

DATED

2016

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

- and -

(2) ÉLECTRICITÉ DE FRANCE S.A.

- and -

(3) CHINA GENERAL NUCLEAR POWER CORPORATION

DEED OF UNDERTAKING
in relation to the nature of modifications proposed by the
Secretary of State to the Hinkley Point C Funded
Decommissioning Programme in accordance with section
46(3A) of the Energy Act 2008

Slaughter and May
One Bunhill Row
London EC1Y 8YY

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THIS DEED is made on

2016

BETWEEN:

1. **THE SECRETARY OF STATE FOR ENERGY AND CLIMATE CHANGE** (the “**Secretary of State**”);
2. **ÉLECTRICITÉ DE FRANCE S.A.**, a société anonyme incorporated in France (registered number 552 081 317) and whose registered office is at 22-30 Avenue de Wagram, 75008 Paris, France (“**EDF**”); and
3. **CHINA GENERAL NUCLEAR POWER CORPORATION (“CGNPC”)**, a state owned enterprise organised and existing under the laws of the People's Republic of China (PRC) with its registered address at Floor 33, China General Nuclear Building South, No. 2002 Shennan Avenue, Futian District, Shenzhen, People's Republic of China, with its Consolidated Social Credit No. 9144030010001694XX issued by the Shenzhen City Markets Supervision Administrative Office.

WHEREAS

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

1. DEFINITIONS AND INTERPRETATION

1.1 Unless the context suggests otherwise, capitalised words which are defined in or pursuant to the terms of the Section 46 Agreement as in effect on the date hereof shall have the same meanings when used in this Deed or its recitals.

1.2 In this Deed and its recitals:

- “Acceding Party”** has the meaning given in Clause 4 (Accession);
- “Accession Letter”** means a document substantially in the form set out in the Schedule (Form of Accession Letter);
- “Act”** means the Energy Act 2008;
- “Associated Person”** means a body corporate which is associated with the Operator for the purposes of the Act, as determined in accordance with Section 67 of the Act;
- “Court Matter”** has the meaning given in Clause 14.5;
- “FAP”** means the Operator's funding arrangements plan which forms part of the FDP from time to time;
- “FDP”** means the Operator's funded decommissioning programme for the Site as approved by the Secretary of State under section 46 of the Act and as may be amended from time to time in accordance with section 48 of the Act;
- “FDP Company”** means the Nuclear Decommissioning Fund Company Limited, a company incorporated in England and Wales (registered number 07992648) and whose registered office is c/o PKF (UK) LLP, Farringdon Place, 20 Farringdon Road, London EC1M 3AP;
- “Section 46 Agreement”** means the agreement entered into between the Operator, the FDP Company and the Secretary of State under section 46(3C) of the Energy Act 2008 on or about the date of this Deed;
- “Security Trustee”** means any person (including a creditor of the Operator) who is a security trustee on behalf of creditors in relation to the funding of the construction of the Facility.

1.3 In this Deed, unless otherwise specified:

- (A) references to Clauses and Schedules are to clauses of, and schedules to, this Deed;
- (B) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted and shall include any subordinate legislation

made from time to time under that statute or statutory provision;

- (C) references to any agreement or document include a reference to that agreement or document as amended, varied, supplemented, substituted, novated or assigned from time to time (but, in the case of the FDP, only if done in accordance with the Act);
- (D) references to a “party” or to the “parties” (other than in the expressions “third party” or “third parties”) means a party or the parties to this Deed;
- (E) references to a “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;
- (F) use of any gender includes the other genders and use of the singular only also includes the plural and vice versa; and
- (G) the expression “subsidiary” shall have the meaning given in the Companies Act 2006.

- 1.4 This Deed is without prejudice to, and shall not be regarded as limiting, the Secretary of State’s powers under any provision of the Act other than section 48(3) of the Act.

2. TERM

- 2.1 This Deed shall take effect on the Effective Date.
- 2.2 No person shall have any right to enforce Clause 3 of this Deed unless it remains an Associated Person or a Security Trustee (but without prejudice to the exercise of any rights which may have accrued to that person before it ceased to be an Associated Person or Security Trustee).
- 2.3 This Deed shall terminate on the date on which the FDP terminates in accordance with its terms.

3. SECRETARY OF STATE’S POWER TO IMPOSE LIABILITIES ON THIRD PARTIES

Pursuant to section 46(3A) of the Act, the Secretary of State agrees for the benefit of each Associated Person and Security Trustee that no Proposed Modification made pursuant to Clause 6.3 of the Section 46 Agreement or modification of the FDP or the conditions to which the approved FDP is subject pursuant to section 48 of the Act shall propose the granting of any Security or guarantee by, or the imposition of any liability, obligation or cost (including any liability, obligation or cost arising from any Security or guarantee required to be granted under any such proposal) on, any Associated Person (other than the FDP Company and any subsidiary of the Operator).

4. ACCESSION

Any person who becomes an Associated Person and/or Security Trustee after the date of this Deed may accede to this Deed as an “**Acceding Party**”; such accession will be effected by delivering an Accession Letter to the Secretary of State, but without prejudice to the continuation *inter se* of the rights and obligations of the original parties to this Deed and any other Acceding Parties who have previously delivered such an Accession Letter.

5. ASSIGNMENT

- 5.1 Subject to clauses 5.2 and 5.4, no party shall assign or purport to assign all or any part of the benefit of, or its rights or benefits under, this Deed without the prior written consent of the Secretary of State.
- 5.2 A Security Trustee who is a party to this Deed may assign its rights to any successor in business acting as Security Trustee or any duly appointed Security Trustee.
- 5.3 No party shall hold in trust for any other person all or any part of the benefit of, or its rights or benefits under, this Deed.
- 5.4 EDF, CGNPC and any Acceding Party (except a Security Trustee) may assign or charge its rights under this Deed by way of security (including to a Security Trustee where relevant).

6. COSTS

Except as otherwise stated in this Deed, EDF shall pay its own costs and expenses in addition to any Security Trustees’ and the Secretary of State’s costs and expenses in relation to the execution and carrying into effect of this Deed.

7. THIRD PARTY RIGHTS

- 7.1 Subject to Clause 7.2, the parties to this Deed do not intend that any term of this Deed should be enforceable, by virtue of the Contracts (Rights of Third Parties) Act 1999, by any person who is not a party to this Deed.
- 7.2 Any person who becomes an Associated Person after the date of this Deed may enforce Clause 4 of this Deed.

8. ANNOUNCEMENTS

- 8.1 Subject to Clause 8.2, no announcement concerning the matters contemplated by this Deed shall be made by any party without the prior written approval of the Secretary of State, such approval not to be unreasonably withheld or delayed.
- 8.2 Any party may, after written notice to the Secretary of State, make an announcement concerning the matters contemplated by this Deed or any ancillary matter if required by:

- (A) Law or Regulation; or
- (B) any securities exchange or regulatory or governmental body to which that party is subject or submits, wherever situated, including (amongst other bodies) London Stock Exchange plc, the Prudential Regulation Authority, the Financial Conduct Authority or The Panel on Takeovers and Mergers, whether or not the requirement has the force of law.

9. WAIVER OF SOVEREIGN IMMUNITY

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

10. EXECUTION AS A DEED

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

11. COUNTERPARTS

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

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

The terms of this Deed are without prejudice to the statutory powers of the Secretary of State under the Act (with the exception of her powers under section 48 of the Act) or any other rights of the Secretary of State.

13. GOVERNING LAW

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

14. ARBITRATION

- 14.1 Any dispute arising out of or in connection with this Deed, whether contractual or non-contractual, including any question regarding its existence, validity or termination, shall be referred to and finally resolved under the LCIA Rules, which are deemed to be incorporated by reference to this Clause 14 (Arbitration).
- 14.2 The number of arbitrators shall be three. The:

- (A) Secretary of State (on one side); and
- (B) any other party to the dispute (on the other side),

shall represent two separate “sides” for the formation of the Arbitral Tribunal pursuant to Rule 8.1 of the LCIA Rules and each side shall nominate one (1) arbitrator. The two (2) arbitrators so nominated shall jointly select a third (3rd) arbitrator as the chairman of the arbitral panel. In the event that the nominated arbitrators are unable to agree, the third arbitrator will be appointed by the LCIA Court in accordance with the LCIA Rules.

- 14.3 The seat, or legal place, of arbitration shall be London and the language used in the arbitral proceedings shall be English. The law of the arbitration agreement shall be the law of England and Wales.
- 14.4 The following words contained in Article 26.8 of the LCIA Rules (or words of similar effect in any successor provision) shall be deemed to have been deleted from such Article 26.8 and shall not apply to any arbitration under this Clause 14 (Arbitration): “and the parties also waive irrevocably their right to any form of appeal, review or recourse to any state court or other legal authority, insofar as such waiver shall not be prohibited under any applicable law.”. For the avoidance of doubt, the parties to the dispute may appeal to the courts of England only on a question of law arising out of an award made in the arbitral proceedings in accordance with section 69(1) of the Arbitration Act 1996 (or any successor provision).
- 14.5 Notwithstanding any other provision of this Clause 14 (Arbitration), any party may at any time apply to the English courts to:
- (A) seek urgent injunctive or other equitable relief, including specific performance; and/or
 - (B) seek judicial review (to the extent jurisdiction may exist and save insofar as the existence of alternative remedies under this Deed would under normal principles exclude judicial review),

in each case, any relief, remedy and/or claim sought pursuant to Sub-Clauses 14.5(A) and (B) above shall be a (“**Court Matter**”).

- 14.6 In respect of any Court Matter:
- (A) the courts of England are to have jurisdiction to settle any Court Matter and any proceeding, suit or action arising out of or in connection with such Court Matter may be brought in the courts of England;
 - (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.

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

SCHEDULE
Form of Accession Letter

To: The Secretary of State for Energy and Climate Change

From: [Acceding Party]

Dated:

Dear Madam

Deed of Undertaking dated [●] among the Secretary of State for Energy and Climate Change, Électricité de France S.A. and China General Nuclear Power Corporation (the “Deed”)

1. We refer to the Deed. This is an Accession Letter. Terms defined in the Deed shall have the same meaning when used in this Accession Letter unless given a different meaning herein.
2. In order to benefit from the rights arising under the Deed, [Acceding Party] agrees to become a party to and to be bound by the terms of the Deed as an Acceding Party pursuant to Clause 4 (Accession).
3. [Acceding Party]’s administrative details are as follows:

Address:

Fax No:

Attention:

4. This Accession Letter is governed by English law.
5. This Accession Letter is entered into by deed.

Executed as a deed by **[Acceding Party]** acting
by [a director and its secretary/two directors]

.....
Director

.....
[Secretary/ Director]

SIGNATURES

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

.....

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

on the day of

ÉLECTRICITÉ DE FRANCE S.A.

Executed as a deed by

.....

(Name of Attorney for ÉLECTRICITÉ DE FRANCE S.A.)

.....

(Signature of Attorney)

As Attorney for Électricité de France S.A.

in the presence of

Witness's signature:

.....

Name:

.....

Address:

.....

.....

.....

EXECUTED as a **DEED** by)
CHINA GENERAL NUCLEAR POWER)
CORPORATION)
 acting by)
)
 [duly authorised under the laws of the People's
 Republic of China] / [under a power of attorney
 dated] for and on
 behalf of **CHINA GENERAL NUCLEAR**
POWER CORPORATION

in the presence of:

Witness's signature:

Name (print):

Address:

.....

.....

Occupation: