

## Appendix 1

### Proposed modifications to the Section 106 Agreement

The proposed modifications to Schedule 17 to the Section 106 Agreement are shown below (deletions are shown in ~~red strikethrough~~ text and additions are shown in blue underlined text):

#### "SCHEDULE 17 – SITE REINSTATEMENT WORKS

##### 1. DEFINITIONS AND INTERPRETATION

- 1.1 Where in this Schedule the following defined terms and expressions are used they shall have the following respective meanings unless otherwise stated:

~~"Bank" means a bank incorporated under the laws of England and Wales, Scotland or Northern Ireland or which has a branch registered in such jurisdictions and which has Investment Grade Rating;~~

~~"Bond" means a financial bond (or separate bonds) from a Bank (or Banks) to be provided for a period of 364 days in substantially the form annexed at Annex 9 to this Deed and for an amount determined in accordance with paragraph 2 of this Schedule;~~

"CDM Regulations" means the Construction (Design and Management) Regulations 2007;

"Contamination" means any substance or organism which alone or in combination with others may cause harm or damage to the environment, human health and safety, flora or fauna and/or pollution of controlled water (as more particularly referred to in section 78(A) of the Environmental Protection Act 1990), and includes:

- (a) any actual or threatened emissions, seepages, discharges, escapes, releases or leaks of pollutants, contaminants or toxic materials;
- (b) any hazardous or toxic materials, pollutants, contaminants and substances; and
- (c) any discarded, unwanted, broken, spoiled or surplus substance, material or article (including any waste as defined in the Environmental Protection Act 1990)

which are in, on or under the Site;

~~"Costs Estimate" means a written estimate of the cost of carrying out and completing the Reinstatement Works (including a reasonable contingency in accordance with commercially prudent practice) in accordance with a joint instruction provided by NNB GenCo and West Somerset Council;~~

~~"Credit Rating" means, in relation to any entity and at any particular time, the long term senior unsecured debt instrument rating or the individual corporate rating assigned to that entity by each of the Rating Agencies;~~

~~"Escrow" means an escrow sum to be provided in accordance with the Escrow Agreement and for an amount determined in accordance with paragraph 2 of this Schedule;~~

~~"Escrow Agreement" means an agreement substantially in the form annexed at Annex 10 to this Deed;~~

~~"Investment Grade Rating" means a Credit Rating;~~

- (a) ~~of at least BBB with Standard & Poor's; or~~
- (b) ~~of at least Baa3 with Moody's;~~

**"Land Condition Statement"** means the document of that name recording the condition of those parts of the Site which are owned freehold by the Fairfield Estate prepared by AMEC and agreed between EDF Energy and the Fairfield Estate and dated March 2011;

**"Land Restoration Scheme"** means a scheme for the restoration and/or reinstatement of those parts of the Site which are owned freehold by the Fairfield Estate to a condition suitable for agricultural use which shall include the following:

- (a) topographical contours and drainage requirements to which the relevant land is to be restored and/or reinstated;
- (b) an appropriate field drainage system sufficient to allow the relevant land to be properly used for agricultural purposes (whether for arable or grazing) or any other use agreed between the Fairfield Estate and West Somerset Council as part of the scheme;
- (c) such stipulations as the Fairfield Estate (acting reasonably) requires as to the location of hedges, stock proof fencing and gates to enclose the relevant land or any part of it required by the Fairfield Estate to be fenced or secured;
- (d) the relevant land shall be suitable (as to whole or part) either for grazing of livestock, growing of cereal crops and grassland as may be reasonably specified by the Fairfield Estate or for use as an ecology area or natural habitat (as contemplated below);
- (e) the replacement of the top soil of a quality appropriate to the state and condition and purposes to or for which the relevant land is to be restored and/or reinstated;
- (f) arrangements for the reinstatement of the coastal path which is at the date of this Deed a public right of way;
- (g) the scheme shall not require the replacement of any dilapidated barns that have been demolished;
- (h) if requested by the Fairfield Estate (and subject to obtaining any necessary approvals from the local planning authority or other competent authority) the proposed use of the relevant land may be (as to whole or part) as an ecology area or other natural habitat so long as the cost of restoration of the relevant land for such proposed use does not exceed to a material extent the cost of restoration for agricultural use unless the Fairfield Estate agrees to pay the excess cost as previously agreed between the Fairfield Estate and West Somerset Council (acting reasonably);

**"Leases"** means together the Operational Leases and the Preliminary Works Leases;

**"Lease Obligations"** means those covenants and conditions on the part of the tenant contained in the extracted clauses from the Preliminary Works Leases annexed at Annex 12 to this Deed;

~~**"Moody's"** means Moody's Investors Service, Inc (or its successor rating business);~~

**"NGL Consents"** means:

- (a) the consent of the Office for Nuclear Regulation under the Nuclear Site Licence;
- (b) the consent of Nuclear Liabilities Fund Limited pursuant to the debenture made on 14 January 2005 (and amended and restated on 5 January 2009);
- (c) the consent of Magnox Limited pursuant to the NSLNSA; and
- (d) the consent of the Secretary of State pursuant to the option agreement made on 14 January 2005 (and amended and restated on 5 January 2009);

"NSLNSA" means the nuclear site licensee's nuclear safety agreement between Magnox (1) and NGL (2) replicated from the agreement of 22 April 1996 and made between Magnox Electric plc (1) the Landlord (then known as Nuclear Electric Limited) (2) such replication having been effected under the terms of the nuclear transfer scheme dated 29 September 2008 made in accordance with section 40 of the Energy Act 2004;

"Nuclear Safety Co-operation Agreements" means any agreements to be completed between NNB GenCo and any parties holding a nuclear site licence on land adjoining the Site relating to the operation of adjacent nuclear sites;

"Nuclear Site Licence" means any nuclear site licence for the Site or any part thereof together with other land granted pursuant to the Nuclear Installations Act 1965;

"OCNS" means the Office for Civil Nuclear Security, or any body having responsibility for civil nuclear security in the United Kingdom or any part thereof which replaces the same from time to time;

"Operational Leases" means together the two 999 year leases which it is currently intended will be granted to NNB GenCo by EDF Energy and NGL following the grant of the Development Consent Order and the terms of such leases shall not (as compared to the Preliminary Works Leases) prevent or make it more onerous for West Somerset Council to carry out the Reinstatement Works;

"Preliminary Works Leases" means together the lease and the three underleases pursuant to which NNB GenCo has an interest in the Site and the lease of part of the Site due to be granted by NGL to NNB GenCo on or around the date hereof (such lease being substantially in the form as disclosed to West Somerset Council and which shall not prevent or make it more onerous for West Somerset Council to carry out the Reinstatement Works) and the associated deed of indemnity, each as referred to in Recital G of this Deed;

~~"Rating Agencies" means Moody's and Standard & Poor's, each a "Rating Agency";~~

"Security Determination Date" means the earliest of:

- (a) the date on which one of the nuclear reactors authorised by the Development Consent Order has been substantially completed and is producing electricity; and
- (b) the date of completion of the Reinstatement Works; and

"Security Plan" means NNB GenCo's or NGL's security plan as approved by the OCNS;

~~"Standard & Poor's" means Standard & Poor's Rating Services (or its successor rating business); and~~

~~"Surveyor" means an independent quantity surveyor of at least 10 years' experience who has specialist knowledge of large scale earthworks and restoration schemes, having due regard to the scope of the Reinstatement Works.~~

## 2. SECURITY

- 2.1 ~~NNB GenCo covenants with West Somerset Council that it shall not Implement Phase 2 unless a Bond or Bonds or an Escrow (in NNB GenCo's absolute discretion) has been put in place for a sum of (or sums totalling) £63,000,000.~~
- 2.2 ~~Not used NNB GenCo covenants with West Somerset Council not to excavate more than 1,500,000 cubic metres of soil and/or rock at the Site before complying with paragraph 2.4.~~
- 2.3 ~~Not used NNB GenCo shall keep records as to the amount of soil and/or rock excavated and shall provide West Somerset Council with details of such amounts when reasonably requested by West Somerset Council to do so.~~

~~2.4 Not used~~ At any time prior to the earlier of more than 1,500,000 cubic metres of soil and/or rock being excavated at the Site or the expiration of 12 months from the Implementation of Phase 2 of the Development, NNB GenCo covenants that it will instruct a Surveyor (jointly with West Somerset Council at no cost to West Somerset Council) to provide a Costs Estimate as soon as reasonably practicable and within 45 days (and in the event that the terms of such joint appointment cannot be agreed between NNB GenCo and West Somerset Council within 28 days of either party proposing the terms of such instruction, the matter shall be deemed a Dispute and shall be determined in accordance with clause 12) and if such Costs Estimate is more than £63,000,000 then prior to more than 1,500,000 cubic metres of soil and/or rock being excavated at the Site the amount of the Bond or Bonds or Escrow in place at that time shall subject to paragraph 2.6 be increased by NNB GenCo to the amount of the Costs Estimate but shall otherwise remain at £63,000,000.

~~2.5~~ On each anniversary of the provision of the Costs Estimate until the Security Determination Date the amount of the Bond or Bonds or Escrow in place at that time shall subject to paragraph 2.6 be adjusted by reference to increases in the Tender Price Index in accordance with the following formula:

$$\text{Revised amount of Escrow/Bond} = \frac{\text{Existing Amount of Escrow/Bond Sum as at relevant anniversary}}{\text{Index at today's date}} \times (\text{Index at Payment Date/Index at today's date})$$

~~2.5~~ Not used

~~2.6~~ Not used Following the grant of any Development Consent Order, West Somerset Council and NNB GenCo agree that:

~~2.6.1~~ on the provision of the Costs Estimate pursuant to paragraph 3.4 (if not already provided); and

~~2.6.2~~ on each anniversary of the provision of the Costs Estimate,

~~the amount of the Bond or Bonds or Escrow in place at those times shall be decreased by the amount of any other security provided by NNB GenCo in respect of the restoration or reinstatement of the Site in respect only of the Development as required by that Development Consent Order (it being acknowledged that such restoration or reinstatement may be part of the restoration or reinstatement of the wider restoration of the land and/or watercourses of which the Site forms part).~~

~~2.7~~ Not used Until the Security Determination Date:

~~2.7.1~~ NNB GenCo covenants with West Somerset Council that no less than 30 days prior to the expiry of any Bond or Bonds provided pursuant to paragraph 2.1 a replacement Bond or Bonds or Escrow (in NNB GenCo's absolute discretion) shall be provided for a sum of not less than the current amount of the Bond or Bonds or Escrow respectively as at that date (excluding any interest accrued) taking into account the effect of paragraphs 2.4 and 2.5 as applicable on such amount; and

~~West Somerset Council agrees that NNB GenCo may at any time replace any Escrow with a Bond or Bonds or any Bond or Bonds with an Escrow for a sum of not less than the current amount of the Escrow or Bonds (as relevant) as at that date (excluding any interest accrued).~~

~~2.8~~ West Somerset Council covenants with NNB GenCo that: Not used

~~2.8.1~~ upon provision of a replacement Bond or Escrow for a sum of not less than the current amount of the Bond or Bonds as at that date taking into account the effect

~~of paragraphs 2.4 and 2.5 as applicable on such amount (excluding any interest accrued); and~~

~~2.8.2 — upon the Security Determination Date,~~

~~it shall release the Bank and NNB GenCo from all liabilities under the Bond or Bonds in place up to that time and that on the Security Determination Date NNB GenCo's obligations under paragraphs 2.1 to 2.7 inclusive shall cease and determine.~~

- 2.9 NNB GenCo shall notify the occurrence of the Security Determination Date to West Somerset Council and the Fairfield Estate in writing, provided that such notification shall not of itself mean that the Security Determination Date has occurred.

### 3. **CARRYING OUT OF REINSTATEMENT WORKS BY WEST SOMERSET COUNCIL**

- 3.1 In the event that NNB GenCo is in breach of its obligation to carry out the Reinstatement Works and West Somerset Council has given NNB GenCo not less than 6 months' written notice of its intention to carry out the Reinstatement Works itself and:

3.1.1 NNB GenCo does not within that 6 month period:

- (A) provide West Somerset Council with written notice of its intention to commence within that same period the Reinstatement Works and thereafter to carry out and complete the Reinstatement Works; and
- (B) actually commence the Reinstatement Works; or

3.1.2 NNB GenCo does not carry out and complete the Reinstatement Works within three years from the date of West Somerset Council's notice; or

3.1.3 following receipt of West Somerset Council's notice NNB GenCo has commenced the Reinstatement Works but there is subsequently a period of inactivity of longer than 12 months in the carrying out of the Reinstatement Works and as a result of which there is no reasonable prospect of the Reinstatement Works being completed within three years from the date of West Somerset Council's notice,

then West Somerset Council shall have the right to commence, carry out and complete the Reinstatement Works itself and West Somerset Council shall use best endeavours to commence, carry out and complete the Reinstatement Works itself **PROVIDED THAT** ~~(i) West Somerset Council shall only be responsible to a limit of the current amount of the Bond or Bonds or Escrow for such purposes in place at the time and~~ (ii) it is not clearly and manifestly incompatible with the proper planning of the area at the relevant time for the Reinstatement Works to be carried out and completed by West Somerset Council.

- 3.2 In the event that West Somerset Council exercises its right under paragraph 3.1 to carry out the Reinstatement Works EDF Energy, NGL and the Fairfield Estate acknowledge that such entry on to the Site by West Somerset Council and its remaining on the Site (with such vehicles and equipment as may be required) in compliance with the provisions of this Schedule 17 constitutes a sharing of occupation by NNB GenCo with a contractor as permitted under the Preliminary Works Leases and NNB GenCo hereby gives West Somerset Council licence to enter onto and remain on the Site as its contractor to carry out and complete the Reinstatement Works pursuant to paragraph 3.1 (and NNB GenCo acknowledges that such entry by West Somerset Council as contractor does not require West Somerset Council to enter into any further works contract or other contract with NNB GenCo nor will West Somerset Council owe any duty of care or warranty to NNB GenCo with regard to the carrying out and completion of the Reinstatement Works save as provided in this Schedule 17).

- 3.3 EDF Energy, NGL and the Fairfield Estate agree and accept that the Reinstatement Works comprise part of the Preliminary Works (as this term is defined in the Preliminary Works Leases).
- 3.4 West Somerset Council acknowledges that when carrying out the Reinstatement Works:
- 3.4.1 it shall use the Site as licensee and no relationship of landlord and tenant is created between NNB GenCo or the Fairfield Estate and West Somerset Council by this Deed;
- 3.4.2 NNB GenCo and the Fairfield Estate shall retain control and ownership of the Site (as set out in the recitals to this Deed) and West Somerset Council has no right to exclude NNB GenCo or the Fairfield Estate from the Site; and
- 3.4.3 EDF Energy, NGL and the Fairfield Estate shall be entitled to enter the Site pursuant to the Leases,

**PROVIDED ALWAYS** that EDF Energy, NNB GenCo, NGL and the Fairfield Estate shall not prevent the exercise by West Somerset Council of the right under paragraph 3.1 of this Schedule save to the extent that West Somerset Council fails to comply with paragraphs 3.5, 3.6, 3.7, 3.8, 3.9 and 3.10 of this Schedule or save to the extent that exercise of the right would constitute a breach of the Nuclear Site Licence.

- 3.5 In exercise of its rights under paragraph 3.1 of this Schedule, West Somerset Council shall not by any default, act or omission put NNB GenCo, NGL, EDF Energy or Fairfield Estate (in respect of NGL, EDF Energy or the Fairfield Estate in respect of the matters in paragraph 3.5.2 only) in breach of any of:
- 3.5.1 the Preliminary Works Leases and/or the Operational Leases (so far as they are in force) and the relevant provisions of which have been notified to West Somerset Council in writing; and
- 3.5.2 any matters to which the title of the Site is subject as at the date of this Deed;
- or render NNB GenCo or NGL or Fairfield Estate liable to pay any damages, costs, expenses and/or other compensation of whatever nature (including legal expenses) thereunder.
- 3.6 In the event that West Somerset Council carries out the Reinstatement Works pursuant to paragraph 3.1 and at the date when West Somerset Council commences the Reinstatement Works a scheme for the restoration and/or reinstatement of the Site has previously been submitted by NNB GenCo and approved by West Somerset Council pursuant to condition R1 of the Planning Permission, West Somerset Council shall ~~(using the Bond and/or Escrow in place as applicable, though it shall not be obliged to do so)~~ carry out the Reinstatement Works in accordance with such approved scheme.
- 3.7 In the event that on the date on which the first of the events in paragraph 3.1 occurs:
- (a) no scheme for the restoration and/or reinstatement of the Site has been submitted by NNB GenCo or approved pursuant to condition R1 of the Planning Permission; and
- (b) West Somerset Council intends to carry out the Reinstatement Works in accordance with paragraph 3.1,

then West Somerset Council and the Fairfield Estate shall seek to agree a Land Restoration Scheme which shall be submitted as soon as reasonably practicable thereafter by West Somerset Council ~~(using the Bond and/or Escrow in place as applicable, though it shall not be obliged to do so)~~ to West Somerset Council for approval (pursuant to West Somerset Council's usual planning procedures) pursuant to condition R1 of the Planning Permission.

- 3.8 In the event that the Land Restoration Scheme submitted pursuant to paragraph 3.7 is not approved by West Somerset Council for the purposes of condition R1 of the Planning Permission (pursuant to West Somerset Council's usual planning procedures) West Somerset Council and the Fairfield Estate shall seek to agree an alternative Land Restoration Scheme which shall be submitted as soon as reasonably practicable thereafter by West Somerset Council (~~using the Bond and/or Escrow in place as applicable, though it shall not be obliged to do so~~) to West Somerset Council for approval (pursuant to West Somerset Council's usual planning procedures) pursuant to condition R1 of the Planning Permission.
- 3.9 In the event that West Somerset Council and the Fairfield Estate have not agreed a Land Restoration Scheme within 6 months of the occurrence of the first of the events set out in paragraph 3.1 (or such longer period as may be agreed between West Somerset Council and the Fairfield Estate), West Somerset Council shall (~~using the Bond and/or Escrow in place as applicable, though it shall not be obliged to do so~~) as soon as reasonably practicable thereafter submit a scheme for approval (pursuant to West Somerset Council's usual planning procedures) pursuant to condition R1 of the Planning Permission which provides for the restoration and/or reinstatement of the Site to its pre-development condition as evidenced by the Land Condition Statement (but such scheme shall include an appropriate field drainage system sufficient to allow the Site to be properly used for agricultural purposes (whether for arable or grazing) and shall not require West Somerset Council to replace any dilapidated barns that have been demolished).
- 3.10 If West Somerset Council enters the Site pursuant to paragraph 3.1, West Somerset Council shall:
- 3.10.1 observe and perform the relevant Lease Obligations on the part of the tenant;
  - 3.10.2 comply with all applicable safety regulations and NNB GenCo's site safety requirements as notified to West Somerset Council;
  - 3.10.3 comply with NNB GenCo and NGL's site emergency arrangements as notified to West Somerset Council including participating in emergency exercises;
  - 3.10.4 take care for the safety of all persons entitled to be on the Site, including by the provision of all safety notices and safety equipment required by relevant laws and regulations for the Reinstatement Works;
  - 3.10.5 provide fencing, lighting and other facilities as described in NNB GenCo's site safety requirements for the Reinstatement Works until completion and notified to West Somerset Council;
  - 3.10.6 comply with any rule or requirement or instruction of either NNB GenCo or NGL as notified to West Somerset Council which in each case is necessary in order for NNB GenCo or NGL (as relevant) to comply with its obligations under any Nuclear Site Licence and/or the NSLNSA and/or the Security Plan and/or any Nuclear Safety Co-operation Agreements (each as notified to West Somerset Council);
  - 3.10.7 take all reasonable measures to protect the environment (both on and off the Site) and prevent Contamination and damage to people and property resulting from the carrying out of the Reinstatement Works;
  - 3.10.8 without prejudice to paragraph 3.10.7 ensure that any emissions, surface discharges and effluent from the carrying out of the Reinstatement Works shall not exceed the values indicated in NNB GenCo's health, safety and environment requirements;

- 3.10.9 comply with the reasonable requirements of the Security Plan notified to West Somerset Council and ensure that all information in relation to the Reinstatement Works will be subject to the Security Plan;
  - 3.10.10 use reasonable endeavours to take such measures as are necessary to prevent unauthorised persons being admitted to the Site and immediately notify NGL, NNB GenCo, the OCNS and the Civil Nuclear Constabulary of any unauthorised persons on the Site;
  - 3.10.11 not without the consent of NGL or (if it holds the Nuclear Site Licence at the relevant time) NNB GenCo which consent NGL or (if it holds the Nuclear Site Licence at the relevant time) NNB GenCo shall be entitled to withhold where (in its absolute discretion) it considers it prudent to do so having regard to the requirements of security or safety of the nuclear site take photographs of the Site or the Reinstatement Works or any part of them unless reasonably necessary to carry out and/or complete the Reinstatement Works;
  - 3.10.12 promptly submit to NNB GenCo any security vetting or other information NNB GenCo requires to enable any person to be given access to the Site in connection with the Reinstatement Works and West Somerset Council acknowledges that certain individuals may not satisfy NNB GenCo's security requirements and that NNB GenCo may, at its absolute discretion, require West Somerset Council not to employ in the performance of the Reinstatement Works any individuals identified by NNB GenCo as presenting a security or other risk; and
  - 3.10.13 comply at all times with the provisions of the Health & Safety at Work etc. Act 1974 and the CDM Regulations and shall ensure that all contractors engaged in connection with the Reinstatement Works shall carry out and fulfil in all respects their respective duties under the CDM Regulations.
- 3.11 West Somerset Council shall indemnify EDF Energy, NGL and the Fairfield Estate (together the "**Owners**") against all reasonable expenses costs claims damages demands and any other liability or consequence (in each case reasonably incurred) arising out of or in respect of any breach of the obligations contained in paragraphs 3.5, 3.6, 3.7, 3.8, 3.9 and 3.10 **PROVIDED THAT:**
- 3.11.1 the Owners shall (if so reasonably required by West Somerset Council) authorise West Somerset Council (at its own expense) to negotiate a settlement of any third party claim;
  - 3.11.2 the Owners shall not settle any claim or proceedings taken against it by a third party that would require West Somerset Council to indemnify the Owners pursuant to the terms of this clause without the consent of West Somerset Council (such consent not to be unreasonably withheld or delayed); and
  - 3.11.3 the Owners shall keep West Somerset Council informed of the progress of any claim and shall take into account any reasonable representations made by West Somerset Council in negotiations with any third party to settle any claim or proceedings against the Owners.
- ~~3.12 In the event that West Somerset Council exercises its right under paragraph 3.1 then, following completion of the Reinstatement Works, the Council shall:~~
- ~~3.12.1 forthwith return to NNB GenCo any monies which it has obtained under the Bond or Escrow and which have not been properly used in connection with the carrying out of the Reinstatement Works; and~~



~~3.12.2 as soon as reasonably practicable provide NNB GenCo with copies of audited accounts showing all payments made by the Council in connection with the Reinstatement Works.~~

#### 4. ACCESS TO THE SITE FOR WEST SOMERSET COUNCIL TO CARRY OUT REINSTATEMENT WORKS UNDER THE ACCESS LICENCE

- 4.1 Following receipt of notice from West Somerset Council that it wishes to exercise its rights pursuant to paragraph 3.1, NGL shall use Reasonable Endeavours to obtain the NGL Consents for the grant of the Access Licence and shall notify West Somerset Council once the NGL Consents have been obtained.
- 4.2 NGL shall use Reasonable Endeavours to obtain the NGL Consents (to the extent that the NGL Consents are necessary at the relevant time) for the grant of the lease by NGL to NNB GenCo of the part of the Site owned with freehold title by NGL (as referred to in Recital G) and to grant the said lease to NNB GenCo as soon as possible and NNB GenCo shall notify West Somerset Council as soon as reasonably practicable after the lease has been completed.
- 4.3 In the event that when West Somerset Council exercises its right under paragraph 3.1 to carry out the Reinstatement Works:
  - 4.3.1 any of the Preliminary Works Leases and/or Operational Leases are not in force and subsisting; or
  - 4.3.2 if in force and subsisting at the Commencement of the Reinstatement Works, the Preliminary Works Leases and/or Operational Leases come to an end (for whatever reason) prior to completion of the Reinstatement Works,

then in respect of the part of the Site which is no longer subject to any of the Preliminary Works Leases and/or Operational Leases EDF Energy and/or NGL and/or the Fairfield Estate as the case may be to the extent that they have an interest in the Site hereby each agree to grant to West Somerset Council an access licence in the form set out in Annex 11 to this Deed and West Somerset Council acknowledges that it shall be reasonable for NGL:

- 4.3.3 to refuse to grant such licence where they are unable having used Reasonable Endeavours to do so to obtain the NGL Consents for the grant of such licence; or
- 4.3.4 to require that the form of access licence be amended to reflect any reasonable requirements imposed as a condition of the issue of the NGL Consents.

#### 5. VARIATION OF NNB GENCO'S REINSTATEMENT OBLIGATIONS

- 5.1 NNB GenCo covenants with the Councils to comply with the reinstatement obligations as set out in conditions R1 to R6 of the draft Planning Permission annexed to this Deed as Annex 1 unless (and then only to the extent that) those reinstatement obligations are expressly varied, removed, abrogated, modified or superseded pursuant to any lawful means, in which case:
  - 5.1.1 NNB GenCo shall comply with such reinstatement obligations as expressly varied or modified and with any replacement obligations in the event that such reinstatement obligations are superseded by replacement obligations; or
  - 5.1.2 save in relation to any antecedent breaches, NNB GenCo shall be released from all obligations pursuant to this Schedule 17 in the event that such reinstatement obligations are entirely removed, abrogated or superseded without replacement, and this Schedule 17 shall be deemed to be varied accordingly.

- 5.2 The parties shall enter into a deed of modification in order to give effect to such variations to this Schedule 17 as are reasonably required as a result of the reinstatement obligations being varied, removed, abrogated, modified or superseded as referred to in paragraph 5.1 subject to NNB GenCo being liable for the reasonable legal costs and expenses properly incurred by the parties in relation to agreeing and entering into such deed.
- 5.3 Any express provision of any Development Consent Order or related Development Consent Obligations (once in effect following the implementation of the development authorised by the Development Consent Order) shall in any event prevail in relation to the reinstatement obligations referred to in paragraph 5.1 and the obligations in this Schedule 17 where and to the extent that there is any incompatibility with the Planning Permission or this Deed in relation thereto.
- 5.4 In relation only to any application for or appeal in connection with an application for planning permission for the Development (other than in respect of a Development Consent Order or related Development Consent Obligations) which seeks to vary, remove, abrogate, modify or supersede the reinstatement obligations referred to in paragraph 5.1, such obligations (or relevant part thereof) shall not be varied, removed, abrogated, modified or superseded unless they no longer serve a useful purpose or such obligations (or relevant part thereof) continue to serve a useful purpose, but would serve that purpose equally well if they had effect subject to the relevant proposed variation, removal, modification or superseding provision, and then shall have effect subject to the same.
- 5.5 It is acknowledged that NNB GenCo may apply to vary, remove, abrogate, modify or supersede the reinstatement obligations referred to in paragraph 5.1 or the obligations in this Schedule 17 by a Development Consent Order or related Development Consent Obligations **PROVIDED THAT** this shall not prevent the Councils from making representations in relation to any such application made by NNB GenCo."

