any orthographic, clerical, arithmetical or minor error in its determination within seven (7) Business Days of it being published by the Panel to the parties (or in the case of a corrected determination, within seven (7) Business Days of such corrected determination being published by the Panel to the parties);

- (P) all fees, costs and expenses incurred by the Panel (including the fees of the LCIA as appointing authority and the fees, costs and expenses of any technical advisers instructed by the independent expert(s)) shall be borne equally by the Operator and the Secretary of State. The parties shall each bear their own costs of appointing the Panel and conducting the reference;
- (Q) save in respect of any matters involving fraud or bad faith, any individual appointed, or previously appointed, as an independent expert shall not be called as a witness or otherwise involved in any further proceedings between the parties which concern the matters that were the subject of the reference made to him. Unless the parties agree otherwise or there is actual partiality an individual may act as independent expert or otherwise act in another independent capacity in a subsequent dispute between the parties;
- (R) the parties and the Panel shall (save as required by applicable law or regulation):
 - (i) keep confidential any documentation disclosed or delivered by a party to the Panel in consequence of, or in connection with, the Dispute in question; and
 - (ii) use reasonable endeavours to procure that the terms of appointment of the Panel include an undertaking that the Panel shall not disclose to any person any such information, data and documentation, and all such information, data and documentation shall remain the property of the party disclosing or delivering the same, and the Panel shall return all copies of it on completion of the Panel's work;
- (S) the Panel, its employees and agents shall not be liable, save in the case of fraud or bad faith, in respect of anything done or purported to be done by him or them in pursuance of the Panel's appointment under this Clause 23.31.

23.32 For the avoidance of doubt the parties to a dispute may appeal to the courts of England on a question of law arising out of a determination made in accordance with Clause 23.31.

23.33 Nothing in these Clauses 23.18 to 23.32 shall prevent the parties from resolving the matter by way of informal discussions and negotiations, provided that such resolution is recorded in a settlement agreement in writing and signed by authorised representatives of the parties before any determination of the Panel is made and published to the parties in accordance with Clause 23.31.

Consolidation

23.34 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 this Agreement or the ILW WTC 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.

24. NOTICES

24.1 A notice under this Agreement shall only be effective if it is in writing. Email is permitted. Faxes are not permitted.

24.2 Notices under this Agreement shall be sent to a party at its address or email address and for the attention of the individual set out below:

<u>Party and individual</u>	<u>Address</u>	<u>Email address</u>
Secretary of State	Department of Energy and Climate Change 3 Whitehall Place London SW1A 2AW	None – notices to be sent by post
Attn:	Permanent Secretary	None
Operator	40 Grosvenor Place London SW1X 7EN	nnblegal@edf-energy.com
Attn:	Chief Executive	None

provided that a party may change its notice details on giving notice to the other party of the change in accordance with this Clause 24 (*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.

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

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

- 24.4 Unless the parties agree otherwise in writing, any notice sent by email 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 email shall not invalidate the notice.
- 24.5 Any notice given under this Agreement 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.

25. FREEDOM OF INFORMATION

Co-operation by Operator with information disclosure requests

- 25.1 The Operator acknowledges that the Secretary of State is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and co-operate with the Secretary of State to enable the Secretary of State to comply with her information disclosure obligations to the extent that they relate to information related to this Agreement.

Requests for information

- 25.2 The Operator shall:
- (A) transfer all Requests for Information to the Secretary of State as soon as practicable after receipt and shall not respond directly to a Request for Information unless expressly authorised to do so by the Secretary of State other than to inform the sender of such request that its Request for Information must be sent directly to the Secretary of State;
 - (B) provide the Secretary of State with a copy of all information in its possession, or power, in the form that the Secretary of State reasonably requires to respond to such Request for Information as soon as practicable and in any event within five (5) Business Days (or such other period as the Secretary of State may reasonably specify) of the Secretary of State's request; and
 - (C) provide all necessary assistance as 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.
- 25.3 If the Secretary of State is requested to disclose any information relating to the Operator and to this Agreement 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 guidance then in force applicable to the Secretary of State):
- (A) inform the Operator as soon as practicable after receipt and in any event within five (5) Business Days of receiving such a request;

(B) before making a disclosure pursuant to a Request for Information, allow the Operator to have a reasonable opportunity to make representations to the Secretary of State whether the 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.

25.4 Notwithstanding Clause 25.3, the Secretary of State shall be responsible for determining, in her sole and absolute discretion and notwithstanding any other provision in this Agreement or any other agreement, whether any 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.

25.5 If the Secretary of State determines that disclosure pursuant to the FOIA or the Environmental Information Regulations, as applicable, is required and the Operator has objected to such disclosure or the extent of the proposed disclosure, the Secretary of State shall give the Operator as much prior notice as is reasonably practicable before such disclosure being made.

26. PROTECTION OF PERSONAL DATA

The Operator undertakes to comply at all times during the Term with data protection legislation and not to perform its obligations under this Agreement in such a way as to cause the Secretary of State to breach any of her applicable obligations under the data protection legislation.

27. RECORD KEEPING

Records

27.1 Prior to the Transfer Date, the Operator shall maintain all documents (including superseded documents) in relation to Waste and Storage Facilities in accordance with any and all applicable laws and Regulatory Requirements. After the Transfer Date (and in relation only to Storage Facilities, related infrastructure and associated Waste which have been transferred to the Secretary of State), the Secretary of State shall, within a reasonable period of time following receipt of a written request from the Operator, provide to the Operator requested information relating to such Storage Facilities, related infrastructure and associated Waste which the Operator requires in order to comply with any and all applicable laws and Regulatory Requirements.

Transfer of records

27.2 The Operator shall, on the Transfer Date, deliver to the Secretary of State copies of any and all records in respect of the Waste and the Storage Facilities that are not already in the possession of the Secretary of State.

28. REMEDIES AND WAIVERS

- 28.1 The rights, powers and remedies provided by this Agreement may be waived only by the relevant party giving written notice (a **“Waiver Notice”**) that expressly states that such waiver is intended for, and such waiver shall only be operative with regard to, the specific circumstances referred to in the Waiver Notice.
- 28.2 Any failure, delay or omission in exercising any right, power or remedy provided by law or under this Agreement by either party shall not:
- (A) affect that right, power or remedy; or
 - (B) constitute a waiver of that right, power or remedy, or of any other rights, powers or remedies.
- 28.3 The single or partial exercise of any right, power or remedy provided by law or under this Agreement shall not unless otherwise expressly stated preclude any other or further exercise of it or the exercise of any other right, power or remedy.
- 28.4 The rights, powers and remedies provided in this Agreement are cumulative and, unless otherwise provided in this Agreement, are not exclusive of any rights, powers or remedies provided by law, in equity or otherwise under this Agreement, except that notwithstanding any provision of this Agreement, a party shall not be entitled to terminate this Agreement by accepting any repudiation of this Agreement by the other party.

29. INVALIDITY

If at any time any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, such provision shall be severed and shall not affect or impair the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement.

30. 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 Agreement and securing to the other party the full benefit of the rights, powers and remedies conferred upon the other party in this Agreement.

31. ENTIRE AGREEMENT

- 31.1 Each of the parties confirms that this Agreement represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the parties with respect to it and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at law or by custom, usage or course of dealing, except that the limit of the Operator's liabilities described in Clause 17.3 shall be the limit for the aggregate of such

liabilities arising under both this Agreement and the ILW WTC. The parties acknowledge that this Agreement is relevant to the FDP and the ILW WTC.

31.2 Each party confirms that:

- (A) in entering into this Agreement it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out or referred to in this Agreement; and
- (B) in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the only rights or remedies in relation to any representation, warranty, assurance, covenant, indemnity, undertaking or commitment given or action taken in connection with this Agreement are pursuant to this Agreement, and for the avoidance of doubt and without limitation, neither party has any other right or remedy (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made before, and/or in, this Agreement).

31.3 Unless otherwise provided in this Agreement, this Agreement may only be varied by:

- (A) a document expressed to be a variation to this Agreement; or
 - (B) a Change Request,
- in each case signed by each of the parties; or
- (C) a determination of a Panel in accordance with Clause 23.31(D) above or an award of a Tribunal in accordance with Clause 23.12 above.

32. ASSIGNMENT

Prohibition on assignment

32.1 Subject to the following provisions of this Clause 32 (*Assignment*), no party may at any time:

- (A) assign all or any part of the benefit of, or its rights or benefits under, this Agreement;
- (B) 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 Agreement; or
- (C) sub-contract or enter into any arrangement whereby another person is to perform any or all of its obligations under this Agreement,

without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

Security

- 32.2 The restrictions in Clause 32.1 do not apply to any assignment, novation or any other arrangements that the Operator enters into in accordance with any agreement with a Secured Creditor.

Successor Government Entity

- 32.3 If the Secretary of State considers that it is expedient to facilitate the public sector's administration and performance of this Agreement, the Secretary of State may notify the Operator that such of the Secretary of State's rights and obligations under this Agreement as are specified in the notice (the "**Substituted Rights and Obligations**") are to be assumed by another Government Entity (the "**Successor Government Entity**").
- 32.4 If the Secretary of State issues a notice under Clause 32.3, the Secretary of State shall, except where the Successor Government Entity is a Minister of the Crown or a government department, unconditionally and irrevocably guarantee the due and punctual performance by any Successor Government Entity of such obligations as are assumed by it.
- 32.5 If a notification complying with the foregoing requirements is given by the Secretary of State, the Operator shall enter into such further agreements as the Secretary of State may reasonably consider necessary to substitute the Successor Government Entity for the Secretary of State in respect of the Substituted Rights and Obligations and to make any consequential modifications to this Agreement that are necessary to give effect to the substitution.
- 32.6 The Secretary of State may not require any assumption of Substituted Rights and Obligations or the making of any consequential modifications to this Agreement under Clause 32.3 that will adversely affect any rights of the Operator or that will impose any additional obligations on the Operator.

33. COSTS

Except as otherwise stated in this Agreement, the Operator shall pay its own costs and expenses and any and all of the Secretary of State's costs and expenses in relation to the execution and carrying into effect of this Agreement, including the costs and expenses of the Secretary of State incurred:

- (A) under the Review Process;
- (B) in determining the Waste Transfer Price and Waste Transfer Payment;
- (C) in determining the Waste Management Cost Estimate and the Waste Management Risk Premium; and
- (D) (to the extent not already covered above) in determining the Reference WTC Fee and/or the Revised Policy WTC Fee.

34. THIRD PARTY RIGHTS

- 34.1 Clause 17.8 and Clause 23.30 (the “**Third Party Rights Clauses**”) confer a benefit on certain persons named therein who are not a party to this Agreement (each for the purpose of this Clause 34 (*Third Party Rights*) a “**Third Party**”) and, subject to the remaining provisions of this Clause 34 (*Third Party Rights*), are intended to be enforceable by the Third Party by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 34.2 The parties to this Agreement do not intend that any term of this Agreement, apart from the Third Party Rights Clauses, should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Agreement.
- 34.3 Notwithstanding the provisions of Clause 34.1, this Agreement may be rescinded or varied in any way and at any time by the parties to this Agreement without the consent of any Third Party.

35. COUNTERPARTS

- 35.1 This Agreement may be executed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart.
- 35.2 Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

36. CONVERSION TO ALTERNATIVE CURRENCY

- 36.1 With effect from the date (if any) that the UK adopts an alternative currency to sterling (the “**Alternative Currency**”) as its lawful currency (the “**Alternative Currency Effective Date**”):
- (A) to the extent relevant, invoiced amounts shall be converted from sterling to the Alternative Currency and shall be stated in the invoice in such Alternative Currency;
 - (B) no payments falling due after the Alternative Currency Effective Date which would have been payable in sterling under this Agreement but for the adoption of the Alternative Currency by the UK as its lawful currency shall be made in sterling; and
 - (C) on the Alternative Currency Effective Date, all amounts stated in sterling shall be converted into the Alternative Currency and, on and after the Alternative Currency Effective Date, all amounts required to be calculated in sterling shall be calculated in the Alternative Currency.
- 36.2 For the purposes of this Clause 36 (*Conversion to Alternative Currency*), conversions from sterling to the Alternative Currency shall be at the fixed conversion rate provided for by English law.

37. WITHDRAWAL OF RPI INDEX

37.1 If the index referred to in limb (a) of the definition of RPI or any subsequent Replacement Inflation Index:

- (A) ceases to be published by the Office for National Statistics; or
- (B) it is agreed by the parties or it is determined by the Panel or Tribunal (as the case may be) as may be appointed in accordance with the provisions of Clause 23 (*Dispute Resolution*) that the index referred to in limb (a) of the definition of RPI or the Replacement Inflation Index (as applicable) has ceased to be used for the purposes of calculating the amount payable by the UK Government on repayment of the majority of notional amount outstanding of UK index-linked gilts,

then such alternative index or publication or information which produces as nearly as possible the same economic result or gives the same economic information shall be deemed to be the "**Replacement Inflation Index**".

37.2 If the reference date used in the compilation of any such RPI (or Replacement Inflation Index) index or information shall change, the figure taken to be shown in such index or information shall be the figure which would have been shown in the index or information if the original reference date had been retained.

37.3 If any dispute or difference shall arise between the parties as to the construction or effect of this Clause 37 (and a dispute shall be deemed to have arisen if the parties have not reached agreement within six (6) weeks of the occurrence of the event referred to in Clause 37.1 having been notified by a party to the other party), either party may refer the matter for determination in accordance with Clause 23 (*Dispute Resolution*) and the Panel or Tribunal (as the case may be) shall have the power to order that such amendments are made to this Agreement as are necessary to give effect to any Replacement Inflation Index including in relation to Clause 37.2.

38. WAIVER OF SOVEREIGN IMMUNITY

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

39. GOVERNING LAW AND JURISDICTION

Governing law

39.1 This Agreement is to be governed by and construed in accordance with English law.

39.2 Any Dispute arising out of or in connection with this Agreement, whether contractual or non-contractual, is to be governed by and determined in accordance with English law.

39.3 Any Dispute must be resolved in accordance with the provisions of Clause 23 (*Dispute Resolution*), subject to the provisions of Clause 39.4 below.

Jurisdiction

39.4 Notwithstanding any other provision of Clause 23 (*Dispute Resolution*) or this Clause 39 (*Governing Law and Jurisdiction*), either party may at any time:

- (A) apply to the courts of England to:
 - (i) seek urgent injunctive or other equitable relief, including specific performance; or
 - (ii) enforce any and all decisions of an expert and/or arbitral tribunal; and/or
- (B) seek judicial review (to the extent jurisdiction may exist and save insofar as the existence of alternative remedies under this Agreement would under normal principles exclude judicial review).

39.5 For the purpose of any matters which are capable of being referred to a court in accordance with Clause 23 (*Dispute Resolution*) or this Clause 39 (*Governing Law and Jurisdiction*):

- (A) the courts of England are to have exclusive jurisdiction to settle any such matter and any Proceedings arising out of or in connection with such matter shall be brought only in the courts of England;
- (B) 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
- (C) each party irrevocably submits and agrees to submit to the jurisdiction of the courts of England.

SIGNATURES

This Agreement has been duly executed by the Parties (or their duly authorised representatives) on the date specified at the beginning of this Agreement.

SECRETARY OF STATE

For the Secretary of State for Energy and Climate Change

Signature:

Print Name:

Job Title:

Date:.....

Signed by

.....

(Name of authorised director)

.....

(Signature of authorised director)

for and on behalf of

NNB GENERATION COMPANY (HPC) LIMITED

Schedule 1
Conditions Precedent

1. FDP APPROVAL

The approval by the Secretary of State of the Operator's FDP, including the Operator's DWMP, pursuant to section 46 of the Energy Act 2008.

2. REGULATORY CONSENTS

Receipt by the Operator of:

- (A) a nuclear site licence granted in relation to the Site pursuant to section 3 of the Nuclear Installations Act 1965; and
- (B) an electricity generation licence granted in relation to the Site pursuant to section 6 of the Electricity Act 1989.

Schedule 2
Methodologies

Part A - Primary Methodology

1. The Secretary of State shall calculate the Base Cost Unit Estimate in accordance with Schedule 3 (*Calculation of Base Cost Unit Estimate*).
2. The Secretary of State shall convert the Base Cost Unit Estimate to Price Units using the following conversion formula (the “**Converted Base Cost Unit Estimate**”).

$$\frac{\text{Base Unit Cost Estimate}}{\left(\frac{\text{Operator's Estimated Price Unit Waste Inventory}}{\text{Operator's Estimated Waste Inventory}} \right)}$$

3. The Secretary of State (acting in accordance with the Agreed Standards) shall adjust the Converted Base Cost Unit Estimate (or, if no conversion under Paragraph 2 above is necessary, the Base Cost Unit Estimate) for Estimating Uncertainty and Discrete Risks to produce a probability distribution (the “**Risk Adjusted Cost Distribution**”).
4. The Secretary of State shall determine from the Risk Adjusted Cost Distribution the value which corresponds to P95 on that distribution (the “**Pricing Cost Estimate**”).
5. The Expected Waste Transfer Price or the Waste Transfer Price, as applicable, per Price Unit of Waste will be set at the lower of: (i) the Pricing Cost Estimate; and (ii) the indexed Cap.

Part B - Interim Methodology

1. The Secretary of State shall calculate the Base Cost Unit Estimate in accordance with Schedule 3 (*Calculation of Base Cost Unit Estimate*).
2. The Secretary of State shall convert the Base Cost Unit Estimate to Price Units using the following conversion formula (the “**Projected Converted Base Cost Unit Estimate**”).

$$\frac{\text{Base Unit Cost Estimate}}{\left(\frac{\text{Operator's Estimated Price Unit Waste Inventory}}{\text{Operator's Estimated Waste Inventory}} \right)}$$

3. The Secretary of State (acting in accordance with the Agreed Standards) shall determine, in consultation with the Operator and taking account of the manner in which the previous Expected Waste Transfer Price was determined, the approach to adjusting the Projected Converted Base Cost Unit Estimate for Estimating Uncertainty and Discrete Risks that reflects reasonably available information (the “**Interim Risk Adjustment Methodology**”).
4. The Secretary of State shall adjust the Projected Converted Base Cost Unit Estimate (or, if no conversion under Paragraph 2 above is required, the Base Cost Unit Estimate) following the Interim Risk Adjustment Methodology to produce the “**Projected Pricing Cost Estimate**”.
5. The Expected Waste Transfer Price shall be set at the lower of: (i) the Projected Pricing Cost Estimate; and (ii) the indexed Cap.

Part C - Default Methodology

1. No later than sixty (60) Business Days before the Price Setting Review Start Date, the Secretary of State shall identify the cost modelling reasonably available to her and shall notify the Operator accordingly.
2. The Secretary of State shall, having regard to the cost modelling identified, determine the Waste Transfer Price no later than forty (40) Business Days before the Price Setting Review Start Date and shall notify the Operator of her determination, providing reasonable details of her calculation of the Waste Transfer Price.
3. The Operator shall have a period of forty (40) Business Days in which to make representations in relation to the Secretary of State's determination.
4. The Secretary of State shall confirm the Waste Transfer Price no later than the Price Setting Review Start Date.
5. The Waste Transfer Price shall not exceed the indexed Cap.

Schedule 3
Calculation of Base Cost Unit Estimate³

1. VARIABLE COSTS

- 1.1 The Secretary of State shall add together the Estimated Inventory of Legacy Waste and the Estimated Inventory of New Build Waste to give the **“Total Estimated Inventory of Waste”**.
- 1.2 The Secretary of State shall determine the product of the Estimated Variable Costs per DECC Unit of Waste and the Operator's Estimated Waste Inventory to give the **“Operator's Total Variable Waste Costs”**.
- 1.3 The Secretary of State shall add together the Operator's Total Variable Waste Costs and the Operator's Total Variable ILW Costs to give the **“Operator's Total Variable Costs”**.
- 1.4 The Secretary of State shall determine the result of the addition of: (i) the product of the Estimated Variable Costs per DECC Unit of Waste and the Total Estimated Inventory of Waste; and (ii) the product of the Estimated Variable Costs per DECC Unit of ILW and the Total Estimated Inventory of ILW, to give the **“Total Variable Costs”**.

2. FIXED COSTS

- 2.1 The Secretary of State shall determine the product of the Estimated Fixed Costs and the result of the division of the Operator's Total Variable Costs by the Total Variable Costs with the result being the **“Operator's Fixed Costs”**.
- 2.2 The Secretary of State shall:
- (A) divide the Estimated Fixed Costs to be incurred during the Applicable Uplift Period by the total Fixed Costs (the **“Annual Uplift Share”**) and divide the Estimated Fixed Costs to be incurred during the Applicable Discount Period by the total Fixed Costs (the **“Annual Discount Share”**);
- (B) multiply the Annual Uplift Share for each year in the Applicable Uplift Period by $(1 + r)^N$ and multiply the Annual Discount Share for each year in the Applicable Discount Period by $1/(1 + r)^N$, where:

r is the percentage interest rate selected by the Secretary of State (acting in accordance with the Agreed Standards) expressed as a decimal; and

³ Explanatory note: There will be one WTP Review at the same time for both the Spent Fuel and the ILW Waste Transfer Contracts.

^N is the number of years remaining in the Applicable Uplift Period or the number of years elapsed in the Applicable Discount Period (as applicable) after the calendar year in question has ended; and

(C) add together the results for each year in the Applicable Uplift Period and the Applicable Discount Period under (B) above (the "**Financing Charge Uplift Factor**").

2.3 The Secretary of State shall determine the product of the Operator's Fixed Costs and Financing Charge Uplift Factor, the result being the "**Operator's Adjusted Fixed Costs**".

2.4 The Secretary of State shall allocate the Operator's Adjusted Fixed Costs to Waste in accordance with the percentage that the Operator's Total Variable Waste Costs represents of the Operator's Total Variable Costs.

2.5 The Operator's Adjusted Fixed Costs allocated to Waste pursuant to Paragraph 2.4 above shall be divided by the Operator's Estimated Waste Inventory to give the "**Operator's Fixed Costs per DECC Unit of Waste**".

3. **BASE COST UNIT ESTIMATE**

The Operator's Fixed Costs per DECC Unit of Waste from Paragraph 2.5 above shall be added to the Estimated Variable Costs per DECC Unit of Waste to give the initial estimate of the total cost of the GDF Programme per DECC Unit of Waste produced at or from the Site (the "**Base Cost Unit Estimate**").

Schedule 4
Representations and Warranties

Part A - Operator's Warranties

Capacity of the Operator

1. The Operator is validly incorporated, in existence and duly registered and has the requisite capacity, power and authority to enter into and perform this Agreement and any document entered into pursuant to the terms of this Agreement.
2. The obligations of the Operator under this Agreement constitute, and the obligations of the Operator under any document entered into pursuant to the terms of this Agreement will when delivered constitute, legal, valid and binding obligations of the Operator in accordance with their respective terms.
3. The execution and delivery of, and the performance by the Operator of its obligations under, this Agreement and each document entered into pursuant to the terms of this Agreement will not:
 - (A) result in a breach of any provision of the articles of association of the Operator;
 - (B) result in a breach of, or constitute a default under, any instrument by which the Operator is bound; or
 - (C) result in a breach of any statute, law, rule, regulation, order, judgment or decree of any court, governmental agency or regulatory body by which the Operator is bound.

Compliance and regulation; litigation and claims

4. All licences, consents and other permissions, authorisations and approvals required for the Operator to carry out the transactions contemplated by this Agreement have been or will be obtained at the time required, are not subject to onerous conditions hindering its carrying out of such transactions and are in full force and effect.

Title to Waste

5. The Operator is the sole legal and beneficial owner of the Waste, except for the circumstances where a Secured Creditor becomes the legal and/or beneficial owner of any or all of the Waste.
6. No option, right to acquire, mortgage, charge, pledge, lien or other right exercisable by third parties or other form of security or encumbrance or equity on, over or affecting the whole or any part of the Waste is outstanding and there is no agreement or commitment to give or create any and no claim has been made by any person to be entitled to any except for any such rights acquired by a Secured Creditor in relation to the Waste.

Waste specification

7. The Waste and any Storage Facility (in the circumstance of Transfer of the Waste without physical delivery pursuant to Clauses 8.4 to 8.6), meet, and are maintained in accordance with, any and all applicable laws and Regulatory Requirements, including:
 - (A) the relevant conditions attached to an authorisation issued pursuant to the Environmental Permitting (England and Wales) Regulations 2010 (and any successor thereof) for the disposal of Waste;
 - (B) the relevant conditions attached to the nuclear site licence for the Site issued by the Office for Nuclear Regulation pursuant to the Nuclear Installations Act 1965 (and any successor thereof); and
 - (C) the safety case submitted by the Operator in accordance with the nuclear site licence for the Site, including in particular the radioactive waste management case.

8. If a Contract Assumption Deviation has occurred and has been notified in accordance with Paragraph 4 of Schedule 11 (*Review Process, Notifications and Issue of Certificates*), the Waste meets the Revised Policy Waste Criteria.

Part B – Secretary of State's Warranties

1. The Secretary of State has the requisite capacity, power and authority to enter into and perform this Agreement and any document entered into pursuant to the terms of this Agreement.
2. The obligations of the Secretary of State under this Agreement constitute, and the obligations of the Secretary of State under any document entered into pursuant to the terms of this Agreement will when delivered constitute, legal, valid and binding obligations of the Secretary of State in accordance with their respective terms.
3. The execution and delivery of, and the performance by the Secretary of State of her obligations under, this Agreement and each document entered into pursuant to the terms of this Agreement will not result in a breach of any statute, law, rule, regulation, order, judgment or decree of any court, governmental agency or regulatory body by which the Secretary of State is bound.

Schedule 5
Agreed Standards

Where a party is required to act in accordance with the Agreed Standards, the party shall perform their obligations as follows:

- (A) a party shall make any determination or calculation within the range of what is reasonable having regard to the other party's written representations;
- (B) a party shall make any determination or calculation in a transparent manner such that it is capable of review by, or on behalf of, the other party;
- (C) if requested by the other party, a party shall provide a written explanation for any determination or calculation; and
- (D) to the extent applicable, a party shall apply the Specific Factors.

Schedule 6
Specific Factors

- (A) Money values used in the determination of the Waste Transfer Price and the Expected Waste Transfer Price shall, pursuant to Clause 1.2(O), be in the money values of the day for which the most recently published RPI (or the Replacement Inflation Index) data is available at the time of determination.
- (B) Actual data shall be used where available.
- (C) The Generic Base Cost Estimate shall be updated to reflect: (i) specific cost data; and (ii) the information reasonably available, in relation to the GDF Programme at the time of determination.
- (D) The GDF Site Specific Cost Estimate shall be calculated on a line item by line item basis and shall incorporate an assessment of risk and uncertainty in accordance with: (i) the practice of the NDA (or where the NDA's duties in this regard are assumed by another Government Entity, the practice of that Successor Government Entity); and (ii) (subject to (i)) Good Industry Practice.
- (E) Variable Costs and Fixed Costs shall be derived from the GDF Programme Cost Estimate.
- (F) For the purpose of considering whether any amendments could be made to this Agreement in relation to the GDF Programme Cost Apportionment, the GDF Programme Cost Estimate shall be analysed on the basis that: (i) Fixed Costs are any and all costs of the GDF Programme that are largely unrelated to the volume of material being emplaced; (ii) Variable Costs are any and all costs of the GDF Programme that vary with the volume of material being emplaced, and any amendments shall only be required if they materially improve the accuracy of the GDF Programme Cost Apportionment.
- (G) The estimate of whether one or more than one GDFs might be needed will be made on the basis of the level of information reasonably available at the time of determination.
- (H) The Estimated Inventory of New Build Waste shall be estimated by reference to: (i) a predicted Spent Fuel inventory for the New Build Fleet based upon such factual data as to existing sites of the New Build Fleet as is then reasonably available; and (ii) an estimate of the likely size of the New Build Fleet at the Price Setting Review Start Date based upon the declared intentions of Credible Nuclear Power Operators in relation to future sites of the New Build Fleet which have been designated or have received some other form of initial approval.
- (I) The Estimated Inventory of Legacy Waste shall be estimated using the inventory of Legacy Waste used for the purposes of calculating the GDF Programme Cost Estimate in the most recent annual report and accounts of the NDA reconciled to the published inventory.

- (J) The interest rate and discount rate selected for the Financing Charge Uplift Factor shall be such rates as are used by the Government in relation to its nuclear liabilities.
- (K) For the purpose of the Default Methodology, the Expected Assumed Disposal Dates or Assumed Disposal Dates, as applicable, shall be the Default Date.
- (L) All personnel carrying out calculations or determinations under this Agreement shall be suitably qualified and experienced.
- (M) No Estimating Uncertainty or Discrete Risk adjustments, additions or uplifts shall be applied to costs which have been incurred.
- (N) The First Emplacement Date, the Last Emplacement Date and the GDF Closure Date shall be determined with regard to the then most recent emplacement schedule for, and the estimated rate of emplacement in, the GDF Programme.
- (O) The costs in the GDF Programme Cost Estimate shall be allocated to (i) waste streams (including Spent Fuel and ILW) and (ii) Legacy Waste and New Build Waste, on the basis of the information reasonably available at the time of determination.

Schedule 7
Contract Assumptions

1. New Build Waste will be disposed of in the GDF Programme.
2. Spent Fuel will be disposed of without being subject to re-processing before packaging.

Schedule 8
GDF Site Selection Delay

1. APPLICATION

If, sixty (60) Business Days before the Price Setting Review Start Date, (i) GDF Site Selection has not occurred and (ii) no Contract Assumption Deviation has been notified in accordance with Paragraph 4 of Schedule 11 (*Review Process, Notifications and Issue of Certificates*), the provisions of this Schedule 8 (*GDF Site Selection Delay*) shall apply.

2. WASTE TRANSFER PRICE

2.1 The Waste Transfer Price shall be calculated in accordance with the Default Methodology.

2.2 The Assumed Disposal Date shall be a single date which is the Default Date.

2.3 The Operator may not Dispute the Waste Transfer Price determined using the Default Methodology in any circumstances, provided that the Waste Transfer Price so determined shall not exceed the Cap.

2.4 For the avoidance of doubt:

(A) the Transfer Date shall still be determined in accordance with Clause 8 (*Transfer of Waste*) at the times set out in Clause 8.4.

(B) Clause 7.1 and Clause 7.6 shall still apply at the times set out in Clause 7 (*Payments*).

3. EARLY TRANSFER PAYMENT

The Secretary of State shall promptly calculate the Waste Management Cost Estimate using the DWMP SF Management Line Items from the most recent FDP Quinquennial Report. Once the calculation of the Waste Management Cost Estimate has been agreed or determined in accordance with this Paragraph 3 it is fixed and may not subsequently be amended (except, for the avoidance of doubt, that it shall still be indexed under Clause 7.1(B)).

4. CERTIFICATE TO BE DELIVERED TO THE OPERATOR

The Secretary of State shall deliver a certificate to the Operator no later than the Price Setting Review Start Date:

(A) setting out the Waste Transfer Price as calculated in accordance with Paragraph 2 above and in money values of the Price Setting Review Start Date; and

(B) confirming that the Assumed Disposal Dates shall be a single date which is the Default Date.

5. REQUIREMENT TO MAINTAIN DWMP

The Operator shall, until the Transfer Date, maintain a DWMP covering the period up to and including the Transfer Date. The Operator and the Secretary of State shall work together between the Price Setting Review Start Date and the Transfer Date to ensure that all Regulatory Requirements regarding the preparation of plans for the management of Waste after the Transfer Date are complied with.

Schedule 9 Contract Assumption Deviation

1. APPLICATION

1.1 If:

- (A) a Contract Assumption Deviation has occurred and has been notified in accordance with Paragraph 4 of Schedule 11 (*Review Process, Notifications and Issue of Certificates*); or
- (B) the conditions set out in Clause 7.3 have been satisfied,

the provisions of this Schedule 9 (*Contract Assumption Deviation*) shall apply.

1.2 The Secretary of State may only deviate from the Contract Assumptions where:

- (A) the deviation results from a change in general Government policy in relation to the long term management of higher activity radioactive waste in the UK; and
- (B) the deviation complies with Clause 5 (*Equitable Treatment*).

2. WASTE TRANSFER DATE

Before the end of the Revised Policy Review Period, the Operator shall determine, or re-determine (acting reasonably) the Assumed Transfer Date with reference to the Decommissioning End Date; such date must reflect Early Transfer and must be no earlier than the Decommissioning End Date and no later than 31 December 2150. Such Assumed Transfer Date shall be used for the purpose of calculating the Reference WTC Fee only. For the avoidance of doubt, for all purposes other than the calculation of such Reference WTC Fee, the Assumed Transfer Date shall not be fixed under this Paragraph 2 and may be updated from time to time in accordance with the other provisions of this Agreement.

3. REFERENCE WTC FEE AND REVISED POLICY WTC FEE

3.1 Not later than the end of the Revised Policy Review Period, the Secretary of State shall determine the criteria to which Waste must conform at each Transfer Date (the "**Revised Policy Waste Criteria**"). The Revised Policy Waste Criteria shall be accompanied by a statement that they are consistent with: (i) the Contract Assumptions where the conditions set out in Clause 7.3 have been satisfied, or any replacement assumption notified in accordance with Paragraph 4 of Schedule 11 (*Review Process, Notifications and Issue of Certificates*) where a Contract Assumption Deviation has occurred; and (ii) Clause 5 (*Equitable Treatment*).

3.2 The Secretary of State and the Operator shall (each acting reasonably and in consultation with one another) calculate the Reference WTC Fee, in accordance with Paragraph 3.3 of this Schedule before the end of the Revised Policy Review Period.

Once the Reference WTC Fee has been fixed under this Paragraph 3.2 it may not subsequently be amended.

3.3 The Reference WTC Fee shall be calculated on the basis that a Contract Assumption Deviation has not occurred and shall be calculated as the sum of the Waste Transfer Payment, the Waste Management Cost Estimate, and the Waste Management Risk Premium, in each case as calculated pursuant to the provisions of Paragraphs 3.4 and 3.5 below.

3.4 Subject to Paragraph 3.5, if the Reference WTC Fee is required to be calculated on or before the Price Setting Review Start Date, it shall be calculated as the sum of:

(A) the most recent indexed SF Transfer Payment, as recalculated *mutatis mutandis* based on:

(i) the Waste Transfer Price being the Cap; and

(ii) the Assumed Transfer Date being as determined in accordance with Paragraph 2;

(B) the most recent indexed Transfer Date Management Target; and

(C) an amount equal to twelve point five (12.5) per cent. of the most recent Transfer Date Management Target.

3.5 If the Reference WTC Fee is required to be calculated after the Price Setting Review Start Date or at any time following the determination of a Waste Transfer Price under Clause 10.8 or Clause 10.11, it shall be calculated as the sum of:

(A) the most recent indexed SF Transfer Payment, as recalculated *mutatis mutandis* based on the Assumed Transfer Date as determined in accordance with Paragraph 2;

(B) the most recent indexed Transfer Date Management Target; and

(C) an amount equal to 12.5 per cent. of the most recent Transfer Date Management Target.

3.6 Not later than the end of the Revised Policy Review Period, the Secretary of State shall determine the waste transfer and management costs on the basis that the relevant Contract Assumption Deviation has occurred or the conditions set out in Clause 7.3 have been satisfied (the "**Revised Policy WTC Fee**"). The Secretary of State shall calculate the Revised Policy WTC Fee in money values of the same month as the Reference WTC Fee is indexed to under Paragraph 3.4 or 3.5 (as applicable), based on:

(A) the Revised Policy Waste Criteria;

- (B) estimates of the costs of long term management of the Waste after the Assumed Transfer Date;
- (C) proportionate allocation of costs between waste streams (including Legacy Waste and New Build Waste);
- (D) an assessment of Estimating Uncertainty and Discrete Risks around such cost estimates; and
- (E) appropriate adjustments for indexation and the application of the Discount Rate.

4. REVISED POLICY WASTE CRITERIA

- 4.1 The steps to be taken in relation to Waste Management in the DWMP shall be based on the need to ensure that the Waste will meet the Revised Policy Waste Criteria on the Transfer Date.
- 4.2 The Operator shall maintain a DWMP covering the period up to and including the Transfer Date.

Amending the Revised Policy Waste Criteria

- 4.3 The Revised Policy Waste Criteria may be amended at any time:
 - (A) by the Secretary of State upon written confirmation to the Operator setting out the amendments to the Revised Policy Waste Criteria and containing a statement that such amendments are consistent with: (i) any replacement assumption notified in accordance with Paragraph 2.1 above; (ii) Clause 5 (*Equitable Treatment*); and (iii) reasonably necessary in order to comply with Regulatory Requirements; or
 - (B) by the agreement of the parties in accordance with Clause 19 (*Changes to the Agreement*).
- 4.4 Any and all costs and expenses incurred by the Operator in relation to the Waste before the Transfer Date in relation to any criteria to which the Waste must conform, including the cost of compliance with any amendments to the Revised Policy Waste Criteria, shall be for the account of the Operator. Except for the Contract Assumption Deviation Payment, the Operator will have no liability for any such costs and expenses in relation to that Waste which are incurred after the Transfer Date.

5. CERTIFICATE TO BE DELIVERED TO THE OPERATOR

- 5.1 The Secretary of State shall deliver a certificate to the Operator within one (1) month of the expiry of the Revised Policy Review Period, setting out the “**Contract Assumption Deviation Waste Transfer Price**” in money values of the same month as the Reference WTC Fee is indexed to under Paragraph 3.4 or 3.5 (as applicable) as calculated as follows:

$$\begin{array}{r} \text{Contract Assumption} \\ \text{Deviation Waste} \\ \text{Transfer Price} \end{array} = \begin{array}{r} \text{Contract} \\ \text{Assumption} \\ \text{Deviation WTC} \\ \text{Fee} \end{array} \times \frac{1}{\begin{array}{r} \text{Operator's Estimated Waste} \\ \text{Inventory used to calculate the} \\ \text{Reference WTC Fee} \end{array}}$$

6. PAYMENT

- 6.1 The Operator shall, on the Transfer Date, pay the Secretary of State the Contract Assumption Deviation Payment. The receipt of funds by the Secretary of State in respect of the Contract Assumption Deviation Payment shall constitute a good discharge of the Operator's obligations under Clause 7.1 in relation to the Waste Transfer Payment, the Waste Management Risk Premium and the payment required in respect of the Waste Management Cost Estimate in consideration for the Transfer of the Waste and will be in full satisfaction of the Operator's obligation to pay any amount to the Secretary of State in relation thereto, except for any obligation of the Operator to indemnify the Secretary of State which may arise under Clause 16.1.
- 6.2 For the avoidance of doubt, the Secretary of State shall not be required to rebate to the Operator any amount by which the actual costs covered by the Contract Assumption Deviation Payment are less than the estimated costs used to determine the Contract Assumption Deviation WTC Fee.

7. CONTRACT ASSUMPTIONS FURTHER AMENDMENT

If, following a Contract Assumption Deviation having been notified in accordance with Paragraph 4 of Schedule 11 (*Review Process, Notifications and Issue of Certificates*), a further Contract Assumption Deviation is notified in accordance with Paragraph 4 of Schedule 11 (*Review Process, Notifications and Issue of Certificates*), this Schedule 9 (*Contract Assumption Deviation*) shall govern the revised assessment of the new Contract Assumption Deviation Waste Transfer Price. The new Contract Assumption Deviation Waste Transfer Price shall be the lesser of:

- (A) the Contract Assumption Deviation Waste Transfer Price which was calculated prior to the latest Contract Assumption Deviation having been notified in accordance with Paragraph 4 of Schedule 11 (*Review Process, Notifications and Issue of Certificates*) (as described in Paragraph 5 above) as indexed to the same money values as for the calculation of the Contract Assumption Deviation Waste Transfer Price under Paragraph 7(B) below; and
- (B) the Contract Assumption Deviation Waste Transfer Price which is calculated after the latest Contract Assumption Deviation having been notified in accordance with Paragraph 4 of Schedule 11 (*Review Process, Notifications and Issue of Certificates*) in accordance with this Schedule 9 (*Contract Assumption Deviation*), except that, in substitution for Paragraphs 3.4 and 3.5,

the Reference WTC Fee shall be calculated simply as the most recent indexed SF Transfer Payment.⁴

8. DEFINITIONS

For the purposes of this Schedule 9 (*Contract Assumption Deviation*):

“**Contract Assumption Deviation Payment**” shall be calculated as:

$$\text{Contract Assumption Deviation Payment} = \frac{\text{Contract Assumption Deviation Waste Transfer Price}}{\text{Contract Assumption Deviation Waste Transfer Price}} \times \text{volume of Waste Transferred in Price Units}$$

“**Contract Assumption Deviation WTC Fee**” means the lesser of the Reference WTC Fee and the Revised Policy WTC Fee;

“**Reference WTC Fee**” means the fee calculated in accordance with Paragraph 3.3 above;

“**Revised Policy Review Period**” means the period beginning on either: (a) the date upon which the Secretary of State notifies the Operator of the relevant Contract Assumption Deviation in accordance with Paragraph 4 of Schedule 11 (*Review Process, Notifications and Issue of Certificates*); or (b) the date upon which there is determined to be No Realistic Prospect for Delivery (as applicable), and ending not more than sixty (60) Business Days after such date; and

“**Revised Policy WTC Fee**” means the fee calculated in accordance with Paragraph 3.6 above.

⁴ Explanatory note: In this scenario, where there has already been a previous Contract Assumption Deviation, Waste Management Cost Estimates will have ceased under the FDP. The Waste management element will have been subsumed within the Waste Transfer Price which will then cover both Waste management and Waste disposal costs. Therefore Paragraphs 3.4(B) and 3.5(B) would be redundant as part of the revised Contract Assumption Deviation Waste Transfer Price calculation.

Schedule 10
Security Trigger Event Action

1. APPLICATION

- 1.1 If a Security Trigger Event Action has occurred, the provisions of this Schedule 10 (*Security Trigger Event Action*) shall apply.

2. INDICATIVE WTC FEE

- 2.1 As soon as reasonably practicable following the Security Trigger Event Action, the Secretary of State and the Operator shall (each acting reasonably and in consultation with one another) calculate the Indicative WTC Fee.

- 2.2 If the Indicative WTC Fee is required to be calculated before the Price Setting Review Start Date, if a Waste Transfer Price has not already been determined under either Clause 10.8 or Clause 10.11, it shall be calculated as the sum of:

- (A) the indexed SF Transfer Payment as recalculated *mutatis mutandis* based on:
- (i) the Waste Transfer Price as determined by the Secretary of State and notified to the Operator within forty (40) Business Days of the Security Trigger Event Action in accordance with the Primary Methodology or Interim Methodology (as applicable); and
 - (ii) only using the volume of Waste existing as at the date of the occurrence of the Security Trigger Event Action rather than a projected estimate; and

- (B) the most recent indexed Transfer Date Management Target; and

- (C) twelve point five (12.5) per cent. of the sum determined pursuant to Paragraph 2.2(B) above.

- 2.3 If the Indicative WTC Fee is to be calculated after the Price Setting Date, then it shall be calculated as the sum of:

- (A) the indexed SF Transfer Payment as recalculated, *mutatis mutandis*, only using the volume of Waste existing as at the date of the occurrence of the Security Trigger Event Action rather than a projected estimate; and

- (B) the most recent indexed Transfer Date Management Target; and

- (C) twelve point five (12.5) per cent. of the sum determined pursuant to Paragraph 2.3(B) above.

3. FUNDED SF TRANSFER FEE

3.1 As soon as reasonably practical following the Security Trigger Event Action, the Secretary of State and the Operator shall (each acting reasonably and in consultation with one another) calculate the amount of the Fund Assets as at the date of the Security Trigger Event Action which is nominally allocated to the costs of waste management and waste disposal in accordance with Paragraph 3.2 (the "**Funded SF Transfer Fee**").

3.2 The Funded SF Transfer Fee shall be calculated as follows:

(WTC Fee/DTM Costs)*Fund Assets = Funded SF Transfer Fee.

3.3 As soon as reasonably practical following the calculation of the Funded SF Transfer Fee, the Operator shall use all reasonable endeavours to procure that the FDP Company releases the Funded SF Transfer Fee to the Operator.

4. WTC FEE DISCREPANCY

4.1 As soon as reasonably practicable following the calculation of the Indicative WTC Fee, the Secretary of State and the Operator shall (each acting reasonably and in consultation with one another) calculate the sum of the Indicative WTC Fee less the Funded SF Transfer Fee (the "**WTC Fee Discrepancy**"). If the Funded SF Transfer Fee is greater than the Indicative WTC Fee then the WTC Fee Discrepancy shall be zero (0).

5. SECURITY TRIGGER EVENT ACTION FEE

5.1 The Operator shall pay the Secretary of State the Security Trigger Event Action Fee as consideration for the Transfer of any and all Waste under this Agreement.

5.2 The Security Trigger Event Action Fee is comprised of:

(A) the amount payable by the FDP Company to the Operator pursuant to Paragraph 3.3; and

(B) the lesser of:

(i) the WTC Fee Discrepancy; and

(ii) an amount equal to the value of the assets available to the administrator of the Operator at the time of the Security Trigger Event Action.

6. PAYMENT

6.1 The Security Trigger Event Action Fee is immediately due and payable upon the occurrence of a Security Trigger Event Action. The receipt of funds by the Secretary of State in respect of the Security Trigger Event Action Fee shall constitute a good discharge of the Operator's obligations under Clause 7.1 in relation to the Waste

Transfer Payment, the Waste Management Risk Premium and the payment required in respect of the Waste Management Cost Estimate in consideration for the Transfer and management of the Waste. Payment of the Security Trigger Event Action Fee by the Operator will be in full satisfaction of the Operator's obligation to pay any amount to the Secretary of State in relation to the Transfer of any and all Waste under this Agreement, except:

- (A) in the event that the Operator continues to generate electricity from any reactor on the Site following the relevant Security Trigger Event Action and following the release of the Qualifying Floating Charge (as defined in the FDP) granted in favour of the Secretary of State, in which case any payment made pursuant to Paragraph 5.2 above shall be deemed to be a prepayment in respect of such obligation to pay; or
- (B) for any obligation of the Operator to indemnify the Secretary of State which may arise under Clause 16.1.

7. TRANSFER

- 7.1 Satisfaction of the Operator's obligations under Paragraph 6.1 of this Schedule 10 shall mean that the Secretary of State is obliged to take title to and liability for all Waste on the receipt of funds by the Secretary of State in respect of the Security Trigger Event Action Fee.

8. DEFINITIONS

"Funded SF Transfer Fee" has the meaning given in Paragraphs 3.1 and 3.2 above.

"Indicative WTC Fee" is the sum calculated in accordance with Paragraph 2.2 or 2.3 above (as applicable); and

"Security Trigger Event Action Fee" shall be determined in accordance with Paragraph 5.2 above.

Schedule 11
Review Process, Notifications and Issue of Certificates

1. WTP REVIEW START DATES

A WTP Review Start Date shall occur on each of:

- (A) the eightieth (80th) Business Day following receipt by the Operator of notification by the Secretary of State of the date falling two (2) years before the Start Date (as estimated in advance by the Secretary of State, acting reasonably);
- (B) the third (3rd) anniversary of the Start Date;
- (C) the eighth (8th) anniversary of the Start Date;
- (D) the thirteenth (13th) anniversary of the Start Date; and
- (E) the eighteenth (18th) anniversary of the Start Date.

2. PRICE SETTING REVIEW START DATE

The Price Setting Review Start Date shall occur on the twenty-third (23rd) anniversary of the Start Date.

3. NOTIFICATION AND CERTIFICATION REQUIREMENTS

3.1 The notification requirements referred to in Clause 14.7 are as follows. The Secretary of State shall notify the Operator in writing setting out:

- (A) the Expected Waste Transfer Price or the Waste Transfer Price, as applicable, in the money values of the relevant WTP Review Start Date or the Price Setting Review Start Date, as applicable; and
- (B) the Assumed Disposal Dates as agreed or determined in accordance with Clause 10.2 and Clause 10.3.

3.2 In relation to:

- (A) the WTP Review commencing on the thirteenth (13th) anniversary of the Start Date; and
- (B) the WTP Review commencing on the Price Setting Review Start Date,

the notification in writing required to be sent by the Secretary of State to the Operator pursuant to Paragraph 3.1 above shall be in the form of a certificate.

4. CONTRACT ASSUMPTION DEVIATION

The Secretary of State shall only notify the Operator of the occurrence of a Contract Assumption Deviation (if applicable) and any replacement assumption:

- (A) within the period between ninety (90) and sixty (60) Business Days:
 - (i) before the WTP Review Start Date which coincides with the thirteenth (13th) anniversary of the Start Date; and
 - (ii) before the Price Setting Review Start Date; or
- (B) at any time after the Price Setting Date.

5. ISSUE OF CERTIFICATES TO FDP COMPANY

5.1 Subject to Paragraph 5.2, where the Secretary of State delivers a certificate to the Operator under:

- (A) Clause 10.3;
- (B) Clause 10.8;
- (C) Clause 10.11;
- (D) Paragraph 4 of Schedule 8 (*GDF Site Selection Delay*);
- (E) Paragraph 4 of Schedule 9 (*Contract Assumption Deviation*);
- (F) Paragraph 3.2 of this Schedule 11 (*Review Process, Notifications and Issue of Certificates*); and
- (G) Paragraph 5.2 or 5.3 of this Schedule 11 (*Review Process, Notifications and Issue of Certificates*),

(a "**WTC Certificate**"),

the Operator shall provide a copy of such certificate to the FDP Company and the Secretary of State.

5.2 Without prejudice to Paragraph 5.3 below, where the Secretary of State delivers a WTC Certificate which does not contain the correct and necessary information as required under the relevant Clause or Paragraph and in accordance with the terms of this Agreement, the Operator shall notify the Secretary of State as soon as reasonably practicable of the error or omission and the Secretary of State shall promptly and, in any event, no later than twenty (20) Business Days after the Operator's notification, issue a revised certificate correcting the error or omission or else provide a written explanation of why the Secretary of State considers that the WTC Certificate contains the correct

and necessary information as required under the relevant Clause or Paragraph and in accordance with the terms of this Agreement.

- 5.3 Where the Secretary of State delivers a WTC Certificate to the Operator and the Operator has grounds to dispute the content of the certificate under the terms of this Agreement then the disputed matters will be resolved in accordance with the dispute resolution procedure set out in Clause 23 (*Dispute Resolution*) and (if applicable) the Secretary of State shall promptly deliver a revised WTC Certificate as agreed or determined and in any event within five (5) Business Days of such agreement or determination.