



The Sizewell C Project

8.17 Draft Section 106 Agreement Appendix C - Second Relocated Facilities Section 106 Agreement

Revision: 1.0
Applicable Regulation: Regulation 5(2)(q)
PINS Reference Number: EN010012

April 2021

Planning Act 2008
Infrastructure Planning (Applications: Prescribed
Forms and Procedure) Regulations 2009





HERBERT
SMITH
FREEHILLS

DATED 17 February 2021

EAST SUFFOLK COUNCIL
and
EDF ENERGY NUCLEAR GENERATION LIMITED

AGREEMENT

under section 106 of the Town And Country
Planning Act 1990 and other relevant powers
relating to land at Sizewell B Power Station
Complex and adjoining land, Sizewell, Leiston,
Suffolk

Herbert Smith Freehills LLP

TABLE OF CONTENTS

Clause	Headings	Page
1.	DEFINITIONS AND INTERPRETATION.....	1
2.	STATUTORY POWERS.....	3
3.	COMMENCEMENT	3
4.	COVENANTS BY THE OWNER	3
5.	COVENANTS BY THE COUNCIL.....	3
6.	COMPLIANCE.....	3
7.	REGISTRATION AS LOCAL LAND CHARGE.....	3
8.	ENFORCEABILITY AND SUCCESSORS IN TITLE.....	4
9.	ARBITRATION	4
10.	CONSEQUENTIAL VARIATIONS TO CONDITIONS	4
11.	REVOCATION OF PERMISSION	4
12.	FURTHER PLANNING PERMISSIONS AND DEVELOPMENT CONSENT ORDERS	4
13.	SERVICE OF NOTICES.....	5
14.	COSTS	5
15.	SEVERANCE	5
16.	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999	5
17.	JURISDICTION	5
	SCHEDULE 1 THE APPLICATION SITE	6
	SCHEDULE 2 THE DEVELOPMENT	7
	SCHEDULE 3 OWNER'S COVENANTS.....	8
	SCHEDULE 4 COUNCIL'S COVENANTS.....	9

THIS AGREEMENT is made on 17th day of February 2021

BETWEEN:

- (1) **EAST SUFFOLK COUNCIL** of Melton Hill, Woodbridge, Suffolk, IP12 1AU (the "Council")
- (2) **EDF ENERGY NUCLEAR GENERATION LIMITED** (company number 03076445) whose registered office is at Barnett Way, Barnwood, Gloucester GL4 3RS (the "Owner")

WHEREAS:

- (A) The Council is the local planning authority for the purposes of the 1990 Act for the area within which the Application Site is situated.
- (B) The Owner is the freehold owner of the Application Site.
- (C) The Owner has applied to the Council for permission to develop the Application Site in accordance with the Application and as part of the Development has agreed to comply with the obligations, covenants and restrictions contained herein and the Owner is willing to enter into this Agreement pursuant to the provisions of section 106 of the 1990 Act and all other enabling provisions in order to facilitate the Development.

NOW THIS AGREEMENT WITNESSES AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this agreement where the context so requires or admits the following expressions shall have the following meanings:

"**Accessibility Payment**" means the annual payment by the Owner to the Council of £4,000;

"**Amenity Payment**" means the payment by the Owner to the Council of £20,000;

"**AONB**" means the Suffolk Coast and Heaths Area of Outstanding Natural Beauty;

"**Application**" means the hybrid planning application (part outline, part full) for the Development, submitted on 16 November 2020 with reference DC/20/4646/FUL and any amendments thereto submitted on behalf of the Owner to the Council;

"**Application Site**" means the land described in Schedule 1 and shown for identification purposes only edged red on the Plan;

"**Development**" means the development described in Schedule 2;

"**Consumer Prices Index**" means the United Kingdom (UK) domestic measure of inflation from month to month in the prices of consumer goods and services purchased in the UK or such successor prices index as may be used as the UK domestic measure of inflation;

"**Funding Group**" means the group established by the Suffolk County Council, the Suffolk Coastal District Council¹ and the Owner (in accordance with a legal agreement pursuant to section 106 of the 1990 Act dated 22 February 2011) which shall be responsible for the identification (in consultation with the Suffolk Coast and Heaths Unit) of works to improve the amenity and accessibility of the AONB and Heritage Coast within the locality of the Development and its wider environs and shall be responsible for controlling the use of the Amenity Payment and the Accessibility Payment to fund (in whole or part) the identified works;

"**Implementation**" means the date of implementation of the Permission (or any part as may be specified) by the carrying out of a material operation as defined in Section 56(4) of the 1990 Act comprised in the Development (or any part as may be specified) and

¹ Suffolk Coastal District Council and Waveney District Council became East Suffolk Council on 1 April 2019

excluding any Preparatory Operation; and for the purposes of Schedule 3 means any material operation as defined in Section 56(4) of the 1990 Act towards the development of the Western access road and the Visitor centre respectively; and references to "Implement" shall be construed accordingly;

"Implementation Date" means the date of Implementation of the Development written notice of which shall be sent to the Council by the Owner not later than 24 hours after Implementation;

"Nominated Bank Account" means the interest bearing bank account to be used and controlled by the Council on behalf of the Funding Group for the deposit of the Amenity Payment and the Accessibility Payment;

"Plan" means drawing number SZC-RF0000-XX-000-DRW-100044 Rev01 entitled; "Location Plan" annexed to this agreement;

"Permission" means planning permission for the Development (conditional or otherwise) pursuant to the Application;

"Preparatory Operation" means permitted preparatory works (as defined in the Permission), site clearance and other preparatory works including archaeological investigations; provision of gas, electricity, water, drainage and telecommunications services;

"Relocated Facilities 1 Permission" means the planning permission granted by the Council on 13 November 2019, with reference number DC/19/1637/FUL (as amended from time to time);

"Relocated Facilities 1 section 106 agreement" means an agreement between the Council and the Owner pursuant to section 106 of the 1990 Act and other enabling provisions dated 13 November 2019;

"Terms of Reference" means the written terms of reference in relation to the constitution and operation of the Funding Group;

"Visitor Centre" means the part of the development described in the Application as the "Visitor Centre" to be located at the south-east corner of the area known as Coronation Wood, adjacent to the proposed Training Centre;

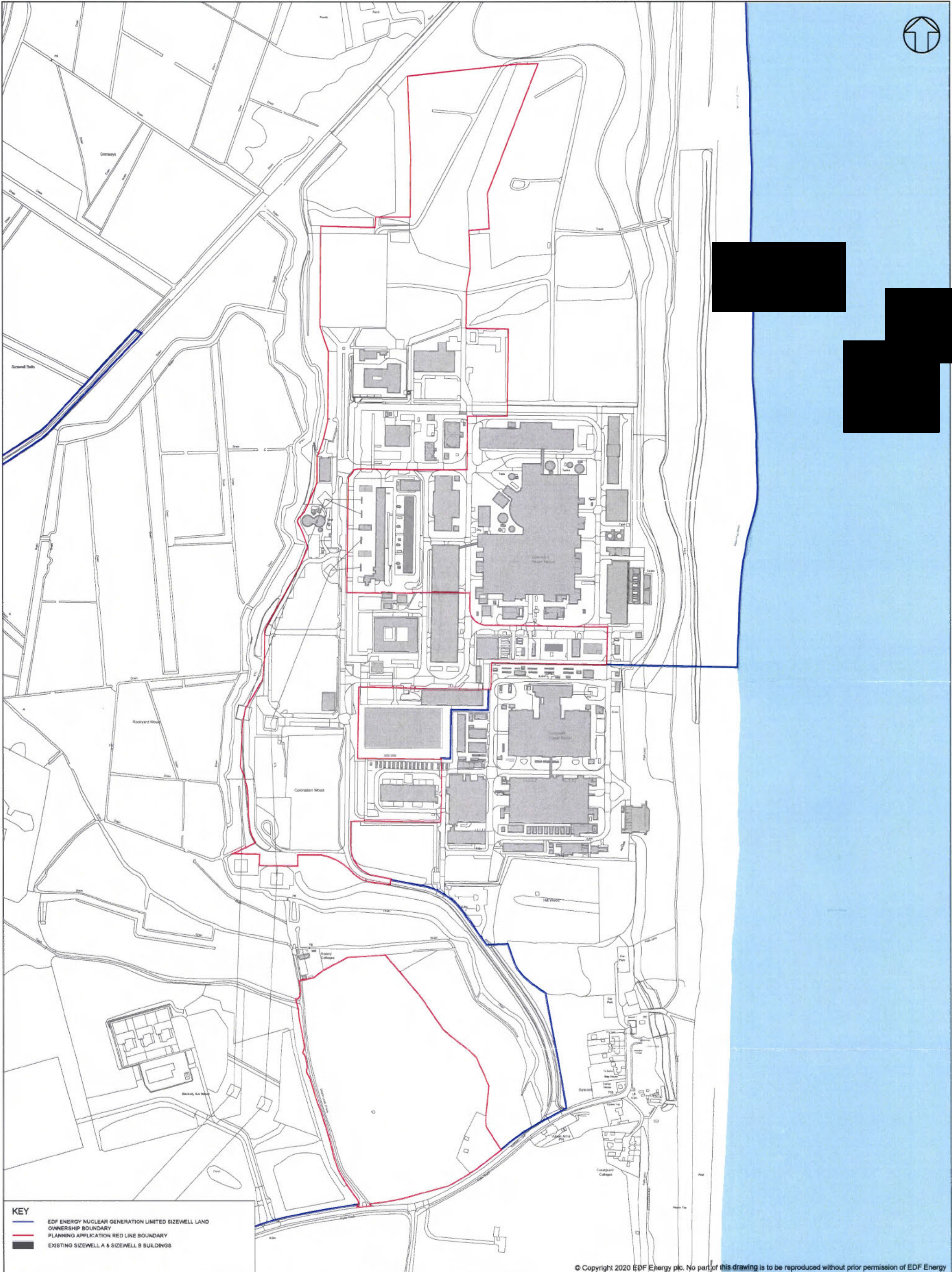
"Western access road" means the development described in the Application as the "Western Access Road" on the western edge of the area known as Coronation Wood to follow the alignment of an existing access track to the south of the Coronation Wood area and north to join the existing Sizewell B approach road and roundabout;

"1972 Act" means the Local Government Act 1972 (as amended);

"1990 Act" means the Town and Country Planning Act 1990.

1.2 Interpretation

- 1.2.1 The expression 'Council' shall include its successors in title and assigns, and statutory successors.
- 1.2.2 The expression 'Owner' shall include its successors in title and assigns and any person corporate or otherwise claiming through or under it an interest or estate in any part or parts of the Application Site as if such person had also been an original covenanting party in respect of the interest or estate for the time being held by it.
- 1.2.3 References to any Recital, Clause, Schedule, Paragraph or Appendix (or any part of them) shall unless the context otherwise requires be references to a recital, clause, schedule, paragraph or appendix (or any part of them) of this agreement.
- 1.2.4 Titles and headings to the Clauses and Paragraphs in this agreement and its Schedules and Appendix are for convenience only and shall not be construed in or affect the interpretation of this agreement.



KEY

- EDF ENERGY NUCLEAR GENERATION LIMITED SIZEWELL LAND OWNERSHIP BOUNDARY
- PLANNING APPLICATION RED LINE BOUNDARY
- EXISTING SIZEWELL A & SIZEWELL B BUILDINGS

DOCUMENT:
SIZEWELL C RELOCATED FACILITIES
 PLANNING APPLICATION DRAWING FOR APPROVAL

DRAWING NO: SZC-RF0000-XX-000-DRW-100044
 DATE: OCT 2020

REVISION: 01
 SCALE: 1:2500@A1

DRAWING SECURITY CLASSIFICATION:
 PROTECTIVE MARKING REQUIRED
 NOT PROTECTIVELY MARKED

DRAWING TITLE:
LOCATION PLAN

NO.	DATE	BY	CHKD	APP'D	ISSUED FOR INFORMATION
01	23.09.20	SB	NP		

© Copyright 2020 EDF Energy plc. No part of this drawing is to be reproduced without prior permission of EDF Energy

EDF ENERGY
 NUCLEAR GENERATION LIMITED

SCALE 1:2500
 SCALE IN METRES 1:2500

- 1.2.5 References to a particular statute include any statutory extension, modification, amendment or re-enactment of such statute and also any regulations or orders made in pursuance of it.
- 1.2.6 Unless the context otherwise requires references to the singular shall include the plural and vice versa and any words denoting actual persons shall include companies, corporations and other artificial persons.

2. STATUTORY POWERS

- 2.1 This agreement is made pursuant to Section 106 of the 1990 Act, section 111 of the 1972 Act, section 1 of the Localism Act 2011 (as amended) and any other enabling statutory provisions, and the covenants given by the Owner to the Council:
 - 2.1.1 are planning obligations for the purposes of Section 106 of the 1990 Act;
 - 2.1.2 relate to the Application Site;
 - 2.1.3 are entered into by the Owner so as to bind its freehold interest in the Application Site;
 - 2.1.4 are enforceable by the Council.
- 2.2 The covenants given by the Owner to the Council in Clause 4 and the covenants given by the Council to the Owner in Clause 5 are made and are enforceable pursuant to Section 111 of the 1972 Act and all other enabling powers which may be referable thereto.
- 2.3 Nothing in this agreement shall prejudice or affect the powers, duties and obligations of the Council in exercise of their statutory functions.

3. COMMENCEMENT

The entry into force of the provisions of this agreement (other than this Clause and Clause 14 which shall have effect immediately upon the delivery of this agreement) is conditional upon:

- 3.1.1 the Permission being duly granted by the Council; and
- 3.1.2 Implementation of the Permission.

4. COVENANTS BY THE OWNER

The Owner covenants with the Council in the terms of Schedule 3.

5. COVENANTS BY THE COUNCIL

The Council covenants with the Council in the terms of Schedule 4.

6. COMPLIANCE

Following the performance, discharge or other fulfilment of the obligations (or any of them) of the Owner pursuant to the terms of this agreement the Council may upon written request certify compliance with the particular obligation and if required by the Owner may execute a deed of release from the relevant obligation of this agreement and will apply to the appropriate Registrar of Local Land Charges for a note thereof to be entered on the Local Land Charges Register.

7. REGISTRATION AS LOCAL LAND CHARGE

It is hereby agreed that this agreement shall be registered by the Council as a local land charge for the purposes of the Local Land Charges Act 1975 provided that the Council shall apply to the appropriate Registrar of Local Land Charges to cancel or amend such registration if the provisions (in whole or part) of Clause 4 and Clause 6 shall have been complied with.

8. ENFORCEABILITY AND SUCCESSORS IN TITLE

The provisions of this agreement which are stated to relate to the Application Site shall be enforceable against the Owner and against any person for the time being deriving title to the Application Site from the Owner but neither the Owner nor any person deriving title to the Application Site shall have any liability under such provisions of this agreement (but without prejudice to the rights of the Council in respect of any antecedent breach) in respect of any period during which the Owner (or as the case may be such other person) no longer has an interest in the Application Site.

9. ARBITRATION

In the event of any dispute or difference arising out of this agreement other than a dispute or difference relating to a question of law or upon the interpretation of this agreement the same shall be referred to a sole arbitrator to be agreed between the parties to the dispute or difference and being a member of the Royal Institution of Chartered Surveyors or on the application of any such party appointed by the President for the time being of the Royal Institution of Chartered Surveyors and in this respect these presents shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996.

10. CONSEQUENTIAL VARIATIONS TO CONDITIONS

10.1 If there is an application under Section 73A of the 1990 Act to vary or release any condition contained in the Permission and the Council agrees to the variation or release; OR if there is an appeal under Section 78 of the 1990 Act and any condition contained in the Permission is then varied or released; AND If requested in writing so to do by any person against whom this agreement is at that time enforceable; THEN the Council agree to enter into an agreement with the relevant persons to modify or discharge the planning obligations in this agreement to reflect the variation or release; AND this agreement shall, subject to Clause 3, apply to the new permission.

10.2 Any approval granted by the Council pursuant to any of the conditions attached to the Permission shall be deemed to constitute approval for the purposes of any covenant or provision in this agreement which corresponds to any such condition.

11. REVOCATION OF PERMISSION

If the Permission is cancelled, quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires before Implementation this agreement shall cease to have effect immediately.

12. FURTHER PLANNING PERMISSIONS AND DEVELOPMENT CONSENT ORDERS

12.1 Subject to clause 12.2 and 12.3, nothing in this Deed shall be construed as prohibiting or limiting the rights of the Owner to use or develop any part of the Site in accordance with and to the extent permitted by a certificate of lawful use, planning permission, harbour empowerment order, transport and works act order, development consent order or other statutory authority other than the Permission granted either before or after the date of this agreement.

12.2 In the event that a planning permission, harbour empowerment order, transport and works act order, development consent order or other statutory authority other than the Permission is granted which authorises the Development or development substantially similar to the Development (including as part of a wider or larger scheme or project), then unless otherwise agreed in writing by the Council the provisions of this agreement shall apply as if such Development or development thereby authorised were authorised by the Permission and for the avoidance of doubt, any sums paid in accordance with the provisions of this agreement or the Relocated Facilities 1 section 106 agreement shall be taken to satisfy (in whole or in part as appropriate) any obligation in substantially the same form as the obligations comprised in Schedule 3 of this agreement (to avoid double payment).

12.3 No works shall be undertaken in reliance to this Permission until written notice has been given to the Council. Following the implementation of this Permission, no further works shall be carried out pursuant to the Relocated Facilities 1 Permission unless otherwise agreed with the Council in writing.

13. SERVICE OF NOTICES

13.1 Any notice, consent or approval required to be given under this agreement shall be in writing and shall be delivered personally or sent by pre-paid first class or recorded delivery post or through any document exchange of which the intended recipient is a member.

13.2 The address for service of any such notice, consent or approval as aforesaid shall be the address given in this agreement for each of the parties hereto or such other address for service as shall have been previously notified in writing by the intended recipient to the party desiring to effect service.

13.3 A notice, consent or approval under this agreement shall be deemed to have been served as follows:

13.3.1 if personally delivered at the time of delivery;

13.3.2 if posted at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom; and

and in proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice, consent or approval was properly addressed and delivered into the custody of the postal authority in a pre-paid first class or recorded delivery envelope (as appropriate) as the case may be.

14. COSTS

The Owner agrees to pay on the date of this agreement £500 to the Council as a full and final contribution towards their legal and other costs incurred in the preparation and execution of this agreement.

15. SEVERANCE

If any provision of this agreement shall be held to be invalid, illegal or unenforceable the validity, legality and enforceability of the remaining provisions of this agreement shall not in any way be deemed thereby to be affected or impaired.

16. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person who is not a party to this agreement shall have no right under the 1999 Act to enforce any term of this agreement.

17. JURISDICTION

This Deed is governed by and interpreted in accordance with English law and (save for any reference to or proceedings in the European Court of Justice) shall be determined in the Courts of England and Wales.

IN WITNESS whereof this agreement has been executed by the parties hereto and is intended to be and is hereby delivered on the date first above written

SCHEDULE 1

THE APPLICATION SITE

The land comprising the Application Site at the Sizewell B power station complex and adjoining land, Sizewell Power Station Road, Sizewell, Leiston IP16 4UE shown for identification purposes only edged in red on the Plan and being registered at HM Land Registry as part of Title Reference Numbers: SK160398 and SK160397.

SCHEDULE 2

THE DEVELOPMENT

Hybrid application seeking outline planning permission, with all matters reserved, for up to 9,500 square metres Gross External Area (GEA) to provide administration, storage, welfare and canteen facilities and a visitor centre of up to 1,000 square metres GEA. Detailed planning permission is sought for demolition of some existing structures and redevelopment to include a training centre and interim visitor centre, an outage store, lay down area, car and cycle parking, landscaping, associated infrastructure (including utilities, plant and highway works), tree felling and other relevant works.

SCHEDULE 3

OWNER'S COVENANTS

- 1. ACCESS AND AMENITY FUND (AAF)**
- 1.1 **Western Access Road**
 - 1.1.1 The Owner agrees not later than 14 days after the Implementation Date of the Western Access Road to pay to the Council 75% of the Amenity Payment.
 - 1.1.2 The Owner agrees not later than 14 days after the Implementation Date of the Western Access Road and annually thereafter until and including the year 2035 to pay to the Council 75% of the Accessibility Payment.
- 1.2 **Visitor Centre**
 - 1.2.1 The Owner agrees not later than 14 days after the Implementation Date of the Visitor Centre to pay to the Council 25% of the Amenity Payment.
 - 1.2.2 The Owner agrees not later than 14 days after the Implementation Date of the Visitor Centre and annually thereafter until and including the year 2035 to pay to the Council 25% of the Accessibility Payment.
- 1.3 The Owner agrees not less than 7 days prior to the fifth anniversary and each following fifth anniversary of the Implementation Date of the Western Access Road or Visitor Centre (whichever is the first to be Implemented) to review and where necessary adjust (by addition or subtraction) the Accessibility Payment to reflect changes to the Consumer Prices Index over the preceding sixty month period and to provide the Council with written details, where requested.
- 1.4 The Owner and the Council agree that the planning obligations contained in this Agreement are directly related to the Development and are fairly and reasonably related in scale and kind to the Development. The Owner agrees that the Amenity Payment and the Accessibility Payment may be used by the Funding Group to fund works to improve the amenity and accessibility of the AONB within the locality of the Development and the environs of the AONB within Suffolk.

SCHEDULE 4

COUNCIL'S COVENANTS

1. The Council agrees that upon receipt of the Amenity Payment (or any part thereof) and receipt of the Accessibility Payment (or any part thereof) it shall without delay deposit all such payments (without deduction) into the Nominated Bank Account and thereafter it shall utilise all such deposited payments in accordance with the Terms of Reference of the Funding Group.
2. The Council agrees that the Amenity Payment and the Accessibility Payment (or any part thereof) shall be held in the Nominated Bank Account pending instruction from the Funding Group and shall not be used for any other purpose.
3. Unless expressly stated otherwise in this agreement, if any amount of money paid to the Council under this agreement remains unspent within 5 (five) years of the date that amount was paid by the Owner, the Council shall repay any such unspent monies to the Owner or its nominee.
4. Where in this agreement it is stated that the Council's consent approval or agreement is required the Council agrees not to unreasonably withhold its consent approval or agreement and to confirm in writing its consent approval or agreement or otherwise of submitted schemes and or measures within twenty eight days of the date of receipt of such schemes and or measures, or such longer period as may be agreed in writing between the Owner and the Council, and in the event of it failing to respond within the said twenty eight days that the Owner may proceed with the Development on the basis that such scheme and or measures have been approved by the Council.

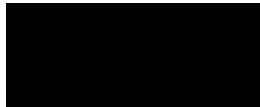
THE COMMON SEAL of
EAST SUFFOLK
COUNCIL was hereunto affixed and
this document thereby executed
as a deed in the presence of :

)
)
)
)
)
)



EXECUTED as a DEED by
EDF ENERGY NUCLEAR GENERATION
LIMITED

)
)



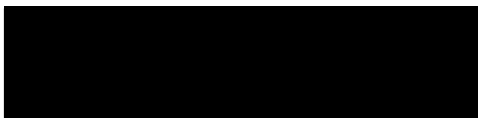
acting by a director



Director

in the presence of

)



Witness' name:

Witness



Witness address:

