

CONDITIONAL AGREEMENT
Between
UNITED STATES DEPARTMENT OF ENERGY
And
[INSERT SPONSOR'S NAME]
to enter into a
STANDBY SUPPORT CONTRACT

THIS CONDITIONAL AGREEMENT (“Conditional Agreement”) is entered into, as of the ___ day of _____, 200_, between THE UNITED STATES DEPARTMENT OF ENERGY (the “Department”) and **[insert Sponsor’s name]** with respect to **[insert name of nuclear power plant]**.

RECITALS

A. Section 638 of the Energy Policy Act of 2005 (Pub. L. 109-58, 119 Stat. 594) 42 U.S.C. 16014, *Standby Support for Certain Nuclear Plant Delays*, authorizes the Department to enter into up to six Standby Support Contracts with Sponsors of Advanced Nuclear Facilities to provide risk insurance for certain delays attributed to the regulatory process or litigation.

B. Part 950, title 10, Code of Federal Regulations, implements the provisions of section 638 and provides that the Department and a Sponsor may enter into a Conditional Agreement to enter into a Standby Support Contract if certain conditions, limitations and requirements are satisfied.

NOW, THEREFORE, the Department and **[insert Sponsor’s name]** hereby agree to this Conditional Agreement as follows:

ARTICLE I
Definitions

For purposes of this Conditional Agreement:

A. “Covered Nuclear Power Plant” means **[insert name of nuclear power plant to which Conditional Agreement relates]**.

B. “Sponsoring Party” means **[insert Sponsor’s name]**.

C. All terms which are defined in section 638 of the Energy Policy Act of 2005 and 10 CFR Part 950 shall have the same definition herein as provided in section 638 and 10 CFR Part 950.

ARTICLE II
Commitment to Standby Support Contract

Section 2.1. The Department shall enter into a Standby Support Contract with the Sponsoring Party with respect to the Covered Nuclear Power Plant if and only if:

(a) The Sponsoring Party is one of the first six Sponsors to fulfill all the conditions precedent set forth in Article VI; and

(b) All applicable statutory, regulatory and contractual requirements, conditions and limitations, including those specified in this Conditional Agreement, are satisfied.

ARTICLE III
Prior Determinations

Section 3.1. Prior to entering into this Conditional Agreement, the Program Administrator for the Standby Support Program determined that:

(a) The Sponsoring Party submitted to the Department the following required information:

(i) An electronic copy of the Combined License application for the Covered Nuclear Power Plant docketed by the Nuclear Regulatory Commission (“Commission”) pursuant to 10 CFR Part 52, and if applicable, an electronic copy of the design certification or early site permit, or environmental report referenced or included with the Combined License application (Appendix 1);

(ii) A summary schedule identifying the projected dates of construction, testing, and Full Power Operation (Appendix 2);

(iii) A detailed business plan that includes intended financing for the project including the credit structure and all sources and uses of funds for the project, the most recent private credit rating or other similar credit analysis for project related financing, and the projected cash flows for all debt obligations for the Covered Nuclear Power Plant that would be covered under the Standby Support Contract (Appendix 3);

(iv) The estimate by the Sponsoring Party of the amount and timing of the payments for debt service for which Standby Support payments under Covered Delays would be available (Appendix 4); and

(v) The amounts of coverage elected by the Sponsoring Party to be allocated to the Program Account to cover principal or interest costs and to the Grant Account to cover Incremental Costs, including whether these amounts would be different if the Covered Nuclear Power Plant is one of the Initial Two Reactors or one of the Subsequent Four Reactors (Appendix 4).

(b) The information submitted under section 3.1(a) is accurate and complete.

(c) The Commission has not approved a Combined License for the Covered Nuclear Power Plant.

(d) The terms and conditions of this Conditional Agreement are consistent with applicable law and regulations.

ARTICLE IV Coverage Amounts

Section 4.1. The amount of coverage to be allocated under the anticipated Standby Support Contract to the Program Account to cover principal or interest costs shall not exceed \$500 million if the Covered Nuclear Power Plant is one of the Initial Two Reactors and \$250 million if the Covered Nuclear Power Plant is one of the Subsequent Four Reactors. The amount of coverage allocated to the Program Account may not exceed eighty (80) percent of the total financing for the Covered Nuclear Power Plant and shall be backed by the full faith and credit of the United States.

Section 4.2. The amount of coverage to be allocated under the anticipated Standby Support Contract to the Grant Account to cover Incremental Costs shall not exceed \$500 million if the Covered Nuclear Power Plant is one of the Initial Two Reactors and \$250 million if the Covered Nuclear Power Plant is one of the Subsequent Four Reactors.

Section 4.3. The combined amount of coverage to be allocated under the anticipated Standby Support Contract to both the Program Account and the Grant Account shall not exceed \$500 million if the Covered Nuclear Power Plant is one of the Initial Two Reactors and \$250 million if the Covered Nuclear Power Plant is one of the Subsequent Four Reactors. The Sponsoring Party may elect to allocate 100 percent of the coverage to either the Program Account or the Grant Account.

ARTICLE V Funding of Program and Grant Accounts

Section 5.1. (a) If the Covered Nuclear Power Plant is one of the Initial Two Reactors, the Program Account shall be funded in the anticipated amount of \$_____, which is an amount equal to the Loan Costs associated with the amount of principal or interest to which the Sponsoring Party has elected to allocate coverage in such a case.

(b) If the Covered Nuclear Power Plant is one of the Subsequent Four Reactors, the Program Account shall be funded in the anticipated amount of \$_____, which is an amount equal to the Loan Costs associated with the amount of principal or interest to which the Sponsoring Party has elected to allocate coverage in such a case.

Section 5.2. If the Covered Nuclear Power Plant is one of the Initial Two Reactors, the Grant Account shall be funded in the anticipated amount of \$_____, which is equal to the Incremental Costs to which the Sponsoring Party has elected to allocate coverage in such a case. If the Covered Nuclear Power Plant is one of the Subsequent Four Reactors, the Grant Account shall be funded in the anticipated amount of \$_____, which is equal to the Incremental Costs to which the Sponsoring Party has elected to allocate coverage in such a case.

Section 5.3. No later than ninety (90) days prior to the anticipated execution date of a Standby Support Contract between the Department and the Sponsoring Party, the Sponsoring Party shall provide sufficient information to the Department to recalculate the Loan Costs and the Incremental Costs associated with the amounts of coverage that the Sponsoring Party has elected to allocate to the Program Account and to the Grant Account, taking into account whether the Covered Nuclear Power Plant is one of the Initial Two Reactors or one of the Subsequent Four Reactors.

Section 5.4. The Department shall recalculate the Loan Costs and the Incremental Costs associated with the amounts of coverage that the Sponsoring Party has elected to allocate to the Program Account and to the Grant Account, based on the information supplied by the Sponsoring Party pursuant to section 5.3 of this Conditional Agreement.

Section 5.5. Based on the full amount of the Loan Costs or Incremental Costs as recalculated by the Department pursuant to section 5.4 of this Conditional Agreement, in the event the amount of funds available for deposit in the Program Account or Grant Account is not sufficient to result in an amount equal to the full amount of the loan costs or incremental costs resulting from the allocation of coverage under the Conditional Agreement, the Sponsoring Party shall no later than sixty (60) days prior to the anticipated execution of the Standby Support Contract:

- (a) Notify the Department that it will not execute a Standby Support Contract; or
- (b) Notify the Department that it or another non-Federal source shall fund the Program Account or Grant Account up to an amount equal to the full recalculated amount of Loan Costs or Incremental Costs.

Section 5.6. In the event the Sponsoring Party or another non-Federal source does not provide sufficient funds to fund the Program Account or the Grant Account in an amount equal to the full recalculated amount of Loan Costs or Incremental Costs, the amount of coverage available under the Standby Support Contract shall be reduced on a pro rata basis to reflect the amount deposited in the Program Account or Grant Account.

Section 5.7. If the amount of coverage available under the Standby Support Contract is reduced pursuant to section 5.6 of this Conditional Agreement, the Sponsoring Party shall not have recourse against the Department for any claims for an amount of Covered Costs in excess of the reduced amount of coverage and the

Department shall not be liable for any such claims, notwithstanding any other provision of law.

Section 5.8. The Department's contribution of Federal funding to the Program Account or the Grant Account shall be limited to only those amounts, if any, that are appropriated to the Department for the purpose of funding the Program Account or Grant Account. The Department makes no commitment by entering into this Conditional Agreement to seek or obtain appropriations for the purpose of funding the Program Account or Grant Account. No term, condition or provision of this Conditional Agreement or any law or regulation shall be construed to require the Department to seek or obtain appropriations for the purpose of funding the Program Account or Grant Account.

Section 5.9. Loan Costs shall be calculated consistent with the Federal Credit Reform Act of 1990, and in the manner prescribed by the Department in 10 CFR Part 950.

Section 5.10. Loan Costs shall not be paid from the proceeds of debt guaranteed or funded by the Federal government.

ARTICLE VI

Conditions Precedent for a Standby Support Contract

Section 6.1. The Department shall not enter into a Standby Support Contract with the Sponsoring Party pursuant to this Conditional Agreement unless and until all of the following conditions have been fulfilled:

- (a) The Department and the Sponsoring Party have duly executed this Conditional Agreement;
- (b) The Commission has issued a Combined License for the Covered Nuclear Power Plant;
- (c) The Sponsoring Party possesses all Federal, State, or local permits required by law to commence construction of the Covered Nuclear Power Plant, and documentation of such has been provided to the Department;
- (d) The Sponsoring Party has commenced Construction of the Covered Nuclear Power Plant, and documentation of such has been provided to the Department;
- (e) No later than thirty (30) days prior to execution of the Standby Support Contract, and consistent with the Energy Policy Act of 2005, section 638(b)(2)(C), funds in the amounts determined in accordance with Article V of this Conditional Agreement have been made available and have been deposited in the Program Account or the Grant Account, as applicable;

(f) The funds deposited in the Program Account are equal to the Loan Costs associated with the amount of principal or interest costs for which the Standby Support Contract provides coverage;

(g) The funds deposited in the Grant Account are equal to the Incremental Costs for which the Standby Support Contract provides coverage;

(h) The Sponsoring Party has obtained insurance coverage required for the project by the Commission and its lenders, and documentation of such has been provided to the Department; and

(i) No later than ninety (90) days prior to execution of the Standby Support Contract, the Sponsoring Party has provided the Department with:

- (1) A detailed schedule for completing the inspections, tests, analyses and acceptance criteria in the Combined License and informing the Commission that the acceptance criteria have been met;
- (2) A proposed schedule for review of such inspections, tests, analyses and acceptance criteria by the Commission, consistent with the requirements of 10 CFR 950.14(a), and which the Department has evaluated and approved;
- (3) A detailed systems-level construction schedule that includes a schedule identifying projected dates of construction, testing and full power operation of the Covered Nuclear Power Plant; and
- (4) A detailed and up-to-date plan of financing for the project including the credit structure and all sources and uses of funds for the project, and the projected cash flows for all debt obligations for the Covered Nuclear Power Plant.

ARTICLE VII

Term of Conditional Agreement

Section 7.1. This Conditional Agreement shall remain in effect until such time as the earliest of the following events occurs:

(a) The Sponsoring Party enters into a Standby Support Contract with the Department pursuant to this Conditional Agreement;

(b) The Sponsoring Party has commenced construction on the Covered Nuclear Power Plant and has not entered into a Standby Support Contract with the Department within thirty (30) days after commencement of construction;

(c) The Sponsoring Party notifies the Department in writing that it wishes to terminate the Conditional Agreement, thereby extinguishing any rights or obligations it may have under the Conditional Agreement;

(d) The Department has entered into Standby Support Contracts that cover three different reactor designs, and the Conditional Agreement between the Sponsoring Party and the Department is for a Covered Nuclear Power Plant of a different reactor design than those covered under existing Standby Support Contracts; or

(e) The Department has entered into six Standby Support Contracts.

ARTICLE VIII

Dispute Resolution

Section 8.1. If there is a matter in dispute concerning a question of fact arising under this Conditional Agreement, then the parties shall engage in dispute resolution as follows:

(a) The Sponsoring Party and the Department shall engage in good faith efforts to resolve the matter in dispute after written notification by one party to the other that there is a Conditional Agreement matter in dispute.

(b) If the parties cannot reach a resolution of the matter in dispute within thirty (30) days of the written notification of the matter in dispute, then the Sponsoring Party shall have fifteen (15) days during which time it may request a decision of the Program Administrator. Upon receipt of a notice of dispute arising under the Conditional Agreement, the Program Administrator shall use best efforts to issue a decision within thirty (30) days. The Program Administrator's decision shall be in writing and shall include the basis for the decision. The decision of the Program Administrator shall be final and conclusive, unless appealed by the Sponsoring Party within ten (10) days of receipt of the Program Administrator's decision to the Department's Assistant Secretary for Nuclear Energy, or his designee, whose decision shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, arbitrary and capricious, or so grossly erroneous as to constitute bad faith. In connection with any appeal under this section, the Sponsoring Party shall be afforded an opportunity to submit evidence in support of its appeal.

(c) This Dispute Resolution section does not preclude consideration of questions of law in connection with decisions under (b), provided that nothing in this section shall be construed as making final the decision of any Departmental official on a question of law.

AGREED TO:

FOR THE DEPARTMENT OF ENERGY

Program Administrator
Standby Support Program
Office of Nuclear Energy
US Department of Energy
Washington DC 20585

Date

FOR **[insert Sponsor's name]**

[INSERT TITLE, ADDRESS]

Date