

.....
(1) NNB GENERATION COMPANY (HPC) LIMITED

and

(2) THE NUCLEAR DECOMMISSIONING FUND COMPANY LIMITED

**FUNDING ARRANGEMENTS PLAN
FOR HINKLEY POINT C**

Herbert Smith Freehills LLP

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TABLE OF CONTENTS

Clause	Headings	Page
	RECITALS.....	1
1.	THE FDP	1
2.	PRIMARY FUNDING PERIOD, SECONDARY FUNDING PERIOD AND FUNDING PATHS	3
3.	MINIMUM CONTRIBUTION CALCULATION RULES	4
4.	SECURITY PACKAGE	5
5.	FDP REGULATIONS.....	5
	SECTION A: DEFINITIONS AND INTERPRETATION.....	6
1.	DEFINITIONS AND INTERPRETATION.....	6
	SECTION B: CONTRIBUTIONS TO THE FDP IMPLEMENTATION COMPANY.....	7
2.	CONTRIBUTIONS WILL FALL DUE EACH YEAR	7
3.	ANY PERSON MAY MAKE CONTRIBUTIONS.....	7
4.	CONTRIBUTIONS NOTICE WILL BE PRODUCED FOR EACH FINANCIAL PERIOD	7
5.	FDP CONTRIBUTIONS HAVE PRIORITY OVER DEBT AND DIVIDEND PAYMENTS.....	8
6.	SIGNIFICANT CREDITORS TO BE INFORMED OF FDP OBLIGATIONS	8
7.	CONTRIBUTIONS PAYMENT PROCEDURES APPLY	8
	SECTION C: INVESTMENT OF CONTRIBUTIONS AND FUND ASSETS	9
8.	INVESTMENT RULES APPLY TO ALL FDP INVESTMENTS	9
9.	FDP IMPLEMENTATION COMPANY WILL HOLD THE FUND ASSETS REMOTE FROM THE OPERATOR.....	9
10.	ALL FDP INVESTMENTS WILL BE MADE UNDER INVESTMENT ORDERS	9
11.	INVESTMENTS MAY BE MADE WITH AVAILABLE CASH.....	10
12.	FDP IMPLEMENTATION COMPANY WILL MONITOR ALL INVESTMENT ORDERS	10
13.	OPERATOR MAY REQUEST INFORMATION ON FUND ASSETS.....	11
14.	ONGOING COMPLIANCE WITH THE INVESTMENT RULES	11
15.	FDP IMPLEMENTATION COMPANY MAY MAKE APPOINTMENTS AND GRANT MANDATES TO FACILITATE INVESTMENT EXECUTION.....	13
	SECTION D: REVIEWING, REPORTING AND VERIFICATION	14
16.	PROGRAMME FOR ANNUAL REVIEW	14
17.	PROGRAMME FOR QUINQUENNIAL REVIEW	14
18.	FDP IMPLEMENTATION COMPANY INSTRUCTIONS TO REVIEW PARTICIPANTS	14
19.	BASIS OF ESTIMATION.....	14
	SECTION E: WARRANTIES, UNDERTAKINGS AND BUSINESS RESTRICTIONS.....	15
20.	FDP IMPLEMENTATION COMPANY WARRANTIES.....	15
21.	OPERATOR WARRANTIES	15

22.	OPERATOR BUSINESS RESTRICTIONS	15
23.	OPERATOR FINANCIAL RESTRICTIONS.....	15
24.	CASH SWEEP.....	19
25.	CALCULATION OF CASH SWEEP PAYMENT	20
26.	DISTRIBUTION BLOCK APPLIES DURING QUALIFYING CASH SWEEP PERIODS	21
27.	ANTI-AVOIDANCE	22
28.	CASH SWEEP PAYMENT PROCEDURES APPLY	22
SECTION F: INSURANCE REQUIREMENTS		23
29.	MAINTENANCE OF MATERIAL DAMAGE INSURANCE POLICY	23
SECTION G: CONSEQUENCES OF SECURITY TRIGGER EVENT ACTION BEING TAKEN		24
30.	SECRETARY OF STATE MUST BE NOTIFIED OF AN OPERATOR INSOLVENCY EVENT	24
31.	SECURITY PACKAGE TO BE GRANTED	24
32.	ENTITLEMENT TO TAKE SECURITY TRIGGER EVENT ACTION	26
33.	FUNDED SF TRANSFER FEE AND FUNDED ILW TRANSFER FEE WILL BE RELEASED IF SECURITY TRIGGER EVENT ACTION IS TAKEN	26
34.	RIGHT TO ACCELERATE DECOMMISSIONING CONTRIBUTIONS IF SECURITY TRIGGER EVENT ACTION IS TAKEN.....	27
35.	REPAYMENT OF UNSPENT DTM PAYMENTS IF SECURITY TRIGGER EVENT ACTION IS TAKEN	28
36.	PRIORITY OF THE SECURITY	28
37.	FUND ASSETS TO BE USED FOR FUNDING THE DESIGNATED TECHNICAL MATTERS DESPITE INSOLVENCY OF THE OPERATOR	28
SECTION H: MITIGATION MEASURES ON UNPLANNED EARLY PERMANENT SHUTDOWN.....		29
38.	UNPLANNED EARLY PERMANENT SHUTDOWN	29
39.	NO ELECTRICITY GENERATION AFTER THE ACTUAL DECOMMISSIONING START DATE WITHOUT SECRETARY OF STATE CONSENT	29
SECTION I: DISBURSEMENTS PERIOD AND DECOMMISSIONING PERIOD PROCEDURES.....		30
40.	PROGRAMME FOR DISBURSEMENTS PERIOD AND DECOMMISSIONING PERIOD ANNUAL REVIEWS	30
41.	PROGRAMME FOR DISBURSEMENTS PERIOD AND DECOMMISSIONING PERIOD QUINQUENNIAL REVIEWS	30
SECTION J: PAYMENTS AND DISBURSEMENTS POLICY		31
42.	RULES APPLY FOR THE CLAIM AND USE OF DTM PAYMENTS	31
43.	RELEASE OF FUNDS FOLLOWING AN UNPLANNED PERMANENT SHUTDOWN	31
44.	ANNUAL WORK PLAN AND BUDGET	32
45.	ANNUAL DTM PAYMENT WILL BE CALCULATED BY THE FDP IMPLEMENTATION COMPANY	34
46.	DTM COSTS OVERRUNS MAY BE CLAIMED	35

47.	FDP IMPLEMENTATION COMPANY WILL CALCULATE DTM OVERRUN PAYMENTS	38
48.	MID-YEAR REPORT	38
49.	ANNUAL RECONCILIATION REVIEW	38
50.	VERIFICATION OF LONG TERM CONTRACTS AND MATERIAL AFFILIATE CONTRACTS	38
SECTION K: ENSURING COMPLIANCE WITH THE FDP		41
51.	MATERIAL BREACH SHALL BE NOTIFIED TO THE SECRETARY OF STATE	41
52.	BREACH AND ENFORCEMENT	42
53.	UNLAWFUL OBLIGATIONS	45
54.	FORCE MAJEURE	46
55.	VARIATION OF THIS AGREEMENT	46
56.	FDP MODIFICATIONS MUST BE IMPLEMENTED BY THE PARTIES	46
57.	SECRETARY OF STATE DIRECTIONS MUST BE IMPLEMENTED BY THE PARTIES	47
58.	DISPUTE DETERMINATIONS MUST BE IMPLEMENTED BY THE PARTIES	47
59.	SECRETARY OF STATE INFORMATION REQUESTS MUST BE SATISFIED BY THE PARTIES	47
SECTION L: FDP IMPLEMENTATION COMPANY STRUCTURE AND OWNERSHIP		48
60.	STRUCTURE OF THE FDP IMPLEMENTATION COMPANY	48
61.	ROLE OF THE FDP IMPLEMENTATION COMPANY	48
62.	OWNERSHIP OF THE FDP IMPLEMENTATION COMPANY	49
63.	THE SHAREHOLDERS' AGREEMENT	50
64.	CONSTITUTION OF THE FDP IMPLEMENTATION COMPANY	50
65.	ARTICLES AND SHAREHOLDERS' AGREEMENT TO BE CONSISTENT WITH STRUCTURE AND OWNERSHIP REQUIREMENTS	51
SECTION M: GOVERNANCE OF THE FDP IMPLEMENTATION COMPANY		52
66.	FDP IMPLEMENTATION COMPANY TO BE GOVERNED INDEPENDENTLY	52
67.	APPOINTMENT OF INDEPENDENT DIRECTORS	53
68.	REMOVAL OF INDEPENDENT DIRECTORS	54
69.	ARTICLES MUST BE CONSISTENT WITH GOVERNANCE REQUIREMENTS	55
70.	INDEPENDENT DIRECTOR SERVICE AGREEMENTS TO BE ON MANDATORY TERMS	55
71.	THE FDP BUDGET AND SERVICES AGREEMENT	56
SECTION N: PERMITTED PAYMENTS		58
72.	RETURN OF SURPLUS PAYMENT	58
73.	MISTAKEN PAYMENTS	58
74.	DETERMINED AMOUNTS	58
SECTION O: MODIFICATIONS		60
75.	RELEVANT MODIFICATIONS	60

76.	REQUIRED VALUE	60
77.	CONSEQUENCES OF AN ALTERNATIVE WTC TRIGGER	60
	SECTION P: WINDING-UP OF THE FDP IMPLEMENTATION COMPANY	61
78.	WINDING-UP OF THE FDP IMPLEMENTATION COMPANY	61
	SECTION Q: MISCELLANEOUS.....	63
79.	INFORMATION	63
80.	NOTICES.....	63
81.	CONFIDENTIALITY AND ANNOUNCEMENTS	64
82.	CONVERSION TO ALTERNATIVE CURRENCY	66
83.	RPI.....	66
84.	INDEX CHANGE EVENT	67
85.	CREDIT RATING CHANGE EVENT	68
86.	INTEREST TO RUN ON DEFAULT	68
87.	MISCELLANEOUS	69
	SCHEDULE 1 WARRANTIES	72
	SCHEDULE 2 FUNDING PATHS.....	74
	Section 1: Fund Building Path.....	74
	Section 2: Secondary Funding Path	76
	Section 3: Correction Adjustment Percentages	77
	SCHEDULE 3 MINIMUM CONTRIBUTION CALCULATION RULES	78
	Section 1: Calculation of the Next Annual Contribution	78
	Section 2: Calculation of Base Case Contributions	79
	Section 3: Calculation of the Correction Contribution	81
	Section 4: Formulae Sheet	83
	SCHEDULE 4 PAYMENT PROCEDURES	89
	Section 1: Contributions Payment Procedures	89
	Section 2: Fund Payment Procedures	90
	Section 3: Cash Sweep Payment Procedures	91
	SCHEDULE 5 OPERATOR BUSINESS AND FINANCIAL RESTRICTIONS	92
	SCHEDULE 6 OPERATOR UNDERTAKINGS	94
	SCHEDULE 7 INVESTMENT RULES	95
	SCHEDULE 8 ANNUAL REVIEW PROGRAMME	102
	Section 1: Annual Review Process	102
	Section 2: Requirements for the Annual Report	107
	Section 3: Disputes arising at Annual Review	108
	SCHEDULE 9 QUINQUENNIAL REVIEW PROGRAMME	109
	Section 1: Quinquennial Review Process.....	109
	Section 2: Requirements for the Quinquennial Report	115
	Section 3: Disputes arising at a Quinquennial Review	116
	Section 4: DWMP Assumptions	117
	SCHEDULE 10 TECHNICAL VERIFICATION.....	119
	Section 1: Requirements for the Technical Verification Report on Annual Review	119
	Section 2: Agreed Technical Verification Procedures for Quinquennial Review	120
	Section 3: Requirements for the Technical Verification Report on Quinquennial Review	121
	Section 4: Requirements for the Expert Verification Report on technical issues	122
	Section 5: ILW Transfer Contract Certificates and SF Transfer Contract Certificates	123

SCHEDULE 11 FINANCIAL VERIFICATION	124
Section 1: Requirements for the Financial Verification Report	124
Section 2: Requirements for the Calculation Confirmation Report	125
SCHEDULE 12 REQUIREMENTS FOR THE ANNUAL FUND ASSETS REPORT	127
SCHEDULE 13 REQUIREMENTS FOR THE MODIFICATION VERIFICATION REPORT	128
SCHEDULE 14 REQUIREMENTS FOR ANNUAL OPERATOR DIRECTORS' CERTIFICATE	129
SCHEDULE 15 PAYMENTS AND DISBURSEMENTS REQUIREMENTS	131
Section 1: Requirements for Annual Work Plan and Budget	131
Section 2: Requirements for Mid-Year Report	132
Section 3: Requirements for Contract Verification Report	133
SCHEDULE 16 ANNUAL RECONCILIATION REVIEW	134
Section 1: Process for Annual Reconciliation Review	134
Section 2: Requirements for Operator Reconciliation Report	136
Section 3: Agreed Reconciliation Verification Procedures	137
Section 4: Requirements for the Reconciliation Verification Report	138
Section 5: Requirements for the Annual Reconciliation Report	139
Section 6: Disputes arising at an Annual Reconciliation Review	140
SCHEDULE 17 AVAILABLE OPERATOR CASH FLOW FOR QUALIFYING CASH SWEEP PERIODS	141
SCHEDULE 18 GOVERNANCE ARRANGEMENTS	142
Section 1: Shareholder Governance Arrangements	142
Section 2: Board Governance Arrangements	142
Section 3: Reserved Matters and FDP Protection Triggers	143
Section 4: Mandatory Articles	144
SCHEDULE 19 INDEPENDENT EXPERT REFERRAL PROCEDURE	145
SCHEDULE 19A INDEPENDENT INVESTMENT EXPERT REFERRAL PROCEDURE	150
SCHEDULE 19B ANNUAL WORK PLAN AND BUDGET INDEPENDENT EXPERT REFERRAL PROCEDURE	154
SCHEDULE 19C VALUATION PROCEDURE	158
SCHEDULE 20 CLAIMS, DISPUTES AND ARBITRATION	161
SCHEDULE 21 DEFINITIONS AND INTERPRETATION	163

THIS AGREEMENT is made on _____ and made as a deed
BETWEEN:

- (1) **NNB GENERATION COMPANY (HPC) LIMITED**, a company incorporated in England (registered number 06937084) and whose registered office is at 40 Grosvenor Place, London SW1X 7EN (the "**Operator**"); and
- (2) **THE NUCLEAR DECOMMISSIONING FUND COMPANY LIMITED**, a company incorporated in England (registered number 07992648) and whose registered office is c/o BDO LLP, 55 Baker Street, London W1U 7EU (the "**FDP Implementation Company**").

RECITALS

1. THE FDP

1.1 Approval of an FDP is a legal requirement

- 1.1.1 It is an offence under section 47(2) of the Energy Act 2008 to use or permit another person to use a nuclear site, by virtue of a nuclear site licence, without having in place an approved funded decommissioning programme.
- 1.1.2 Under section 46 of the Energy Act 2008, it is the role of the Secretary of State, having consulted the relevant interested bodies, to reject or approve a funded decommissioning programme.
- 1.1.3 The Operator intends to develop two (2) Reactors at Hinkley Point C - a nuclear installation for which a nuclear site licence is required - and is therefore required to submit a funded decommissioning programme in respect of Hinkley Point C.

1.2 An FDP must contain technical steps, cost estimates and security

Under section 45(7) of the Energy Act 2008, a funded decommissioning programme must, in particular, contain:

- 1.2.1 details of the steps to be taken under the programme in relation to the Technical Matters;
- 1.2.2 estimates of the costs likely to be incurred in connection with the Designated Technical Matters; and
- 1.2.3 details of any security to be provided in connection with those costs.

1.3 DWMP sets out cost estimates and plan of the technical steps

- 1.3.1 The DWMP (which is updated from time to time in accordance with this Agreement, the Energy Act 2008 and Applicable Law) sets out details of the matters referred to in Recitals 1.2.1 and 1.2.2 above and constitutes the content required by sections 45(7)(a) and (b) of the Energy Act 2008. The DWMP constitutes the Operator's "decommissioning and waste management plan" as described in the FDP Guidance.
- 1.3.2 The DWMP does not confer any legal rights or impose any legal obligations on either of the Parties to this Agreement.

1.4 This Agreement sets out the terms on which the DTM Costs will be financed

- 1.4.1 This Agreement constitutes the Operator's "funding arrangements plan" as described in the FDP Guidance and sets out the terms on which the Operator will finance the DTM Costs. It includes the content described in and required by section 45(7)(c) of the Energy Act 2008.
- 1.4.2 No term of this Agreement may be amended or modified without the Secretary of State's consent.

1.5 This Agreement and DWMP together form the FDP

This Agreement and the DWMP together constitute the FDP.

1.6 This Agreement is a contract between the Parties

This Agreement is a private law contract and the Parties have agreed pursuant to Clause 87.7 (*Governing Law and Jurisdiction*) that the rights and remedies available to the FDP Implementation Company, the Operator and the Secretary of State under this Agreement are limited to those specified in Clause 52.4 (*Remedies*) and shall be available:

- 1.6.1 to each Party if the other commits a breach of its obligations under this Agreement; and
- 1.6.2 to the Secretary of State if either Party commits a breach of its obligations under this Agreement in the circumstances provided for in Clause 87.3 (*Third party rights*).

1.7 Purpose of the FDP Implementation Company is to implement the FAP

The sole purpose of the FDP Implementation Company is to implement its obligations and (to the extent it considers appropriate) exercise its rights under this Agreement in accordance with its terms, and to give such assistance as is reasonably requested of it by the Operator or the Secretary of State in connection with this Agreement and the preparation, approval and/or entering into of any funded decommissioning programme subsequent to the FDP and any matter ancillary thereto. The FDP Implementation Company's review of this Agreement and ancillary documents has been conducted in that context.

1.8 Secretary of State has statutory powers in relation to the FDP

In addition to the Secretary of State's contractual rights, the Secretary of State has those powers in relation to this Agreement that are conferred on him in relation to funded decommissioning programmes under the Energy Act 2008. However, the exercise of the Secretary of State's power to propose modifications to this Agreement will be subject to the terms of the Section 46 Agreement to be entered into between, among others, the Operator, the FDP Implementation Company and the Secretary of State and the Deed of Undertaking to be entered into between, initially, the shareholders of the Operator and the Secretary of State.

1.9 Compliance with this Agreement constitutes compliance with the FDP

- 1.9.1 The Operator is not required to propose a modification to the FDP under section 48 of the Energy Act 2008 in order for either Party to perform any obligation set out in this Agreement (including obtaining, producing, changing or replacing any document referred to in this Agreement), save that the Operator acknowledges the requirements to propose a modification:
 - (A) in order to update the DWMP (other than in relation to Exempt Modifications);
 - (B) in relation to unlawful obligations under Clause 53.2 (*Modification will be proposed in respect of unlawful obligations*);
 - (C) in relation to long term Force Majeure Events under Clause 54.2 (*Modification will be proposed in respect of a long term Force Majeure Event*);
 - (D) in relation to proposed amendments to mandatory terms of the Shareholders' Agreement under Clause 63.2 (*Mandatory Shareholders' Agreement Terms not to be amended*);
 - (E) in relation to proposed amendments to mandatory terms of the FDP Budget and Services Agreement under Clause 71.4 (*Mandatory Budget and Services Agreement Terms not to be amended*); and
 - (F) in relation to proposed amendments to mandatory terms of the FDP Implementation Company's constitution under Clause 64 (*Constitution of the FDP Implementation Company*).

- 1.9.2 The Secretary of State has set out in a letter to the Operator her opinion of what constitutes a modification to this FDP.
- 1.9.3 The Secretary of State and the Operator will enter into a standstill agreement on or about the date of this Agreement which constitutes an FDP Direct Agreement for the purposes of this Agreement. Financing Parties (and others, if relevant) may accede to the standstill agreement in the future or, alternatively, the standstill agreement may be replaced by an alternative FDP Direct Agreement concerning this Agreement which sets out certain intercreditor arrangements. Neither the FDP Implementation Company (subject to Clause 31.6) nor the Secretary of State is obliged to sign any FDP Direct Agreement. The Secretary of State will only do so in accordance with Applicable Law and if it is content with the terms of the FDP Direct Agreement as they concern this Agreement.
- 1.9.4 The Secretary of State may (but is not obliged to), subject to conditions agreed between the Operator and the Secretary of State, make a statutory transfer scheme under the Energy Act 2004 to transfer securities of the Operator, property, rights and liabilities of the Operator to the Nuclear Decommissioning Authority or a publicly owned company or implement another method of transfer.
- 1.9.5 The Secretary of State has acknowledged in the Section 46 Agreement that it has approved the FDP as making prudent provision for the Technical Matters (including the financing of the Designated Technical Matters) having regard to, inter alia, the following factors:
- (A) the DWMP has been costed to P80;
 - (B) the target Fund Assets Value represents a P80 assessment of the DTM Costs as they are reviewed and verified through the mechanisms set out in this Agreement, plus, in respect of the Costs of Decommissioning and the Costs of Spent Fuel Management, a further contingency of 25%;
 - (C) the target Fund Assets Value is designed to ensure that the expected costs are fully funded in accordance with the Primary Funding Path by FYE Year 37 and in accordance with the Investment Rules;
 - (D) this Agreement is designed to adjust required Contributions to the Fund Assets in response to increases in DTM Costs and in response to lower than anticipated Fund Asset growth;
 - (E) the periods of time within which deficits in the Fund Assets are made up, being initially 10 years, reducing in accordance with the terms of this Agreement; and
 - (F) the calculations of liabilities for waste disposal and management are derived from the Waste Transfer Contracts.

2. PRIMARY FUNDING PERIOD, SECONDARY FUNDING PERIOD AND FUNDING PATHS

2.1 Costs of Decommissioning, Costs of Spent Fuel Management and Costs of ILW Disposal to be funded over the Primary Funding Period

The Operator intends to finance the estimated Costs of Decommissioning, the estimated Costs of Spent Fuel Management and the estimated Costs of ILW Disposal (as estimated at the Approved P Value in each case) together with a further contingency of twenty-five percent (25%) in respect of the Costs of Decommissioning and the Costs of Spent Fuel Management, by funding such costs through payments in each Financial Period during the Primary Funding Period. The Primary Funding Period is thirty-seven (37) years. This period has been proposed by the Operator because this means that full funding should be achieved during a period when its revenues are most stable and predictable – payments under the HPC CfD in respect of the second (2nd) Reactor are expected to end in the same year. After that date, the Operator will be dependent on revenues from the market which could be less predictable.

2.2 **Costs of Spent Fuel Disposal to be funded as SF Waste is generated**

The Operator intends to finance the Costs of Spent Fuel Disposal (as estimated at the Approved P Value) through payments in each Financial Period during the Primary Funding Period and the Secondary Funding Period.

2.3 **Operational DTM Costs to be funded out of opex during the Operational Period**

The Operator intends to finance the Operational DTM Costs solely out of operating revenue during the Operational Period. The Operational DTM Costs are therefore excluded from the calculation of the Annual Contributions to be paid by the Operator to the FDP Implementation Company during the Primary Funding Period and the Secondary Funding Period, and as such may not be claimed by the Operator as DTM Payments during the Disbursements Period.

2.4 **Costs will be estimated at the Approved P Value**

2.4.1 The DTM Costs are estimates, although the Operator expects certainty to increase over time as more experience of Decommissioning becomes available. The Operator will estimate the DTM Costs at the Approved P Value.

2.4.2 The Approved P Value for the Costs of Decommissioning is P80 (representing an eighty percent (80%) probability that the outturn costs relating to Decommissioning are at or under that value). This means that contingency has been built into the cost estimates in addition to a further twenty-five percent (25%) contingency that the Operator will provide in relation to the Costs of Decommissioning.

2.4.3 The Approved P Value for the Costs of Spent Fuel Management, the Costs of Spent Fuel Disposal and the Costs of ILW Disposal will be as required under the SF Transfer Contract and ILW Transfer Contract (as applicable) that in each case is to be entered into between the Operator and the Secretary of State. The Operator will provide a further twenty-five percent (25%) contingency in relation to the Costs of Spent Fuel Management.

2.5 **Primary Funding Path and Secondary Funding Path show how funding towards the targets will be built up**

2.5.1 The Primary Funding Path shows the cumulative percentage of the Year 37 Target that it is expected will be financed by the end of each Financial Period during the Primary Funding Period.

2.5.2 The Secondary Funding Path will be derived in order to provide for the funding of the Total Secondary Funding Amount on a straight line basis during the Secondary Funding Period.

2.5.3 A final payment which aligns the fund to the End of Generation Target will be calculated in the First Decommissioning Period and paid at the start of the Second Decommissioning Period.

3. **MINIMUM CONTRIBUTION CALCULATION RULES**

3.1 **Contributions Notice will be produced annually**

The Operator will produce a Contributions Notice in accordance with the Minimum Contribution Calculation Rules as part of each Annual Review and Quinquennial Review which is undertaken before the end of the First Decommissioning Period. The Minimum Contribution Calculation Rules have been designed to size Annual Contributions so that the Annual Milestones in each Financial Period are met based on conservative assumptions and to provide a reasonable period for the correction of deficits and surpluses.

3.2 **Contributions Notice sets out the amount due from the Operator**

The Contributions Notice will set out the amount of the Annual Contribution due from the Operator on the next Annual Contribution Date. The Operator will pay each Annual Contribution on the Annual Contribution Date in accordance with this Agreement.

4. **SECURITY PACKAGE**

The Operator has agreed to enter into FDP Security Documents on terms consistent with this Agreement so as (i) to grant Security which will benefit the Secretary of State and the FDP Implementation Company (either directly or together with others as beneficiaries of a security trust); and (ii) so that, subject to the detailed terms of the FDP Security Documents and any FDP Direct Agreement, certain claims of the Secretary of State and the FDP Implementation Company will be prioritised.

5. **FDP REGULATIONS**

The Operator acknowledges the obligations arising pursuant to the FDP Regulations and the FDP Order.

IT IS AGREED as follows:

SECTION A: DEFINITIONS AND INTERPRETATION

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement words and expressions shall have the meanings given in paragraph 1 (*Definitions*) of Schedule 21 (*Definitions and Interpretation*).

1.2 Interpretation

The interpretative provisions set out in paragraph 2 (*Interpretation*) of Schedule 21 (*Definitions and Interpretation*) shall apply throughout this Agreement.

1.3 Explanatory Notes

In this Agreement non-binding explanatory notes are set out in italics and are labelled "Explanatory Notes". These italicised explanatory notes are for information only and do not impose any binding legal obligations on either of the Parties.

SECTION B: CONTRIBUTIONS TO THE FDP IMPLEMENTATION COMPANY**2. CONTRIBUTIONS WILL FALL DUE EACH YEAR**

On each Annual Contribution Date the Operator shall make an Annual Contribution in accordance with this Agreement in the amount specified for the relevant Financial Period in the Contributions Notice for that Financial Period.

3. ANY PERSON MAY MAKE CONTRIBUTIONS

An Annual Contribution or an Overpayment or a Cash Sweep Payment to the FDP Implementation Company may be made by the Operator, or any other person.

4. CONTRIBUTIONS NOTICE WILL BE PRODUCED FOR EACH FINANCIAL PERIOD

Explanatory note: Contributions will be calculated in accordance with the Minimum Contribution Calculation Rules set out in Schedule 3 (Minimum Contribution Calculation Rules) which will generally be applied as part of the process for both an Annual Review as set out in Schedule 8 (Annual Review Programme) and a Quinquennial Review as set out in Schedule 9 (Quinquennial Review Programme). However, as the first review will not be undertaken until an 'as built' DWMP can be prepared (around First Criticality) and will then take some time to complete, the Operator will need to calculate the initial two contributions separately based on the DWMP submitted on approval of the FDP and have these calculations verified by the FDP Implementation Company.

4.1 First Contributions Notice will be produced before First Criticality

4.1.1 The Operator shall produce the first (1st) Draft Contributions Notice setting out the first (1st) and second (2nd) Annual Contributions. The amount due shall be calculated in accordance with the methodology set out in Schedule 3 (*Minimum Contribution Calculation Rules*) using the DTM Costs stated in the DWMP approved at the date of this Agreement, but the amounts returned from those calculations shall be Indexed to the Financial Year End of the most recent, complete Financial Period that has occurred immediately prior to the date of the relevant Annual Contribution.

4.1.2 At least thirty-five (35) Business Days before First Criticality, the Operator shall send a copy of the first (1st) Draft Contributions Notice to each of the FDP Implementation Company and the Independent Financial Verifier.

4.1.3 The Parties shall each use their reasonable endeavours to procure that the first (1st) Draft Contributions Notice is verified by the Independent Financial Verifier in accordance with paragraph 10.17 (*Operator calculations will be verified*) of Schedule 8 (*Annual Review Programme*) or determined by an Independent Expert in accordance with Section **Error! Reference source not found.** (*Disputes arising at Annual Review*) of Schedule 8 (*Annual Review Programme*) (which shall each apply with such changes as are necessary).

4.1.4 The Operator shall submit the first (1st) Draft Contributions Notice to the Secretary of State as soon as reasonably practicable before the first (1st) Annual Contribution Date, together with the Calculation Confirmation Report from the Independent Financial Verifier or the determination of the Independent Expert (as applicable) in respect of the first (1st) Draft Contributions Notice.

4.1.5 The first (1st) Draft Contributions Notice will enter into effect as the first (1st) Contributions Notice with effect from the date that it is submitted to the Secretary of State under Clause 4.1.4.

4.2 Contributions Notice will be produced annually up to the First Decommissioning Period

The Operator shall produce a Draft Contributions Notice at each Annual Review and Quinquennial Review in accordance with Schedule 8 (*Annual Review Programme*) or Schedule 9 (*Quinquennial Review Programme*) (as applicable) undertaken in accordance

with Clauses 16 (*Programme for Annual Review*) and 17 (*Programme for Quinquennial Review*) (as applicable). The Draft Contributions Notice will, in each case, enter into effect as the Contributions Notice for the next Annual Contribution Date for all purposes under this Agreement with effect from the date that it is submitted to the Secretary of State as part of the Annual Report or Quinquennial Report (as the case may be).

4.3 **Operational DTM Costs**

The Operator shall discharge the Operational DTM Costs during the Operational Period without recourse to the Fund Assets.

5. **FDP CONTRIBUTIONS HAVE PRIORITY OVER DEBT AND DIVIDEND PAYMENTS**

5.1 If an Annual Contribution or Cash Sweep Payment has become due and has not been paid by the Operator then whilst the Annual Contribution or Cash Sweep Payment (as applicable) remains unpaid, the Operator shall not do any of the following other than as expressly permitted by any FDP Direct Agreement or unless agreed otherwise in writing by the Secretary of State:

- 5.1.1 pay, repay or prepay any principal, interest or other amount on or in respect of its Borrowings, the SoS/LCCC Amounts or any Relevant Guarantee; or
- 5.1.2 make any payment into an Excluded Bank Account; or
- 5.1.3 make any distribution in respect of its Borrowings, the SoS/LCCC Amounts or any Relevant Guarantee; or
- 5.1.4 redeem, purchase, acquire or defease any of its Borrowings, the SoS/LCCC Amounts or any Relevant Guarantee; or
- 5.1.5 make any Distribution or other payment to its shareholders or Affiliates (except in respect of the Safety Critical Expenditure); or
- 5.1.6 make any payment in respect of the Subordinated Shareholder Loans; or
- 5.1.7 exercise any set-off against any of its Borrowings, the SoS/LCCC Amounts or any Relevant Guarantee or any amount owed by it to its shareholders or Affiliates.

6. **SIGNIFICANT CREDITORS TO BE INFORMED OF FDP OBLIGATIONS**

The Operator shall inform all of its Significant Creditors of its obligations under Clause 5 (*FDP Contributions have priority over debt and dividend payments*) in writing and shall use its reasonable endeavours to obtain an acknowledgement of those obligations from each of its Significant Creditors.

7. **CONTRIBUTIONS PAYMENT PROCEDURES APPLY**

The Contributions Payment Procedures shall apply to all Contributions made by the Operator (save that paragraph 1 of Section 1 (*Contributions Payment Procedures*) of Schedule 4 (*Payment Procedures*) shall only apply to Annual Contributions).

SECTION C: INVESTMENT OF CONTRIBUTIONS AND FUND ASSETS**8. INVESTMENT RULES APPLY TO ALL FDP INVESTMENTS**

The Operator and the FDP Implementation Company shall each use their best endeavours to procure that no Prohibited Practice and no Prohibited Direct Investment is undertaken in respect of the Fund Assets.

9. FDP IMPLEMENTATION COMPANY WILL HOLD THE FUND ASSETS REMOTE FROM THE OPERATOR

The Operator and the FDP Implementation Company shall procure that all of the Fund Assets are held on behalf of the FDP Implementation Company and are not held by the Operator or its Affiliates other than to the extent permitted under the Investment Rules.

10. ALL FDP INVESTMENTS WILL BE MADE UNDER INVESTMENT ORDERS**10.1 FDP investments must be made under Investment Orders**

10.1.1 The Operator shall not knowingly (and shall use its reasonable endeavours to procure that its Affiliates shall not) Deal Directly with the Fund Assets at any time.

10.1.2 The Operator or its Authorised Representatives must issue Investment Orders to the FDP Implementation Company in order to make any investment or disposal of the Fund Assets.

10.1.3 The FDP Implementation Company shall make all investments and disposals of the Fund Assets in accordance with an Investment Order, except where Clause 71.3 (*FDP Implementation Company may have recourse to the Fund Assets if the Operator fails to pay*) applies.

10.2 Operator may issue Investment Orders

10.2.1 The FDP Implementation Company shall (and shall use reasonable endeavours to procure that the FDP Company Administrator or an Investment Execution Manager shall) only accept Investment Orders given by the Operator or an Authorised Representative and which contains a statement:

(A) in respect of Collective Investment Schemes, in the form required by paragraph 3.4.2 (*Collective Investment Schemes*) of Schedule 7 (*Investment Rules*); and

(B) in any other case, stating that the Operator has no reason to believe that the Investment Order being made will cause or represent a manifest breach of the Investment Rules set out in Schedule 7 (*Investment Rules*).

10.2.2 The Operator or an Authorised Representative may give an Investment Order to the FDP Implementation Company at any time on or after the first (1st) Annual Contribution Date.

10.3 Investment Orders must comply with the investment prohibitions

The Operator shall not knowingly (and shall use its reasonable endeavours to procure that no Authorised Representatives shall) give an Investment Order to the FDP Implementation Company if, at the time the Investment Order is given, the implementation of that Investment Order by the FDP Implementation Company would constitute a Prohibited Practice or a Prohibited Direct Investment.

10.4 Effect of election of Alternative Long Term Discount Rate on subsequent Investment Orders

If, in any Financial Period after the Switch Period, an election to use an Alternative Long Term Discount Rate is currently in effect, then the following shall apply:

10.4.1 there shall be no obligation for the Operator to issue any Investment Orders either to buy or sell any Specified Government Security or related Permitted

Derivatives arising solely as a result of the Operator's election to use an Alternative Long Term Discount Rate (but without prejudice to any other obligations that the Operator may have under the Investment Rules);

- 10.4.2 notwithstanding Clause 10.4.1, if the Operator does decide to issue an Investment Order requesting that the FDP Implementation Company acquire any Specified Government Security, then the Operator shall use its best endeavours to procure that any such Investment Order is not inconsistent with the portfolio used to derive the Alternative Long Term Discount Rate (including, where relevant, in relation to the acquisition of related Permitted Derivatives), except that:
- (A) the Operator may issue Investment Orders in relation to a Specified Government Security which is not in the portfolio used to derive the Alternative Long Term Discount Rate, provided that all such investments have a value which is, in aggregate, less than five percent (5%) of the Fund Assets Value at the date of giving the Investment Order;
 - (B) the Operator may issue Investment Orders in relation to a Specified Government Security which was not in the portfolio most recently used to derive the Alternative Long Term Discount Rate if such Specified Government Security is newly available to the market since the date of the Operator's election to use an Alternative Long Term Discount Rate, provided that such investment must be permissible as part of a portfolio used to derive the Alternative Long Term Discount Rate in accordance with the principles set out in paragraph 8.1.1 (Election of an Alternative Long Term Discount Rate) of Schedule 3 (*Minimum Contribution Calculation Rules*); and
 - (C) the Operator may issue Investment Orders in relation to a Specified Government Security whose maturity is not consistent with the portfolio used to derive the Alternative Long Term Discount Rate provided that such Specified Government Security has a maturity equal to or greater than twenty (20) years, and further provided that the investment is otherwise consistent with such portfolio.

11. INVESTMENTS MAY BE MADE WITH AVAILABLE CASH

The FDP Implementation Company may make the investments specified in an Investment Order using "**Available Cash**", being:

- 11.1.1 uninvested Contributions;
- 11.1.2 the proceeds of the sale of any Fund Assets that are included in the same Investment Order (or a separate Investment Order given at the same time); or
- 11.1.3 any other Fund Assets that are held in cash at the time that the investment is made.

12. FDP IMPLEMENTATION COMPANY WILL MONITOR ALL INVESTMENT ORDERS

12.1 FDP Implementation Company must review Investment Orders promptly

- 12.1.1 The FDP Implementation Company shall review (or cause the FDP Company Administrator or an Investment Execution Manager to review) each Investment Order promptly after it has been received from the Operator or an Authorised Representative.
- 12.1.2 The FDP Implementation Company shall use its best endeavours to implement the Investment Order (or cause the FDP Company Administrator or an Investment Execution Manager to implement the Investment Order) as soon as reasonably practicable after receipt, except where:
 - (A) the FDP Implementation Company considers that the implementation of the Investment Order would constitute a Prohibited Practice or a

Prohibited Direct Investment, in which case Clause 12.2 (*FDP Implementation Company must challenge all non-compliant Investment Orders*) shall apply; or

- (B) the FDP Implementation Company does not have sufficient Available Cash, in which case the FDP Implementation Company shall notify the Operator of the additional amount of Fund Assets that would need to be disposed of in order to make the investments specified in such Investment Order as soon as reasonably practicable.

12.2 FDP Implementation Company must challenge all non-compliant Investment Orders

If the FDP Implementation Company considers, acting reasonably, that the implementation of the Investment Order would constitute a Prohibited Practice or a Prohibited Direct Investment, it shall give the Operator an Inconsistent Investment Notice as soon as reasonably practicable.

12.3 Operator must dispute Inconsistent Investment Notice or withdraw Investment Order

If the Operator has received an Inconsistent Investment Notice from the FDP Implementation Company, the Operator shall either:

- 12.3.1 refer the question of whether the implementation of the Investment Order would constitute a Prohibited Practice or a Prohibited Direct Investment for determination in accordance with the Independent Investment Expert Referral Procedure; or
- 12.3.2 withdraw the specified Investment Order (and the Operator shall be deemed to have withdrawn the Investment Order if it has not referred the matter for determination within thirty (30) Business Days of receiving the Inconsistent Investment Notice from the FDP Implementation Company).

12.4 FDP Implementation Company not obliged to comply

The FDP Implementation Company shall not be obliged to comply with an Investment Order if:

- 12.4.1 Clause 12.2 (*FDP Implementation Company must challenge all non-compliant Investment Orders*) applies; and
- 12.4.2 that Investment Order has not been withdrawn,

unless and until that Investment Order is determined not to constitute a Prohibited Practice or a Prohibited Direct Investment in accordance with the Independent Investment Expert Referral Procedure.

13. OPERATOR MAY REQUEST INFORMATION ON FUND ASSETS

The Operator may request a summary of the asset classes and current values of the Fund Assets from the FDP Company Administrator or an Investment Execution Manager at any time and the FDP Implementation Company shall use its reasonable endeavours to procure that such person submits the requested information to the Operator as soon as reasonably practicable and in any event within ten (10) Business Days of the Operator's request.

14. ONGOING COMPLIANCE WITH THE INVESTMENT RULES

14.1 Operator compliance with the Investment Rules at a year end

Subject to Clause 14.2.2, the Operator shall use its reasonable endeavours to procure that the investments making up the Fund Assets as a whole (which, for the avoidance of doubt, includes investments held in the Direct Investment Portfolio, investments in Collective Investment Schemes or underlying investments held indirectly within Collective Investment Schemes) are consistent with the Investment Rules as at:

- 14.1.1 the last day of each Annual Reporting Period; and

14.1.2 the last day of each Quinquennial Reporting Period.

14.2 Operator must restore compliance of portfolio within the deadline

14.2.1 Subject to Clause 14.2.2, if, in any Annual Review or Quinquennial Review, it has been verified or determined that there was an Inconsistent Portfolio as at the last day of the relevant Annual Reporting Period or Quinquennial Reporting Period (as applicable), the Operator shall procure that the Fund Assets as a whole (which for the avoidance of doubt, includes investments held in the Direct Investment Portfolio, investments in Collective Investment Schemes or underlying investments held indirectly within Collective Investment Schemes) are consistent with the Investment Rules on or before the Portfolio Compliance Deadline by issuing Investment Orders or making cash Contributions (if required).

Explanatory note: It is possible that consistency with the Investment Rules has been naturally restored without any specific action being taken because of changes in the value of the fund assets after the review date. In those circumstances, the Operator will not need to take any active steps to satisfy this Clause 14.2.1.

14.2.2 If any part of the Investment Rules is modified following a Proposed Modification pursuant to the terms of the Section 46 Agreement, then the Operator shall only be required to use its reasonable endeavours to procure that the Fund Assets as a whole (which for the avoidance of doubt, includes investments held in the Direct Investment Portfolio, investments in Collective Investment Schemes or underlying investments held indirectly within Collective Investment Schemes) are consistent with the modified Investment Rules at the Financial Year End which occurs at least twelve (12) months after the effective date of the modification of the Investment Rules. Clause 14.1 (*Operator compliance with the Investment Rules at a year end*) and Clause 14.2.1 shall be suspended during such period but shall apply in respect of any Annual Reporting Period or Quinquennial Reporting Period which occurs after that date.

14.3 De-risking

At the relevant time, the Operator shall issue Investment Orders that are consistent with the de-risking obligations set out in paragraphs 5 and 6 of the Investment Rules.

14.4 Real Estate Valuation

14.4.1 The Operator shall use its reasonable endeavours to procure that:

- (A) if the FDP Implementation Company holds more than three (3) Real Estate investments, then at least one third ($\frac{1}{3}$) by value (based on the most recently performed valuations) of Real Estate investments are revalued in each Financial Period; and
- (B) each individual Real Estate investment is revalued at least once in every three (3) Financial Periods.

14.4.2 The Operator shall procure that each valuation of a Real Estate investment under this Clause 14.4 shall be undertaken by an appropriately qualified member of the RICS or other professional who is subject to standards that are broadly equivalent to those of the RICS Valuation – Professional Standards.

14.5 Infrastructure Valuation

The Operator shall use its reasonable endeavours to procure that:

- 14.5.1 each individual Infrastructure investment is revalued at least once in every three (3) Financial Periods; and
- 14.5.2 each such valuation of an Infrastructure investment is prepared:
 - (A) on a fair value basis;

- (B) by an independent, appropriately qualified valuer in accordance with standard market practice; and
- (C) on a basis which applies no premium or discount for:
 - (1) the size or proportion of the interest held in the relevant Infrastructure; or
 - (2) the degree of control conferred by the interest held in the relevant Infrastructure.

Explanatory note: Valuers may look at the IPEV Valuation Guidelines, for example, or broadly equivalent guidance in order to value Infrastructure investments.

15. FDP IMPLEMENTATION COMPANY MAY MAKE APPOINTMENTS AND GRANT MANDATES TO FACILITATE INVESTMENT EXECUTION

15.1 FDP Implementation Company may appoint Investment Execution Managers

15.1.1 The FDP Implementation Company may appoint and remove Investment Execution Managers from time to time and may instruct any Investment Execution Manager (or may instruct the FDP Company Administrator) to:

- (A) review Investment Orders and assess whether any Prohibited Practices or Prohibited Direct Investments have been proposed; and/or
- (B) implement Investment Orders.

15.1.2 The FDP Implementation Company shall not appoint the Operator or any Affiliate of the Operator as an Investment Execution Manager and, if any Investment Execution Manager becomes an Affiliate of the Operator following its appointment by the FDP Implementation Company, the FDP Implementation Company shall remove such Investment Execution Manager as soon as reasonably practicable.

15.2 FDP Implementation Company may grant mandates over its accounts

The FDP Implementation Company may grant mandates over its accounts to the FDP Company Administrator or any Investment Execution Manager appointed from time to time. The FDP Implementation Company shall procure that any mandate that it grants over its accounts does not permit the transfer of any Fund Assets except pursuant to an Investment Order.

15.3 FDP Implementation Company to appoint FDP Custodians

15.3.1 The FDP Implementation Company shall appoint an FDP Custodian on or before the first (1st) Annual Contribution Date to act as a custodian of the Fund Assets, and be responsible for their safe keeping. The FDP Implementation Company shall not remove an FDP Custodian unless it has appointed a new FDP Custodian to take its place.

15.3.2 The FDP Implementation Company shall not appoint the Operator or any Affiliate of the Operator as an FDP Custodian and, if any FDP Custodian becomes an Affiliate of the Operator following its appointment by the FDP Implementation Company, the FDP Implementation Company shall remove such FDP Custodian as soon as reasonably practicable.

SECTION D: REVIEWING, REPORTING AND VERIFICATION**16. PROGRAMME FOR ANNUAL REVIEW**

Without prejudice to Clause 40 (*Programme for Disbursements Period and Decommissioning Period Annual Reviews*), the Operator and the FDP Implementation Company shall undertake an Annual Review in each Annual Review Year occurring between First Criticality and the end of the First Decommissioning Period.

17. PROGRAMME FOR QUINQUENNIAL REVIEW

Without prejudice to Clause 41 (*Programme for Disbursements Period and Decommissioning Period Quinquennial Reviews*), the Operator and the FDP Implementation Company shall undertake a Quinquennial Review in each Quinquennial Review Year occurring between First Criticality and the end of the First Decommissioning Period.

18. FDP IMPLEMENTATION COMPANY INSTRUCTIONS TO REVIEW PARTICIPANTS

Where it is stated in this Agreement that the FDP Company Administrator, an FDP Custodian, the Independent Technical Verifier, the Independent Financial Verifier or any other person appointed by the FDP Implementation Company from time to time (but who is not a Party to this Agreement) is required to undertake any action under this Agreement, the FDP Implementation Company shall use its reasonable endeavours to procure that the relevant person undertakes such action as soon as reasonably practicable and otherwise in accordance with this Agreement.

19. BASIS OF ESTIMATION

From and including the first (1st) Quinquennial Review, Estimating Uncertainty and Discrete Risk and cost shall be combined using a statistical model to produce a probability distribution from which an appropriate P value can be derived in accordance with paragraph 3.6.4 of Section 1 (*Quinquennial Review Process*) of Schedule 9 (*Quinquennial Review Programme*).

SECTION E: WARRANTIES, UNDERTAKINGS AND BUSINESS RESTRICTIONS**20. FDP IMPLEMENTATION COMPANY WARRANTIES**

The FDP Implementation Company warrants to the Operator that each of the FDP Implementation Company Warranties is true and accurate as at the date of this Agreement except as disclosed in writing to both the Operator and the Secretary of State on or before the date of this Agreement.

21. OPERATOR WARRANTIES

The Operator warrants to the FDP Implementation Company that each of the Operator Warranties is true and accurate as at the date of this Agreement except as disclosed in writing to both the FDP Implementation Company and the Secretary of State on or before the date of this Agreement.

22. OPERATOR BUSINESS RESTRICTIONS**22.1 Operational restrictions apply to the Operator**

From the date of this Agreement until the commencement of the Decommissioning Period, the Operator shall comply with the Operator Business Restrictions set out in Section 1 (*Business Restrictions*) of Schedule 5 (*Operator Business and Financial Restrictions*) except as agreed otherwise in writing by the Secretary of State.

22.2 Operator Undertakings

For the duration of this Agreement, the Operator shall comply with the Operator Undertakings set out in Schedule 6 (*Operator Undertakings*) except as agreed otherwise in writing by the Secretary of State.

23. OPERATOR FINANCIAL RESTRICTIONS**23.1 Application of the Gearing Restriction**

This Clause 23 applies with effect from the Regearing Date until the date on which the Site End State is achieved.

23.2 Notification of amortisation schedule

23.2.1 Once the Regearing Date has occurred, the Operator shall notify the FDP Implementation Company and the Secretary of State of the Regearing Date as soon as reasonably practicable, and in any event no later than ten (10) Business Days, after the Operator becomes aware that it has occurred.

23.2.2 If the Peak Debt as at the Regearing Date is higher than the amount set out for the corresponding date in Section 2 (*Indicative Amortisation Amounts*) of Schedule 5 (*Operator Business and Financial Restrictions*), the Operator shall, together with the notification under Clause 23.2.1, provide the FDP Implementation Company and the Secretary of State with the amortisation schedule certified by two (2) Directors of the Operator as being the amortisation schedule which applies to the Peak Debt as at the Regearing Date.

23.2.3 If any SZC Bonds are issued, the Operator shall notify the FDP Implementation Company and the Secretary of State of the date on which the SZC Bonds are issued and provide the amortisation schedule certified by two (2) Directors of the Operator which applies to the SZC Bonds as at the date of issue as soon as reasonably practicable, and in any event no later than ten (10) Business Days, after the issue date.

23.2.4 If the amortisation schedule set out in, or notified to the FDP Implementation Company and the Secretary of State pursuant to, this Agreement has been replaced by a longer amortisation schedule pursuant to Clauses 23.3.1(A)(3) or 23.3.1(C), the Operator shall provide the FDP Implementation Company and the

Secretary of State with such longer amortisation schedule certified by two (2) Directors of the Operator as the amortisation schedule which applies to the relevant Borrowing as soon as reasonably practicable, and in any event no later than ten (10) Business Days, after the relevant re-scheduling date.

23.3 Permitted Gearing Level

The Operator has the "**Permitted Gearing Level**" provided that any of the following thresholds are satisfied:

- 23.3.1 the principal amount of all Borrowings of the Operator including any capitalised interest thereon (other than Excluded Borrowings) does not exceed the aggregate of:
- (A) whichever is the highest of either:
 - (1) the amount set out for the corresponding Financial Period in Section 2 (*Indicative Amortisation Amounts*) of Schedule 5 (*Operator Business and Financial Restrictions*); or
 - (2) an amount equivalent to the Peak Debt, as amortised according to the amortisation schedule notified to the FDP Implementation Company under Clause 23.2.2 which applied as at the Regearing Date provided that, except for the circumstances set out in sub-paragraph (3) below, £16 billion of such debt is scheduled to be amortised in accordance with Section 2 (*Indicative Amortisation Amounts*) of Schedule 5 (*Operator Business and Financial Restrictions*); or
 - (3) the highest amount under either sub-paragraph (1) or (2) which is outstanding as at the date this sub-paragraph (3) is applied as amortised according to such longer amortisation schedule as may be agreed between the Operator and the relevant Secured Creditors (or as otherwise prescribed) in circumstances where the Operator considers, acting reasonably, that it is or would be in financial distress if such rescheduling were not undertaken (or the amount of outstanding Borrowings otherwise arising as a consequence of non-payment of any principal amount of Borrowings due to financial distress of the Operator) provided that the outstanding amount for this sub-paragraph (3) shall not exceed the outstanding amount immediately prior to such rescheduling or non-payment except for any capitalised interest thereon; plus
 - (B) £2,000,000,000 (Indexed); plus
 - (C) the outstanding amount of the SZC Bonds (if issued) as amortised according to the amortisation schedule notified to the FDP Implementation Company under Clause 23.2.3 provided that, all such debt is scheduled to be repaid by the Switch Date or such longer amortisation schedule as may be agreed between the Operator and the relevant Secured Creditors (or as otherwise prescribed) in circumstances where the Operator considers, acting reasonably, that it is or would be in financial distress if such rescheduling were not undertaken (or the amount of outstanding Borrowings otherwise arising as a consequence of non-payment of any principal amount of Borrowings due to financial distress of the Operator) provided that the amount outstanding under the SZC Bonds shall not exceed the amount outstanding under the SZC Bonds immediately prior to such rescheduling or non-payment; or
- 23.3.2 Net Debt does not exceed fifty percent (50%) of Enterprise Value, calculated in accordance with Clause 23.7 (*Assessment of Permitted Gearing Level may use fair value or accounting value*).

23.4 Assessment of Permitted Gearing Level

On and from the Regearing Date, the Operator shall:

- 23.4.1 prior to incurring any individual Borrowing, or (in respect of a series of Borrowings which are incurred in connection with the same matter or event) any new aggregate Borrowings, of more than one hundred million pounds (£100,000,000), Indexed, ("**New Borrowings**") either:
- (A) procure that a Valuer determines whether the Operator will maintain the Permitted Gearing Level following such incurrence if the Operator is relying on Clause 23.3.2; or
 - (B) provide a certificate to the FDP Implementation Company on or up to ten (10) Business Days prior to the proposed date of incurrence signed by two (2) directors, stating the outstanding principal amount of the Operator's Borrowings and stating whether the Operator will maintain the Permitted Gearing Level following such incurrence (together with reasonable supporting evidence) if the Operator is relying on Clause 23.3.1; and
- 23.4.2 in the period beginning on the Regearing Date and ending on the last day of the Primary Funding Period, either:
- (A) procure that a Valuer determines whether the Operator is maintaining the Permitted Gearing Level as at the end of each Financial Period if the Operator is relying on Clause 23.3.2; or
 - (B) give, in each Annual Review and Quinquennial Review, the Annual Operator Directors' Certificate stating the outstanding principal amount of the Operator's Borrowings as at the most recent Financial Year End, and confirming whether or not the Operator is maintaining the Permitted Gearing Level as at the most recent Financial Year End if the Operator is relying on Clause 23.3.1; and
- 23.4.3 in the period beginning on the first day of the Secondary Funding Period, if the Draft Contribution Notice produced as part of an Annual Review or Quinquennial Review shows a Deficit, either:
- (A) procure that a Valuer determines whether the Operator is maintaining the Permitted Gearing Level as at the end of the preceding Financial Period if the Operator is relying on Clause 23.3.2; or
 - (B) give the Annual Operator Directors' Certificate stating the outstanding principal amount of the Operator's Borrowings as at the most recent Financial Year End, and confirming whether or not the Operator is maintaining the Permitted Gearing Level as at the end of the most recent Financial Year End if the Operator is relying on Clause 23.3.1; and
- 23.4.4 otherwise, the Operator may elect to test the Permitted Gearing Level at any time by either:
- (A) if the Operator is relying on Clause 23.3.2, procuring that a Valuer determines whether the Operator is maintaining the Permitted Gearing Level as at the date of the test; or
 - (B) if the Operator is relying on Clause 23.3.1, giving a certificate signed by two (2) directors, stating the outstanding principal amount of the Operator's Borrowings as at the date of the test, and confirming whether or not that is in compliance with the Permitted Gearing Level.

23.5 Use of New Borrowings following an assessment of the Permitted Gearing Level

If the Operator has incurred a New Borrowing in compliance with Clause 23.4.1 and such compliance is based on the application of Clause 23.3.1(A):

- 23.5.1 the Operator shall use its reasonable endeavours to use the proceeds from that New Borrowing in a manner which is consistent with the proposed use of that New Borrowing which was taken into account in the relevant application of Clause 23.3.1(A); and
- 23.5.2 if the Operator knowingly applies the proceeds from that New Borrowing in a manner which is inconsistent with the proposed use of such New Borrowings which was taken into account in the original application of Clause 23.3.1(A), the Operator shall procure that a new assessment under Clause 23.3.2 is undertaken on the basis of the actual manner in which the proceeds from the New Borrowing is used.

23.6 Consequences of failure to satisfy Permitted Gearing Level

- 23.6.1 If there is a failure to make an assessment or provide a certificate or if an assessment undertaken or certificate provided in accordance with Clause 23.4.1 shows that the Operator would not maintain the Permitted Gearing Level if it incurred the proposed New Borrowings, then the Operator shall not be permitted to incur any portion of such Borrowings as would cause it to exceed the Permitted Gearing Level.
- 23.6.2 If there is a failure to make an assessment or provide a certificate or if an assessment undertaken or certificate provided in accordance with Clause 23.4.2, Clause 23.4.3, Clause 23.4.4 or Clause 23.5 shows that the Operator is exceeding the Permitted Gearing Level then the Operator shall not make any Distribution to shareholders or Affiliates or make any payments in respect of Subordinated Shareholder Loans in each case following receipt of such assessment or from the date of such certificate (as applicable) unless and until an assessment is undertaken or a certificate is provided in accordance with Clause 23.4.2, Clause 23.4.3, Clause 23.4.4 or Clause 23.5 which shows that the Operator has maintained the Permitted Gearing Level at the relevant date.

23.7 Assessment of Permitted Gearing Level may use fair value or accounting value

Whenever the Operator is required to assess whether it has the Permitted Gearing Level in accordance with this Agreement and if the Operator was relying on Clause 23.3.1 for the purposes of such assessment, the Operator shall request that the Valuer uses in its calculations:

- 23.7.1 for the purposes of determining the applicable Enterprise Value, either the Fair Enterprise Value or the Accounting Enterprise Value (at the Operator's election (in its sole discretion)); and
- 23.7.2 for the purposes of determining the applicable Net Debt, the Outstanding Net Debt Amount.

23.8 Valuation in same financial period

If a Valuer has already calculated the Enterprise Value of the Operator as at a date ("**Test Date**") in a Financial Period pursuant to Clause 23 and the Operator is required or chooses to assess whether it has maintained its Permitted Gearing Level as at any subsequent date in the same Financial Period ("**New Test Date**"), then the Operator for the purposes of making such assessment shall use the Enterprise Value calculated by such Valuer as adjusted by the Operator (using reasonable skill and care):

- 23.8.1 for any relevant cash flows between the Test Date and the New Test Date; and
- 23.8.2 where the Operator is required to assess whether it has maintained its Permitted Gearing Level pursuant to Clause 23.4.1(A), to take into account the New

Borrowings in the same manner as a Valuer would pursuant to the Valuation Procedure.

23.9 **Compliance Events in relation to Permitted Gearing Level**

It shall not, of itself, be either a Compliance Event or (for the avoidance of doubt) a breach of this Agreement that any assessment undertaken in accordance with Clause 23.4 (*Assessment of Permitted Gearing Level*) shows that the Operator has not maintained the Permitted Gearing Level. However if the Operator takes any of the actions which are not permitted in such circumstances under Clause 23.6 (*Consequences of failure to satisfy Permitted Gearing Level*), then, unless remedied before the expiry of the Remedy Period, such action will constitute a Compliance Event.

24. **CASH SWEEP**

Explanatory note: The Operator will use the assumed long term discount rate in its calculations during the early years of the FDP, but will switch to using a market rate in the Switch Period. If this change causes there to be a Switch Period Deficit, the Operator has agreed to make, in addition to the increased Base Case Contributions and increased correction contributions, cash sweep payments from the final years of its CfD revenue to make up that Switch Period Deficit only. When the Switch Period Deficit has been cleared or the overall fund has moved into surplus, the cash sweep mechanism will no longer apply. Deficits that arise after the Switch Period, or which are unrelated to the switch from an assumed LTDR to the use of a LTDR reflecting the floating market rate will continue to be addressed through Correction Contributions in the standard way.

24.1 **Potential Cash Sweep Periods**

Each of the following Financial Periods is a "**Potential Cash Sweep Period**":

- 24.1.1 the four (4) consecutive Financial Periods commencing immediately after the end of the Switch Period; and
- 24.1.2 each Outage Extension Period (if any).

24.2 **Qualifying Cash Sweep Periods will be identified on a provisional and final basis**

- 24.2.1 A Potential Cash Sweep Period will be a "**Qualifying Cash Sweep Period**" if all of the following conditions are met:
 - (A) there was both a Switch Period Deficit and an overall Deficit at the end of the Switch Period; and
 - (B) all of the preceding Potential Cash Sweep Periods (if any) were Qualifying Cash Sweep Periods; and
 - (C) there was both a Remaining Switch Period Deficit and an overall Deficit as at the end of that Potential Cash Sweep Period.
- 24.2.2 For the avoidance of doubt, if a Surplus has been reported in any Annual Report or Quinquennial Report submitted after the Switch Period, then no subsequent Cash Sweep Period will be a Qualifying Cash Sweep Period.
- 24.2.3 The Operator will assess whether a given Potential Cash Sweep Period is a Qualifying Cash Sweep Period:
 - (A) on a provisional basis, as at the date it submits the Draft Contributions Notice as part of the Annual Review or Quinquennial Review in respect of that Potential Cash Sweep Period; and
 - (B) on a final basis, as at the date it submits the Annual Report or Quinquennial Report in respect of the Potential Cash Sweep Period,

and in both cases using the Fund Assets Value stated in the Annual Fund Assets Report for that Potential Cash Sweep Period.

24.2.4 The Operator shall submit the results of each assessment undertaken in accordance with Clause 24.2.3 as part of the Annual Review or Quinquennial Review (as applicable) which is undertaken in respect of that Potential Cash Sweep Period.

25. CALCULATION OF CASH SWEEP PAYMENT

25.1 Provisional Cash Sweep Payment

25.1.1 If a Potential Cash Sweep Period is determined by the Operator, on a provisional basis in accordance with Clause 24.2.3(A), to be a Qualifying Cash Sweep Period then:

- (A) at least five (5) Business Days before the Provisional Cash Sweep Payment Date, the Operator shall calculate the Provisional Cash Sweep Amount in accordance with Clause 25.1.2 and shall notify such amount to the FDP Implementation Company; and
- (B) a Cash Sweep Payment in an amount equal to the Provisional Cash Sweep Amount shall fall due on the Provisional Cash Sweep Payment Date.

25.1.2 The "**Provisional Cash Sweep Amount**" in respect of any Qualifying Cash Sweep Period shall be the lowest of the following:

- (A) the Deficit which existed as at the Financial Year End of that Qualifying Cash Sweep Period, as stated in the Draft Contributions Notice for that Qualifying Cash Sweep Period;
- (B) the Remaining Switch Period Deficit which existed as at the Financial Year End of that Qualifying Cash Sweep Period, calculated on the basis of the Nominal Short Term Discount Rate stated in the Operator's unverified Gilt Yield Notification; and
- (C) fifty percent (50%) of the Estimated Available Operator Cash Flow for the Qualifying Cash Sweep Period or, (where the Qualifying Cash Sweep Period is an Outage Extension Period, fifty percent (50%) of the Outage Extension Proportion of such Estimated Available Operator Cash Flow).

25.1.3 For the avoidance of doubt, it is not intended that the Operator will be entitled to receive any payment from the FDP Implementation Company under this Clause 25 (*Calculation of Cash Sweep Payment*), including if the Estimated Available Operator Cash Flow for any Qualifying Cash Sweep Period is a negative number.

25.1.4 The Operator shall submit a statement and explanation of the calculation of the Provisional Cash Sweep Amount as calculated in accordance with Clause 25.1.2 as part of the Annual Review or Quinquennial Review (as applicable) in respect of that Potential Cash Sweep Period.

25.2 Reconciliation Cash Sweep Payment

25.2.1 If a Potential Cash Sweep Period is determined by the Operator, on a final basis in accordance with Clause 24.2.3(B), to be a Qualifying Cash Sweep Period then:

- (A) at least five (5) Business Days before the Cash Sweep Reconciliation Payment Date, for that Qualifying Cash Sweep Period the Operator shall calculate the Reconciled Cash Sweep Amount for that Qualifying Cash Sweep Period in accordance with Clause 25.2.2 and shall notify such amount to the FDP Implementation Company; and
- (B) on the Cash Sweep Reconciliation Payment Date for that Qualifying Cash Sweep Period:
 - (1) if the Reconciled Cash Sweep Amount for that Qualifying Cash Sweep Period is a positive number, a Cash Sweep Payment in

an amount equal to that Reconciled Cash Sweep Amount shall fall due; or

- (2) if the Reconciled Cash Sweep Amount for that Qualifying Cash Sweep Period is a negative number, such sum shall be netted off from the Annual Contribution which falls due in that Qualifying Cash Sweep Period under Clause 2 (*Contributions will fall due each year*).

- 25.2.2 The "**Reconciled Cash Sweep Amount**" in respect of any Qualifying Cash Sweep Period shall be the difference between the Provisional Cash Sweep Amount for that Qualifying Cash Sweep Period (or zero (0), if there is no difference) and the lowest of the following:
- (A) the Deficit which existed as at the Financial Year End of that Qualifying Cash Sweep Period, as verified and stated in the Annual Report or Quinquennial Report submitted for that period;
 - (B) the Remaining Switch Period Deficit which existed as at the Financial Year End of that Qualifying Cash Sweep Period, calculated on the basis of the Nominal Short Term Discount Rate as verified and stated in the Annual Report or Quinquennial Report submitted for that period; and
 - (C) fifty percent (50%) of the Available Operator Cash Flow for that Qualifying Cash Sweep Period or, (where the Qualifying Cash Sweep Period is an Outage Extension Period, fifty percent (50%) of the Outage Extension Proportion of such Available Operator Cash Flow.
- 25.2.3 For the avoidance of doubt, the Reconciled Cash Sweep Amount in respect of any Qualifying Cash Sweep Period may be a negative number.
- 25.2.4 The Operator shall submit a statement and explanation of the calculation of the Reconciled Cash Sweep Amount as calculated in accordance with Clause 25.2.2 as part of the Annual Review or Quinquennial Review (as applicable) in respect of that Potential Cash Sweep Period.

26. **DISTRIBUTION BLOCK APPLIES DURING QUALIFYING CASH SWEEP PERIODS**

- 26.1 If a Cash Sweep Lock-Up Period occurs, then during such Cash Sweep Lock-Up Period the Operator shall not make any Distribution to its shareholders or Affiliates or make any payments in respect of the Subordinated Shareholder Loans except in each case with the consent of the Secretary of State.
- 26.2 The "**Cash Sweep Lock-Up Period**" is the period beginning on the first (1st) Business Day of the first Potential Cash Sweep Period and ending on the earliest of:
- 26.2.1 the date on which the Operator satisfies itself that the 20 Year Gilt Rate as at the last Business Day of the Switch Period was equal to or greater than one point five percent (1.5%); or
 - 26.2.2 without prejudice to Clause 26.3, the date on which the Operator submits a Draft Contributions Notice stating that there is no Deficit or no Remaining Switch Period Deficit; or
 - 26.2.3 the date on which the Operator determines in accordance with Clause 24.2.3(B), that any Potential Cash Sweep Period is not a Qualifying Cash Sweep Period; or
 - 26.2.4 the last day of the Cash Sweep Period.
- 26.3 If a Cash Sweep Lock-Up Period ends pursuant to Clause 26.2.2 above and the Operator subsequently determines, on a final basis in accordance with Clause 24.2.3(B), that the relevant Potential Cash Sweep Period is a Qualifying Cash Sweep Period, the Cash Sweep Lock-Up Period shall re-commence on the date on which the Operator has made such a determination and shall end in accordance with Clause 26.2.

27. ANTI-AVOIDANCE

27.1 General Undertaking

27.1.1 It is the intention of the Operator that cash flow available for Cash Sweep Payments (where due) shall comprise the Operator's cash flow after Safety Critical Expenditure, operating expenditure and making Permitted Allocations to a Reasonable and Prudent Standard.

27.1.2 The Operator undertakes to the FDP Implementation Company that it will not knowingly do any act (including making a provision or reserve in excess of the Reasonable and Prudent Standard and, for the avoidance of doubt, any pre-existing balances as at the end of the Switch Period in reserves which the Secured Creditors have required the Operator to maintain shall not for this purpose be deemed to be in excess of such requirements) or make any omission, in any such case which is designed to or a main purpose of which is to evade, avoid, circumvent, frustrate or reduce in whole or in part the payment to or receipt by the FDP Implementation Company of any Cash Sweep Payments.

27.2 Release of Over-Provision

If any Permitted Allocation made by the Operator during the Qualifying Cash Sweep Periods is subsequently Released, in whole or in part, in the two (2) Financial Periods occurring immediately after the end of the last Qualifying Cash Sweep Period then, if there is a Deficit and a Remaining Switch Period Deficit as at the date on which the relevant Permitted Allocation is Released, the Operator shall, within twenty (20) Business Days of the date on which the relevant Permitted Allocation is Released, pay to the FDP implementation Company an amount equal to the lowest of:

27.2.1 50 percent (50%) of the Permitted Allocation so Released;

27.2.2 the amount of the Deficit at the date on which the Permitted Allocation is Released; and

27.2.3 the amount of the Remaining Switch Period Deficit at the date on which the Permitted Allocation is Released.

27.3 Compliance Certificate

The directors of the Operator shall provide to the FDP Implementation Company promptly upon request (such a request to be made no more than once in every six (6) month period) during any Qualifying Cash Sweep Period (and any Potential Qualifying Cash Sweep Period unless and until it shall have been determined, on a final basis in accordance with Clause 24.2.3(B), that that Potential Cash Sweep Period cannot be or is not a Qualifying Cash Sweep Period), a certificate confirming the Operator's compliance with this Clause 27 (*Anti-Avoidance*).

28. CASH SWEEP PAYMENT PROCEDURES APPLY

The Cash Sweep Payment Procedures shall apply to all Cash Sweep Payments made by the Operator.

SECTION F: INSURANCE REQUIREMENTS

29. MAINTENANCE OF MATERIAL DAMAGE INSURANCE POLICY

With effect from First Criticality, the Operator shall use its reasonable endeavours to obtain and maintain a material damage insurance policy in line with Good Industry Practice if such material damage insurance is available from the Third Party Insurance Market at a reasonable cost.

SECTION G: CONSEQUENCES OF SECURITY TRIGGER EVENT ACTION BEING TAKEN**30. SECRETARY OF STATE MUST BE NOTIFIED OF AN OPERATOR INSOLVENCY EVENT**

The Operator shall notify the FDP Implementation Company and the Secretary of State as soon as reasonably practicable after it becomes aware that an Operator Insolvency Event has occurred.

31. SECURITY PACKAGE TO BE GRANTED**31.1 Security is taken subject to DTM Purpose Trust**

The Parties acknowledge that, to the extent that any Security granted by the Operator extends to either the DTM Payments, the Operator's right to receive DTM Payments or its rights in respect of the Operator DTM Control Account, such Security will be subject to the DTM Purpose Trust. The Operator shall procure that:

- 31.1.1 if any fixed charge or any floating charge is granted by the Operator, then the relevant Secured Creditor gives a similar acknowledgement; and
- 31.1.2 any document other than the FDP Security Documents under which a fixed charge or a floating charge is granted by the Operator for the benefit of a creditor contains a similar acknowledgement from the beneficiaries of such Security.

31.2 Security for the benefit of the Secretary of State and the FDP Implementation Company

Subject to Clause 31.5 (*Prohibition on granting a fixed charge*), at the same time as, or prior to, the earlier of: (a) the date on which the Operator first grants any fixed charge or any floating charge; and (b) the date that occurs five (5) Business Days before First Criticality, the Operator shall ensure that (subject to Clause 31.4.3 (*FDP Security Documents*)):

- 31.2.1 the Secretary of State is a beneficiary, either directly or indirectly as a beneficiary of a security trust, of a first ranking Qualifying Floating Charge (the "**SoS Qualifying Floating Charge**") which secures, amongst other things, the payment of the WTCs Debt to the Secretary of State in accordance with the terms of the SF Transfer Contract and the ILW Transfer Contract; and
- 31.2.2 the FDP Implementation Company is a beneficiary, either directly or indirectly as a beneficiary of a security trust, of either a first ranking Qualifying Floating Charge (jointly with the SoS Qualifying Floating Charge) or a second ranking Qualifying Floating Charge (ranking behind the SoS Qualifying Floating Charge only) (the "**Fund Co Qualifying Floating Charge**") which secures, amongst other things, the payment to the FDP Implementation Company (in each case, in accordance with this Agreement) of:
 - (A) the Annual Contributions, the Cash Sweep Payments and any payment due under Clause 27.2 (*Release of Over Provision*);
 - (B) the Accelerated Decommissioning Contributions Amount; and
 - (C) the unspent portion of the DTM Payments,
 (the liabilities owed by the Operator to the Secretary of State and the FDP Implementation Company referred to in Clauses 31.2.1 and 31.2.2 being, together, the "**FDP Secured Liabilities**" and the Qualifying Floating Charges referred to in Clauses 31.2.1 and 31.2.2 being, together, the "**FDP Qualifying Floating Charges**").

31.3 First Criticality may not occur until the FDP Qualifying Floating Charges have been granted

The Operator undertakes to the FDP Implementation Company that it will not permit First Criticality to occur unless and until the FDP Qualifying Floating Charges have been granted

in accordance with Clause 31.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*), save as otherwise agreed between the Operator and the Secretary of State.

31.4 FDP Security Documents

The Operator shall procure, to the extent within its power, and subject to Applicable Law, that:

- 31.4.1 the FDP Qualifying Floating Charges remain in full force and effect;
 - 31.4.2 the FDP Qualifying Floating Charges retain the ranking and priority required under Clause 31.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*) other than:
 - (A) payments which are expressly permitted to be made in priority by this Agreement being, as at the date of this Agreement, those payments referred to in Clause 36.1 (*Payments in relation to Safety Critical Expenditure*); and
 - (B) as otherwise expressly agreed in the FDP Security Documents or in an FDP Direct Agreement (including with respect to any bank accounts which the Secretary of State has agreed to designate as Excluded Bank Accounts in such FDP Direct Agreement); and
 - 31.4.3 the Operator's liabilities in respect of the WTCs Debt rank in priority to the Operator's other FDP Secured Liabilities,
- until the date on which the FDP Secured Liabilities have been discharged in full.

31.5 Prohibition on granting a fixed charge

- 31.5.1 From the earlier of (a) the date on which the Operator first grants any fixed charge or any floating charge; and (b) the date that occurs five (5) Business Days before First Criticality, the Operator shall not grant any Security constituting a fixed charge other than Security granted:
 - (A) under a Project Security Document to a Security Trustee who holds the Security on trust for relevant creditors including the Secretary of State and the FDP Implementation Company (as contemplated by Clause 31.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*));
 - (B) in connection with the novation or replacement of any Project Security Document provided that such document is itself a Project Security Document; or
 - (C) to a Significant Creditor in respect of bank accounts of the Operator which the Secretary of State has agreed in an FDP Direct Agreement will constitute Excluded Bank Accounts.
- 31.5.2 Subject to Clause 31.5.1, the Operator may include customary language purporting to grant a fixed charge so far as possible when granting any floating charge but only if the Operator, acting reasonably, considers that no fixed charge is granted by such customary language.

31.6 FDP Direct Agreement

The FDP Implementation Company will, at the request of the Operator and the Secretary of State, enter into any FDP Direct Agreement proposed by them if:

- 31.6.1 the Secretary of State is to be a party to that proposed FDP Direct Agreement;
- 31.6.2 the Secretary of State has confirmed to the FDP Implementation Company in writing that it is content that the FDP (taking into account the terms of the proposed FDP Direct Agreement) makes prudent provision for the DTM Costs;
- 31.6.3 the FDP Direct Agreement or entry into it does not conflict with Applicable Law;

- 31.6.4 the Fund Co Qualifying Floating Charge continues to have the ranking set out in Clause 31.2.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*);
- 31.6.5 the FDP Direct Agreement does not contain any provisions which would be inconsistent with its status as a private company limited by shares or which would be inconsistent with a majority of its Shares being independently owned;
- 31.6.6 the FDP Direct Agreement does not impose obligations on the FDP Implementation Company whose performance would be impossible or unduly burdensome in the FDP Implementation Company's opinion, acting reasonably, and
- 31.6.7 prior to making such a request, the Operator has given the FDP Implementation Company a reasonable opportunity to make representations to the Secretary of State on the proposed terms of the FDP Direct Agreement.

32. ENTITLEMENT TO TAKE SECURITY TRIGGER EVENT ACTION

32.1 Secretary of State's right to take Security Trigger Event Action

The Secretary of State may take (or instruct a Security Trustee to take) any Security Trigger Event Action which it otherwise has the right to take under a Document provided that:

- 32.1.1 a Security Trigger Event has occurred and is continuing; and
- 32.1.2 if any FDP Direct Agreement is then in effect, the action is permitted under and is taken in accordance with that FDP Direct Agreement.

32.2 FDP Implementation Company's right to take Security Trigger Event Action

- 32.2.1 The FDP Implementation Company may take (or instruct a Security Trustee to take) any Security Trigger Event Action which it otherwise has the right to take under a Document if, and only if the Secretary of State has taken equivalent Security Trigger Event Action in accordance with Clause 32.1 (*Secretary of State's right to take Security Trigger Event Action*), except that it may exercise any remedy available to it under Clause 52.4 (*Remedies*) in relation to an amount which has become due and payable under this Agreement at any time other than during a Standstill Period.
- 32.2.2 The FDP Implementation Company may not take any steps to exercise any rights it may have to terminate or suspend any Document to which it is a party if a Security Trigger Event is continuing unless and until it has the right to take Security Trigger Event Action pursuant to Clause 32.2.1 or the Operator and the Secretary of State have both confirmed in writing to the FDP Implementation Company that the FDP Implementation Company may take such steps.

33. FUNDED SF TRANSFER FEE AND FUNDED ILW TRANSFER FEE WILL BE RELEASED IF SECURITY TRIGGER EVENT ACTION IS TAKEN

33.1 Payment of Funded SF Transfer Fee and Funded ILW Transfer Fee

Subject to Clause 33.4 (*Direct payment of the Funded SF Transfer Fee and Funded ILW Transfer Fee*) below, if the Secretary of State takes Security Trigger Event Action, the FDP Implementation Company shall pay an amount equal to the aggregate of the Funded SF Transfer Fee and the Funded ILW Transfer Fee to the Operator as soon as reasonably practicable, and in any event within ten (10) Business Days, after the FDP Implementation Company has received notice of the amount of the Funded SF Transfer Fee and the Funded ILW Transfer Fee from the Operator, subject to Clause 33.2 (*Payment of the Funded SF Transfer Fee and Funded ILW Transfer Fee will be deferred if there is insufficient Available Cash*).

Explanatory note: The amount of the Funded SF Transfer Fee and the Funded ILW Transfer Fee is calculated and agreed between the Operator and the Secretary of State

under the terms of the SF Transfer Contract and ILW Transfer Contract respectively after Security Trigger Event Action.

33.2 Payment of the Funded SF Transfer Fee and Funded ILW Transfer Fee will be deferred if there is insufficient Available Cash

If, by the expiry of the ten (10) Business Days payment period referred to in Clause 33.1 (*Payment of Funded SF Transfer Fee and Funded ILW Transfer Fee*) above, the FDP Implementation Company will not have Available Cash in an amount equal to the aggregate of the Funded SF Transfer Fee and the Funded ILW Transfer Fee, then the FDP Implementation Company shall pay such lesser amount as the FDP Implementation Company has in Available Cash to the Operator on the last day of such period and Clause 33.3 (*Further payment will be made if any payment of the Funded SF Transfer Fee and Funded ILW Transfer Fee is reduced due to lack of Available Cash*) shall apply.

33.3 Further payment will be made if any payment of the Funded SF Transfer Fee and Funded ILW Transfer Fee is reduced due to lack of Available Cash

If the aggregate of the Funded SF Transfer Fee and the Funded ILW Transfer Fee was not paid in full within the ten (10) Business Days payment period referred to in Clause 33.1 (*Payment of Funded SF Transfer Fee and Funded ILW Transfer Fee*) pursuant to Clause 33.2 (*Payment of the Funded SF Transfer Fee and Funded ILW Transfer Fee will be deferred if there is insufficient Available Cash*), the FDP Implementation Company shall:

- 33.3.1 notify the Operator and request that the Operator gives Investment Orders in order to liquidate a portion of the Fund Assets into cash as soon as reasonably practicable so as to generate Available Cash for the purpose of making the payments referred to in Clause 33.3.2; and
- 33.3.2 make further payments to the Operator in an aggregate amount equal to the difference between:
 - (A) the aggregate of the Funded SF Transfer Fee and the Funded ILW Transfer Fee; and
 - (B) the amount paid to the Operator pursuant to Clause 33.2 (*Payment of the Funded SF Transfer Fee and Funded ILW Transfer Fee will be deferred if there is insufficient Available Cash*) as soon as reasonably practicable after the FDP Implementation Company has Available Cash.

33.4 Direct payment of the Funded SF Transfer Fee and Funded ILW Transfer Fee

The FDP Implementation Company shall, if requested by the Secretary of State, pay the Funded SF Transfer Fee and Funded ILW Transfer Fee directly to the Secretary of State and such direct payment shall:

- 33.4.1 discharge the Operator's obligation under the relevant Waste Transfer Contract to procure that the FDP Implementation Company releases the Funded SF Transfer Fee and Funded ILW Transfer Fee to the Operator; and
- 33.4.2 result in a pro tanto discharge of the Operator's obligation under the relevant Waste Transfer Contract to pay the WTCs Debt to the Secretary of State under the relevant Waste Transfer Contract.

34. RIGHT TO ACCELERATE DECOMMISSIONING CONTRIBUTIONS IF SECURITY TRIGGER EVENT ACTION IS TAKEN

The Accelerated Decommissioning Contributions Amount shall become payable by the Operator (or may voluntarily be paid by another person) to the FDP Implementation Company immediately upon the Secretary of State taking Security Trigger Event Action in the period between First Criticality and the Financial Year End of the Second Decommissioning Period.

35. REPAYMENT OF UNSPENT DTM PAYMENTS IF SECURITY TRIGGER EVENT ACTION IS TAKEN

Any portion of a DTM Payment that has not been spent by the Operator on Allowable Costs shall become payable by the Operator (or may voluntarily be paid by another person) to the FDP Implementation Company immediately upon the Secretary of State taking Security Trigger Event Action during the Decommissioning Period. The FDP Implementation Company shall transfer any such amount received to the FDP Implementation Company Contribution Bank Account as soon as reasonably practicable.

36. PRIORITY OF THE SECURITY

36.1 Payments in relation to Safety Critical Expenditure

Without affecting whether or not a Payment Default occurs for the purposes of this Agreement, the Parties acknowledge that the Operator is entitled to take any steps necessary to discharge Safety Critical Expenditure including, where it has insufficient available cash, making payments in respect of Safety Critical Expenditure in priority to payments in respect of the FDP Secured Liabilities.

36.2 Undertaking to preserve priority

Subject to Clause 36.1 (*Payments in relation to Safety Critical Expenditure*), the Operator:

36.2.1 shall not take any action to impair the ranking of the FDP Qualifying Floating Charges and the priority of the FDP Secured Liabilities as set out in Clause 31.4 (*FDP Security Documents*); and

36.2.2 shall, to the extent within its power, take such action as the Operator is or becomes aware is necessary from time to time to protect, preserve and perfect the FDP Qualifying Floating Charges ("**Perfecting Action**").

36.3 Dividends cannot be paid until perfection of security

If the Operator becomes aware that either:

36.3.1 it has taken action which has impaired the ranking of the FDP Qualifying Floating Charges and priority of the FDP Secured Liabilities as set out in Clause 31.4 (*FDP Security Documents*), and the Operator has not yet restored such ranking and priority; or

36.3.2 it has become necessary for the Operator to undertake a Perfecting Action as set out in Clause 36.2 (*Undertaking to preserve priority*), and the Operator has not yet undertaken such Perfecting Action,

then the Operator (i) shall not pay any dividend or make any other Distribution to its shareholders or Affiliates; and (ii) shall not make any payment in respect of Subordinated Shareholder Loans, in each case until the ranking of the FDP Qualifying Floating Charges and priority of the FDP Secured Liabilities as set out in Clause 31.4 (*FDP Security Documents*) has been restored or the Perfecting Action has been undertaken (as applicable); and (iii) shall notify the FDP Implementation Company of the relevant circumstances that have arisen under Clause 36.3.1 or 36.3.2 (as applicable) as soon as reasonably practicable.

37. FUND ASSETS TO BE USED FOR FUNDING THE DESIGNATED TECHNICAL MATTERS DESPITE INSOLVENCY OF THE OPERATOR

If the Secretary of State takes or, if relevant, instructs a Security Trustee to take Security Trigger Event Action, the Operator and the FDP Implementation Company will cooperate with each other, the Secretary of State and any insolvency practitioner appointed in respect of the Operator in order to procure, so far as each of the Parties is respectively able to do so and subject to Applicable Law, that whilst the Operator remains the licensee of the Site, the Fund Assets can be used to discharge the costs relating to the Designated Technical Matters.

SECTION H: MITIGATION MEASURES ON UNPLANNED EARLY PERMANENT SHUTDOWN**38. UNPLANNED EARLY PERMANENT SHUTDOWN**

If the Operator's board has taken a decision to implement an Unplanned Early Permanent Shutdown, then as soon as reasonably practicable after the date of such decision, the Operator shall:

- 38.1.1 notify the FDP Implementation Company and the Secretary of State of the decision to undertake an Unplanned Early Permanent Shutdown and the circumstances which have given rise to that decision;
- 38.1.2 notify the FDP Implementation Company and the Secretary of State of its current financial position; and
- 38.1.3 specify a date and location for a meeting and invite appropriate representatives of the FDP Implementation Company, the Secretary of State and any Significant Creditors to attend to discuss the Unplanned Early Permanent Shutdown, any mitigation measures which may be appropriate and the expected financial consequences of such Unplanned Early Permanent Shutdown, including for the FDP and the Secured Creditors.

39. NO ELECTRICITY GENERATION AFTER THE ACTUAL DECOMMISSIONING START DATE WITHOUT SECRETARY OF STATE CONSENT

The Operator shall not, without the prior written consent of the Secretary of State, export electricity from an individual Reactor after the Actual Decommissioning Start Date of such Reactor. For the avoidance of doubt, this Clause 39 shall not prevent the continued operation of the other Reactor.

SECTION I: DISBURSEMENTS PERIOD AND DECOMMISSIONING PERIOD PROCEDURES**40. PROGRAMME FOR DISBURSEMENTS PERIOD AND DECOMMISSIONING PERIOD ANNUAL REVIEWS**

The Operator shall undertake an Annual Reconciliation Review in each Annual Review Year that falls (in whole or in part) during the Disbursements Period in addition to:

- 40.1.1 an Annual Review in accordance with Clause 16 (*Programme for Annual Review*) in respect of each Annual Reporting Period of the Disbursements Period which falls prior to the end of the First Decommissioning Period; and
- 40.1.2 thereafter, an Annual Review in each Annual Review Year in respect of each Annual Reporting Period, but disregarding the requirements set out in paragraph **Error! Reference source not found.** of Section 1 (*Annual Review Process*) of Schedule 8 (*Annual Review Programme*),

but in the case of Clause 40.1.1 and 40.1.2, only paragraph **Error! Reference source not found.** of the Annual Operator Directors' Certificate shall apply in the Decommissioning Period.

41. PROGRAMME FOR DISBURSEMENTS PERIOD AND DECOMMISSIONING PERIOD QUINQUENNIAL REVIEWS

The Operator shall undertake an Annual Reconciliation Review in each Quinquennial Review Year that falls (in whole or in part) during the Disbursements Period in addition to:

- 41.1.1 a Quinquennial Review in accordance with Clause 17 (*Programme for Quinquennial Review*) in respect of each Quinquennial Reporting Period of the Disbursements Period which falls prior to the end of the First Decommissioning Period; and
- 41.1.2 thereafter, a Quinquennial Review in each Quinquennial Review Year in respect of each Quinquennial Reporting Period but disregarding the requirements set out in paragraph **Error! Reference source not found.** of Section 1 (*Quinquennial Review Process*) of Schedule 9 (*Quinquennial Review Programme*),

but in the case of Clause 41.1.1 and 41.1.2, only paragraph **Error! Reference source not found.** of the Annual Operator Directors' Certificate shall apply in the Decommissioning Period.

SECTION J: PAYMENTS AND DISBURSEMENTS POLICY**42. RULES APPLY FOR THE CLAIM AND USE OF DTM PAYMENTS****42.1 Procedure applies for claim of DTM Payments**

The Operator shall claim all DTM Payments in accordance with this Section J (*Payments and Disbursements Policy*).

42.2 Operator may only use DTM Payments for Allowable Costs

The Operator shall not knowingly apply, and shall use its reasonable endeavours not to apply, any DTM Payment that it receives from the FDP Implementation Company for any purpose other than to discharge the Allowable Costs or by way of reimbursement in respect of an Unclaimed Allowable Cost.

42.3 DTM Purpose Trust

The Parties agree that the Operator receives and holds all the DTM Payments which it receives from the FDP Implementation Company on trust for the FDP Implementation Company for the exclusive purpose of the Operator discharging the Allowable Costs and for no other purpose. In accordance with Section 2 (*Fund Payment Procedures*) of Schedule 4 (*Payment Procedures*), the Operator shall hold such DTM Payments which it receives from the FDP Implementation Company in a segregated bank account being, for the purposes of this Agreement, the Operator DTM Control Account.

43. RELEASE OF FUNDS FOLLOWING AN UNPLANNED PERMANENT SHUTDOWN**43.1 Notification of Unplanned Permanent Shutdown**

Without prejudice to Clause 38.1.1 (*Unplanned Early Permanent Shutdown*), the Operator shall notify the FDP Implementation Company and the Secretary of State as soon as reasonably practicable after the Operator becomes aware that an Unplanned Permanent Shutdown is likely to occur.

43.2 Drawdown of funds prior to an Unplanned Permanent Shutdown

In the period beginning on the date of notification by the Operator that an Unplanned Permanent Shutdown is likely to occur pursuant to Clause 43.1 (*Notification of Unplanned Permanent Shutdown*) until the Actual Decommissioning Start Date of either Reactor, the Operator shall not be permitted to receive any payments from the FDP Implementation Company under this Clause 43 (*Release of Funds Following an Unplanned Permanent Shutdown*) other than payments in respect of Pre Closure Planning Costs relating to the relevant Reactor.

43.3 Requirement for funds following Unplanned Permanent Shutdown

43.3.1 For up to two (2) Financial Periods following the date of notification of an Unplanned Permanent Shutdown pursuant to Clause 43.1 (*Notification of Unplanned Permanent Shutdown*), if the Operator considers, acting reasonably, that it is impossible or impractical in the circumstance to prepare an Annual Work Plan and Budget or to comply with the processes and deadlines set out in the remainder of this Section J (*Payments and Disbursements Policy*), then, subject to the other provisions of this Clause 43 (*Release of Funds Following an Unplanned Permanent Shutdown*):

- (A) Clauses 44 (*Annual Work Plan and Budget*) to 49 (*Annual Reconciliation Review*) shall not apply in relation to those Financial Periods; and
- (B) the Operator may request that the FDP Implementation Company makes an Emergency DTM Payment to the Operator. Such a request shall be accompanied by a statement of the amount of the Emergency DTM Payment claimed and an Emergency Allowable Costs Certificate.

- 43.3.2 Following receipt of a request and an Emergency Allowable Costs Certificate pursuant to Clause 43.3.1 and subject to Clause 43.3.3, the FDP Implementation Company shall make an Emergency DTM Payment to the Operator as soon as reasonably practicable, and in any event within five (5) Business Days of such a request. For the avoidance of doubt, no verification of the Emergency DTM Payment claimed by the Operator shall be required prior to payment if this Clause 43.3 applies.
- 43.3.3 If the FDP Implementation Company does not have Available Cash in an amount equal to the Emergency DTM Payment requested by the Operator, then the FDP Implementation Company shall pay such lesser amount as the FDP Implementation Company has in Available Cash to the Operator and Clause 43.3.4 shall apply.
- 43.3.4 If an Emergency DTM Payment was not paid in full within the five (5) Business Days payment period referred to in Clause 43.3.2, the FDP Implementation Company shall:
- (A) notify the Operator and request that the Operator gives Investment Orders in order to liquidate a portion of the Fund Assets into cash as soon as reasonably practicable so as to generate Available Cash for the purpose of making the payments referred to in Clause 43.3.2; and
 - (B) make further payments to the Operator in an aggregate amount equal to the difference between:
 - (1) the Emergency DTM Payment claimed by the Operator; and
 - (2) the amount paid to the Operator pursuant to Clause 43.3.3, as soon as reasonably practicable after the FDP Implementation Company has Available Cash.
- 43.3.5 If an Emergency DTM Payment was paid to the Operator in any Financial Period, at the Half Year End and the Financial Year End it shall report to the FDP Implementation Company its best estimate of the amounts spent during such half year period on Allowable Costs and shall reconcile this to the amount of Emergency DTM Payments received.
- 43.3.6 If the Operator has received an Emergency DTM Payment, all amounts claimed as Emergency DTM Payments shall be verified in the first and second (and, if necessary, third) Annual Reconciliation Review to occur following such Emergency DTM Payments pursuant to Clause 49 (*Annual Reconciliation Review*) and the Annual Reconciliation Review Process in that Financial Period shall apply with such changes as are necessary.

44. ANNUAL WORK PLAN AND BUDGET

44.1 Operator must submit an Annual Work Plan and Budget

- 44.1.1 Subject to Clause 43.3 (*Requirement for funds following Unplanned Permanent Shutdown*), the Operator shall prepare an Annual Work Plan and Budget in respect of each Financial Period in the Disbursements Period in accordance with this Clause 44.1.
- 44.1.2 The Operator shall decide whether the elements of each Annual Work Plan and Budget should be undertaken using its own employees, under a contract with an Affiliate or under a contract with a Third Party on the basis of the Operator's reasonable assessment of what constitutes 'best value' for money. In making its assessment, the Operator shall be entitled to take into account any non-cost factors that the Operator, acting reasonably, considers relevant, including:
- (A) the availability of in-house, Affiliate or supply chain resources in respect of the relevant work;
 - (B) the effective discharge of the Operator's regulatory obligations;

- (C) the relative certainty and deliverability of the relevant work (including the likelihood of such work being delivered on time and on budget) as regards provision of such work on an in-house, Affiliate or supply chain resources basis; and
 - (D) the relevant experience and track record of in-house, Affiliate or supply chain resources in decommissioning light water nuclear reactors.
- 44.1.3 The Operator shall use its reasonable endeavours to procure that:
- (A) each Annual Work Plan and Budget is complete and up to date in all material respects as at the date of submission;
 - (B) any opinions, forecasts or estimates contained in each Annual Work Plan and Budget are prepared with due care and on the basis of reasonable assumptions; and
 - (C) the Operator's decisions to undertake elements of the Annual Work Plan using its own employees, under a contract with an Affiliate or under a contract with a third party are set out, together with a certificate signed by two (2) directors of the Operator acting on behalf of the Operator's board, one of whom shall be the managing director or the chief executive officer of the Operator, stating that the Operator believes the decisions have been made on the basis of achieving 'best value' for money in accordance with Clause 44.1.2 together with its reasons for its belief.
- 44.1.4 The Operator shall submit each Annual Work Plan and Budget to the FDP Implementation Company and the Independent Technical Verifier at least three (3) months prior to the start of the relevant Financial Period, together with such information as the Operator, acting reasonably, considers will allow the Independent Technical Verifier to assess whether the amounts claimed have been properly calculated.
- 44.1.5 The Operator shall not knowingly, and shall use its reasonable endeavours to procure that it does not, include any Disallowable Costs in an Annual Work Plan and Budget.
- 44.2 **Operator must submit an Allowable Costs Certificate**
- The Operator shall give the FDP Implementation Company an Allowable Costs Certificate in respect of each Annual Work Plan and Budget that is submitted, which must be signed by two (2) directors acting on behalf of the Operator's board, one of whom shall be the managing director or the chief executive officer of the Operator.
- 44.3 **Independent Technical Verifier must challenge Disallowable Costs included in the Annual Work Plan and Budget**
- 44.3.1 The FDP Implementation Company shall use its reasonable endeavours to procure that the Independent Technical Verifier reviews each Annual Work Plan and Budget as soon as possible after it has been received.
- 44.3.2 If the Independent Technical Verifier, acting reasonably, considers that:
- (A) it is likely that any of the works or activities set out in an Annual Work Plan and Budget to be undertaken in the forthcoming Financial Period give rise to Disallowable Costs; and
 - (B) the aggregate Disallowable Costs that may be incurred as a result of all such works or activities are likely to be more than one million five hundred thousand pounds (£1,500,000), Indexed,
- then the Independent Technical Verifier shall give the Operator and the FDP Implementation Company a Disallowable Costs Notice as soon as reasonably practicable and in any event no later than fifteen (15) Business Days after receipt of the Annual Work Plan and Budget.

44.3.3 For the avoidance of doubt, the Independent Technical Verifier shall not be entitled to give a Disallowable Costs Notice in relation to a Long Term Contract or Material Affiliate Contract that has been verified or determined to contain only Allowable Costs (or only gives rise to Disallowable Costs that will be separately invoiced and paid for) in accordance with Clause 50 (*Verification of Long Term Contracts and Material Affiliate Contracts*), except to the extent permitted under Clause 50.6 (*Effect of contract verification on reconciliation exercise*).

44.4 Operator must dispute the Disallowable Costs Notice or remove Disallowable Costs from the Annual Work Plan and Budget

If the Operator has received a Disallowable Costs Notice from the Independent Technical Verifier, then the Operator shall either:

44.4.1 refer the matter of whether the Annual Work Plan and Budget gives rise to Disallowable Costs which in aggregate will be more than one million five hundred thousand pounds (£1,500,000), Indexed, for determination in accordance with the Annual Work Plan and Budget Independent Expert Referral Procedure; or

44.4.2 remove the specified works and activities from the Annual Work Plan and Budget and reduce the estimate of Allowable Costs to become payable during the forthcoming Financial Period by the sum specified in the Disallowable Costs Notice, in which case the Operator shall not be entitled to claim such amount as an Unclaimed Allowable Cost in any subsequent Annual Reconciliation Review. The Operator shall be deemed to have made such amendments to the Annual Work Plan and Budget if it has not referred the matter for determination within fifteen (15) Business Days of receiving the Disallowable Costs Notice from the Independent Technical Verifier.

45. ANNUAL DTM PAYMENT WILL BE CALCULATED BY THE FDP IMPLEMENTATION COMPANY

45.1 Operator must specify the amounts claimed from the Fund each year

The Operator shall submit an Annual DTM Claim Notice as soon as reasonably practicable prior to each Annual DTM Payment Date setting out the Annual DTM Claim Amount.

45.2 FDP Implementation Company will calculate the Annual DTM Payment due to the Operator

45.2.1 The FDP Implementation Company shall calculate the Annual DTM Payment due to the Operator on each Annual DTM Payment Date as the amount equal to either:

- (A) the Annual DTM Claim Amount; or
- (B) if the Fund Assets Value is less than the Annual DTM Claim Amount as at the Annual DTM Payment Date, then the amount equal to the Fund Assets Value; or
- (C) if the FDP Implementation Company does not have Available Cash in an amount equal to the Annual DTM Claim Amount as at the Annual DTM Payment Date, then such lesser amount as the FDP Implementation Company has in Available Cash and Clause 45.5 (*Further payment will be made if any Annual DTM Payment is reduced due to lack of Available Cash*) shall apply.

45.2.2 If the FDP Implementation Company believes, acting reasonably, that Clause 45.2.1(B) or 45.2.1(C) will apply at any Annual DTM Payment Date, it shall notify the Operator as soon as reasonably practicable and shall also send a copy of such notice to the Secretary of State.

45.3 FDP Implementation Company will make Annual DTM Payment on Annual DTM Payment Date if Annual DTM Claim Notice has been received

The FDP Implementation Company shall pay the Annual DTM Payment to the Operator on the Annual DTM Payment Date, except if Clause 45.4 (*Late payment will be made if Annual DTM Claim Notice not received by the Annual DTM Payment Date*) applies, in which case the FDP Implementation Company shall notify the Operator as soon as reasonably practicable.

45.4 Late payment will be made if Annual DTM Claim Notice not received by the Annual DTM Payment Date

If the FDP Implementation Company has not received an Annual DTM Claim Notice in respect of the relevant Financial Period as at the relevant Annual DTM Payment Date, the FDP Implementation Company shall not make the Annual DTM Payment on the Annual DTM Payment Date. The FDP Implementation Company shall make the Annual DTM Payment as soon as reasonably practicable after the Annual DTM Claim Notice is received from the Operator.

45.5 Further payment will be made if any Annual DTM Payment is reduced due to lack of Available Cash

If, in any Financial Period, the Annual DTM Claim Amount was not paid in full pursuant to Clause 45.2.1(C), then the FDP Implementation Company shall make a further DTM Payment to the Operator of the difference between the Annual DTM Claim Amount and the amount paid to the Operator on the Annual DTM Payment Date pursuant to Clause 45.2.1(C) as soon as reasonably practicable after the FDP Implementation Company has cash equal to such difference available.

45.6 Payment Procedures apply to DTM Payments

The Fund Payment Procedures apply to each DTM Payment made by the FDP Implementation Company.

45.7 DTM Payments are without prejudice to right to challenge Disallowable Costs

The release of any DTM Payment by the FDP Implementation Company in accordance with this Clause 45 (*Annual DTM Payment will be calculated by the FDP Implementation Company*) shall not be taken as acceptance by the FDP Implementation Company that all amounts in the relevant Annual Work Plan and Budget are Allowable Costs which shall finally be determined as part of the Annual Reconciliation Review.

46. DTM COSTS OVERRUNS MAY BE CLAIMED

46.1 Operator must submit an amended Annual Work Plan and Budget before cost overruns can be claimed

46.1.1 If:

- (A) the Operator becomes aware that a DTM Costs Overrun is likely to arise in respect of the works and activities scheduled to take place in the then current Financial Period or because the Operator wishes to undertake accelerated work and activities in the then current Financial Period for Decommissioning;
- (B) it is reasonably practicable for the Operator to claim for such DTM Costs Overrun before the end of the then current Financial Period; and
- (C) the Operator considers, acting reasonably, that it is necessary or efficient for such works and activities to be undertaken within the then current Financial Period,

the Operator shall prepare an amended Annual Work Plan and Budget in accordance with this Clause 46.1 (*Operator must submit an amended Annual Work Plan and Budget before cost overruns can be claimed*).

- 46.1.2 The Operator shall use its reasonable endeavours to procure that:
- (A) each amended Annual Work Plan and Budget:
 - (1) complies with the requirements of Section 1 (*Requirements for Annual Work Plan and Budget*) of Schedule 15 (*Payments and Disbursements Requirements*), which shall apply with such changes as are necessary;
 - (2) separately identifies the amount of the DTM Costs Overruns likely to arise within the then current Financial Period;
 - (3) contains a summary of how the DTM Costs Overruns have arisen and any action that the Operator has taken or intends to take in order to mitigate such circumstances;
 - (4) contains the Operator's reasons for considering that it is reasonably necessary or efficient for such works and activities to be undertaken within the then current Financial Period;
 - (5) is complete and up to date in all material respects as at the date of submission; and
 - (B) any opinions, forecasts or estimates contained in the amended Annual Work Plan and Budget are prepared with due care and on the basis of reasonable assumptions.
- 46.1.3 The Operator shall submit each amended Annual Work Plan and Budget to the FDP Implementation Company and the Independent Technical Verifier as soon as reasonably practicable after becoming aware of the DTM Costs Overruns, together with such information as the Operator considers, acting reasonably, will allow the Independent Technical Verifier to assess whether the DTM Costs Overruns claimed have been properly calculated or constitute Disallowable Costs.
- 46.1.4 The Operator shall not knowingly, and shall use its reasonable endeavours to procure that it does not, include any Disallowable Costs in the amended Annual Work Plan and Budget.

46.2 Operator must submit a DTM Costs Overrun Certificate

The Operator shall give the FDP Implementation Company a DTM Costs Overrun Certificate in respect of any amended Annual Work Plan and Budget submitted, which must be signed by two (2) directors acting on behalf of the Operator's board, one of whom shall be the managing director or the chief executive officer of the Operator.

46.3 Verification of significant DTM Costs Overruns is required

If:

- 46.3.1 the DTM Costs Overruns included in the amended Annual Work Plan and Budget in relation to any Financial Period would lead to the Operator receiving less than one hundred and twenty-five percent (125%) of the DTM Costs falling within paragraph (b) of the definition of Allowable Costs, then Clause 47 (*FDP Implementation Company will calculate DTM Overrun Payments*) shall apply; or
- 46.3.2 the DTM Cost Overruns included in the amended Annual Work Plan and Budget in relation to any Financial Period would lead to the Operator receiving one hundred and twenty-five percent (125%) or more of the DTM Costs falling in paragraph (b) of the definition of Allowable Costs, then:
- (A) Clause 47 (*FDP Implementation Company will calculate DTM Overrun Payments*) shall apply in respect of the portion of the DTM Costs Overruns that is less than or equal to one hundred and twenty-five percent (125%) of the DTM Costs falling in paragraph (b) of the definition of Allowable Costs; and

- (B) Clause 46.4 (*Independent Technical Verifier must review works and activities included in the Annual Work Plan and Budget if overruns exceed 25% contingency*) shall apply in respect of the portion of the DTM Costs Overruns that is more than one hundred and twenty-five percent (125%) of the DTM Costs falling in paragraph (b) of the definition of Allowable Costs.

46.4 Independent Technical Verifier must review works and activities included in the Annual Work Plan and Budget if overruns exceed 25% contingency

46.4.1 Where this Clause 46.4 applies, the FDP Implementation Company shall use its reasonable endeavours to procure that the Independent Technical Verifier reviews each amended Annual Work Plan and Budget as soon as possible after it has been received.

46.4.2 If either:

- (A) the Independent Technical Verifier, acting reasonably, considers that:
- (1) it is likely that any of the works or activities added to the amended Annual Work Plan and Budget in respect of the DTM Costs Overruns constitute Disallowable Costs; and
 - (2) the aggregate Disallowable Costs that may be incurred as a result of all such works or activities are likely to amount to more than five hundred thousand pounds (£500,000), Indexed; and/or
- (B) the Independent Technical Verifier, acting reasonably, considers that the Operator's assessment that it is necessary or efficient for such works and activities to be undertaken within the then current Financial Period is not reasonable,

then the Independent Technical Verifier shall give the Operator and the FDP Implementation Company an Overrun Objection Notice as soon as reasonably practicable and in any event no later than fifteen (15) Business Days after receipt of the amended Annual Work Plan and Budget.

46.4.3 For the avoidance of doubt, the Independent Technical Verifier shall not be entitled to give an Overrun Objection Notice either:

- (A) in relation to a Long Term Contract or Material Affiliate Contract that has been verified or determined to give rise to Allowable Costs in accordance with Clause 50 (*Verification of Long Term Contracts and Material Affiliate Contracts*), except to the extent permitted under Clause 50.6 (*Effect of contract verification on reconciliation exercise*); or
- (B) in respect of anything contained in the original Annual Work Plan and Budget.

46.5 Operator must dispute the Overrun Objection Notice or remove the relevant works and activities from the amended Annual Work Plan and Budget

If the Operator has received an Overrun Objection Notice from the Independent Technical Verifier, then the Operator shall either:

46.5.1 refer the matter of:

- (A) whether the works and activities added to the amended Annual Work Plan and Budget gives rise to Disallowable Costs which in aggregate will be more than five hundred thousand pounds (£500,000), Indexed; and/or
- (B) whether or not it is necessary or efficient for such works and activities to be undertaken within the then current Financial Period,

for determination in accordance with the Annual Work Plan and Budget Independent Expert Referral Procedure; or

46.5.2 remove the specified works and activities from the amended Annual Work Plan and Budget and reduce the estimate of DTM Costs Overruns that will become payable during the remainder of the Financial Period by the sum specified in the Overrun Objection Notice, in which case the Operator shall not be entitled to claim such amount as an Unclaimed Allowable Cost in any subsequent Annual Reconciliation Review. The Operator shall be deemed to have made such amendments to the Annual Work Plan and Budget if it has not referred the matter for determination within fifteen (15) Business Days of receiving the Overrun Objection Notice from the Independent Technical Verifier.

47. FDP IMPLEMENTATION COMPANY WILL CALCULATE DTM OVERRUN PAYMENTS

47.1 Operator must specify the DTM Costs Overruns claimed from the Fund

The Operator shall give a DTM Costs Overrun Claim Notice to the FDP Implementation Company as soon as reasonably practicable after submitting the amended Annual Work Plan and Budget and, if Clause 46.4 (*Independent Technical Verifier must review works and activities included in the Annual Work Plan and Budget if overruns exceed 25% contingency*) applies, verification or determination of the relevant proportion of the DTM Costs Overruns.

47.2 Process applies for making DTM Costs Overrun Payment

If the FDP Implementation Company receives a DTM Costs Overrun Claim Notice under Clause 47.1 (*Operator must specify the DTM Costs Overruns claimed from the Fund*), then it shall calculate the DTM Overrun Payment due to the Operator and Clause 45 (*Annual DTM Payment will be calculated by the FDP Implementation Company*) shall apply with such changes as are necessary.

48. MID-YEAR REPORT

The Operator shall submit a Mid-Year Report to the FDP Implementation Company within twenty (20) Business Days of the Half Year End in each Financial Period during the Disbursements Period.

49. ANNUAL RECONCILIATION REVIEW

The Operator and the FDP Implementation Company shall undertake an Annual Reconciliation Review at the end of each Financial Period during which a DTM Payment was made in accordance with the Annual Reconciliation Review Process as part of the Annual Review or Quinquennial Review (as applicable) undertaken in that Financial Period.

50. VERIFICATION OF LONG TERM CONTRACTS AND MATERIAL AFFILIATE CONTRACTS

50.1 Long Term Contracts may be referred for verification by the Operator

The Operator may give notice to the FDP Implementation Company and the Independent Technical Verifier stating that it wishes to refer a Long Term Contract for verification by the Independent Technical Verifier in accordance with this Clause 50 (*Verification of Long Term Contracts and Material Affiliate Contracts*). Such notice may be given at any time before or after the Long Term Contract comes into effect and shall be accompanied by a copy of the Long Term Contract (in final agreed form or executed, as applicable).

50.2 Material Affiliate Contracts must be referred for review by the Operator

If the Operator intends to enter into a Material Affiliate Contract, but has not tendered to let such contract on a competitive basis, then the Operator shall send a copy of the Material Affiliate Contract in final agreed form to the FDP Implementation Company and the Independent Technical Verifier for review by the Independent Technical Verifier in accordance with this Clause 50 (*Verification of Long Term Contracts and Material Affiliate Contracts*) before entering into such Material Affiliate Contract.

50.3 Verification that Allowable Costs will be incurred under the contract

- 50.3.1 If the Operator has referred a Long Term Contract or a Material Affiliate Contract for verification, then the FDP Implementation Company shall use its reasonable endeavours to procure that the Independent Technical Verifier reviews such Long Term Contract or Material Affiliate Contract as soon as reasonably practicable after it has been received.
- 50.3.2 The FDP Implementation Company shall use its reasonable endeavours to procure that the Independent Technical Verifier issues a Contract Verification Report within twenty-five (25) Business Days after the date on which the Operator referred the Long Term Contract or Material Affiliate Contract for review.

50.4 Operator must dispute scope identified as disallowable or make amendments to the contract

If the Contract Verification Report identifies that any scope of a Long Term Contract or Material Affiliate Contract gives rise to a Disallowable Cost (or if there is a delay in the Independent Technical Verifier submitting the Contract Verification Report in accordance with Clause 50.3.2 (*Verification that Allowable Costs will be incurred under the contract*)), the Operator shall either:

- 50.4.1 refer the matter of whether the relevant Long Term Contract or Material Affiliate Contract contains scope which gives rise to a Disallowable Cost to an Independent Expert for determination in accordance with the Independent Expert Referral Procedure;
- 50.4.2 make such amendments to the relevant Long Term Contract or Material Affiliate Contract as are necessary to remove the scope which gives rise to a Disallowable Cost; or
- 50.4.3 give a notice confirming that the Operator accepts that the costs incurred under the provisions identified by the Independent Technical Verifier constitute Disallowable Costs, and undertaking to procure that such Disallowable Costs are separately identified on the invoices issued under the relevant Long Term Contract or Material Affiliate Contract and that such costs are not included in any future Annual Work Plan and Budget. The Operator shall be deemed to have given such notice if it has neither referred the matter for determination nor notified the FDP Implementation Company that it intends to amend the relevant Long Term Contract or Material Affiliate Contract within fifteen (15) Business Days of receipt of the relevant Contract Verification Report.

50.5 Effect of dispute on claim of Annual DTM Payment

If the Operator has referred a dispute to an Independent Expert in accordance with Clause 50.4.1, and the dispute has not been determined before the date on which the Operator is required to submit the Annual Work Plan and Budget under Clause 44.1 (*Operator must submit an Annual Work Plan and Budget*) for the first (1st) Financial Period in which costs will be payable by the Operator under the terms of the relevant Long Term Contract or Material Affiliate Contract, then the Operator shall not include the disputed works and activities (or the estimated costs of performing such works and activities) in such Annual Work Plan and Budget or any amendment to that Annual Work Plan and Budget made pursuant to Clause 46.1 (*Operator must submit an amended Annual Work Plan and Budget before cost overruns can be claimed*) but shall be entitled to either:

- 50.5.1 perform such works and activities and claim such costs as Unclaimed Allowable Costs as part of an Annual Reconciliation Review; or
- 50.5.2 defer the performance of such works and activities until the next Annual Work Plan and Budget after the matter has been finally determined (but shall be entitled to claim any increased costs arising from the deferral of the works and activities).

50.6 Effect of contract verification on reconciliation exercise

50.6.1 Subject to Clause 50.6.2, if any Long Term Contract or Material Affiliate Contract (or specified provisions of such contracts) are verified or determined as giving rise to Allowable Costs only (or only giving rise to Disallowable Costs that will be separately invoiced and paid for), then the Independent Technical Verifier shall not be entitled to form a view or make a judgment regarding such matter as part of any future Annual Work Plan and Budget or any future Annual Reconciliation Review.

50.6.2 If any amendments are made to any Long Term Contract or Material Affiliate Contract that has been previously verified or determined as giving rise to Allowable Costs in accordance with this Clause 50 (*Verification of Long Term Contracts and Material Affiliate Contracts*) and those amendments are likely either to:

- (A) give rise to additional Allowable Costs of more than two million pounds (£2,000,000), Indexed; or
- (B) add scope which gives rise to a Disallowable Cost (unless the works and activities in relation to such additional scope are to be separately invoiced and paid for),

then the Operator shall notify the FDP Implementation Company and the Independent Technical Verifier and the process under this Clause 50 (*Verification of Long Term Contracts and Material Affiliate Contracts*) shall apply with such changes as are necessary in respect of such amendments.

SECTION K: ENSURING COMPLIANCE WITH THE FDP**51. MATERIAL BREACH SHALL BE NOTIFIED TO THE SECRETARY OF STATE****51.1 Certain events will be notified to the Operator**

51.1.1 The FDP Implementation Company shall notify the Operator as soon as reasonably practicable if it believes that any of the events referred to in Clauses 51.2.1 to 51.2.5 has occurred (and followed up by the FDP Implementation Company making a telephone call and sending an email to the Operator as soon as reasonably practicable after the notice is served).

51.1.2 Within ten (10) Business Days after receipt of a notice under Clause 51.1.1, the Operator shall notify the FDP Implementation Company setting out whether, in the Operator's reasonable opinion, any of the relevant events referred to in Clauses 51.2.1 to 51.2.5 has occurred and shall at the same time notify the FDP Implementation Company of any steps being taken to cure the relevant events referred to in Clauses 51.2.1 to 51.2.5 (or cure the adverse effect of the relevant events referred to in Clauses 51.2.1 to 51.2.5).

51.2 Certain events will be notified to the Secretary of State

On or after the tenth (10th) Business Day following receipt (being the date of deemed receipt in accordance with Clause 80.4.2) of the notice referred to in Clause 51.1.1, the FDP Implementation Company shall notify the Secretary of State if it continues to believe that any of the following has occurred:

51.2.1 a Payment Default;

51.2.2 a Compliance Event or Potential Compliance Event in respect of the Operator's obligations under Clause 5 (*FDP Contributions have priority over debt and dividend payments*);

51.2.3 a Compliance Event or Potential Compliance Event in respect of the Operator's obligations under Clause 10.1.1 (*FDP investments must be made under Investment Orders*);

51.2.4 an FDP Qualifying Floating Charge ceases to have full force and effect; or

51.2.5 a Compliance Event or Potential Compliance Event in respect of the Operator's obligations under Clause 60.3 (*Obligation to maintain an insolvency remote structure*),

and shall at the same time notify the Secretary of State of any steps which the FDP Implementation Company is aware are being taken to cure the relevant event or circumstances (or cure the adverse effect of the relevant event or circumstances).

51.3 Notification of breaches of this Agreement

The Parties acknowledge their shared understanding that the FDP Implementation Company will notify material breaches by the Operator in accordance with the Material Breach Policy in effect from time to time. Despite this shared understanding, nothing in this Agreement prevents the FDP Implementation Company from notifying to the Secretary of State any Compliance Event or Potential Compliance Event by the Operator that has occurred or is continuing, if the FDP Implementation Company considers that it would be appropriate to do so.

51.4 Adoption and amendment of the Material Breach Policy

51.4.1 The FDP Implementation Company has adopted a Material Breach Policy and shall maintain such policy in effect until the end of the Decommissioning Period. The Material Breach Policy in effect as at the date of this Agreement identifies the Mandatory Material Breach Requirements agreed between the Operator, the FDP Implementation Company and the Secretary of State.

- 51.4.2 The FDP Implementation Company may amend the Material Breach Policy from time to time save that it may not amend the Mandatory Material Breach Requirements without the prior written consent of the Secretary of State and the Operator. The FDP Implementation Company undertakes to procure that the Material Breach Policy in effect from time to time will be consistent with the Mandatory Material Breach Requirements unless the FDP Implementation Company has obtained the prior written consent of both the Operator and the Secretary of State to any inconsistency.
- 51.4.3 If the FDP Implementation Company proposes to amend the Material Breach Policy at any time, it shall send a copy of the proposed Material Breach Policy to the Operator and the Secretary of State within a reasonable period prior to the date that it intends to adopt the proposed amended Material Breach Policy. The FDP Implementation Company shall take into account the reasonable comments of the Operator and the Secretary of State regarding the proposed amended Material Breach Policy. If either the Operator or the Secretary of State considers the proposed amendment is inconsistent with the Mandatory Material Breach Requirements then the Operator or the Secretary of State (as applicable) shall notify the FDP Implementation Company who must then either:
- (A) refer the matter for determination in accordance with the Independent Expert Referral Procedure or the Dispute Resolution Procedure; or
 - (B) withdraw the proposed amendment, and the FDP Implementation Company shall be deemed to have withdrawn the amendment if it has not referred the matter for determination within fifteen (15) Business Days after receipt of notice from the Operator or the Secretary of State stating that the proposed amendment is inconsistent with the Mandatory Material Breach Requirements.

52. BREACH AND ENFORCEMENT

52.1 Compliance Events constitute breaches of this Agreement

Without prejudice to Clause 23.9 (*Compliance Events in relation to Permitted Gearing Level*), Clause 52.3 (*Compliance Events not causing breach*), Clause 53 (*Unlawful obligations*) and Clause 54 (*Force Majeure*), there shall be no breach of any term of this Agreement by a Party unless a Compliance Event in respect of that Party relating to the relevant failure has occurred and is continuing.

52.2 Compliance Events

- 52.2.1 Except where Clause 53 (*Unlawful obligations*) or Clause 54 (*Force Majeure*) applies, a Compliance Event occurs and is continuing if either Party fails to comply with a provision of this Agreement and that failure (or the adverse effect of that failure) has not been remedied, waived or, subject to Clauses 52.2.2 and 52.2.3, referred to determination under the Dispute Resolution Procedure (or, if available, the Independent Expert Referral Procedure, Annual Work Plan and Budget Independent Expert Referral Procedure or the Independent Investment Expert Referral Procedure) before the end of the Remedy Period provided always that a Compliance Event occurs immediately if the Operator:
- (A) knowingly applies any DTM Payment that it receives from the FDP Implementation Company for any purpose other than to discharge the Allowable Costs or by way of reimbursement in respect of an Unclaimed Allowable Cost;
 - (B) knowingly Deals Directly with the Fund Assets at any time in contravention of Clause 9 (*FDP Implementation Company will hold the Fund Assets remote from the Operator*) or Clause 10.1.1 (*FDP investments must be made under Investment Orders*); or

- (C) knowingly acts, or fails to act, in contravention of Clause 36.2 (*Undertaking to preserve priority*); or
- (D) knowingly makes a payment that does not comply with Clause 5 (*FDP Contributions have priority over debt and dividend payments*).

52.2.2 The Operator shall act reasonably in referring a matter to determination under the Dispute Resolution Procedure (or, if available, the Independent Expert Referral Procedure, Annual Work Plan and Budget Independent Expert Referral Procedure or the Independent Investment Expert Referral Procedure) and shall act reasonably in conducting the dispute and shall not take any action which has the predominant purpose of delaying the point in time at which a Compliance Event occurs.

52.2.3 If the Dispute Resolution Procedure, the Independent Expert Referral Procedure, Annual Work Plan and Budget Independent Expert Referral Procedure or the Independent Investment Expert Referral Procedure (as applicable) determines that a failure to comply with a provision of this Agreement has occurred or if the Operator ceases to act in compliance with Clause 52.2.2, then the applicable failure shall be deemed to be a Compliance Event which has occurred and is continuing on the expiry of the applicable Remedy Period.

52.3 Compliance Events not causing breach

52.3.1 Despite the occurrence of a Compliance Event, there shall not be a breach of this Agreement:

- (A) if the Operator has proposed a modification to the FDP under the Energy Act 2008 (which is not a manifestly frivolous or a vexatious proposal) in respect of the relevant event or circumstance on the grounds that:
 - (1) the provision giving rise to the Compliance Event is unlawful or unenforceable; and/or
 - (2) the provision conflicts with any of the Operator or the FDP Implementation Company's other obligations under Applicable Law (in accordance with Clause 53.2 (*Modification will be proposed in respect of unlawful obligations*)); and/or
 - (3) performance of the obligation is not reasonably practicable or results in outcomes or has consequences which are so unreasonable in the context of the terms of this Agreement that no rational party could have intended them; and/or
 - (4) performance of the obligation has been affected by a long term Force Majeure Event (in accordance with Clause 54.2 (*Modification will be proposed in respect of a long term Force Majeure Event*)); and/or
- (B) if the Secretary of State has initiated a process under the Section 46 Agreement to make a modification in respect of the relevant event or circumstance; and/or
- (C) if the event or circumstance that would otherwise constitute a breach:
 - (1) is or is caused by the appointment of any administrator, administrative receiver, receiver or other similar person under or pursuant to the FDP Security Documents, any Project Security Documents, any FDP Direct Agreement or any other document under which the Operator creates or purports to create Security in accordance with this Agreement (provided that such action is consistent with the ranking referred to in Clause 31.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*)) and further provided that the Security is on materially similar terms to the FDP Security Documents and does not

contain any provision which is adverse to the terms of this Agreement);

- (2) is or is caused by the non-payment of an Annual Contribution or Cash Sweep Payment during a Standstill Period;
 - (3) is or is caused by the taking of any steps to enforce the FDP Security Documents, any Project Security Documents, or any other document under which the Operator creates or purports to create Security in accordance with this Agreement (provided that such action is consistent with the ranking referred to in Clause 31.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*) and further provided that the Security is on materially similar terms to the FDP Security Documents and does not contain any provision which is adverse to the terms of this Agreement);
 - (4) is or is caused by the transfer of any shares in any person (other than in relation to the Non-Voting Operator Share) or any other assets (not in contravention of paragraph 1.2 (*No asset stripping is permitted*) of Section 1 (*Business Restrictions*) of Schedule 5 (*Operator Business and Financial Restrictions*) or an FDP Direct Agreement, if relevant) in return for any actual or contingent release of the transferor from any obligation or Security granted under the FDP Security Documents; and/or
 - (5) is performed, remedied or cured in accordance with the terms of the FDP Security Documents or any FDP Direct Agreement; and/or
- (D) in respect of non-payment of an amount which is due but not due and payable under this Agreement,

provided that nothing in this Clause 52.3.1 shall restrict the ability of the Secretary of State to take (or, if relevant, to instruct a Security Trustee to take) Security Trigger Event Action in accordance with Clause 32 (*Entitlement to take Security Trigger Event Action*) either:

- (1) if there is an FDP Direct Agreement in effect, in accordance with that FDP Direct Agreement; or
- (2) otherwise, in accordance with the FDP Security Documents or any Project Security Documents if a Security Trigger Event is continuing.

52.3.2 Without prejudice to the application of Clause 5 (*FDP Contributions have priority over debt and dividend payments*), to the extent that (but only for so long as) the Operator is unable to make payment to the FDP Implementation Company on an Annual Contribution Date or on a Provisional Cash Sweep Payment Date of an amount that would otherwise be due and payable on that date and such inability to pay is a result of:

- (A) a continuing default by the Operator's counterparty under the HPC CfD; and/or
- (B) a systemic failure of the electricity market (including any non-payment or reduced payment to the Operator under the HPC CfD which arises as a result of the operation of the pay when paid mechanism implemented under the Energy Act 2013),

such amount shall continue to be due (for the purposes of crystallising a debt) but shall not be due and payable notwithstanding Clause 2 (*Primary Funding Period, Secondary Funding Period and Funding Paths*).

52.4 Remedies

- 52.4.1 Without prejudice to any rights which may arise under Clause 32 (*Entitlement to take Security Trigger Event Action*), the sole and exclusive remedies that are available to each of the Parties (and the Secretary of State for the purposes of exercising the third party rights granted to him under Clause 87.3 (*Third party rights*)) in respect of any breach of this Agreement shall be those set out in Clause 52.4.2. All other remedies provided under Applicable Law are excluded to the fullest extent permissible under Applicable Law (including, without limitation, termination for repudiatory breach, rescission, damages, and any and all other remedies that might otherwise be available under law or in equity). All other liability of the Operator or the FDP Implementation Company arising under or in relation to this Agreement, whether in tort, by statute or otherwise (and whether or not arising from any negligence on the part of the Parties or any of their agents or employees) is excluded to the fullest extent permissible under Applicable Law.
- 52.4.2 The following remedies shall be available to the non-defaulting Party (and the Secretary of State for the purposes of exercising the third party rights granted to him under Clause 87.3 (*Third party rights*)) in relation to a breach of any term of this Agreement arising from a Compliance Event which has occurred and is continuing:
- (A) judgment in relation to a debt which has become due and payable in accordance with this Agreement; and/or
 - (B) an injunction against the other Party; and/or
 - (C) specific performance of the defaulting Party's obligations; and/or
 - (D) declaratory relief.
- 52.4.3 Nothing in this Clause 52.4 is intended to prevent a non-defaulting Party from taking any of the following actions:
- (A) waiving a breach, if permitted under Clause 87.6 (*No waiver*); or
 - (B) referring the matter to the Secretary of State and requesting that she exercise her statutory powers; and/or
 - (C) initiating and following the Dispute Resolution Procedure (or, if available, the Independent Expert Referral Procedure, the Annual Work Plan and Budget Independent Expert Referral Procedure or the Independent Investment Expert Referral Procedure).
- 52.4.4 Nothing in this Clause 52.4 is intended to limit or exclude liability or remedies for fraud or any negligent act or omission of the Parties (or any of their agents or employees) giving rise to death or personal injury.

53. UNLAWFUL OBLIGATIONS

53.1 Unlawful obligations do not apply

Notwithstanding any other provision of this Agreement that may conflict, neither Party shall be obliged to make any payment or perform any obligation under this Agreement to the extent it would be unlawful or not within its powers to do so under Applicable Law (including, in particular, insolvency law).

53.2 Modification will be proposed in respect of unlawful obligations

As soon as reasonably practicable after the Operator becomes aware that a provision of this Agreement has become unlawful (other than as a result of insolvency law), the Operator shall propose a modification under the Energy Act 2008 to modify this Agreement with the aim of substituting the unlawful provision with obligations which the Operator considers, acting reasonably, will have an equivalent effect, other than as to being unlawful, to the extent practicable or possible.

54. **FORCE MAJEURE**

54.1 **Suspension of obligations for a Force Majeure Event**

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 breach of this Agreement for so long as the Force Majeure Event prevents the Affected Party from performing such obligations provided that:

- 54.1.1 the Affected Party shall give notice to the other Party as soon as reasonably practicable after the Force Majeure Event has occurred setting out (to the extent such information is reasonably available):
- (A) the date and cause of the suspension of its relevant obligations under this Agreement;
 - (B) the date the suspension of the Affected Party's relevant obligations under this Agreement is reasonably expected to be removed;
 - (C) the steps being taken to remove or mitigate the suspension of the Affected Party's relevant obligations under this Agreement; and
 - (D) any other details reasonably requested by the other Party;
- 54.1.2 to the extent that such information is not reasonably available at the time a notice is given pursuant to Clause 54.1.1, such information shall be notified by the Affected Party to the other Party as soon as reasonably practicable after it becomes reasonably available; and
- 54.1.3 the Party whose obligations have been suspended pursuant to this Clause 54 shall use reasonable endeavours to mitigate the effects of such suspension and resume the performance of the suspended obligations as soon as reasonably practicable and shall notify the other Party accordingly.

54.2 **Modification will be proposed in respect of a long term Force Majeure Event**

As soon as reasonably practicable after the Operator becomes aware that a Force Majeure Event has persisted for a continuous period of twelve (12) months, the Operator shall propose a modification under the Energy Act 2008 to modify 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 Operator considers, acting reasonably, will have an equivalent effect (to the extent practicable or possible).

55. **VARIATION OF THIS AGREEMENT**

The Parties agree and acknowledge that no variation to this Agreement will be effective unless:

- 55.1.1 the Secretary of State has made or approved a modification under section 49 of the Energy Act 2008; and
- 55.1.2 the variation is made in writing and signed by both Parties.

56. **FDP MODIFICATIONS MUST BE IMPLEMENTED BY THE PARTIES**

56.1 **FDP modifications must be implemented**

If an FDP Modification Event occurs, then the modification shall apply immediately as between the Parties in accordance with the terms of the modification (notwithstanding any provision of this Agreement that may conflict) and the Parties shall execute all such deeds and documents and do all such things as are required to give full effect to such modification.

56.2 Delay or failure to implement a modification

If any modification to the FDP is not implemented by the FDP Implementation Company promptly in accordance with the terms of the modification, the Operator may exercise its FDP Protection Powers in accordance with the Articles in order fully to implement the modification as soon as reasonably practicable.

57. SECRETARY OF STATE DIRECTIONS MUST BE IMPLEMENTED BY THE PARTIES**57.1 Secretary of State directions must be implemented**

Each Party shall do all such things as are required to give full effect to any direction given by the Secretary of State under section 58 of the Energy Act 2008 (to the extent within its powers).

57.2 Delay or failure to implement a direction

If any direction to the FDP Implementation Company under section 58 of the Energy Act 2008 of the Secretary of State is not implemented by the FDP Implementation Company promptly in accordance with the terms of the direction, the Operator may exercise its FDP Protection Powers in accordance with the Articles in order fully to implement the direction as soon as reasonably practicable.

58. DISPUTE DETERMINATIONS MUST BE IMPLEMENTED BY THE PARTIES**58.1 Dispute determinations must be implemented**

Each Party shall do all such things as are required to give full effect to any binding determination made in accordance with the Dispute Resolution Procedure, the Independent Expert Referral Procedure, the Independent Investment Expert Referral Procedure or the Annual Work Plan and Budget Independent Expert Referral Procedure.

58.2 Delay or failure to implement a determination

If any determination made in accordance with the Dispute Resolution Procedure, the Independent Expert Referral Procedure, the Independent Investment Expert Referral Procedure or the Annual Work Plan and Budget Independent Expert Referral Procedure is not implemented promptly in accordance with the terms of the determination by the FDP Implementation Company, the Operator may exercise its FDP Protection Powers in accordance with the Articles in order to fully implement the determination as soon as reasonably practicable.

59. SECRETARY OF STATE INFORMATION REQUESTS MUST BE SATISFIED BY THE PARTIES

Each of the Parties shall do all such things as are required to satisfy any request made by the Secretary of State under section 52 of the Energy Act 2008.

SECTION L: FDP IMPLEMENTATION COMPANY STRUCTURE AND OWNERSHIP**60. STRUCTURE OF THE FDP IMPLEMENTATION COMPANY****60.1 Incorporation of the FDP Implementation Company as a private limited company**

The FDP Implementation Company has been established in England as a private company limited by shares, and (subject only to any relevant change in Applicable Law) will remain established in that form for the duration of this Agreement.

60.2 FDP Implementation Company to be managed from and centred in England

60.2.1 The FDP Implementation Company's registered office shall be situated in England.

60.2.2 The FDP Implementation Company shall be managed from, and remain tax resident in, England.

60.2.3 The Operator and the FDP Implementation Company shall procure, to the extent possible, that the FDP Implementation Company's centre of main interest is England for the purposes of the Insolvency Regulation for the duration of this Agreement.

60.3 Obligation to maintain an insolvency remote structure

The Operator and the FDP Implementation Company shall procure that the FDP Implementation Company remains Insolvency Remote at all times from the date of this Agreement (to the extent within their respective powers and subject to the Secretary of State's approval of a modification to the FDP or an amendment to an entrenched Mandatory Article where necessary).

61. ROLE OF THE FDP IMPLEMENTATION COMPANY**61.1 Sole purpose of the FDP Implementation Company to be the implementation and enforcement of this Agreement**

The sole purpose of the FDP Implementation Company at all times from the date of this Agreement shall be:

61.1.1 to implement its obligations and, to the extent it considers appropriate, exercise its rights under this Agreement, the Section 46 Agreement and any FDP Direct Agreement in accordance with its terms and any matter ancillary thereto; and

61.1.2 to give such consideration and assistance as is reasonably requested of it by the Operator or the Secretary of State in connection with the preparation, approval and/or entering into of any funded decommissioning programme subsequent to the FDP and any matter ancillary thereto,

(the "**Purpose**").

61.2 Powers of the FDP Implementation Company to be restricted

At all times from the date of this Agreement, the powers of the FDP Implementation Company shall be restricted under its Articles to such things as further or are designed to further the Purpose. In particular, under the Articles in effect from time to time the Operator and the FDP Implementation Company shall procure that:

61.2.1 the FDP Implementation Company is not permitted to make any distribution to the Shareholders (including making any dividend payment), except:

(A) to the extent that not to do so would breach Applicable Law; or

(B) to facilitate the redemption of an Independent Director Share in accordance with the Articles and this Agreement;

- 61.2.2 the FDP Implementation Company is not permitted to make any payment or transfer of the Fund Assets except as permitted under and in accordance with this Agreement;
- 61.2.3 the FDP Implementation Company is not permitted to guarantee or otherwise be obliged for the debts or liabilities of others, except as contemplated in this Agreement;
- 61.2.4 the FDP Implementation Company is not permitted to pledge the FDP Implementation Company's credit for the benefit of others;
- 61.2.5 the FDP Implementation Company is not permitted to borrow money or issue securities other than issuing the Operator Share and the redeemable Independent Director Shares;
- 61.2.6 the FDP Implementation Company is not permitted to make loans or advances or pledge or provide security in respect of the Fund Assets other than as permitted under and in accordance with this Agreement; and
- 61.2.7 the FDP Implementation Company is not permitted to enter into agreements with third parties other than as permitted under and in accordance with this Agreement or in the ordinary course of business having regard to the purpose of the FDP Implementation Company, in each case, on bona fide, arms' length terms.

61.3 **Undertaking to ensure compliance with restrictions**

The FDP Implementation Company undertakes to comply with the restrictions referred to in Clause 61.2 (*Powers of the FDP Implementation Company to be restricted*).

62. **OWNERSHIP OF THE FDP IMPLEMENTATION COMPANY**

62.1 **Majority of Shares to be independently owned**

At all times, the majority of the Shares in the FDP Implementation Company shall be owned by persons that are independent of the Operator, being:

- 62.1.1 the Independent Directors; or
- 62.1.2 the FDP Company Administrator, if, at any time, due to circumstances beyond the control of the Operator and the FDP Implementation Company there is an insufficient number of Independent Directors appointed. In such circumstances, paragraph 1.2 (*Board meeting where insufficient Directors are appointed*) of Section 2 (*Board Governance Arrangements*) of Schedule 18 (*Governance Arrangements*) shall apply.

62.2 **Two classes of shares in the FDP Implementation Company**

- 62.2.1 The FDP Implementation Company shall have two (2) classes of shares:
 - (A) the ordinary Non-Voting Operator Share; and
 - (B) the redeemable Independent Director Shares.
- 62.2.2 No classes of shares in the FDP Implementation Company may be created other than the Non-Voting Operator Share and the Independent Director Shares.

62.3 **Operator must own one Share**

- 62.3.1 The Operator shall own one (1) Non-Voting Operator Share at all times.
- 62.3.2 The Operator has subscribed for and fully paid up the Non-Voting Operator Share.
- 62.3.3 The Non-Voting Operator Share shall not be transferable to any other person other than pursuant to Security granted under the FDP Security Documents and provided that (subject to the terms of any FDP Direct Agreement) such security may only be enforced in relation to the Non-Voting Operator Share if:

- (A) the Operator and the Operator's investors (if relevant) have been released by the Secretary of State from their obligations under the FDP in accordance with the Energy Act 2008 (or otherwise); and
- (B) the Operator and the Operator's investors (if relevant) have been released by ONR from their obligations under the Nuclear Site Licence (or otherwise).

62.4 Independent Directors must each own one Share

- 62.4.1 Each of the Independent Directors appointed as at the date of this Agreement has subscribed for and fully paid up one (1) Independent Director Share.
- 62.4.2 Each Independent Director appointed at any time after the date of this Agreement shall subscribe for and fully pay up one (1) Independent Director Share.
- 62.4.3 The Independent Director Shares shall not be transferable to any other person.

62.5 No other shares

- 62.5.1 The FDP Implementation Company shall allot and issue shares in the FDP Implementation Company in accordance with the requirements of Clause 62.3 (*Operator must own one Share*), Clause 62.4 (*Independent Directors must each own one Share*) and (if applicable) Clause 62.1.2 (*Majority of Shares to be independently owned*).
- 62.5.2 No shares in the FDP Implementation Company shall be allotted or issued other than in accordance with Clause 62.3 (*Operator must own one Share*) and Clause 62.4 (*Independent Directors must each own one Share*) and (if applicable) Clause 62.1.2 (*Majority of Shares to be independently owned*).

62.6 Shares of outgoing Independent Directors must be cancelled and redeemed

- 62.6.1 The rights attaching to any Independent Director Share (other than in respect of redemption) must automatically be cancelled with immediate effect as at the date that the Holder ceases to be an Independent Director.
- 62.6.2 The FDP Implementation Company shall redeem the Independent Director Share of any person that ceases to be an Independent Director as soon as reasonably practicable after the date that the appointment ends.

63. THE SHAREHOLDERS' AGREEMENT

63.1 Shareholders' Agreement will set out Shareholders' obligations

The Operator and the FDP Implementation Company shall enter into, and shall procure that each of the Independent Director Shareholders appointed before, on or after the date of this Agreement enters into, a Shareholders' Agreement which places an obligation on each of the Shareholders to exercise their respective rights and powers as Holders of shares in the FDP Implementation Company in accordance with the provisions of this Agreement and the Articles (including the Purpose). The Parties shall maintain the Shareholders' Agreement in full force and effect for the duration of this Agreement.

63.2 Mandatory Shareholders' Agreement Terms not to be amended

The Operator and the FDP Implementation Company shall not amend or otherwise vary the Mandatory Shareholders' Agreement Terms without the prior written consent of the Secretary of State. Where the proposed amendment would not be consistent with any requirement set out in this Agreement, then the Operator shall also be required to seek a variation of the relevant provisions of this Agreement as an FDP Modification Event.

64. CONSTITUTION OF THE FDP IMPLEMENTATION COMPANY

The FDP Implementation Company shall not amend or repeal the Mandatory Articles without the prior written consent of the Secretary of State and shall entrench the Mandatory

Articles in accordance with the 2006 Act. Where the proposed modification or repeal of a Mandatory Article would not be consistent with any requirement set out in this Agreement, then the Operator shall also be required to seek a variation of the relevant provisions of this Agreement as an FDP Modification Event.

65. **ARTICLES AND SHAREHOLDERS' AGREEMENT TO BE CONSISTENT WITH STRUCTURE AND OWNERSHIP REQUIREMENTS**

65.1 **Obligation not to introduce inconsistent amendments**

Neither the Operator nor the FDP Implementation Company shall knowingly take any step which would render the Articles and/or the Shareholders' Agreement in effect from time to time after the date of this Agreement inconsistent with the requirements of this Agreement.

65.2 **Endeavours to ensure that non-compliance arising is remedied**

If either the Operator or the FDP Implementation Company becomes aware that the Articles and/or the Shareholders' Agreement in effect from time to time after the date of this Agreement have become inconsistent with the requirements of this Agreement (whether because of a change in Applicable Law or otherwise), each of the Parties shall use its reasonable endeavours to procure that the inconsistency in the Articles and/or the Shareholders' Agreement that has arisen is cured as soon as reasonably practicable (to the extent that it is within their respective powers to do so).

SECTION M: GOVERNANCE OF THE FDP IMPLEMENTATION COMPANY**66. FDP IMPLEMENTATION COMPANY TO BE GOVERNED INDEPENDENTLY****66.1 FDP Implementation Company to be governed by Independent Directors**

66.1.1 The Board shall be comprised of a majority of Independent Directors, except if Clause 66.1.2 applies.

66.1.2 If, at any time, the Board is not comprised of a majority of Independent Directors, then paragraph 1.2 (*Board meeting where insufficient Directors are appointed*) of Section 2 (*Board Governance Arrangements*) of Schedule 18 (*Governance Arrangements*) shall apply.

66.2 Operator Directors must be appointed

The Operator shall appoint one (1) Operator Director to the Board from the date of this Agreement and two (2) Operator Directors from the date of First Criticality.

66.3 Operator has no voting rights in the ordinary course

The Operator and any Operator Directors appointed from time to time shall be entitled to receive notice, attend and speak at a general meeting or a Board meeting of the FDP Implementation Company, but shall not be entitled to exercise any voting rights except where Clause 66.4 (*Operator may vote only where necessary to protect the FDP*) applies.

66.4 Operator may vote only where necessary to protect the FDP

66.4.1 The Operator shall be entitled to vote on a resolution in respect of a Reserved Matter. No shareholder resolution of the FDP Implementation Company in respect of a Reserved Matter shall be validly passed unless all of the Shareholders (including the Operator) vote in favour of such resolution.

66.4.2 If an FDP Protection Trigger occurs, the Operator or the Operator Director (as the case may be) shall have the right to:

- (A) form a quorum for a general meeting or a Board meeting of the FDP Implementation Company without the participation of the Independent Director Shareholders or the Independent Directors;
- (B) propose shareholder or Board resolutions relating solely to such action as is necessary, in the Operator's reasonable opinion, to cure or prevent the event or circumstance giving rise to the FDP Protection Trigger; and
- (C) exercise one hundred percent (100%) of the voting rights on a resolution at a general meeting or a Board meeting of the FDP Implementation Company relating to an FDP Protection Trigger, that has been proposed in accordance with paragraph (B).

66.4.3 The Operator shall send a notice to the Secretary of State detailing any actions taken pursuant to Clause 66.4.2 within ten (10) Business Days of taking such any such action.

66.5 Board to take the day to day decisions of the FDP Implementation Company

The Board, acting collectively, may exercise the powers of the FDP Implementation Company. Any decision of the Board must either be a decision by majority of the Directors eligible to vote taken at a Board meeting, or a unanimous decision of the Directors eligible to vote taken by written resolution.

66.6 Rules apply regarding decision making of FDP Implementation Company

The FDP Implementation Company and the Operator shall use reasonable endeavours to procure that the arrangements for governance and decision making of the FDP Implementation Company comply with the requirements of Schedule 18 (*Governance Arrangements*) at all times after the date of this Agreement.

67. APPOINTMENT OF INDEPENDENT DIRECTORS

67.1 Existing Independent Directors decide on all new Independent Director appointments

The Independent Directors shall determine the identity of any new Independent Directors to be appointed by majority vote, except where Clause 67.6 (*Board meetings where insufficient Directors are appointed*) applies.

67.2 Independent Directors must satisfy the Independence Criteria

The FDP Implementation Company may appoint an Independent Director only if the prospective appointee satisfies the Independence Criteria. In particular, the Independent Directors may appoint a prospective appointee only if:

- 67.2.1 the Independent Directors are satisfied that the Notifiable Circumstances do not apply in respect of the prospective appointee; or
- 67.2.2 having given due consideration to any Notifiable Circumstances which apply in respect of the prospective appointee, all of the Independent Directors are satisfied that the person is independent in character and judgement and give their reasons in writing, provided that it shall not be entitled to form the judgement that any then current employee or officer of the Operator or any Affiliate is independent in character and judgement.

67.3 Articles must specify the Notifiable Circumstance relating to independence

- 67.3.1 The FDP Implementation Company and the Operator shall procure that the Notifiable Circumstances are set out in the Articles.
- 67.3.2 The FDP Implementation Company shall regularly review the Notifiable Circumstances and consider whether any amendment to the Articles should be made to reflect relevant best practice regarding the independence of directors of limited companies in the United Kingdom.

67.4 Independent Directors must disclose Notifiable Circumstances

The FDP Implementation Company shall use reasonable endeavours to procure that each Independent Director and prospective appointee is required to disclose to the FDP Implementation Company if any Notifiable Circumstance applies to such person (whether arising before or after the appointment takes effect).

67.5 FDP Implementation Company to have an Independent Chairman

The FDP Implementation Company has appointed an Independent Chairman as at the date of this Agreement and the Independent Directors shall elect a new Independent Chairman as soon as reasonably practicable whenever the position of Independent Chairman is vacant.

67.6 Board meetings where insufficient Directors are appointed

- 67.6.1 If, at any time, there is only one (1) Independent Director appointed then:
 - (A) such sole Independent Director shall be deemed to have been elected as the Independent Chairman; and
 - (B) such sole Independent Director and the FDP Company Administrator shall jointly select and appoint new Independent Directors as soon as reasonably practicable at a general meeting in accordance with paragraph 1.2 (*Board meeting where insufficient Directors are appointed*) of Section 2 (*Board Governance Arrangements*) of Schedule 18 (*Governance Arrangements*).
- 67.6.2 If, at any time, there are no Independent Directors appointed, then the FDP Company Administrator shall select and appoint a new Independent Director to

be the Independent Chairman at a general meeting in accordance with paragraph 1.2 (*Board meeting where insufficient Directors are appointed*) of Section 2 (*Board Governance Arrangements*) of Schedule 18 (*Governance Arrangements*) as soon as reasonably practicable.

68. REMOVAL OF INDEPENDENT DIRECTORS

68.1 Independent Directors who breach FDP may be removed

The FDP Implementation Company shall procure that it has the right to:

68.1.1 terminate the appointment of any Independent Director who is determined to have ceased to be independent in accordance with Clause 68.2 (*Independent Directors who cease to be independent must be removed*), commits a breach of the Articles, commits a breach of the Shareholders' Agreement, causes the Operator or the FDP Implementation Company to commit a breach of this Agreement or causes the Operator or the FDP Implementation Company to commit a breach of the FDP Budget and Services Agreement; and

68.1.2 suspend any such Independent Director in accordance with Clause 68.3.1, in each case with immediate effect.

68.2 Independent Directors who cease to be independent must be removed

The appointment of any Independent Director must be terminated with immediate effect if at any time during his or her appointment any of the relationships or circumstances referred to in the Independence Criteria arises and if at a vote in a Board meeting, to be held as soon as reasonably practicable after such event occurs, the other Independent Directors do not determine unanimously that the relevant person is of independent character and judgement provided that the other Independent Directors shall not be entitled to form the judgement that any then current employee or officer of the Operator or of any Affiliate of the Officer is independent in character and judgement.

68.3 Operator has the right to request removal of an Independent Director who breaches FDP

68.3.1 The Operator may, acting reasonably, request that the Board removes an Independent Director if it considers that such person has committed or caused the FDP Implementation Company to commit a wilful breach of the Articles, the Shareholders' Agreement or this Agreement, together with such evidence as it considers supports such request. Subject to Clause 68.3.3, the Independent Director named in such request shall be suspended with immediate effect from the date of the Operator's request and shall remain suspended until either the Independent Director is removed or the matter is determined in favour of the Independent Director in accordance with Clause 68.3.2.

68.3.2 Unless Clause 68.3.3 applies, the FDP Implementation Company shall convene a Board meeting promptly after receipt of a request from the Operator to remove an Independent Director and shall consider the request. If a majority of the Independent Directors voting and present at the Board meeting agree with the Operator's request, then the appointment of the relevant Independent Director shall be terminated by the FDP Implementation Company with immediate effect. If the Independent Directors do not so agree, then the Operator may refer the matter for dispute resolution in accordance with the Dispute Resolution Procedure.

68.3.3 If there is an insufficient number of Independent Directors to convene a Board meeting in accordance with Clause 68.3.2, then the Operator shall refer the matter for dispute resolution in accordance with the Dispute Resolution Procedure and, despite being suspended under Clause 68.3.1, any Independent Director so suspended shall be authorised to do such acts as are necessary to facilitate the FDP Implementation Company's participation in the Dispute

Resolution Procedure. If this Clause 68.3.3 applies, then the FDP Implementation Company shall notify the FDP Company Administrator of the circumstances. The FDP Implementation Company shall use its reasonable endeavours to procure that in such circumstances the FDP Company Administrator is, insofar as it is able, obliged to undertake such acts as are necessary on behalf of the FDP Implementation Company in order to facilitate the compliance of the FDP Implementation Company with this Agreement including, if appropriate, appointing Independent Directors to the Board of the FDP Implementation Company on a temporary basis pending resolution of the matter in accordance with the Dispute Resolution Procedure.

69. ARTICLES MUST BE CONSISTENT WITH GOVERNANCE REQUIREMENTS

69.1 Obligation not to introduce inconsistent amendments

Neither the Operator nor the FDP Implementation Company shall knowingly take any step which would render the Articles and/or the Shareholders' Agreement in effect from time to time after the date of this Agreement inconsistent with the requirements of Clauses 66 (*FDP Implementation Company to be governed independently*) to 68 (*Removal of Independent Directors*).

69.2 Endeavours to ensure that non-compliance arising is remedied

If either the Operator or the FDP Implementation Company becomes aware that the Articles and/or the Shareholders' Agreement in effect from time to time after the date of this Agreement have become inconsistent with the requirements of Clauses 66 (*FDP Implementation Company to be governed independently*) to 68 (*Removal of Independent Directors*) (whether because of a change in Applicable Law or otherwise), each of the Parties shall use its reasonable endeavours to procure that the inconsistency in the Articles and/or the Shareholders' Agreement that has arisen is cured as soon as reasonably practicable (to the extent that it is within their respective powers to do so).

70. INDEPENDENT DIRECTOR SERVICE AGREEMENTS TO BE ON MANDATORY TERMS

The FDP Implementation Company shall enter into a Service Agreement with each Independent Director appointed to the FDP Implementation Company as at the date of this Agreement or who is appointed after the date of this Agreement which includes terms that:

70.1.1 provide that the total remuneration payable to the Independent Director from time to time is a fair, reasonable and proportionate sum taking into account the nature of the proposed appointment and any remuneration terms that apply to current Independent Directors and that may be accepted by other suitable candidates;

70.1.2 where the relevant Independent Director was appointed:

(A) before First Criticality, specify that the appointment of that person will terminate two (2) years after First Criticality (subject to extension for such fixed period as would allow the relevant Independent Director to participate in the next forthcoming Quinquennial Review);

(B) on or after First Criticality, specify that the person is appointed for a fixed term of seven (7) years (subject to extension for such fixed period as would allow the relevant Independent Director to participate in the next forthcoming Quinquennial Review);

70.1.3 provide a warranty from the relevant Independent Director to the FDP Implementation Company either that:

(A) the Notifiable Circumstances do not apply; or

(B) if any Notifiable Circumstance does apply, the person has given full particulars of it to the Board in order for the remaining Independent Directors to form a judgement of whether he or she is nonetheless independent in character and judgement;

- 70.1.4 give an undertaking from the relevant Independent Director to the FDP Implementation Company that the person will immediately inform the Board if any Notifiable Circumstances arise during his or her appointment;
- 70.1.5 give the FDP Implementation Company the right to terminate and/or suspend his or her appointment in the circumstances mentioned in Clause 68 (*Removal of Independent Directors*); and
- 70.1.6 give an undertaking from the relevant Independent Director to comply with the Articles and the Shareholders' Agreement in all respects, including (without limitation) all provisions in relation to conflicts of interest.

71. THE FDP BUDGET AND SERVICES AGREEMENT

71.1 FDP Budget and Services Agreement will set out appointments and independence criteria

The Operator and the FDP Implementation Company shall set out a process in the FDP Budget and Services Agreement to agree arms' length terms and independence criteria for the appointment of the FDP Company Administrator, any FDP Custodian, any Investment Execution Manager and the Verifiers and any other contracts reasonably necessary for the FDP Implementation Company to perform its functions in accordance with this Agreement.

71.2 Budgets for the FDP Implementation Company will be agreed or determined by an Expert

- 71.2.1 The Operator and the FDP Implementation Company shall enter into the FDP Budget and Services Agreement which must contain a process for agreement between the Operator and the FDP Implementation Company or determination by an independent expert of an annual budget, to be split into instalments of six (6) months in respect of the amounts that the FDP Implementation Company reasonably expects to charge in the relevant six (6) month period in relation to:
 - (A) the remuneration of the Independent Directors;
 - (B) the services provided to the Operator by the FDP Implementation Company (including the FDP Implementation Company's administration costs and expenses);
 - (C) the fees of the FDP Implementation Company's contractors and advisors;
 - (D) costs arising directly in relation to the execution of Investment Orders (including any transaction fees, brokerage fees, commissions or equivalent);
 - (E) Tax liabilities (if any);
 - (F) Miscellaneous Expenses;
 - (G) any applicable insurance costs; and
 - (H) an appropriate contingency amount reflecting the level of uncertainty in the expected costs referred to in paragraphs (A) to (F) above.
- 71.2.2 The Operator shall pay a fee to the FDP Implementation Company of the amount specified in the FDP Implementation Company Budget but less Excess Sums (to the extent agreed with the FDP Implementation Company), or the disputed amount determined to be payable by an independent expert in accordance with reasonable deadlines (to be agreed between the Operator and the FDP Implementation Company or as specified by an independent expert) after the same is agreed or determined under the FDP Budget and Services Agreement.

71.3 FDP Implementation Company may have recourse to the Fund Assets if the Operator fails to pay

71.3.1 If the Operator fails to make payment to the FDP Implementation Company of:

- (A) an agreed or determined fee which relates to the performance of this Agreement (but not any amount relating to the negotiation of any future funded decommissioning programme) when it becomes due and payable under the FDP Budget and Services Agreement, then the FDP Implementation Company may dispose of Fund Assets to the extent necessary in order to procure that the FDP Implementation Company has sufficient available cash to meet the agreed or determined budget amounts for the forthcoming three (3) months and for the subsequent three (3) months if the amount remains unpaid after the initial three (3) month period; or
- (B) an amount that has become due and payable under an indemnity in the FDP Budget and Services Agreement or the Shareholders' Agreement, then the FDP Implementation Company may dispose of Fund Assets to the extent necessary in order to procure that the FDP Implementation Company has sufficient available cash to meet the amount of the claim.

71.3.2 As soon as reasonably practicable after exercising its rights under Clause 71.3.1 (which, during a Standstill Period, shall not be until the end of such Standstill Period), the FDP Implementation Company shall use its reasonable endeavours to enforce the Operator's obligation under Clause 71.2.2 and/or the FDP Budget and Services Agreement and/or the Shareholders' Agreement (as applicable), and shall use any amount recovered to restore the Fund Assets to the level prior to such disposal.

71.4 Mandatory Budget and Services Agreement Terms not to be amended

The Operator and the FDP Implementation Company shall not amend or vary the Mandatory Budget and Services Agreement Terms without the prior written consent of the Secretary of State. Where the proposed amendment would not be consistent with any requirement of this Agreement, then the Operator shall also be required to seek a variation of the relevant provisions of this Agreement as an FDP Modification Event.

71.5 Obligation not to introduce inconsistent amendments

Neither the Operator nor the FDP Implementation Company shall knowingly take any step which would render the FDP Budget and Services Agreement in effect from time to time after the date of this Agreement inconsistent with the requirements of Clauses 70 (*Independent Director Service Agreements to be on Mandatory Terms*) and 71 (*The FDP Budget and Services Agreement*).

71.6 Endeavours to ensure that non-compliance arising is remedied

If either the Operator or the FDP Implementation Company becomes aware that the FDP Budget and Services Agreement in effect from time to time after the date of this Agreement has become inconsistent with the requirements of Clauses 70 (*Independent Director Service Agreements to be on Mandatory Terms*) and 71 (*The FDP Budget and Services Agreement*) (whether because of a change in Applicable Law or otherwise), each of the Parties shall use its reasonable endeavours to procure that the inconsistency in the FDP Budget and Services Agreement which has arisen is cured as soon as reasonably practicable (to the extent that it is within their respective powers to do so).

SECTION N: PERMITTED PAYMENTS**72. RETURN OF SURPLUS PAYMENT****72.1 Operator must create Available Cash for Return of Surplus Payments**

If a Return of Surplus Payment is due to the Operator in accordance with the Minimum Contribution Calculation Rules following an Annual Review or Quinquennial Review that is undertaken prior to the end of the First Decommissioning Period, then the Operator may issue Investment Orders to cause the FDP Implementation Company to have Available Cash in an amount that is at least equal to the amount of such Return of Surplus Payment.

72.2 FDP Implementation Company will make Return of Surplus Payment

The FDP Implementation Company shall pay the Return of Surplus Payment to the Operator on the Annual Contribution Date immediately following the Annual Review or Quinquennial Review in which the Return of Surplus Payment was calculated, except if Clause 72.3 (*Return of Surplus Payment if there is insufficient Available Cash*) applies.

72.3 Return of Surplus Payment if there is insufficient Available Cash

If, as at any Annual Contribution Date on which a Return of Surplus Payment would be payable to the Operator under Clause 72.2 (*FDP Implementation Company will make Return of Surplus Payment*), the FDP Implementation Company will not have Available Cash in an amount equal to that amount, then the FDP Implementation Company shall pay such lesser amount as the FDP Implementation Company has in Available Cash to the Operator and Clause 72.4 (*Further payment will be made if any Return of Surplus Payment is reduced due to lack of Available Cash*) shall apply.

72.4 Further payment will be made if any Return of Surplus Payment is reduced due to lack of Available Cash

If a Return of Surplus Payment was not paid in full on the Annual Contribution Date immediately following the Annual Review or Quinquennial Review in which such amount was calculated pursuant to Clause 72.3 (*Return of Surplus Payment if there is insufficient Available Cash*), the FDP Implementation Company shall make a further payment to the Operator of the difference between the Return of Surplus Payment that was calculated in accordance with the Minimum Contribution Calculation Rules and the amount paid to the Operator pursuant to Clause 72.3 (*Return of Surplus Payment if there is insufficient Available Cash*) as soon as reasonably practicable after the FDP Implementation Company has Available Cash equal to such difference.

72.5 Fund Payment Procedures apply

The Fund Payment Procedures apply in respect of each Return of Surplus Payment made by the FDP Implementation Company.

73. MISTAKEN PAYMENTS

If a Party receives an amount from the other Party that has been paid to it in error, it shall repay such amount as soon as reasonably practicable following a request from the Party who made the mistaken payment.

74. DETERMINED AMOUNTS**74.1 Amount payable on a binding determination**

If any amount is payable by a Party to the other Party in accordance with any determination that is binding on the Parties which is made under this Agreement or the Documents, the Party that owes the determined amount shall pay it to the other Party as soon as reasonably practicable following the date that the determination is made, except if Clause 74.2 (*Amount payable on a binding determination if there is insufficient Available Cash*) applies.

74.2 Amount payable on a binding determination if there is insufficient Available Cash

If, following a binding determination an amount is payable to the Operator under Clause 74.1 (*Amount payable on a binding determination*) and the FDP Implementation Company will not have Available Cash in an amount equal to that amount, then the FDP Implementation Company shall pay such lesser amount as the FDP Implementation Company has in Available Cash to the Operator and Clause 74.3 (*Further payment will be made if any amount payable on a binding determination is reduced due to lack of Available Cash*) shall apply.

74.3 Further payment will be made if any amount payable on a binding determination is reduced due to lack of Available Cash

If the amount payable was not paid in full following a binding determination pursuant to Clause 74.2 (*Amount payable on a binding determination if there is insufficient Available Cash*), the FDP Implementation Company shall make a further payment to the Operator of the difference between the amount payable pursuant to Clause 74.1 (*Amount payable on a binding determination*) and the amount paid to the Operator pursuant to Clause 74.2 (*Amount payable on a binding determination if there is insufficient Available Cash*) as soon as reasonably practicable after the FDP Implementation Company has Available Cash equal to such difference.

SECTION O: MODIFICATIONS**75. RELEVANT MODIFICATIONS**

The Parties acknowledge that the following modifications to the DWMP are "relevant modifications" for the purposes of Regulation 11(2) of the FDP Regulations:

- 75.1.1 any change in the cost estimates set out in the DWMP that arise from Indexation if a Verifier or an Independent Expert confirms that Indexation has been applied in accordance with this Agreement;
- 75.1.2 any change in the cost estimates set out in the DWMP, if a Verifier or an Independent Expert has confirmed that the Fund Assets Value as at the last day of the Previous Financial Period (as stated in the Annual Fund Asset Report) together with the Specified Security was at or above the Required Value;
- 75.1.3 any change to the steps in the DWMP and any associated decrease in the cost estimates in the DWMP in the Disbursements Period if it has been verified or determined by an Independent Technical Verifier or an Independent Expert that the Draft DWMP properly identifies the reduction in scope and associated costs resulting from the discharge of the relevant liabilities.

76. REQUIRED VALUE

The Parties acknowledge that the "required value" for the purposes of Regulation 12 of the FDP Regulations and for the purposes of Clause 75.1.2 (*Relevant Modifications*) is ninety percent (90%) of the Annual Milestone for the Current Financial Period (as calculated in accordance with Schedule 3 (*Minimum Calculation Contribution Rules*)).

77. CONSEQUENCES OF AN ALTERNATIVE WTC TRIGGER

If an Alternative WTC Trigger occurs, then the Operator will propose a modification to the FDP to address this as soon as reasonably practicable, in accordance with the Energy Act 2008.

SECTION P: WINDING-UP OF THE FDP IMPLEMENTATION COMPANY**78. WINDING-UP OF THE FDP IMPLEMENTATION COMPANY****78.1 Termination of this Agreement**

- 78.1.1 Neither Party shall be entitled to terminate this Agreement, for any reason whatsoever, except in accordance with this Clause 78.1.
- 78.1.2 The Parties shall cease to have any further obligations to each other under this Agreement, except for those under this Clause 78, Clause 1 (*Definitions and Interpretation*), and Clauses 80 (*Notices*) to 87 (*Miscellaneous*), on the earliest of:
- (A) subject to any FDP Direct Agreement which is in effect the Operator giving notice to the FDP Implementation Company and the Secretary of State prior to First Criticality stating that it has permanently abandoned its plans to develop Hinkley Point C; or
 - (B) the FDP Implementation Company having disbursed all of the Fund Assets in accordance with this Agreement; or
 - (C) the later of:
 - (1) the date that all of the Operator's liabilities under the SFTC have been discharged; or
 - (2) the date that the Site achieves the Site End State; or
 - (D) the Operator providing evidence that is satisfactory to the FDP Implementation Company, acting reasonably, that a replacement FDP has been approved by the Secretary of State in respect of the Site (and any FDP approved by the Secretary of State following a transfer of the rights and obligations of the Operator under this Agreement in accordance with the FDP Security Documents and any FDP Direct Agreement shall be deemed to be such an approved FDP); or
 - (E) except in the circumstances referred to in Clause 78.1.2(F), the Operator receiving a notice from the Secretary of State releasing it from its obligations under this Agreement in accordance with section 64(3) of the Energy Act 2008; or
 - (F) where all of the Operator's rights in relation to all of the Key Generation Assets are transferred to any other person, the date on which the Operator and its investors (where relevant) are released from their obligations under both:
 - (1) this Agreement, by the Secretary of State in accordance with section 64(3) of the Energy Act 2008 (or otherwise); and
 - (2) the Nuclear Site Licence, by the ONR (or otherwise).

78.2 Winding-up of the FDP Implementation Company

- 78.2.1 The Operator shall not petition to wind up the FDP Implementation Company other than in accordance with this Clause 78.2 (*Winding-up of the FDP Implementation Company*).
- 78.2.2 Where the FDP Implementation Company ceases to have any further obligations to the Operator under this Agreement pursuant to Clause 78.1 (other than where another FDP has been approved by the Secretary of State following a transfer of the rights and obligations of the Operator under this Agreement in accordance with the FDP Security Documents and any FDP Direct Agreement), the FDP Implementation Company and the Operator shall take all steps considered necessary or desirable (including undertaking any necessary corporate action) to:
- (A) make provision for the FDP Implementation Company's Winding-up Costs;

- (B) pay the residual assets of the FDP Implementation Company to the Operator; and
- (C) wind up the FDP Implementation Company.

78.2.3 The FDP Implementation Company and the Operator shall cooperate to wind up the FDP Implementation Company in the manner which is most financially efficient for the Group.

SECTION Q: MISCELLANEOUS**79. INFORMATION**

The Operator shall promptly supply the FDP Implementation Company with all information and documents reasonably requested by the FDP Implementation Company in order for the FDP Implementation Company to perform its functions in accordance with this Agreement or in order for the FDP Implementation Company to procure that the FDP Company Administrator, an FDP Custodian, any Investment Execution Manager, the Independent Technical Verifier and Independent Financial Verifier perform their respective functions.

80. NOTICES**80.1 Delivery of notices**

A notice (including any approval, consent or other communication) given by one Party to the other Party in connection with this Agreement (or by either Party to the Secretary of State where required under this Agreement):

80.1.1 must be in writing in the English language;

80.1.2 must be served by one of the following methods:

(A) hand delivery to the address of the addressee; and/or

(B) first or second class post to the address of the addressee (or airmail if posted to or from a place outside the United Kingdom); and/or

(C) any alternative method agreed in writing between the Parties from time to time; and

80.1.3 must be given in accordance with the notice delivery details specified by the other Party from time to time in accordance with this Clause 80 (*Notices*) or by the Secretary of State (if applicable).

80.2 Initial notice delivery details

The relevant details of each Party and the Secretary of State at the date of this Agreement are:

FDP Implementation Company

Address: c/o BDO LLP, 55 Baker Street, London W1U 7EU

Attention: The Chairman

The Operator

Address: 40 Grosvenor Place, London, SW1X 7EN

Attention: Chief Executive

The Secretary of State

Address: Department of Energy & Climate Change, 3 Whitehall Place, London, SW1A 2AW

Attention: Permanent Secretary

80.3 Updated notice delivery details may be given at any time

Either Party may notify alternative notice delivery details to the other Party in accordance with Clause 80.1 (*Delivery of notices*) if, at any time, the notice delivery details specified in this Agreement or most recently notified to the other Party in accordance with this Clause 80.3 are no longer appropriate for the service of notice to such Party.

80.4 Receipt of notices

80.4.1 In the absence of evidence of earlier receipt, any notice shall take effect from the time that it is deemed to be received in accordance with Clause 80.4.2.

80.4.2 Subject to Clause 80.4.3, a notice is deemed to be received:

- (A) in the case of a notice delivered by hand to the address of the addressee, upon delivery at that address;
- (B) in the case of a posted letter within the United Kingdom, by first class post, twenty-four (24) hours after posting or in the case of second class post within the United Kingdom or airmail, if posted to or from a place outside the United Kingdom, forty-eight (48) hours after posting; or
- (C) in respect of any other agreed method of notice, at the time agreed between the Parties.

80.4.3 A notice that would otherwise be deemed in accordance with Clause 80.4.2 above to be received either on a day which is not a Business Day or after 5 p.m. on any Business Day according to local time in the place of receipt, shall be deemed to be received on the next following Business Day.

81. CONFIDENTIALITY AND ANNOUNCEMENTS**81.1 Applicable Law**

This Clause 81 is subject to any requirements under the Nuclear Industries Security Regulations 2003 and the Anti-terrorism, Crime and Security Act 2001 and any other Applicable Laws (recognised in the United Kingdom) such that any sensitive nuclear information shared with third parties is adequately protected in terms of the confidentiality, integrity and availability of the information.

81.2 Disclosure of this Agreement

The Parties agree that the provisions of this Agreement shall, subject to Clause 81.3 (*Commercially Sensitive Information*), not be treated as Confidential Information and may be disclosed without restriction.

Explanatory note: This Clause only covers disclosure of information set out directly in the FAP and does not relate to any related documents. There are some documents referred to in this Agreement that will not be disclosed to the public – notably the DDWMP which contains nuclear sensitive information. It is the Operator's intention to publish Annual Reports and Quinquennial Reports, and in accordance with the FDP Guidance, any Commercially Sensitive Information in these reports will be redacted prior to publication.

81.3 Commercially Sensitive Information

To the extent that any provisions of this Agreement are varied after the date of the approval of the FDP the Operator may, acting reasonably, designate that Clause 81.2 (*Disclosure of this Agreement*) shall not apply to such provisions of this Agreement if it designates them as Commercially Sensitive Information which shall, subject to Clause 81.4 (*Maintaining confidentiality*), be kept and treated as confidential. If the FDP Implementation Company disputes the Operator's designation of any Commercially Sensitive Information, such challenge shall be a Dispute and the FDP Implementation Company shall be entitled to refer the dispute for resolution in accordance with the Dispute Resolution Procedure.

81.4 Maintaining confidentiality

Each Party shall:

81.4.1 not disclose any Confidential Information to any person other than any of its officers, officials, employees or agents to the extent required to enable such Party to carry out its obligations under this Agreement; and

81.4.2 use all reasonable endeavours to ensure that any person to whom any such Confidential Information is disclosed by it complies with the restrictions contained in this Clause 81 (*Confidentiality and announcements*) as if such person were a party to this Agreement.

81.5 **Permitted disclosures**

Clause 81.3 (*Commercially Sensitive Information*) and 81.4 (*Maintaining confidentiality*) shall not apply to:

- 81.5.1 any disclosure of information to the Secretary of State in connection with any matter relating to this Agreement;
- 81.5.2 any disclosure of information to a Third Party that is reasonably required to be made by either Party for the performance of its obligations under this Agreement;
- 81.5.3 any disclosure of information by the Operator or (if relevant) a Security Trustee to any actual or prospective lender, credit provider or guarantor of the Operator (or any of its Affiliates), any agent or trustee on behalf of such lender credit provider or guarantor and each of their respective advisers provided that such person is under a duty of confidentiality to the Operator or (if relevant) a Security Trustee (as applicable);
- 81.5.4 any matter which a Party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this Clause 81;
- 81.5.5 any disclosure to enable a determination to be made under the Dispute Resolution Procedure, the Independent Expert Referral Procedure, the Independent Investment Expert Referral Procedure and/or the Annual Work Plan and Budget Independent Expert Referral Procedure;
- 81.5.6 any disclosure that is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the Party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or, if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;
- 81.5.7 any disclosure of information that is already lawfully in the possession of the receiving party, before its disclosure by the disclosing party;
- 81.5.8 any provision of information to the Parties' own professional advisers or insurance advisers or, on placing or renewing any insurance policies, to a Party's insurer or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to a Party to enable it to carry out its obligations under this Agreement, to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal; and
- 81.5.9 any disclosure of information to the Verifiers in accordance with this Agreement.

81.6 **Third party compliance**

Where disclosure is permitted under Clause 81.5 (*Permitted Disclosures*), other than Clauses 81.5.3, 81.5.6, 81.5.7 and 81.5.8 thereof, the Party providing the information shall procure that the recipient of the information is subject to the same obligation of confidentiality as that contained in this Agreement.

81.7 **Miscellaneous**

The Operator acknowledges that the National Audit Office and the Secretary of State have the right to publish details of this Agreement (including Commercially Sensitive Information).

81.8 **Announcements**

Neither Party shall release any announcement or despatch any announcement or circular, relating to this Agreement unless the form and content of such announcement or circular have been submitted to, and agreed by, the other Party and the Secretary of State. Nothing in this Clause 81.8 shall prohibit either Party from making any announcement or despatching any circular as required by law or the rules of any listing authority, stock exchange or any other regulatory body in which case, the announcement shall only be released or the circular despatched after consultation with the other Party and the Secretary of State and after taking into account the reasonable requirements of the other Party and the Secretary of State as to the content of such announcement or circular.

81.9 **Freedom of Information Act**

The FDP Implementation Company shall notify and consult the Operator as soon as reasonably practicable if it receives notification from the UK Government that it has received a request to disclose any Confidential Information pursuant to the Freedom of Information Act 2000 or Environmental Information Regulations and will make any reasonable representations to the UK Government that the Operator requests.

82. **CONVERSION TO ALTERNATIVE CURRENCY**

82.1 **Adoption of Alternative Currency**

With effect from the date (if any) that the United Kingdom adopts an alternative currency to sterling (the "**Alternative Currency**") as its lawful currency (the "**Alternative Currency Effective Date**"):

- 82.1.1 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;
- 82.1.2 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 United Kingdom as its lawful currency shall be made in sterling; and
- 82.1.3 on the Alternative Currency Effective Date, all amounts stated in sterling shall be converted into 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.

82.2 **Currency conversions**

Any conversions from sterling to the Alternative Currency that is made by either Party pursuant to Clause 82.1 (*Adoption of Alternative Currency*) shall be at the relevant conversion rate provided for by English law for the purposes of adopting the Alternative Currency.

83. **RPI**

83.1 **Withdrawal of index**

- 83.1.1 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 an Independent Investment Expert 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,

(each, an "**RPI Index Change Event**"), 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**".

83.1.2 On an RPI Index Change Event, the Parties shall seek to agree how payments will be adjusted under this Agreement or how the calculation of yields, discount rates and any other affected calculations will be undertaken to take into account the RPI Index Change Event (the "**Specified Adjustments**") and the necessary payments and repayments shall be made between the Parties together with interest at the Nominal Short Term Discount Rate for the Financial Period during which the original payment fell due (which shall be apportioned appropriately to give a daily rate).

83.2 Reference Date Change

If the reference date used in the compilation of any such RPI 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.

83.3 Reference to the Independent Expert Referral Procedure on RPI

83.3.1 If any dispute or difference shall arise between the Parties under or in respect of Clause 83 (*RPI*) (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 83.1 having been notified by a Party to the other Party), either Party may refer the matter for determination in accordance with the Independent Expert Referral Procedure.

83.3.2 If so determined pursuant to the Independent Investment Expert Referral Procedure, the Replacement Inflation Index, payments and repayments and the Specified Adjustments shall be deemed to be those provided in the determination. In default of agreement between the Parties, the Independent Expert shall have the power to produce a report detailing how such matters shall apply as between the Parties in operation of this Agreement and the Parties shall act in accordance with such report.

84. INDEX CHANGE EVENT

84.1 Withdrawal of Reference Index

84.1.1 If after the date of this Agreement any Reference Index is unavailable or is discontinued (whether permanently or temporarily) (each an "**Index Change Event**"), then such alternative index, publication, information or specified securities which produces as nearly as possible the same economic result or gives the same economic information shall be deemed to be the "**Replacement Index**".

84.1.2 On an Index Change Event, the Parties shall seek to agree how the Investment Rules and any other affected provisions or definitions under this Agreement will be interpreted in order to take into account the Index Change Event (the "**Specified Index Change Adjustments**").

84.2 Reference to the Independent Expert Referral Procedure of a Reference Index

84.2.1 If any dispute or difference shall arise between the Parties under or in respect of this Clause 84 (*Index Change Event*) or if the Parties fail to agree a replacement Reference Index (and a dispute shall be deemed to have arisen if the Parties have not reached agreement within twenty (20) Business Days of the occurrence of the Index Change Event) then the matter shall be referred, at the request of either Party, to an Independent Investment Expert for determination in accordance with the Independent Investment Expert Referral Procedure and the

Parties shall instruct the Independent Investment Expert to make a binding determination for the Reference Index no later than forty (40) Business Days after it is instructed.

- 84.2.2 If so determined pursuant to the Independent Investment Expert Referral Procedure, the Replacement Index, specified securities and the Specified Index Change Adjustments shall be deemed to be those provided in the determination. In default of agreement between the Parties, the Independent Investment Expert shall have the power to produce a report detailing how such matters shall apply as between the Parties in operation of this Agreement and the Parties shall act in accordance with such report.

85. CREDIT RATING CHANGE EVENT

85.1 Withdrawal of Credit Rating Criteria

- 85.1.1 If after the date of this Agreement either (i) any credit rating specified in this Agreement changes in name or description or ceases to be published; or (ii) any specified credit rating agency ceases to exist (each a "**Credit Rating Change Event**"), then such alternative index, publication, information, criteria or specified person or agency which produces as nearly as possible the same economic result or gives the same economic information shall be deemed to be the "**Replacement Credit Rating Criteria**".

- 85.1.2 On a Credit Rating Change Event, the Investment Rules and any other affected provisions or definitions under this Agreement will be interpreted in order to take into account the Credit Rating Change Event (the "**Specified Credit Rating Criteria Adjustments**").

85.2 Reference to the Independent Expert Referral Procedure of Credit Rating Criteria

- 85.2.1 If any dispute or difference shall arise between the Parties under or in respect of this Clause 85 (*Credit Rating Change Event*) or if the Parties fail to agree a Replacement Credit Rating Criteria (and a dispute shall be deemed to have arisen if the Parties have not reached agreement within twenty (20) Business Days of the occurrence of the Credit Rating Change Event); then the matter shall be referred, at the request of either Party, to an Independent Investment Expert for determination in accordance with the Independent Investment Expert Referral Procedure and the Parties shall instruct the Independent Investment Expert to make a binding determination for the Reference Index no later than forty (40) Business Days after it is instructed.

- 85.2.2 If so determined pursuant to the Independent Investment Expert Referral Procedure, the Replacement Credit Rating Criteria and the Specified Credit Rating Criteria Adjustments shall be deemed to be those provided in the determination. In default of agreement between the Parties, the Independent Investment Expert shall have the power to produce a report detailing how such matters shall apply as between the Parties in operation of this Agreement and the Parties shall act in accordance with such report.

86. INTEREST TO RUN ON DEFAULT

If the Operator fails to pay any amount due and payable by it under this Agreement or under any judgment in connection with this Agreement, the Operator shall, in addition to such amount, be liable to pay to the FDP Implementation Company, interest (which shall accrue from day to day) on such overdue amount from the due date until the date of actual payment, after as well as before judgment, at the Nominal Short Term Discount Rate for the Financial Period during which the amount becomes due (which shall be apportioned appropriately to give a daily rate) or, if the Nominal Short Term Discount Rate is negative, then zero (0).

87. MISCELLANEOUS

87.1 Assignment

Neither Party may Deal with the benefit of this Agreement or its performance under this Agreement, except (i) in accordance with any FDP Direct Agreement which is entered into; and (ii) that the Operator may, pursuant to the FDP Security Documents, assign or charge its rights under this Agreement by way of security (including to a Security Trustee where relevant). Any purported Dealing in contravention of this Clause 87.1 shall be ineffective.

87.2 No partnership

Nothing in this Agreement or in any document referred to in it or any arrangement contemplated by it shall constitute any of the Parties a partner of any other nor shall the execution, completion and implementation of this Agreement confer on any Party any power to bind or impose any obligations to any Third Parties on any other Party or to pledge the credit of any other Party.

87.3 Third party rights

No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement other than:

87.3.1 the Secretary of State: (i) under Clause 32 (*Entitlement to take Security Trigger Event Action*); or (ii) if the Operator or the FDP Implementation Company (as the case may be) has not taken or is not taking steps to enforce the relevant obligation after the expiry of the Remedy Period; and

87.3.2 in relation to Clause 51.1 (*Material breach shall be notified to the Secretary of State*), Clause 81.5.3 (*Permitted disclosures*) and paragraph 4 (*Designated Operator DTM Control Account*) of Section 2 (*Fund Payment Procedures*) of Schedule 4 (*Payment Procedures*), a Security Trustee (if relevant),

in each case if the relevant obligation has not been waived by the other Party.

87.4 Entire Agreement

87.4.1 Each of the Parties to this Agreement 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. The Parties acknowledge that this Agreement is intended to be read with any report issued under Clauses 83 (*RPI*) to 84.2.2 (*Reference to the Independent Expert Referral Procedure of a Reference Index*), the DWMP, the Section 46 Agreement, the Deed of Undertaking, the SF Transfer Contract, the ILW Transfer Contract, any FDP Direct Agreement which is entered into from time to time, the FDP Security Documents, the Shareholders' Agreement, the FDP Budget and Services Agreement and the Articles (but agree that those documents, other than the DWMP, are not incorporated as part of the FDP).

87.4.2 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 prior to, and/or in, this Agreement).

87.5 Counterparts

This Agreement may be executed in any number of counterparts and by the Parties on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

87.6 No waiver

The rights and remedies of the Parties shall not be affected by any failure to exercise or delay in exercising any right or remedy or by the giving of any indulgence by any other Party or by anything whatsoever except a specific waiver or release in writing and any such waiver or release shall not prejudice or affect any other rights or remedies of the Parties. No single or partial exercise of any right or remedy shall prevent any further or other exercise of it or the exercise of any other right or remedy. The FDP Implementation Company shall not waive a breach by the Operator without the prior written consent of the Secretary of State unless the breach is, in the FDP Implementation Company's opinion (acting reasonably), minor, administrative or procedural (provided that the outcome of the procedure, other than as to timing, is not impacted by the breach).

87.7 Governing Law and Jurisdiction

87.7.1 This Agreement shall be governed by and construed in accordance with English law.

87.7.2 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter, existence, negotiation, validity, termination or enforceability (including non-contractual disputes or claims), shall be finally governed by Schedule 20 (*Claims, Disputes and Arbitration*), except as otherwise specified in this Agreement as being subject to Schedule 19 (*Independent Expert Referral Procedure*), Schedule 19A (*Independent Investment Expert Referral Procedure*), Schedule 19B (*Annual Work Plan and Budget Independent Expert Referral Procedure*) or Schedule 19C (*Valuation Procedure*).

IN WITNESS of which this document has been duly executed and delivered as a deed on the date first stated at the beginning of this deed.

**EXECUTED as a DEED by NNB
GENERATION COMPANY (HPC) LIMITED**

acting by

.....
(Name of authorised director)

.....
(Signature of authorised director)
Director

in the presence of

Witness's signature:

Name:

Address:
.....

**EXECUTED as a DEED by THE NUCLEAR
DECOMMISSIONING FUND COMPANY
LIMITED**

acting by

.....
(Name of authorised director)

.....
(Signature of authorised director)
Director

in the presence of

Witness's signature:

.....

Name:

.....

Address:

.....

.....

.....

SCHEDULE 1**WARRANTIES****1. FDP IMPLEMENTATION COMPANY WARRANTIES****1.1 Status**

The FDP Implementation Company is duly incorporated and validly existing under the laws of England and Wales as a private limited company.

1.2 Binding Obligations

This Agreement constitutes valid, legal, binding and enforceable obligations of the FDP Implementation Company, subject to the approval of the Secretary of State where necessary under the Energy Act 2008.

1.3 Power and Authority

1.3.1 The FDP Implementation Company has the corporate power and legal capacity to enter into and perform its obligations under this Agreement in accordance with the terms as at the date of this Agreement, subject to the approval of the Secretary of State where necessary under the Energy Act 2008.

1.3.2 The FDP Implementation Company has taken all necessary corporate actions required to authorise the execution, performance and delivery of this Agreement.

1.4 Insolvency

1.4.1 So far as the FDP Implementation Company is aware, after having made reasonable enquiries, no FDP Implementation Company Insolvency Event has occurred or is pending or threatened.

1.4.2 For the purposes of the Insolvency Regulation, the FDP Implementation Company's centre of main interest is situated in England and Wales and the FDP Implementation Company has no establishment in any other jurisdiction.

2. OPERATOR WARRANTIES**2.1 Status**

2.1.1 The Operator is duly incorporated and validly existing under the laws of England and Wales as a private limited company.

2.1.2 The Operator has the corporate power to own its assets and carry on its business as it is being conducted at the date of this Agreement and as contemplated by this Agreement.

2.2 Binding Obligations

This Agreement constitutes legal, valid, binding and enforceable obligations of the Operator, subject to the approval of the Secretary of State where necessary under the Energy Act 2008.

2.3 Power and Authority

2.3.1 The Operator has the corporate power and legal capacity to enter into and perform its obligations under this Agreement in accordance with the terms as at the date of this Agreement, subject to the approval of the Secretary of State where necessary under the Energy Act 2008.

2.3.2 The Operator has taken all necessary corporate actions required to authorise the execution, performance and delivery of this Agreement.

2.4 No conflict with other obligations

So far as the Operator is aware, after having made reasonable enquiries of the board of the Operator, and subject to the approval of the Secretary of State where necessary, the entry into and performance of this Agreement, and the transactions contemplated by this Agreement, by the Operator shall not:

- 2.4.1 result in a breach of Applicable Law, which breach would have a Material and Adverse Effect;
- 2.4.2 result in a breach of any court order or judgment applicable to the Operator;
- 2.4.3 result in a breach, or constitute a default or termination event, under any agreement or instrument to which the Operator is a party or by which it is bound, which breach or default would have a Material and Adverse Effect; or
- 2.4.4 conflict with or result in a breach of the Operator's memorandum or articles of association.

2.5 Insolvency

- 2.5.1 So far as the Operator is aware, after having made reasonable enquiries, no Operator Insolvency Event has occurred or is pending or threatened.
- 2.5.2 For the purposes of the Insolvency Regulation, the Operator's centre of main interest is situated in England and Wales and the Operator has no establishment in any other jurisdiction.

2.6 No breach

So far as the Operator is aware, after having made reasonable enquiries of the board of the Operator, there is no event or circumstance outstanding which constitutes (or, with the expiry of a grace period, the giving of notice, the making of any determination or any combination of any of the foregoing, would constitute) a default event or termination event (however described) under any agreement or instrument to which the Operator is a party or by which it is bound and which has or is reasonably likely to have a Material and Adverse Effect.

SCHEDULE 2
FUNDING PATHS

SECTION 1: Primary Funding Path

For Financial Periods before the Primary Funding Path comes into effect, the Primary Funding Path Percentage will be 0%. During the Primary Funding Period, the following shall apply:

FINANCIAL PERIOD (ending after First Criticality)	PRIMARY FUNDING PATH PERCENTAGE (as at the last day of the Financial Period)
1st	0.62%
2nd	1.30%
3rd	2.02%
4th	2.81%
5th	3.66%
6th	4.58%
7th	5.57%
8th	6.63%
9th	7.77%
10th	9.00%
11th	10.31%
12th	11.72%
13th	13.24%
14th	14.85%
15th	16.58%
16th	18.43%
17th	20.40%
18th	22.51%
19th	24.76%
20th	27.16%
21st	29.71%
22nd	32.43%
23rd	35.33%
24th	38.41%
25th	41.70%

FINANCIAL PERIOD (ending after First Criticality)	PRIMARY FUNDING PATH PERCENTAGE (as at the last day of the Financial Period)
26th	45.18%
27th	48.89%
28th	52.83%
29th	57.02%
30th	61.46%
31st	66.18%
32nd	71.18%
33rd	76.48%
34th	82.11%
35th	88.08%
36th	94.06%
37th	100.00%

SECTION 2: Secondary Funding Path

The Secondary Funding Path Percentages (as at the last day of the Financial Period) shall be, in respect of each Financial Period during the Secondary Funding Period, the amount (expressed as a percentage) which is equal to:

- (A) the number of Financial Year Ends between the start of the Secondary Funding Period and the Financial Year End of the Financial Period for which the calculation is being performed; divided by
- (B) the number of Financial Year Ends occurring between the start of the Secondary Funding Period and the FYE End of Generation.

This can be expressed by the formula:

$$SFPP_n = \frac{P_n}{T}$$

Where:

n = Financial Period 'n', the year for which a Secondary Funding Path Percentage is being calculated;

SFPP = the Secondary Funding Path Percentage;

P = the number of Financial Year Ends between the start of the Secondary Funding Period and the Financial Year of n ; and

T = the number of Financial Year Ends occurring between the start of the Secondary Funding Period and the FYE End of Generation.

SECTION 3: Correction Adjustment Percentages

During the Primary Funding Period the following shall apply:

FINANCIAL PERIOD (ending after First Criticality)	CORRECTION ADJUSTMENT PERCENTAGE (as at the last day of the Financial Period)
1 to 32	10%
33	11.1%
34	12.5%
35	14.3%
36	16.7%
37	20%

During the Secondary Funding Period, the Correction Adjustment Percentage (as at the last day of the Financial Period) shall be:

- (A) in respect of each Financial Period with a Financial Year End occurring four (4) or more years prior to FYE End of Generation, twenty percent (20%);
- (B) in respect of the Financial Periods with a Financial Year End occurring three (3), two (2) and one (1) year prior to FYE End of Generation, twenty-five percent (25%), thirty-three percent (33%) and fifty percent (50%) respectively; and
- (C) in respect of the Financial Period ending on FYE End of Generation, one hundred percent (100%).

The Correction Adjustment Percentage (as at the last day of the Financial Period) for the First Decommissioning Period shall be zero percent (0%).

The Correction Adjustment Percentage (as at the last day of the Financial Period) for the Second Decommissioning Period shall be one hundred percent (100%).

SCHEDULE 3

MINIMUM CONTRIBUTION CALCULATION RULES

Explanatory note: The base case is that Annual Contributions should be sized so that the Annual Milestones will be achieved in each Financial Period even if the annual growth in the value of the Fund Assets from the previous Annual Milestone (including the Annual Contribution for the Current Financial Period) is only at the Short Term Discount Rate. If any Deficit or Surplus arises; then it will be corrected over a ten (10) year correction period at the start of the Primary Funding Period, reducing progressively to five (5) years following Year 32 and then reducing progressively to one (1) year before the Decommissioning Start Date.

SECTION 1: Calculation of the Next Annual Contribution

2.7 Minimum Contribution Calculation

Unless paragraph 2.8 (*Return of Surplus Calculation*) applies, the Annual Contribution that will be due from the Operator on the following Annual Contribution Date shall be:

- 2.7.1 the Base Case Contribution for the Annual Contribution Date occurring in the Next Financial Period (calculated in accordance with Section 2); and
- 2.7.2 plus (if there is a Deficit) and minus (if there is a Surplus) the Correction Contribution for the Annual Contribution Date occurring in the Next Financial Period (calculated in accordance with Section 3).

2.8 Return of Surplus Calculation

If the calculation performed in accordance with paragraph 2.7 (*Minimum Contribution Calculation*) results in a negative number:

- 2.8.1 the Annual Contribution that will be due from the Operator to the FDP Implementation Company on the next Annual Contribution Date shall be zero (0); and
- 2.8.2 the Return of Surplus Payment that will be due from the FDP Implementation Company to the Operator on the next Annual Contribution Date shall be the amount by which the Correction Contribution exceeds the Base Case Contribution for that Financial Period.

This can be expressed by the formula:

$$RSP_{n+1} = (CC_{n+1} - BCC_{n+1})$$

Where:

RSP means the amount of the Return of Surplus Payment;

CC means the Correction Contribution;

BCC means the Base Case Contribution; and

n means the Current Financial Period.

SECTION 2: Calculation of Base Case Contributions

Explanatory note: The base case is that Annual Contributions should be sized so that the Annual Milestones will be achieved in each Financial Period even if the annual growth in the value of the Fund Assets from the previous Annual Milestone (including the Annual Contribution for the Current Financial Period) is only at the Short Term Discount Rate.

The Annual Milestones are calculated as at the last day of each Annual Review and Quinquennial Review based on money values at the end of the Previous Financial Period. Because Annual Milestones are calculated by reference to decommissioning costs expressed in money values as at the end of the Previous Financial Period, and Base Case Contributions are calculated as at the start of the Next Financial Period (i.e. a period apart which will usually but not always be one (1) year), one (1) period of inflation must also be taken into account so that the Base Case Contributions are calculated and paid on the basis of the money values at the start of the Next Financial Period.

2.9 Base Case Contribution Calculation

For the first Annual Contribution Date and each subsequent Annual Contribution Date that occurs during the Primary Funding Period and the Secondary Funding Period, the Base Case Contribution for the Annual Contribution Date occurring in the Next Financial Period shall be calculated during and as part of (and therefore using the updated Annual Milestones calculated during and as part of) the Annual Review or Quinquennial Review (as appropriate) in each Current Financial Period, or, in respect of the first and second Annual Contributions, during and as part of the process referred to in Clause 4.1 (*First Contribution Notice will be produced before First Criticality*), as follows:

- 2.9.1 the Annual Milestone for the Next Financial Period shall be divided by one (1) plus the Short Term Discount Rate for the Next Financial Period (expressed as a decimal); then
- 2.9.2 the Annual Milestone for the Current Financial Period shall be subtracted from the amount calculated in accordance with paragraph 2.9.1; then
- 2.9.3 the amount calculated in accordance with paragraph 2.9.2 shall be multiplied by one (1) plus the Projected Inflation Rate (expressed as a decimal).

This can be expressed by the formula:

$$BCC_{n+1} = (AM_{n+1} / (1+g) - AM_n) * (1+r_n)$$

Where:

BCC means the Base Case Contribution calculated in accordance with this Section 2;

AM means the Annual Milestone calculated in accordance with Section 4 during and as part of the Annual Review or Quinquennial Review (as appropriate) in "n" or, in respect of the first and second Annual Contributions, during and as part of the process referred to in Clause 4.1;

g means the Short Term Discount Rate set out in the verified or determined Gilt Yield Notification;

n means the Current Financial Period; and

r means the Projected Inflation Rate.

2.10 Base Case Contributions for the First Decommissioning Period and the Second Decommissioning Period

The Base Case Contribution for each Annual Contribution Date that occurs in both the First Decommissioning Period and the Second Decommissioning Period will be zero (0).

Explanatory note: It is intended that the fund is aligned to the End of Generation Target based on the Fund Assets Value as at FYE End of Generation. As the Correction

Contribution for any year is based on the actual Fund Assets Value as compared with the Annual Milestone two (2) years prior to the carrying out of such Correction Contribution, a final Correction Contribution is required on the first day of the Second Decommissioning Period. This will reflect any difference between the actual Fund Assets Value as at FYE End of Generation and the End of Generation Target. To ensure that neither a surplus nor a deficit is corrected in the First Decommissioning Period (that may then need to be unwound in the Second Decommissioning Period) the Correction Adjustment Percentage for the First Decommissioning Period is set at zero (0).

SECTION 3: Calculation of the Correction Contribution

Explanatory note: The basic position is that if a deficit or surplus arises then it will be corrected over a ten (10) year correction period at the start of the Primary Funding Period, reducing progressively to five (5) years during the Final Primary Funding Periods and then reducing progressively to one (1) year before the Decommissioning Start Date.

The Total Correction Amount is calculated based on the position of the fund as at the last day of the Previous Financial Period. One period of inflation is taken into account in the underlying formula so that the Correction Contribution is calculated and paid on the basis of money values at the start of the Next Financial Period.

2.11 Correction Contribution Calculation for the Primary Funding Period and the Secondary Funding Period

2.11.1 During the Primary Funding Period and the Secondary Funding Period, the Correction Contribution for the Annual Contribution Date occurring in the Next Financial Period shall be:

- (A) an amount equal to the Provisional Correction Amount calculated in accordance with paragraph 2.7.2; or
- (B) if paragraph 2.12 (*Contribution Ratchet*) applies, the amount calculated in accordance with paragraph 2.8.2.

2.11.2 The Provisional Correction Amount shall be calculated by multiplying the Total Correction Amount by the Correction Adjustment Percentage for the Next Financial Period.

This can be expressed by the formula:

$$PCA_{n+1} = TCA_{n+1} * \text{Correction Adjustment Percentage}_{n+1}$$

Where:

PCA means the Provisional Correction Amount;

TCA means the Total Correction Amount calculated in accordance with Section 4;

n means the Current Financial Period; and

Correction Adjustment Percentage means the percentage for the corresponding Financial Period as set out in Section 3 (*Correction Adjustment Percentages*) of Schedule 2 (*Funding Paths*).

2.12 Contribution Ratchet

2.12.1 This paragraph 2.12 (*Contribution Ratchet*) applies if:

- (A) the Fund Assets Value as at the last day of the Previous Financial Period (as set out in the most recent Annual Fund Assets Report) was less than the Annual Milestone for the Previous Financial Period; and
- (B) at the most recent Annual Contribution Date, a Correction Contribution was added to the Base Case Contributions as a result of a Deficit; and
- (C) the amount calculated in accordance with paragraph 2.11 (*Correction Contribution Calculation for the Primary Funding Period and the Secondary Funding Period*) is less than the Correction Contribution added to the Base Case Contributions in paragraph 2.12.1(B) above multiplied by one (1) plus the Projected Inflation Rate.

2.12.2 Where this paragraph 2.12 (*Contribution Ratchet*) applies, the Correction Contribution for the following Annual Contribution Date shall be either:

- (A) the Correction Contribution paid on the most recent Annual Contribution Date multiplied by one (1) plus the Projected Inflation Rate (expressed as a decimal); or
- (B) if the amount calculated under 2.12.2(A) is more than the Total Correction Amount for the Next Financial Period as calculated in accordance with Section 4, then the Total Correction Amount for the Next Financial Period.

This can be expressed by the formula:

$$CC_{n+1} = \text{the lesser of } CC_n * (1+r_n) \text{ or } TCA_{n+1}$$

Where:

CC means the Correction Contribution;

TCA means the Total Correction Amount calculated in accordance with Section 4;

n means the Current Financial Period;

Correction Adjustment Percentage means the percentage for the corresponding Financial Period as set out in Section 3 (*Correction Adjustment Percentages*) of Schedule 2 (*Funding Paths*); and

r means the Projected Inflation Rate.

SECTION 4: Formulae Sheet**1. ANNUAL MILESTONE FORMULAE****1.1 Primary Funding Period Annual Milestones**

If a Financial Period for which a calculation is being performed has a Financial Year End on or before the end of the Primary Funding Period, the Annual Milestone for the last day of that Financial Period is calculated by multiplying the Year 37 Target by the Primary Funding Path Percentage for that Financial Period.

This can be expressed by the formula:

$$AM_x = \text{Year 37 Target} * \text{Primary Funding Path Percentage}_x$$

Where:

AM means the Annual Milestone;

x means the Financial Period in respect of which the Annual Milestone is being calculated; and

Primary Funding Path Percentage means the percentage for the corresponding Financial Period as set out in Section 1 (*Primary Funding Path*) of Schedule 2 (*Funding Paths*).

1.2 Secondary Funding Period Annual Milestones

If a Financial Period for which a calculation is being performed has a Financial Year End after the end of the Primary Funding Period but on or before FYE End of Generation, the Annual Milestone for that Financial Period is calculated as follows:

1.2.1 the Year 37 Target; plus

1.2.2 the Total Secondary Funding Amount multiplied by the Secondary Funding Path Percentage for that Financial Period.

This can be expressed by the formula:

$$AM_x = \text{Year 37 Target} + (\text{TSFA} * \text{Secondary Funding Path Percentage}_x)$$

Where:

AM means the Annual Milestone;

TSFA means the Total Secondary Funding Amount;

x means the Financial Period in respect of which the Annual Milestone is being calculated; and

Secondary Funding Path Percentage means the Secondary Funding Path Percentage for the corresponding Financial Period as set out in Section 2 (*Secondary Funding Path*) of Schedule 2 (*Funding Paths*).

1.3 Total Secondary Funding Amount

The Total Secondary Funding Amount is calculated by subtracting the Year 37 Target from the End of Generation Target.

This can be expressed by the formula:

$$\text{TSFA} = \text{EOGT} - \text{EFPT}$$

Where:

EFPT means the Year 37 Target;

EOGT means the End of Generation Target; and

TSFA means the Total Secondary Funding Amount.

Explanatory note: The values used in this formula are calculated in paragraphs 4 to 7 below.

2. TOTAL CORRECTION AMOUNT FORMULAE

The Total Correction Amount for the Next Financial Period is calculated by either:

- 2.1.1 if there is a Deficit, subtracting both (i) the Fund Assets Value as at the last day of the Previous Financial Period (as set out in the Annual Fund Assets Report); and (ii) if a Cash Sweep Payment is payable in the Current Financial Period, the amount of the Cash Sweep Payment which will fall due on the forthcoming Cash Sweep Payment Date (as set out in the Annual Operator Directors' Certificate), from the Annual Milestone for the Previous Financial Period, and then multiplying that amount by one (1) plus the Projected Inflation Rate (expressed as a decimal).

This can be expressed by the formula:

$$TCA_{n+1} = (AM_{n-1} - FAV_{n-1} - CSP_n) * (1+r_n); \text{ or}$$

- 2.1.2 if there is a Surplus, subtracting the Annual Milestone for the Previous Financial Period from the Fund Assets Value as at the last day of the Previous Financial Period (as set out in the Annual Fund Assets Report), and then multiplying that amount by one (1) plus the Projected Inflation Rate (expressed as a decimal).

This can be expressed by the formula:

$$TCA_{n+1} = (FAV_{n-1} - AM_{n-1}) * (1+r_n)$$

Where:

TCA means the Total Correction Amount;

FAV means the Fund Assets Value;

CSP means the Cash Sweep Payment to be paid on the Cash Sweep Payment Date in the Current Financial Period;

AM means the Annual Milestone;

r represents the Projected Inflation Rate; and

n refers to the Current Financial Period.

3. OVERALL END OF GENERATION TARGET AND YEAR 37 TARGET

3.1 End of Generation Target

The End of Generation Target will be calculated by adding:

- 3.1.1 one hundred and twenty-five percent (125%) of the End of Generation Decommissioning Target;
- 3.1.2 one hundred and twenty-five percent (125%) of the End of Generation Management Target;

- 3.1.3 the End of Generation ILW Disposal Target; and
- 3.1.4 the End of Generation Spent Fuel Disposal Target.

3.2 **Year 37 Target**

The Year 37 Target will be calculated by adding:

- 3.2.1 one hundred and twenty-five percent (125%) of the Year 37 Decommissioning Target;
- 3.2.2 one hundred and twenty-five percent (125%) of the Year 37 Management Target;
- 3.2.3 the Year 37 ILW Disposal Target; and
- 3.2.4 the Year 37 Spent Fuel Disposal Target.

4. **DECOMMISSIONING TARGETS**

Explanatory note: All discounting is done from the first day of the Financial Period in which the cash flow is scheduled to occur because all DWMP cash flows are assumed to occur on the first (1st) day of the Financial Period.

4.1 **End of Generation Decommissioning Target**

The End of Generation Decommissioning Target is the sum of:

- 4.1.1 the cash flows from the Draft DWMP which relate to the Costs of Decommissioning other than Pre Closure Planning Costs, discounted on an annual compound basis at one (1) plus the Long Term Discount Rate (expressed as a decimal):
 - (A) from the first (1st) day of the Financial Period during which the relevant amount is to be incurred (as scheduled in the Draft DWMP);
 - (B) to FYE End of Generation; plus
- 4.1.2 the cash flows from the Draft DWMP which relate to Pre Closure Planning Costs.

4.2 **Year 37 Decommissioning Target**

The Year 37 Decommissioning Target is the sum of:

- 4.2.1 the cash flows from the Draft DWMP which relate to the Costs of Decommissioning other than Pre Closure Planning Costs, discounted on an annual compound basis at one (1) plus the Long Term Discount Rate (expressed as a decimal):
 - (A) from the first (1st) day of the Financial Period during which the relevant amount would be incurred if Decommissioning began in the first (1st) Financial Period immediately following the end of the Primary Funding Period (but otherwise on the basis of the timings of cash flows set out in the Draft DWMP);
 - (B) to the last day of the Primary Funding Period; plus
- 4.2.2 the cash flows from the Draft DWMP which relate to Pre Closure Planning Costs.

5. **WASTE AND SPENT FUEL MANAGEMENT TARGETS**

5.1 **Transfer Date Management Target**

The Transfer Date Management Target shall be calculated as the sum of the cash flows (if any) from the Draft DWMP which relate to the Costs of Spent Fuel Management, discounted on an annual compound basis at one (1) plus the SFTC Discount Rate (expressed as a decimal):

- 5.1.1 from the first (1st) day of the Financial Period during which the relevant amount is to be incurred (as scheduled in the Draft DWMP);

5.1.2 to the SF Transfer Date.

5.2 End of Generation Management Target

The End of Generation Management Target is the Transfer Date Management Target, discounted on an annual compound basis at one (1) plus the Long Term Discount Rate (expressed as a decimal):

5.2.1 from the SF Transfer Date;

5.2.2 to FYE End of Generation.

5.3 Year 37 Management Target

The Year 37 Management Target is the aggregate amount of the End of Generation Management Target plus the Additional Storage Amount, such aggregate amount discounted on an annual compound basis at one (1) plus the Long Term Discount Rate (expressed as a decimal):

5.3.1 from FYE End of Generation;

5.3.2 to the last day of the Primary Funding Period.

5.4 Additional Storage Amount

The Additional Storage Amount is twenty-three (23) times the average yearly cost of waste storage over any continuous period of five (5) Financial Periods chosen by the Operator, taken from the relevant cost lines in the Draft DWMP. For the avoidance of doubt, the Additional Storage Amount values shall be the exact values taken from the Draft DWMP, without any adjustment for indexation or discounting applied as part of the calculation performed under this paragraph 5.4 (*Additional Storage Amount*).

6. ILW DISPOSAL TARGET

6.1 ILW Transfer Payment

The ILW Transfer Payment is the ILW Transfer Price (Indexed to the end of the Previous Financial Period) multiplied by the projected volumes (at P80) of ILW Waste as set out in the Draft DWMP as cash flows.

6.2 End of Generation ILW Disposal Target

The End of Generation ILW Disposal Target is the amount of the cash flows from the Draft DWMP which relate to the aggregate of the ILW Transfer Payments, discounted on an annual compound basis at one (1) plus the Long Term Discount Rate (expressed as a decimal):

6.2.1 from the first (1st) day of the Financial Period during which the relevant amount is to be incurred (as scheduled in the Draft DWMP reflecting the ILW Transfer Dates);

6.2.2 to FYE End of Generation.

6.3 Year 37 ILW Disposal Target

The Year 37 ILW Disposal Target is the amount of the End of Generation ILW Disposal Target, discounted on an annual compound basis at one (1) plus the Long Term Discount Rate (expressed as a decimal):

6.3.1 from FYE End of Generation;

6.3.2 to the last day of the Primary Funding Period.

7. SPENT FUEL DISPOSAL TARGET

7.1 SF Transfer Payment

The SF Transfer Payment is the:

- 7.1.1 SF Transfer Price (Indexed to the end of the Previous Financial Period) multiplied by the projected tU (at P80) of SF Waste as set out in the Draft DWMP as cash flows; and
- 7.1.2 (for each relevant amount of projected tU as in paragraph 7.1.1 relating to each of the SF Disposal Dates) discounted on an annual compound basis at one (1) plus the SFTC Discount Rate (expressed as a decimal):
 - (A) from the first (1st) day of the Financial Period during which the relevant amount is to be incurred (as scheduled in the Draft DWMP reflecting each of the SF Disposal Dates);
 - (B) to the SF Transfer Date.

7.2 End of Generation Spent Fuel Disposal Target

The End of Generation Spent Fuel Disposal Target is the SF Transfer Payment discounted on an annual compound basis at one (1) plus the Long Term Discount Rate (expressed as a decimal):

- 7.2.1 from the SF Transfer Date;
- 7.2.2 to FYE End of Generation.

7.3 Year 37 Spent Fuel Disposal Target

The Year 37 Spent Fuel Disposal Target is the SF Transfer Payment, at the SF Transfer Date multiplied by thirty-seven sixtieths ($37/60^{\text{ths}}$), the result of which shall then be discounted on an annual compound basis at one (1) plus the Long Term Discount Rate (expressed as a decimal):

- 7.3.1 from the SF Transfer Date;
- 7.3.2 to the last day of the Primary Funding Period.

8. CALCULATION OF ALTERNATIVE LONG TERM DISCOUNT RATE

8.1 Election of an Alternative Long Term Discount Rate

If, in any Annual Review or Quinquennial Review following the Switch Period, the Operator elects to use an Alternative Long Term Discount Rate for the purposes of this Schedule 3 (*Minimum Contribution Calculation Rules*); then the Alternative Long Term Discount Rate shall be calculated by the Operator as the annual Real Gross Redemption Yield, relative to RPI, on a portfolio (selected by the Operator) of Specified Government Securities and related Permitted Derivatives which has the following characteristics:

- 8.1.1 as a whole, the portfolio has a maturity, currency exposure and RPI exposure that is as close as reasonably practicable to that of the Projected DTM Costs after taking into account the Permitted Derivatives proposed as part of the portfolio;
- 8.1.2 the Specified Government Securities and Permitted Derivatives in the portfolio are capable of being acquired by the FDP Implementation Company (being then available in the market);
- 8.1.3 each of the Specified Government Securities proposed in the portfolio has a current issuance of at least three billion pounds (£3,000,000,000), Indexed in real terms (allowing for indexation of principal),

provided that, for the sole purposes of determining (i) whether the portfolio as a whole has a similar maturity to the Operator DTM Costs under paragraph 8.1.1, decommissioning will be assumed to begin in FYE Year 37 or, if later, on the date on which the calculation is performed and (ii) the portfolio, to the extent that such portfolio consists of securities which

are Specified Government Securities, the portfolio will be assumed to be constructed as at the date of the Annual Review or Quinquennial Review (as applicable) and the securities must satisfy the definition of "Specified Government Securities" (where reference to the "date of investment" shall be treated for these purposes as a reference to the date of the applicable review).

8.2 **Effect of election of Alternative Long Term Discount Rate**

Once the Operator has elected to use an Alternative Long Term Discount Rate under paragraph 8.1 (*Election of an Alternative Long Term Discount Rate*) of this Schedule 3 (*Minimum Contribution Calculation Rules*), the Operator may not switch back to using the 20 Year Gilt Rate unless it considers, acting reasonably, that it is no longer practicable to derive a suitable portfolio which is consistent with the criteria set out in paragraph 8.1 to use as an Alternative Long Term Discount Rate.

SCHEDULE 4**PAYMENT PROCEDURES****SECTION 1: Contributions Payment Procedures****1. ANNUAL CONTRIBUTIONS ARE PAYABLE ON ANNUAL CONTRIBUTION DATE**

The Operator shall (or any other person may, voluntarily and in accordance with Clause 3 (*Any person may make contributions*)) make each Annual Contribution to the FDP Implementation Company on the Annual Contribution Date, unless an FDP Direct Agreement is in force and a Process Event or Security Trigger Event has occurred and is continuing, in which case it shall become payable in accordance with that FDP Direct Agreement.

2. CONTRIBUTIONS TO BE MADE IN CLEARED FUNDS

All Contributions shall be made by way of transfer of cleared funds to the bank account designated for receipt of Contributions by the FDP Implementation Company.

3. DESIGNATED BANK ACCOUNT FOR CONTRIBUTIONS

3.1.1 The FDP Implementation Company shall set up and maintain the FDP Implementation Company Contributions Bank Account.

3.1.2 The FDP Implementation Company may change the provider of the FDP Implementation Company Contributions Bank Account for the payment of Contributions from time to time and, if it does so, it shall give notice to the Operator at least ten (10) Business Days before the date that a payment falls due in accordance with this Agreement.

SECTION 2: Fund Payment Procedures

Explanatory note: payment amounts will be subject to the provisions set out in Clauses 45.2.1 (FDP Implementation Company will calculate the Annual DTM Payment due to the Operator) and 72.3 (Return of Surplus Payment if there is insufficient Available Cash).

1. RETURN OF SURPLUS PAYMENT TO BE MADE ON ANNUAL CONTRIBUTION DATE

The FDP Implementation Company shall make any Return of Surplus Payment that is due to the Operator on the Annual Contribution Date.

2. OPERATOR MUST RELEASE CASH TO ALLOW PAYMENTS TO BE MADE

The Operator shall issue to the FDP Implementation Company such Investment Orders as are required (if any) in order to cause the FDP Implementation Company to have sufficient Available Cash to pay the Return of Surplus Payment, Annual DTM Payment or DTM Overrun Payment due to the Operator on the date it falls due. The Operator shall issue such Investment Orders:

2.1.1 at least twenty (20) Business Days before the relevant Annual DTM Payment Date in the case of any Annual DTM Payment; or

2.1.2 at least five (5) Business Days before the DTM Overrun Payment Date in the case of any DTM Overrun Payment; or

2.1.3 if a Return of Surplus Payment is due, at least five (5) Business Days before the Annual Contribution Date.

3. DISBURSEMENTS TO BE MADE IN CLEARED FUNDS

The FDP Implementation Company shall make all Return of Surplus Payments and DTM Payments by way of transfer of cleared funds to the Operator to the UK bank account designated by the Operator (and shall not be obliged to make such payments to the extent the relevant bank account has not been set up).

4. DESIGNATED OPERATOR DTM CONTROL ACCOUNT

4.1.1 The Operator shall set up and maintain a segregated account that is nominated as the Operator DTM Control Account. The Operator shall use its reasonable endeavours to procure that the only payments made into the Operator DTM Control Account are DTM Payments from the FDP Implementation Company and interest.

4.1.2 The Operator may, with the consent of a Security Trustee (if relevant), change the provider of the Operator DTM Control Account from time to time and, if it does so, it shall give notice to the FDP Implementation Company at least ten (10) Business Days before the date that a payment falls due in accordance with this Agreement.

SECTION 3: Cash Sweep Payment Procedures

1. CASH SWEEP PAYMENTS TO BE MADE ON CASH SWEEP PAYMENT DATE

The Operator shall (or any other person may, voluntarily and in accordance with Clause 3 (*Any person may make contributions*)) make each Cash Sweep Payment on the Cash Sweep Payment Date, unless an FDP Direct Agreement is in force and a Process Event or Security Trigger Event has occurred and is continuing, in which case it shall become payable in accordance with that FDP Direct Agreement.

2. CASH SWEEP PAYMENTS TO BE MADE IN CLEARED FUNDS

All Cash Sweep Payments shall be made by way of transfer of cleared funds to the bank account designated for receipt of Cash Sweep Payments by the FDP Implementation Company.

3. DESIGNATED BANK ACCOUNT FOR CASH SWEEP PAYMENTS

Unless it notifies the Operator otherwise at least ten (10) Business Days before the date that a payment falls due in accordance with this Agreement, the FDP Implementation Company shall be deemed to have designated the FDP Contributions Bank Account for the payment of Cash Sweep Payments.

SCHEDULE 5

OPERATOR BUSINESS AND FINANCIAL RESTRICTIONS

SECTION 1: Business Restrictions

1. OPERATIONAL RESTRICTIONS

1.1 No diversification is permitted

The Operator shall not carry out any business activities that fall outside the Approved Operator Business Scope.

1.2 No asset stripping is permitted

During the Operational Period, the Operator shall not make any disposal of its rights in relation to a Key Generation Asset other than:

- 1.2.1 the grant of Security under or pursuant to the FDP Security Documents from time to time; and
- 1.2.2 to a person who either (i) has (or will have once all Required Authorisations have been obtained) acquired the rights and obligations of the Operator under this Agreement or (ii) otherwise has (or will have once all Required Authorisations have been obtained) an FDP approved by the Secretary of State, in either case in accordance with an FDP Direct Agreement.

SECTION 2: Amortisation Amounts

Number of Financial Year Ends which have occurred after the Regearing Period	MAXIMUM PRINCIPAL AMOUNT OF BORROWINGS (£ billion)
0	16.00
1	16.00
2	16.00
3	16.00
4	16.00
5	16.00
6	15.75
7	15.50
8	15.25
9	15.00
10	14.75
11	14.50
12	14.25
13	13.90
14	13.50
15	13.05

Number of Financial Year Ends which have occurred after the Regearing Period	MAXIMUM PRINCIPAL AMOUNT OF BORROWINGS (£ billion)
16	12.60
17	12.10
18	11.60
19	11.10
20	10.60
21	10.10
22	9.50
23	8.75
24	8.00
25	7.25
26	6.30
27	5.35
28	4.40
29	3.45
30	2.40
31	1.20
32	0.00

SCHEDULE 6

OPERATOR UNDERTAKINGS

1. **STATUS**

The Operator shall maintain its status as a limited company incorporated under the laws of England and Wales.

2. **NO LENDING MONEY OR EXTENDING CREDIT TO THIRD PARTIES**

The Operator shall not be a creditor to any Third Party in respect of any Financial Indebtedness unless the transaction is a Permitted Loan.

3. **GOOD INDUSTRY PRACTICE**

The Operator shall use its reasonable endeavours to procure that any contract that it enters into (whether before or during the Decommissioning Period):

3.1.1 under which Costs of Decommissioning in relation to the Site will be incurred; and

3.1.2 for which payment will be made during the Disbursements Period,

is let in accordance with Good Industry Practice.

SCHEDULE 7

INVESTMENT RULES

Explanatory note:

- *The Operator expects to diversify the portfolio.*
- *The Operator's de-risking process will be subject to efficient portfolio management considerations and the availability of securities, therefore it has been agreed that prescriptive obligations in relation to de-risking would not be appropriate. However, the Operator's aim is to move to holdings of Specified Government Securities in the de-risking period where appropriate to match the profile of the DTM Costs in terms of maturity, currency and inflation linkage to the extent practicable.*

1. PROHIBITED PRACTICES

The following practices may not be undertaken by the FDP Implementation Company at any time:

- 1.1.1 direct investment in the shares or debt instruments of any Investment Execution Manager, the Verifiers or any of their respective affiliates;
- 1.1.2 subject to paragraph 4.2.5 of this Schedule 7, direct investment in the shares or debt instruments of, or Real Estate owned or occupied by, the Operator or an Affiliate;
- 1.1.3 investment in any Derivatives, other than Permitted Derivatives;
- 1.1.4 Underwriting and sub-Underwriting of transactions;
- 1.1.5 physical shorting of securities;
- 1.1.6 securities lending (other than for the purposes of risk management);
- 1.1.7 subject to paragraph 2 (*Permitted Practices*) of this Schedule 7 (*Investment Rules*), making loans or advances to any person or pledging or providing security over the Fund Assets (except that the creation of any security which is required by Applicable Law is permitted); and
- 1.1.8 any other practices materially similar to, and intended to circumvent or avoid, the above prohibitions.

2. PERMITTED PRACTICES

Subject to paragraphs 1 (*Prohibited Practices*) and 4 (*Portfolio Concentration Restrictions and Minimum Allocations*) the FDP Implementation Company may only undertake the following practices:

- 2.1.1 placing deposits with financial institutions rated at least A1 by S&P and P1 by Moody's and which are subject to a regulator with jurisdiction over such institutions in the UK, provided that, where the Fund Assets Value is more than one billion pounds (£1,000,000,000) Indexed, no more than the greater of:
 - (A) five percent (5%) of the Fund Assets Value as at the end of the Previous Financial Period (as stated in the relevant Annual Fund Assets Report); or
 - (B) one hundred and ten percent (110%) of:
 - (1) the Annual Contribution paid to the FDP Implementation Company by the Operator on the most recent Annual Contribution Date; and
 - (2) the Allowable Costs that the Operator expects to become payable for the then current Financial Period as set out in the Annual Work Plan and Budget,

shall be placed with any single Counterparty Group.

- 2.1.2 investment in Convertibles and Warrants (provided that the aggregate notional amount of equity arising on conversion or exercise in full of such investment shall be included in determining the proportion of the Fund Assets allocated to the relevant equity investments);
- 2.1.3 investment in partly paid securities (provided that Cash and Cash Equivalents are held by the FDP Implementation Company in an amount sufficient to meet any outstanding obligation and such Cash and Cash Equivalents are treated as having been paid in meeting in full such outstanding obligation such that the relevant securities are treated as fully paid in determining the proportion of the Fund Assets allocated to the relevant investment);
- 2.1.4 investment in securities (including Convertibles and Warrants) issued as scrip to an existing holding; and
- 2.1.5 Permitted Investments in accordance with paragraph 3 (*Permitted Investments*).

3. **PERMITTED INVESTMENTS**

3.1 **Equity investments**

Subject to paragraphs 1 (*Prohibited Practices*) and 4.2 (*Equity investments*), the FDP Implementation Company may invest the Fund Assets in the constituents of: (i) the World Equity Indices; and (ii) the Emerging Market Equity Index.

3.2 **Bond investments**

- 3.2.1 Subject to paragraphs 1 (*Prohibited Practices*), 3.2.2 and 4.3 (*Bond investments*), the FDP Implementation Company may invest the Fund Assets in the constituents of the Sterling Investment Grade Index, Euro Investment Grade Index and Dollar Bond All Stocks Investment Grade Index or any Specified Government Securities.
- 3.2.2 Save as regards Specified Government Securities, the Operator will not issue Investment Orders to acquire bonds with a long term rating below A- (S&P) or A3 (Moody's) or, if applicable, any Replacement Credit Rating Criteria (read with any Specified Credit Rating Criteria Adjustments) during the Final Primary Funding Periods and the Secondary Funding Period, whichever is the lower at the time the investment is to be made.

Explanatory Note: This means that the FDP Implementation Company would be able to hold investments which had subsequently declined to BBB- (S&P) during the Final Primary Funding Periods and the Secondary Funding Period, but it would not be able to purchase new bonds below A- (S&P) other than Specified Government Securities.

3.3 **Direct investment in Real Estate**

Subject to paragraph 4.4 (*Direct Investments in Real Estate*), the FDP Implementation Company may invest the Fund Assets directly in Real Estate in the United Kingdom, the United States of America, France, the Netherlands and Germany or other countries with an investment grade rating of at least A+ (S&P) or A1 (Moody's) or, if applicable, any Replacement Credit Rating Criteria (read with any Specified Credit Rating Criteria Adjustments).

3.4 **Collective Investment Schemes**

Subject to paragraph 4.1.2 below, the FDP Implementation Company may invest the Fund Assets in Collective Investment Schemes which are UCITS or regulated by an appropriate financial or Governmental Authority, provided that:

- 3.4.1 the FDP Implementation Company is directed by the Operator to invest through Collective Investment Schemes through an Investment Order;

- 3.4.2 any such Investment Order received from the Operator contains a statement that based on the information most recently received by the Operator or which is made available to the Operator and all other UK resident investors in the relevant Collective Investment Scheme, the Operator has no reason to believe that the making of the investment in the Collective Investment Scheme would be inconsistent with the restrictions of the Investment Rules;
- 3.4.3 the manager of the Collective Investment Scheme is not an Affiliate of or controlled by the Operator and has full discretion in the management of assets within any prescribed guidelines, restrictions or prospectus of the Collective Investment Scheme; and
- 3.4.4 to the extent that there are any guidelines or restrictions set out in the applicable documentation (including any prospectus or information memorandum), the management of the Fund Assets invested in the Collective Investment Scheme will not in itself and as at the date of the investment manifestly and in the normal course of events create a breach of the restrictions set out in paragraphs 4.2.4 or 4.2.5 below if investment in the Operator or Affiliates is permitted as part of the investments in such Collective Investment Schemes.

3.5 Investment in Infrastructure

Subject to paragraph 4.5 (*Investment in Infrastructure*), the FDP Implementation Company may invest in Infrastructure or Infrastructure-Linked Indices in the United Kingdom or, if applicable, any Replacement Index (read with any Specified Index Change Adjustments), the United States of America, France, the Netherlands and Germany or other countries with an investment grade rating of at least A+ (S&P) or A1 (Moody's) or, if applicable, any Replacement Credit Rating Criteria (read with any Specified Credit Rating Criteria Adjustments), provided that such investments may only be held up to the thirtieth (30th) Financial Year End occurring after First Criticality.

3.6 Permitted Derivatives

The FDP Implementation Company may invest in a Derivative provided that the following criteria are satisfied at the time the Derivative is entered into:

- 3.6.1 the outstanding notional principal amount of all Derivatives hedging a specific risk category (including interest rate, inflation and currency) held by the FDP Implementation Company does not exceed one hundred percent (100%) of the Fund Assets Value as at the end of the Previous Financial Period as set out in the most recent Annual Fund Assets Report;
- 3.6.2 it has received an Investment Order from the Operator which contains a statement that:
- (A) the Derivative is to be entered into for a Permitted Objective;
 - (B) the Derivative is not entered into as part of a connected transaction or a series of connected transactions with the Derivative counterparty; and
 - (C) the Derivative is to be entered into on market terms,
- (and, for the avoidance of doubt, the FDP Implementation Company and the Independent Financial Verifier shall be entitled to rely on such statement when monitoring compliance with the Investment Rules);
- 3.6.3 at the time of the investment, the Derivative counterparty has a long term credit rating of at least BBB (S&P) or Baa2 (Moody's) or, if applicable, any Replacement Credit Rating Criteria (read with any Specified Credit Rating Criteria Adjustments) and is a duly authorised and regulated market counterparty which is a financial institution in the EEA; and

3.6.4 either:

- (A) if the financial instrument is capable of being centrally cleared, it is cleared through a central clearing house which is authorised or recognised in the EEA; or
- (B) if the financial instrument is not capable of being centrally cleared, the following criteria are satisfied:
 - (1) the financial instrument does not constitute the writing of either an option or a forward by the Operator or the FDP Implementation Company (or a transaction with an equivalent effect);
 - (2) the financial instrument and the collateral arrangements are structured so as to minimise, as far as reasonably practicable, the extent of any lending to the Derivative counterparty; and
 - (3) the financial instrument is collateralised such that the Derivative Counterparty is permitted only to post cash and gilts as collateral.

4. PORTFOLIO CONCENTRATION RESTRICTIONS AND MINIMUM ALLOCATIONS

4.1 General

For the purposes of compliance with this paragraph 4 (*Portfolio Concentration Restrictions and Minimum Allocations*) under Clause 12.1 (*FDP Implementation Company must review Investment Orders promptly*) and Clause 14 (*Ongoing compliance with the Investment Rules*) the following shall apply:

- 4.1.1 all direct investments (being those investments not made through a Collective Investment Scheme) are subject to paragraphs 4 (*Portfolio Concentration Restrictions and Minimum Allocations*), 5 (*De-risking requirements at the First De-risking Date*) and 6 (*De-Risking requirements at the Second De-risking Date*), but the following shall apply:
- (A) assessment of compliance with paragraph 4 (*Portfolio Concentration Restrictions and Minimum Allocations*) shall be made on the basis of the values and composition of the Direct Investment Portfolio only and not on the basis of the Fund Assets as a whole;
 - (B) for the purposes of Clause 12.1 (*FDP Implementation Company must review Investment Orders promptly*), the FDP Implementation Company shall review (or cause the FDP Company Administrator or an Investment Execution Manager to review) each relevant Investment Order to assess whether the restrictions set out in this paragraph 4 (*Portfolio Concentration Restrictions and Minimum Allocations*) in relation to Prohibited Direct Investments would be complied with assuming execution in full of the relevant Investment Order by reference to the existing portfolio of direct investments valued as follows:
 - (1) for any index-listed investments, the value of those investments as published on the index on which such investment is traded as at a date not more than ten (10) Business Days preceding the Investment Order; and
 - (2) otherwise, the most recent valuation of the relevant direct investments by a suitably qualified person stated in an Annual Report or Quinquennial Report (as applicable), or, if there is no such valuation, the book value of the relevant direct investments as stated in the most recent Audited Balance Sheet of the FDP Implementation Company; and
- 4.1.2 this paragraph 4 (*Portfolio Concentration Restrictions and Minimum Allocations*) applies to the investments held in the Direct Investment Portfolio, investments in

Collective Investment Schemes or underlying investments held indirectly within Collective Investment Schemes for the sole purpose of assessment at each Annual Review and Quinquennial Review (as applicable) pursuant to Clause 14 (*Ongoing compliance with the Investment Rules*).

4.2 **Equity investments**

- 4.2.1 The aggregate value of investments in constituents of the Emerging Market Equity Index may not exceed twenty percent (20%) of the aggregate value of all the Equity Holdings in the Fund Assets, or Direct Investment Portfolio, as applicable.
- 4.2.2 The aggregate value of any investment in any individual constituent of the World Equity Indices or the Emerging Market Equity Index or, if applicable, a Replacement Index (read with any Specified Index Change Adjustments) may not exceed ten percent (10%) of the aggregate value of all the Equity Holdings in the Fund Assets, or Direct Investment Portfolio, as applicable.
- 4.2.3 The aggregate value of any investment in any individual constituent of the World Equity Indices or the Emerging Market Equity Index or, if applicable, a Replacement Index (read with any Specified Index Change Adjustments) may not exceed five percent (5%) of the total aggregate value of all equity securities in that particular constituent.
- 4.2.4 No more than five percent (5%) of the Fund Assets Value, or Direct Investment Portfolio, as applicable, in aggregate may be directly invested in companies whose Primary Business is as a participant in the UK electricity generation or electricity supply market or in a Collective Investment Scheme which primarily targets such investments.
- 4.2.5 No more than five percent (5%) of the Fund Assets Value in aggregate may be invested in shares or debt instruments of the Operator or any Affiliates (including, for the avoidance of doubt, EDF S.A.).

4.3 **Bond investments**

Save as regards Specified Government Securities, the aggregate value of any investment in Corporate Bonds of an individual issuer may not exceed five percent (5%) of the Fund Assets Value, or Direct Investment Portfolio, as applicable.

4.4 **Direct investment in Real Estate**

- 4.4.1 The aggregate value of any individual Real Estate investment may not exceed one percent (1%) of the Fund Assets Value, or Direct Investment Portfolio, as applicable;
- 4.4.2 The aggregate value of all investments in Real Estate of any single country (excluding the United Kingdom, the United States of America, France, the Netherlands and Germany) may not exceed five percent (5%) of the Fund Assets Value, or Direct Investment Portfolio, as applicable;
- 4.4.3 The aggregate value of all direct investments in Real Estate may not exceed twenty percent (20%) of the Fund Assets Value, or Direct Investment Portfolio, as applicable,

in each case according to the valuations set out in the most recent Annual Fund Assets Report.

4.5 **Investment in Infrastructure**

- 4.5.1 The aggregate value of investments in any Infrastructure or Infrastructure-Linked Indices may not exceed ten percent (10%) of the Fund Assets Value, or Direct Investment Portfolio, as applicable in each case according to the valuations set out in the most recent Annual Fund Assets Report.

4.5.2 The aggregate value of investment in any Infrastructure may not exceed ten percent (10%) of the value of that particular Infrastructure.

4.6 Government Securities

At least ten percent (10%) of the Fund Assets, or Direct Investment Portfolio, as applicable, must comprise at any time Specified Government Securities or Cash and Cash Equivalents.

5. DE-RISKING REQUIREMENTS AT THE FIRST DE-RISKING DATE

No later than the First De-risking Date, the Operator will issue Investment Orders which result in no more than thirty-five percent (35%) of the Fund Assets Value being made up directly or indirectly (except through Collective Investment Schemes which primarily make investments in bonds and/or Specified Government Securities, but which have the discretion to hold a proportion of Equity Holdings as part of efficient bond portfolio management in line with market practice) of Equity Holdings with effect from the First De-risking Date until the Second De-risking Date.

6. DE-RISKING REQUIREMENTS AT THE SECOND DE-RISKING DATE

No later than the Second De-risking Date, the Operator will issue Investment Orders which result in no more than thirty percent (30%) of the Fund Assets Value being made up directly or indirectly (except through Collective Investment Schemes which primarily make investments in bonds and/or Specified Government Securities, but which have the discretion to hold a proportion of Equity Holdings as part of efficient bond portfolio management in line with market practice) of Equity Holdings with effect from the Second De-risking Date until the end of the Primary Funding Period.

7. DE-RISKING REQUIREMENTS DURING THE FINAL PRIMARY FUNDING PERIODS

7.1.1 Subject to paragraph 7.1.2, during the Final Primary Funding Periods, the Operator will issue Investment Orders which:

- (A) result in the progressive reduction of the risk that the Fund Assets may not be sufficient to meet the DTM Costs over the Final Primary Funding Periods;
- (B) result in at least fifty percent (50%) of the Fund Assets being made up of Specified Government Securities with effect from the last day of the Primary Funding Period; and
- (C) cause the Fund Assets to contain no assets other than Specified Government Securities or Corporate Bonds (invested in accordance with the Investment Rules) with effect from the last day of the Final Primary Funding Periods.

7.1.2 During the Final Primary Funding Periods, the Operator:

- (A) will not issue Investment Orders providing for investment in assets other than Specified Government Securities, Corporate Bonds (invested in accordance with the Investment Rules) or Permitted Derivatives; and
- (B) will issue Investment Orders so that the total value of Corporate Bonds (invested in accordance with the Investment Rules) held shall not exceed fifty percent (50%) of the Fund Assets Value with effect from the last day of the Primary Funding Period.

8. DE-RISKING REQUIREMENTS DURING THE FINAL SECONDARY FUNDING PERIODS

During the Final Secondary Funding Periods, the Operator will issue Investment Orders which:

8.1.1 result in the progressive reduction of the risk that the Fund Assets are not sufficient to meet the DTM Costs over the Final Secondary Funding Periods;

- 8.1.2 result in one hundred percent (100%) of the Fund Assets being made up of Specified Government Securities with effect from the last day of the Secondary Funding Period until the Site End State is achieved except to the extent that assets are held in Cash and Cash Equivalents or Permitted Derivatives; and
- 8.1.3 do not provide for any investment other than in Specified Government Securities and Permitted Derivatives from the commencement of the Final Secondary Funding Period until the Site End State is achieved.

9. MISCELLANEOUS

9.1 Index Change Event and Credit Rating Change Event

References in this Schedule 7 to particular indices or to particular credit rating criteria (and, in each case, all associated definitions) include those indices or criteria as renamed or amended from time to time or, if an Index Change Event or Credit Rating Change Event occurs, the Replacement Index agreed or determined under Clause 84 (*Index Change Event*), read with the Specified Index Change Adjustments and the Replacement Credit Rating Criteria agreed or determined under Clause 85 (*Credit Rating Change Event*), read with the Specified Credit Rating Criteria Adjustments.

9.2 Relevance of expert's report

This Schedule 7 shall be read in accordance with any report issued under Clauses 83 (*RPI*) to 85 (*Credit Rating Change Event*).

10. MODIFICATION TO THE INVESTMENT RULES

If the Investment Rules are modified following a Proposed Modification pursuant to the terms of the Section 46 Agreement, Clause 14.2.2 (*Operator must restore compliance of portfolio within the deadline*) shall apply.

SCHEDULE 8

ANNUAL REVIEW PROGRAMME

Explanatory note: in the Disbursements Period, the Annual Reconciliation Review will form part of the Annual Review Programme.

SECTION 1: Annual Review Process

STAGE 1: REVIEW OF FUND ASSETS

The FDP Implementation Company shall use its reasonable endeavours to procure that the FDP Company Administrator, an FDP Custodian or an Investment Execution Manager submits an Annual Fund Assets Report to the Operator within five (5) Business Days of the end of the Annual Reporting Period.

STAGE 2: SIGNIFICANT EVENT ASSESSMENT

10.1 Operator assesses whether a Significant Event occurred during the Annual Reporting Period

The Operator shall give a Significant Event Assessment Notice to the FDP Implementation Company and the Independent Technical Verifier within fifteen (15) Business Days after the end of the Annual Reporting Period, and shall maintain such records and provide such information as it considers, acting reasonably, necessary for the Independent Technical Verifier to assess whether a Significant Event occurred during the Annual Reporting Period.

Explanatory note: the Operator maintains a log of operational incidents (including the cost impacts of such incidents) at the plant under the record keeping obligations that it is subject to under the nuclear site licence. It is anticipated that the Independent Technical Verifier will review the log to support the assessment of whether a Significant Event has occurred.

10.2 Independent Technical Verifier confirms Significant Event Assessment

10.2.1 The Independent Technical Verifier shall confirm whether or not it agrees with the Operator's Significant Event Assessment Notice within ten (10) Business Days of receipt of such notice.

10.2.2 If the Independent Technical Verifier has not responded to the Significant Event Assessment Notice within ten (10) Business Days of receipt, the Independent Technical Verifier shall be deemed to agree with the Operator's Significant Event Assessment Notice unless the FDP Implementation Company has notified the Operator that the Independent Technical Verifier is not complying, or is unable to comply, with the terms of his engagement, in which case the Parties shall initiate a determination by an Independent Expert in accordance with the Independent Expert Referral Procedure.

STAGE 3: REVIEW OF DWMP

10.3 DWMP shall be updated to reflect the Indexation and discharge of liabilities

The Operator shall update the DWMP (or shall prepare an addendum to the DWMP setting out such information):

10.3.1 to take into account Indexation (from the date of the previous DWMP to the date of the updated DWMP) of the cost estimates from the previous DWMP;

10.3.2 in the Disbursements Period, to take into account the removal of the liabilities that have been discharged from the DWMP; and

10.3.3 in the Disbursements Period, propose any amendments to the cost estimates after paragraphs 10.3.1 and 10.3.2 above have been applied that it considers (acting reasonably) are necessary.

10.4 DWMP shall be updated to reflect any Significant Event that occurred

If a Significant Event has occurred, the Operator shall review the DWMP and shall propose the amendments that it considers, acting reasonably, are necessary to reflect the occurrence of the Significant Event (including taking into account those factors set out in paragraphs 3.3.1, 3.3.2, 3.3.7, 3.4 and 3.6 of Section 1 (*Quinquennial Review Process*) of Schedule 9 (*Quinquennial Review Programme*) resulting from the Significant Event) and on the basis of the Fixed Assumptions.

10.5 Operator shall submit the Draft DWMP

The Operator shall send a copy of the Draft DWMP, updated in accordance with paragraphs 10.3 (*DWMP shall be updated to reflect the Indexation and discharge of liabilities*) and 10.4 (*DWMP shall be updated to reflect any Significant Event that occurred*), to each of the FDP Implementation Company and the Independent Technical Verifier within thirty (30) Business Days of the completion of the Significant Event Assessment.

10.6 Technical Verification will be performed

Within thirty (30) Business Days of receipt of the Draft DWMP, the Independent Technical Verifier shall:

- 10.6.1 if applicable, assess whether the changes made in the Draft DWMP reflect the Significant Event which occurred during the Annual Reporting Period in a way which is reasonable;
- 10.6.2 assess whether the Operator has correctly Indexed the cost estimates set out in the Draft DWMP; and
- 10.6.3 submit a Technical Verification Report in the form required for Annual Review to the Operator and the FDP Implementation Company.

STAGE 4: CALCULATION OF DISCOUNT RATES AND CASH SWEEP**10.7 Fixed rate LTDR used prior to the Switch Date**

In each Annual Review which commences on or before the Switch Date, a fixed real rate of one point five percent (1.5%) per annum shall be used as the Long Term Discount Rate in the calculations performed under Schedule 3 (*Minimum Contribution Calculation Rules*).

10.8 Annual Market LTDR used after the Switch Date

10.8.1 In each Annual Review which commences after the Switch Date, the Operator shall always be entitled to use the 20 Year Gilt Rate as the Long Term Discount Rate unless and until such time the Operator elects (by giving notice to the FDP Implementation Company) to use an Alternative Long Term Discount Rate which has been calculated in accordance with paragraph 8 (*Calculation of an Alternative Long Term Discount Rate*) of Section 4 (*Formulae Sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*), following which the Alternative Long Term Discount Rate shall apply.

10.8.2 If:

- (A) the Operator has elected to use an Alternative Long Term Discount Rate; and
- (B) the rate calculated by the Operator under paragraph 7 (*Spent Fuel Disposal Target*) of Section 4 (*Formulae Sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*) is not more than zero point one percent (0.1%) greater than the 20 Year Gilt Rate,

the Operator shall submit a notice to each of the FDP Implementation Company and the Independent Financial Verifier on or around the date of the delivery of the Draft Contribution Notice, having exercised reasonable skill and care, confirming that to the best of its knowledge and belief the Alternative Long Term Discount Rate has been properly calculated in accordance with paragraph 8 (*Calculation of*

an Alternative Long Term Discount Rate) of Section 4 (Formulae Sheet) of Schedule 3 (Minimum Contribution Calculation Rules).

10.9 Cash Sweep Payment relating to the LTDR switch

If the Annual Reporting Period is a Qualifying Cash Sweep Period, the Operator shall calculate the Cash Sweep Payment to be made in respect of that Financial Period in accordance with Clause 24 (*Cash Sweep*).

10.10 Fixed rate STDR used prior to the Switch Date

In each Annual Review which commences on or before the Switch Date, a fixed real rate of one point five percent (1.5%) per annum shall be used as the Short Term Discount Rate in the calculations performed under Schedule 3 (*Minimum Contribution Calculation Rules*).

10.11 Annual Market STDR used after the Switch Date

In each Annual Review which commences after the Switch Date, the Operator shall review the Short Term Discount Rate on the last day of the Annual Reporting Period and shall give a Gilt Yield Notification to the FDP Implementation Company and the Independent Financial Verifier within fifteen (15) Business Days of the end of the Annual Reporting Period.

STAGE 5: FINANCIAL VERIFICATION

10.12 Specified obligations

In addition to the obligation described in paragraph 10.16 (*Specified obligation*) below, the obligations that have been specified for the purposes of paragraph (a) of the definition of "financial verification report" in the FDP Regulations are:

10.12.1 in each Annual Review which commences after the Switch Date, the obligation to give a Gilt Yield Notification in accordance with paragraph 10.10 of this Annual Review Process; and

10.12.2 the obligation to use reasonable endeavours to comply with the Investment Rules as at the last day of the Annual Reporting Period in accordance with Clause 14.1 (*Operator Compliance with Investment Rules at a year end*).

10.13 Financial Verification will be performed

Within fifteen (15) Business Days of receipt of the Gilt Yield Notification or thirty (30) Business Days of the end of the Annual Reporting Period (whichever is latest), the Independent Financial Verifier shall:

10.13.1 assess:

(A) in each Annual Review which commences after the Switch Date, whether the Gilt Yield Notification accurately reflects the Short Term Discount Rate from the source publication on the last day of the Annual Reporting Period;

(B) whether the Fund Assets as a whole were consistent with the Investment Rules as at the last day of the Annual Reporting Period; and

10.13.2 submit a Financial Verification Report to the Operator and the FDP Implementation Company.

STAGE 6: REVIEW OF CONTRIBUTIONS NOTICE

10.14 Draft Contributions Notice will be updated to reflect Draft DWMP and Short Term Discount Rate

The Operator shall calculate a new Draft Contributions Notice in accordance with the Minimum Contribution Calculation Rules.

10.15 Draft Contributions Notice to be submitted

The Operator shall send a copy of the Draft Contributions Notice to the FDP Implementation Company and the Independent Financial Verifier as soon as reasonably practicable and in any event within fifteen (15) Business Days after both of the following have occurred:

- 10.15.1 the Financial Verification Report has been given and verified or determined (as applicable); and
- 10.15.2 the Draft DWMP has been produced and verified or determined (as applicable).

10.16 Specified obligation

In addition to the obligations described in paragraph 10.12 (*Specified obligations*), the obligation that has been specified for the purposes of paragraph (a) of the definition of "financial verification report" in the FDP Regulations is the obligation of the Operator to calculate a new Draft Contributions Notice in accordance with paragraph 10.14 of this Annual Review Process.

10.17 Operator calculations will be verified

Within fifteen (15) Business Days of receipt of the Draft Contributions Notice, the Independent Financial Verifier shall:

- 10.17.1 verify that the Draft Contributions Notice has been calculated by the Operator in accordance with the Minimum Contribution Calculation Rules; and
- 10.17.2 submit a Calculation Confirmation Report to the Operator and the FDP Implementation Company.

STAGE 7: ANNUAL DIRECTORS' COMPLIANCE CERTIFICATE

The Operator shall review compliance with the material provisions of this Agreement over the Annual Reporting Period in order to prepare the Annual Operator Directors' Certificate.

STAGE 8: OPERATOR FORMULATES ANNUAL REPORT**10.18 Formulation of Annual Report**

The Operator shall produce an Annual Report containing the documents listed in Section 2 (*Requirements for the Annual Report*) of this Schedule 8 (*Annual Review Programme*) and shall submit it to the FDP Implementation Company and to whoever of the FDP Company Administrator, an FDP Custodian or any Investment Execution Manager is to provide the Modification Verification Report.

10.19 Specified obligation

The obligation that has been specified for the purposes of paragraph (a) of the definition of "modification verification report" in the FDP Regulations is the obligation of the Operator to deliver an Annual Report in accordance with paragraph 10.18 (*Formulation of Annual Report*) of this Annual Review Process.

10.20 Modification Verification Report

The FDP Implementation Company shall use its reasonable endeavours to procure that the FDP Company Administrator, an FDP Custodian or any Investment Execution Manager (as applicable) gives a Modification Verification Report to the Operator and the FDP Implementation Company within ten (10) Business Days of submission of the Annual Report by the Operator under paragraph 10.18 (*Formulation of Annual Report*).

STAGE 9: SUBMISSION OF ANNUAL REPORT AND VERIFICATION REPORTS

Within five (5) Business Days of receipt of the Modification Verification Report from the FDP Company Administrator, an FDP Custodian or any Investment Execution Manager (as applicable), the Operator shall submit to the Secretary of State and the FDP Implementation Company:

- 10.21 the Annual Report;
- 10.22 the Annual Fund Assets Report;
- 10.23 the Independent Technical Verifier's response to the Significant Event Assessment Notice (or confirmation from the Operator that no response was received);
- 10.24 the Technical Verification Report;
- 10.25 the Financial Verification Report;
- 10.26 the Calculation Confirmation Report;
- 10.27 any binding determination made in the course of the Annual Review;
- 10.28 the Modification Verification Report; and
- 10.29 a notice confirming:
 - 10.29.1 the modifications to the DWMP that are contained in the Draft DWMP and which constitute Exempt Modifications;
 - 10.29.2 the particular regulation under the FDP Regulations which applies to make each of those proposed modifications an Exempt Modification;
 - 10.29.3 the calculations performed to determine if a particular regulation under the FDP Regulations applies will, if repeated with the same figures at the date the modification is intended to take effect, have the same result;
Explanatory note: the Secretary of State has confirmed that the statement in (C) is what is intended under Regulation 14(2)(d).
 - 10.29.4 the amount of the change in the costs estimates compared to the DWMP that is attributable to each Exempt Modification;
 - 10.29.5 the proposed modifications to the DWMP that do not constitute Exempt Modifications and for which the Operator requires the approval of the Secretary of State, together with the amount of the change in the costs estimates compared to the DWMP that is attributable to each Non-Exempt Modification; and
 - 10.29.6 that the modifications to the DWMP contained in the Draft DWMP are intended to take effect as at the end of the Annual Review Year (subject to the Secretary of State's approval in respect of any proposed modifications which are Non-Exempt Modifications).

SECTION 2: Requirements for the Annual Report**1. ANNUAL REPORT**

The Annual Report shall comprise:

- 1.1.1 a statement of the total Fund Assets Value at the end of the Annual Reporting Period as set out in the Annual Fund Assets Report;
- 1.1.2 a statement of the Annual Milestone for the Next Financial Period as set out in the Draft Contributions Notice;
- 1.1.3 a statement of whether the Fund Assets Value at the end of the Annual Reporting Period, together with the Specified Security is at, above or below the Required Value (and if above or below, by what amount);
- 1.1.4 a statement of the Operator's assessment of the DTM Costs and the P50 DTM Costs as at the end of the Annual Reporting Period;
- 1.1.5 in an Annual Review prior to the end of the Primary Funding Period, a statement of the Accelerated Decommissioning Contributions Amount;
- 1.1.6 the Significant Event Assessment Notice;
- 1.1.7 the Draft DWMP;
- 1.1.8 in each Annual Review which commences after the Switch Date, the Gilt Yield Notification;
- 1.1.9 in each Annual Review which commences after the Switch Date, the Long Term Discount Rate;
- 1.1.10 in each Annual Review which relates to a Potential Cash Sweep Period, a statement of the result of each assessment undertaken in accordance with Clause 24.2.3 (*Qualifying Cash Sweep Periods will be identified on a provisional and final basis*);
- 1.1.11 where relevant a statement and explanation of the calculation of the Provisional Cash Sweep Amount as calculated in accordance with Clause 25.1.2 (*Provisional Cash Sweep Payment*) for the appropriate Financial Period;
- 1.1.12 where relevant a statement and explanation of the calculation of the Reconciled Cash Sweep Amount as calculated in accordance with Clause 25.2.2 (*Reconciliation Cash Sweep Payment*) for the appropriate Financial Period;
- 1.1.13 the Draft Contributions Notice; and
- 1.1.14 the Annual Operator Directors' Certificate.

SECTION 3: Disputes arising at Annual Review**1. PARTIES WILL ATTEMPT TO RESOLVE DISPUTES****1.1 If, at any stage during an Annual Review:**

1.1.1 a dispute arises between the Operator and any of the Verifiers in respect of the Significant Event Assessment Notice, the Gilt Yield Notification, the Draft DWMP or the Draft Contributions Notice; or

1.1.2 any of the Review Participants fails to submit a response or document required by the Annual Review Process when due and this has not been remedied within five (5) Business Days,

appropriate representatives from the relevant Review Participants shall meet to discuss the matter within the next five (5) Business Days and shall attempt to resolve any disagreements. The FDP Implementation Company shall use its reasonable endeavours to procure the relevant Review Participants (other than the Operator) attend any such meeting.

1.2 For the avoidance of doubt, a dispute will arise for the purposes of paragraph 1.1.1 if:

1.2.1 a Review Participant indicates in any response or report produced as part of the Annual Review Process that it does not agree with the relevant assessment made by the Operator; or

1.2.2 any response or report produced as part of the Annual Review Process does not contain a statement that it is required to contain under this Agreement (other than the statement in the Financial Verification Report regarding whether there is an Inconsistent Portfolio if the Operator agrees).

2. REFERRAL TO INDEPENDENT DISPUTE RESOLUTION CAN BE MADE

If the Review Participants cannot resolve their disagreements within a further five (5) Business Days after the deadline for the discussion meeting referred to in paragraph 1 (*Parties will attempt to resolve disputes*), either Party may refer the matter for determination in accordance with the Independent Expert Referral Procedure.

3. DISPUTE RESOLUTION WILL BE DISCONTINUED IF PARTIES SUCCESSFULLY RESOLVE DISPUTE

Any dispute referred to the Independent Expert Referral Procedure under paragraph 2 (*Referral to independent dispute resolution can be made*) shall be discontinued immediately if:

3.1.1 the Operator and the relevant Verifier confirm in writing that the dispute has been resolved at any time before a binding determination is made; or

3.1.2 the Operator withdraws the referral to the Independent Expert by giving notice to the FDP Implementation Company and the relevant Verifier at any time before a binding determination is made confirming that an agreement has been reached with the Verifier.

SCHEDULE 9

QUINQUENNIAL REVIEW PROGRAMME

Explanatory note: in the Disbursements Period, the Annual Reconciliation Review will form part of the Quinquennial Review Programme.

SECTION 1: Quinquennial Review Process

STAGE 1: REVIEW OF FUND ASSETS

The FDP Implementation Company shall use reasonable endeavours to procure that the FDP Company Administrator, an FDP Custodian or an Investment Execution Manager submits an Annual Fund Assets Report to the Operator within five (5) Business Days of the end of the Quinquennial Reporting Period.

STAGE 2: SUBSTANTIVE REVIEW OF DWMP

3.2 DWMP will be fully updated

The Operator shall undertake a substantive review of: (i) the DWMP; and (ii) the Detailed DWMP, and shall then prepare the Draft DWMP and a revised Detailed DWMP in accordance with the requirements set out in paragraphs 3.3 (*Factors to be considered by the Operator*) to 3.7 (*Draft DWMP will continue to be supported by a Detailed DWMP*) below.

3.3 Factors to be considered by the Operator

The Operator shall consider the following factors in updating the Draft DWMP and the revised Detailed DWMP and shall include those amendments which it considers, acting reasonably, are necessary to reflect:

- 3.3.1 the Operator's current intentions under its Nuclear Site Licence obligations in relation to the Decommissioning Strategy in a level of detail which is, in the Operator's opinion, acting reasonably, appropriate taking into account the Decommissioning Start Date and planned date of closure of Reactor 2;
- 3.3.2 any Operational Changes that are in the Operator's opinion, acting reasonably, relevant;
- 3.3.3 the Operator's assessment of risks and uncertainties in relation to the DWMP;
- 3.3.4 any relevant experience accumulated by Affiliates in decommissioning, to the extent available to the Operator;
- 3.3.5 the volumes of Waste generated as at the end of the Quinquennial Reporting Period and the Operator's projections of the volumes that will be generated during the remainder of the Operational Period; and
- 3.3.6 the RWM Waste Packaging Advice (or Revised Policy Waste Acceptance Criteria) then applicable under the SF Transfer Contract; and
- 3.3.7 Good Industry Practice in cost estimation taking into account the Decommissioning Start Date.

3.4 Assumptions to be reflected in the Draft DWMP

The Draft DWMP and revised Detailed DWMP prepared by the Operator shall reflect:

- 3.4.1 the Fixed Assumptions; and
- 3.4.2 the Notifiable Assumptions (unless the Operator certifies that it has notified the Relevant Regulators of the change to the Notifiable Assumptions and that it has not received any objection to the change in writing from either of the Relevant Regulators).

3.5 **Outputs to be included in the Draft DWMP**

The Draft DWMP prepared by the Operator shall include a schedule of annual cash outflows for each year in which there is a cash outflow relating to the Designated Technical Matters as described in the Draft DWMP. The Operator shall present the Costs of Decommissioning, the Costs of Spent Fuel Management, the Costs of ILW Disposal and the Costs of Spent Fuel Disposal separately within such cash outflows. All costs shall be stated in real values as at the end of the relevant Quinquennial Reporting Period.

3.6 **Basis on which DTM Costs to be calculated in the Draft DWMP**

The Draft DWMP and the Detailed DWMP prepared by the Operator shall include the DTM Costs as at the end of the Quinquennial Reporting Period (in real values as at the end of the relevant Quinquennial Reporting Period), prepared in accordance with Good Industry Practice, and which reasonably reflects the following:

- 3.6.1 the cost impact of any changes made to the Draft DWMP and Detailed DWMP pursuant to paragraphs 3.3 (*Factors to be considered by the Operator*) to 3.5 (*Outputs to be included in the Draft DWMP*) above;
- 3.6.2 the cost impact of the Estimating Uncertainty, as recalculated in relation to the Draft DWMP and Detailed DWMP pursuant to paragraphs 3.3 (*Factors to be considered by the Operator*) to 3.5 (*Outputs to be included in the Draft DWMP*) above;
- 3.6.3 the cost impact of the Discrete Risk, as recalculated in relation to the Draft DWMP and Detailed DWMP pursuant to paragraphs 3.3 (*Factors to be considered by the Operator*) to 3.5 (*Outputs to be included in the Draft DWMP*) above; and
- 3.6.4 from and including the first (1st) Quinquennial Review, Estimating Uncertainty and Discrete Risk and cost shall be combined using a statistical model to produce a probability distribution from which an appropriate P value can be derived.

3.7 **Draft DWMP will continue to be supported by a Detailed DWMP**

- 3.7.1 The Operator shall maintain a Detailed DWMP as the main supporting reference to the Draft DWMP.
- 3.7.2 The Detailed DWMP shall provide such further detail as the Operator considers, acting reasonably, is necessary to support the Draft DWMP including on the:
 - (A) scope of the decommissioning and waste management steps;
 - (B) schedule (setting out the timing and interdependencies of the proposed works); and
 - (C) the DTM Costs and the methods by which they have been estimated.
- 3.7.3 The Detailed DWMP shall be developed into an executable plan five (5) years prior to the Decommissioning Start Date and thereafter on a rolling basis during the Disbursements Period in the form of Annual Work Plan and Budgets.

3.8 **Operator shall submit the Draft DWMP**

The Operator shall send a copy of the Draft DWMP to each of the FDP Implementation Company and the Independent Technical Verifier, together with:

- 3.8.1 an explanation of the changes, deletions and additions relative to the existing DWMP and existing Detailed DWMP;
- 3.8.2 a copy of the Operator's assessment of the risks and uncertainties in relation to the Draft DWMP and a reconciliation of that assessment to the calculation of Estimating Uncertainty and Discrete Risk; and
- 3.8.3 an explanation of the changes to the Estimating Uncertainty and Discrete Risk relative to the existing DWMP and existing Detailed DWMP,

within forty-five (45) Business Days after the end of the Quinquennial Reporting Period.

3.9 Technical Verification will be performed

Within sixty (60) Business Days of receipt of the Draft DWMP, the Independent Technical Verifier shall:

- 3.9.1 assess whether the Draft DWMP is reasonable in accordance with the agreed technical verification procedures for Quinquennial Review (as set out in Section 2 (*Agreed Technical Verification procedure for Quinquennial Review*) of Schedule 10 (*Technical Verification*); and
- 3.9.2 submit a Technical Verification Report in the form required for Quinquennial Review to the Operator and the FDP Implementation Company.

STAGE 3: CALCULATION OF DISCOUNT RATES AND CASH SWEEP

3.10 Fixed rate LTDR used prior to the Switch Date

In each Quinquennial Review which commences on or before the Switch Date, a fixed real rate of one point five percent (1.5%) per annum shall be used as the Long Term Discount Rate in the calculations performed under Schedule 3 (*Minimum Contribution Calculation Rules*).

3.11 Annual Market LTDR used after the Switch Date

3.11.1 In any Quinquennial Review which commences after the Switch Date, the Operator shall always be entitled to use the 20 Year Gilt Rate as the Long Term Discount Rate unless and until such time the Operator elects (by giving notice to the FDP Implementation Company) to use an Alternative Long Term Discount Rate calculated in accordance with paragraph 8 (*Calculation of an Alternative Long Term Discount Rate*) of Section 4 (*Formulae Sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*), following which the Alternative Long Term Discount Rate shall apply.

3.11.2 If:

- (A) the Operator has elected to use an Alternative Long Term Discount Rate; and
- (B) the rate calculated by the Operator under paragraph 8.1 (*Election of an Alternative Long Term Discount Rate*) of Schedule 3 (*Minimum Contribution Calculation Rules*) is not more than zero point one percent (0.1%) greater than the 20 Year Gilt Rate,

the Operator shall submit a notice to each of the FDP Implementation Company and the Independent Financial Verifier on or around the date of the delivery of the Draft Contribution Notice, having exercised reasonable skill and care, confirming that to the best of its knowledge and belief the Alternative Long Term Discount Rate has been properly calculated in accordance with paragraph 8 (*Calculation of an Alternative Long Term Discount Rate*) of Section 4 (*Formulae Sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*).

3.12 Cash Sweep Payment relating to the LTDR switch

If the last Financial Period in a Quinquennial Reporting Period is a Qualifying Cash Sweep Period, the Operator shall calculate the Cash Sweep Payment to be made in respect of that Financial Period in accordance with Clause 24 (*Cash Sweep*).

3.13 Fixed rate STDR used prior to the Switch Date

In each Quinquennial Review which commences on or before the Switch Date, a fixed real rate of one point five percent (1.5%) per annum shall be used as the Short Term Discount Rate in the calculations performed under Schedule 3 (*Minimum Contribution Calculation Rules*).

3.14 Annual Market STDR used after the Switch Date

In each Quinquennial Review which commences after the Switch Date, the Operator shall review the Short Term Discount Rate on the last day of the Quinquennial Reporting Period and shall give a Gilt Yield Notification to the FDP Implementation Company and the Independent Financial Verifier within fifteen (15) Business Days of the end of the Quinquennial Reporting Period.

STAGE 4: FINANCIAL VERIFICATION**3.15 Specified obligations**

In addition to the obligations described in paragraph 3.19 (*Specified obligation*) below, the obligations that have been specified for the purposes of paragraph (a) of the definition of "financial verification report" in the FDP Regulations are:

- 3.15.1 in each Quinquennial Review which commences after the Switch Date, the obligation to give a Gilt Yield Notification in accordance with paragraph 3.1 of this Quinquennial Review Process; and
- 3.15.2 the obligation to use reasonable endeavours to comply with the Investment Rules as at the last day of the Quinquennial Reporting Period in accordance with Clause 14.1 (*Operator compliance with the Investment Rules at a year end*).

3.16 Financial verification will be performed

Within fifteen (15) Business Days of receipt of the Gilt Yield Notification or thirty (30) Business Days of the end of the Quinquennial Reporting Period (whichever is latest), the Independent Financial Verifier shall:

- 3.16.1 assess:
 - (A) in each Quinquennial Review which commences after the Switch Date, whether the Gilt Yield Notification accurately reflects the Short Term Discount Rate from the source publication on the last day of the Quinquennial Reporting Period;
 - (B) whether or not there was an Inconsistent Portfolio as at the last day of the Quinquennial Reporting Period; and
- 3.16.2 submit a Financial Verification Report to the Operator and the FDP Implementation Company.

STAGE 5: REVIEW OF CONTRIBUTIONS NOTICE**3.17 Draft Contributions Notice will be updated to reflect Draft DWMP and Short Term Discount Rate**

The Operator shall calculate a new Draft Contributions Notice in accordance with the Minimum Contribution Calculation Rules.

3.18 Draft Contributions Notice to be submitted

The Operator shall send a copy of the Draft Contributions Notice to the FDP Implementation Company and the Independent Financial Verifier as soon as reasonably practicable and in any event within fifteen (15) Business Days after:

- 3.18.1 the Financial Verification Report has been given and verified or determined (as applicable); and
- 3.18.2 the Draft DWMP has been produced and verified or determined (as applicable).

3.19 Specified obligation

In addition to the obligations described in paragraph 3.15 (*Specified obligations*) above, the obligation that has been specified for the purposes of paragraph (a) of the definition of "financial verification report" in the FDP Regulations is the obligation of the Operator to

calculate a new Draft Contributions Notice in accordance with paragraph 3.17 of this Quinquennial Review Process.

3.20 **Operator calculations will be verified**

Within fifteen (15) Business Days of receipt of the Draft Contributions Notice, the Independent Financial Verifier shall:

- 3.20.1 calculate the Draft Contributions Notice in accordance with the Minimum Contribution Calculation Rules; and
- 3.20.2 submit a Calculation Confirmation Report to the Operator and the FDP Implementation Company.

STAGE 6: ANNUAL DIRECTORS' COMPLIANCE CERTIFICATE

The Operator shall review compliance with the material provisions of this Agreement over the last Financial Period of the Quinquennial Reporting Period in order to prepare the Annual Operator Directors' Certificate.

STAGE 7: OPERATOR FORMULATES QUINQUENNIAL REPORT

3.21 **Formulation of Quinquennial Report**

The Operator shall produce a Quinquennial Report containing the documents listed in Section 2 (*Requirements for the Quinquennial Report*) of this Schedule 9 (*Quinquennial Review Programme*) and shall submit it to the FDP Implementation Company and whoever of the FDP Company Administrator, an FDP Custodian or any Investment Execution Manager will provide the Modification Verification Report.

3.22 **Specified obligation**

The obligation that has been specified for the purposes of paragraph (a) of the definition of "modification verification report" in the FDP Regulations is the obligation of the Operator to deliver a Quinquennial Report in accordance with paragraph 3.21 (*Formulation of Quinquennial Report*) of this Quinquennial Review Process.

3.23 **Modification Verification Report**

The FDP Implementation Company shall use its reasonable endeavours to procure that the FDP Company Administrator, an FDP Custodian or any Investment Execution Manager (as applicable) gives a Modification Verification Report to the Operator and the FDP Implementation Company within ten (10) Business Days of submission of the Quinquennial Report by the Operator under paragraph 3.21 (*Formulation of Quinquennial Report*).

STAGE 8: SUBMISSION OF QUINQUENNIAL REPORT AND VERIFICATION REPORTS

Within five (5) Business Days of receipt of the Modification Verification Report from the FDP Company Administrator, an FDP Custodian or any Investment Execution Manager (as applicable), the Operator shall submit to the Secretary of State and the FDP Implementation Company:

- 3.24 the Quinquennial Report;
- 3.25 the Annual Fund Assets Report;
- 3.26 the Technical Verification Report;
- 3.27 the Financial Verification Report;
- 3.28 the Calculation Confirmation Report;
- 3.29 any binding determination made in the course of the Quinquennial Review;
- 3.30 the Modification Verification Report; and
- 3.31 a notice confirming:
 - 3.31.1 the modifications to the DWMP that are contained in the Draft DWMP and which constitute Exempt Modifications;

- 3.31.2 the particular regulation under the FDP Regulations which applies to make each of those proposed modifications an Exempt Modification;
- 3.31.3 the calculations performed to determine if a particular regulation under the FDP Regulations applies will, if repeated with the same figures at the date the modification is intended to take effect, have the same result;
Explanatory note: the Secretary of State has confirmed that the statement in (C) is what is intended under Regulation 14(2)(d).
- 3.31.4 the amount of the change in the costs estimates compared to the DWMP that is attributable to each Exempt Modification;
- 3.31.5 the proposed modifications to the DWMP that do not constitute Exempt Modifications and for which the Operator requires the approval of the Secretary of State, together with the amount of the change in the costs estimates compared to the DWMP that is attributable to each Non-Exempt Modification; and
- 3.31.6 that the modifications to the DWMP contained in the Draft DWMP are intended to take effect as at the end of the Quinquennial Review Year (subject to the Secretary of State's approval in respect of any proposed modifications which are Non-Exempt Modifications).

SECTION 2: Requirements for the Quinquennial Report

The Quinquennial Report shall comprise:

- 3.32 a statement of the total Fund Assets Value at the end of the Quinquennial Reporting Period as set out in the Annual Fund Assets Report;
- 3.33 a statement of the Annual Milestone for the Next Financial Period as set out in the Draft Contributions Notice;
- 3.34 a statement of whether the Fund Assets Value at the end of the Quinquennial Reporting Period, together with the Specified Security is at, above or below the Required Value (and if above or below, by what amount);
- 3.35 a statement of the Operator's assessment of the DTM Costs and the P50 DTM Costs as at the end of the Quinquennial Reporting Period;
- 3.36 in a Quinquennial Review prior to the end of the Primary Funding Period, a statement of the Accelerated Decommissioning Contributions Amount;
- 3.37 the Draft DWMP;
- 3.38 in each Quinquennial Review which commences after the Switch Date, the Gilt Yield Notification;
- 3.39 in each Quinquennial Review which commences after the Switch Date, the Long Term Discount Rate;
- 3.40 in each Quinquennial Review which relates to a Potential Cash Sweep Period, a statement of the result of each assessment undertaken in accordance with Clause 24.2.3 (Qualifying Cash Sweep Periods will be identified on a provisional and final basis);
- 3.41 where relevant a statement and explanation of the calculation of the Provisional Cash Sweep Amount as calculated in accordance with Clause 25.1.2 (Provisional Cash Sweep Payment) for the appropriate Financial Period;
- 3.42 where relevant a statement and explanation of the calculation of the Reconciled Cash Sweep Amount as calculated in accordance with Clause 25.2.2 (Reconciliation Cash Sweep Payment) for the appropriate Financial Period;
- 3.43 the Draft Contributions Notice; and
- 3.44 the Annual Operator Directors' Certificate.

SECTION 3: Disputes Arising at a Quinquennial Review**1. PARTIES WILL ATTEMPT TO RESOLVE DISPUTES****1.1 If, at any stage during a Quinquennial Review:**

1.1.1 a dispute arises between the Operator and any of the Verifiers in respect of the Gilt Yield Notification, the Draft DWMP or the Draft Contributions Notice; or

1.1.2 any of the Review Participants fails to submit a response or document required by the Quinquennial Review Process when due and this has not been remedied within five (5) Business Days,

appropriate representatives from the relevant Review Participants shall meet to discuss the matter within the next five (5) Business Days and shall attempt to resolve any disagreements. The FDP Implementation Company shall use its reasonable endeavours to procure the relevant Review Participants (other than the Operator) attend any such meeting.

1.2 For the avoidance of doubt, a dispute will arise for the purposes of paragraph 1.1.1 if:

1.2.1 a Review Participant indicates in any response or report produced as part of the Quinquennial Review Process that it does not agree with the relevant assessment made by the Operator; or

1.2.2 any response or report produced as part of the Quinquennial Review Process does not contain a statement that it is required to contain under this Agreement (other than the statement in the Financial Verification Report regarding whether there is an Inconsistent Portfolio, if the Operator agrees).

2. REFERRAL TO INDEPENDENT DISPUTE RESOLUTION CAN BE MADE

If the Review Participants cannot resolve their disagreements within a further five (5) Business Days after the deadline for the discussion meeting referred to in paragraph 1 (*Parties will attempt to resolve disputes*) of this Section 3, then either Party may refer the matter for determination in accordance with the Independent Expert Referral Procedure.

3. DISPUTE RESOLUTION WILL BE DISCONTINUED IF PARTIES SUCCESSFULLY RESOLVE DISPUTE

Any dispute referred to the Independent Expert Referral Procedure under paragraph 2 shall be discontinued immediately if:

3.1.1 the Operator and the relevant Verifier confirm in writing that the dispute has been resolved at any time before a binding determination is made; or

3.1.2 the Operator withdraws the referral to the Independent Expert by giving notice to the FDP Implementation Company and the relevant Verifier at any time before a binding determination is made confirming that an agreement has been reached with the Verifier.

SECTION 4: DWMP Assumptions**1. FIXED ASSUMPTIONS****1.1 The Fixed Assumptions are:**

- 1.1.1 the regulatory regime that will be applied to waste management and decommissioning at the relevant time will be that in force at the time the Draft DWMP is prepared;
- 1.1.2 during the Operational Period, the final site end state will be such that the Site has been returned to a state agreed with the regulators and the planning authority;
- 1.1.3 cost estimates will be presented in real values on a consistent basis;
- 1.1.4 decommissioning will be undertaken using equipment and techniques available at the time the Draft DWMP is prepared;
- 1.1.5 all DTM Costs (but, for the avoidance of doubt, not the operational costs of the second (2nd) Reactor) associated with the operation of the Site after the Decommissioning Start Date and prior to achieving the Site End State will be funded as part of decommissioning activity;
- 1.1.6 the Operator shall finance the Operational DTM Costs from operational revenue during the Operational Period and such costs will be separately identified in the Draft DWMP (but shall not be included in the cash flows in the Draft DWMP which are to be used for the purposes of Schedule 3 (*Minimum Contribution Calculation Rules*));
- 1.1.7 under the SF Transfer Contract or the ILW Transfer Contract (as applicable):
 - (A) subject to paragraph (C), the price per m³ of packaged ILW relating to the ILW Transfer Contract shall be the ILW Transfer Price and shall not be updated, except by Indexation, unless and until an ILW Transfer Contract Certificate is delivered by the Operator to the FDP Implementation Company to update it;
 - (B) subject to paragraph (C), the price per tU of SF Waste relating to the SF Transfer Contract shall be the SF Transfer Price and shall not be updated, except by Indexation, unless and until an SF Transfer Contract Certificate is delivered by the Operator to the FDP Implementation Company to update it;
 - (C) only items set out in an ILW Transfer Contract Certificate or an SF Transfer Contract Certificate which are received by the end of the Annual Reporting Period or Quinquennial Reporting Period (as applicable) shall be used for the purposes of the relevant Annual Review or Quinquennial Review (as applicable) and any such items received after such date shall only be used in the following Annual Review or Quinquennial Review (whichever is sooner);
 - (D) the dates on which title to and liability for the relevant ILW Waste shall pass to the Secretary of State (and the relevant payments be made) shall be the ILW Transfer Dates;
 - (E) the cost estimate (if any) in relation to the Waste and Spent Fuel Management Service shall be the Costs of Spent Fuel Management;
 - (F) the date on which title to and liability for the relevant SF Waste shall pass to the Secretary of State (and the relevant payments be made) under the SF Transfer Contract shall be the SF Transfer Date;
 - (G) the dates on which it is estimated that the disposal of the SF Waste relating to the SF Transfer Contract will occur shall be the SF Disposal Dates; and

- (H) Waste management and Spent Fuel disposal and ILW disposal will be carried out in accordance with the SFTC and the ILWTC (as applicable).

2. **NOTIFIABLE ASSUMPTIONS**

2.1 **The Notifiable Assumptions are:**

- 2.1.1 prompt decommissioning of the Site ("**early site clearance**") will be employed;
- 2.1.2 the operating lifetime of each of the Reactors will be sixty (60) years; and
- 2.1.3 low level waste will be dispatched to a disposal facility promptly after generation.

SCHEDULE 10**TECHNICAL VERIFICATION****SECTION 1: Requirements for the Technical Verification Report on Annual Review**

The Technical Verification Report for an Annual Review shall be a document comprising:

- 2.2 a summary of the report's contents;
- 2.3 the following statements:
 - 2.3.1 confirmation that the Independent Technical Verifier is not an affiliate of the Operator or the FDP Implementation Company;
 - 2.3.2 confirmation that the Independent Technical Verifier has acted in the capacity of an independent professional in preparing the Technical Verification Report; and
 - 2.3.3 any other reasons that the Independent Technical Verifier wishes to give for considering that it is independent of the Operator and the FDP Implementation Company;
- 2.4 an assessment of whether, in its reasonable opinion, the Independent Technical Verifier considers the changes made by the Operator to the cost estimates and, if applicable, the details of the steps in the Draft DWMP are reasonable (including as to the application of Indexation and the removal of discharged liabilities);
- 2.5 a section setting out the curriculum vitae of the key personnel who have prepared the Technical Verification Report and/or any other details of the Independent Technical Verifier's qualifications and experience which it wishes to provide; and
- 2.6 a statement of any limits of liability subject to which the Secretary of State may rely on the Independent Technical Verifier's assessment.

SECTION 2: Agreed Technical Verification Procedures for Quinquennial Review**2.7 General approach**

- 2.7.1 The Independent Technical Verifier may request, and the Operator shall provide, any information reasonably required to understand the evidence and rationale behind the Draft DWMP proposed by the Operator and the methodologies, assumptions or data sets used by the Operator.
- 2.7.2 If the Operator has used different methodologies, assumptions or data sets from those used in the previous Quinquennial Review to formulate its view on the Draft DWMP, then the Independent Technical Verifier shall confirm whether the change was reasonably justified (for example, due to a change in legal or economic circumstances and/or the better availability or quality of the revised methodologies, assumptions or data).

2.8 Transposition of Detailed DWMP

The Independent Technical Verifier shall assess whether the data in the Draft DWMP properly represents that in the underlying Detailed DWMP.

2.9 Technical steps

The Independent Technical Verifier shall assess whether the Detailed DWMP properly identifies the necessary scope and appropriate scheduling for:

- 2.9.1 Decommissioning; and
- 2.9.2 Waste Management,

in accordance with the Decommissioning Strategy and the strategy for Waste Management (as applicable).

2.10 Technical deliverability of the Decommissioning Strategy

The Independent Technical Verifier shall assess whether the scope of the Decommissioning Strategy is technically deliverable.

2.11 Cost estimates

- 2.11.1 The Independent Technical Verifier shall assess whether the cost estimates in the DWMP have been prepared in accordance with Good Industry Practice.
- 2.11.2 The Independent Technical Verifier shall assess whether the Operator's assessment, and the application, of Discrete Risk and Estimating Uncertainty to the cost estimates is in accordance with Good Industry Practice and whether the estimates stated by the Operator can reasonably be regarded as representing the Approved P Value.

2.12 Updating steps

The Independent Technical Verifier shall assess whether, taken in the round, in the Independent Technical Verifier's reasonable opinion, the Operator has considered the factors in paragraph 3.3 (*Factors to be considered by the Operator*) of Section 1 (*Quinquennial Review Process*) of Schedule 9 (*Quinquennial Review Programme*) in a reasonable way in producing the Draft DWMP.

SECTION 3: Requirements for the Technical Verification Report on Quinquennial Review

The Technical Verification Report on a Quinquennial Review shall be a document comprising:

- 2.13 a summary of the report's contents;
- 2.14 the following statements:
 - 2.14.1 confirmation that the Independent Technical Verifier is not an affiliate of the Operator or the FDP Implementation Company;
 - 2.14.2 confirmation that the Independent Technical Verifier has acted in the capacity of an independent professional in preparing the Technical Verification Report; and
 - 2.14.3 any other reasons that the Independent Technical Verifier wishes to give for considering that it independent of the Operator and the FDP Implementation Company;
- 2.15 an assessment of whether, in its reasonable opinion, the Independent Technical Verifier considers the Draft DWMP to be reasonable (including as to the application of Indexation and the removal of discharged liabilities);
- 2.16 a section setting out the curriculum vitae of the key personnel who have prepared the Technical Verification Report and/or any other details of the Independent Technical Verifier's qualifications and experience which it wishes to provide; and
- 2.17 a statement of any limits of liability subject to which the Secretary of State may rely on the Independent Technical Verifier's assessment.

SECTION 4: Requirements for the Expert Verification Report on technical issues

The Expert Verification Report on technical issues shall be a document prepared in accordance with the provisions of Schedule 19 (*Independent Expert Referral Procedure*) comprising:

- 2.18 a summary of the report's contents;
- 2.19 the following statements (subject always to paragraph 1.5 of Schedule 19 (*Independent Expert Referral Procedure*)):
 - 2.19.1 confirmation that the Independent Expert is not an affiliate of the Operator or the FDP Implementation Company;
 - 2.19.2 confirmation that the Independent Expert has acted in the capacity of an independent professional in preparing the Expert Verification Report; and
 - 2.19.3 any other reasons that the Independent Expert wishes to give for considering that it is independent of the Operator and the FDP Implementation Company;
- 2.20 an assessment, in respect of the items or lines of the Draft DWMP that have been referred to him for determination, of the costs estimates that the Independent Expert considers to be reasonable and, if paragraph 1.18.3 of Schedule 19 (*Independent Expert Referral Procedure*) applies, any changes or additions to the scope necessary to remedy any deficiencies in the scope identified by the Independent Technical Verifier either through omission of scope or the inclusion of scope which is not technically deliverable, and a related cost estimate;
- 2.21 a section setting out the curriculum vitae of the key personnel who have prepared the Expert Verification Report and/or any other details of the Independent Expert's qualifications and experience which it wishes to provide; and
- 2.22 a statement of any limits of liability subject to which the Secretary of State may rely on the Independent Expert's assessment.

References in this section to an Independent Expert shall be construed as references to a Panel, as appropriate.

SECTION 5: ILW Transfer Contract Certificates and SF Transfer Contract Certificates

The Independent Technical Verifier shall not assess any of the underlying matters set out in the relevant ILW Transfer Contract Certificates and SF Transfer Contract Certificates as part of an Annual Review or Quinquennial Review, but the scope of its review may include satisfying itself that the contents of the relevant ILW Transfer Contract Certificates and the SF Transfer Contract Certificates have been reflected accurately in the DWMP or the Detailed DWMP.

SCHEDULE 11

FINANCIAL VERIFICATION

SECTION 1: Requirements for the Financial Verification Report

The Financial Verification Report shall be a document comprising:

- 2.23 a summary of the report's contents;
- 2.24 the following statements:
 - 2.24.1 confirmation that the Independent Financial Verifier is not an affiliate of the Operator or the FDP Implementation Company;
 - 2.24.2 confirmation that the Independent Financial Verifier has acted in the capacity of an independent professional in preparing the Financial Verification Report; and
 - 2.24.3 any other reasons that the Independent Financial Verifier wishes to give for considering that it is independent of the Operator and the FDP Implementation Company;
- 2.25 in each Annual Review and Quinquennial Review which commences after the Switch Date, a statement of whether, in the Independent Financial Verifier's reasonable opinion, the Gilt Yield Notification given by the Operator complies with the specified obligation in paragraph 10.12 of the Annual Review Process or paragraph 3.15 of the Quinquennial Review Process (as the case may be);
- 2.26 where paragraph 2.25 applies, a confirmation that the method followed by the Independent Financial Verifier was to cross-check the Short Term Discount Rate stated in the Gilt Yield Notification against the source publication on the last day of the Annual Reporting Period or the Quinquennial Reporting Period (as the case may be);

Explanatory note: The Secretary of State has required verification of gilt yields to be reported by the Operator. This is a factual matter and taken from a publicly available source. The FDP Regulations require the method of verification to be stated in a verification report, including where factual matters are being cross-checked and this is what paragraph 2.26 addresses.
- 2.27 a statement of whether, in the Independent Financial Verifier's reasonable opinion, the Fund Assets (taken as a whole) complied with the Investment Rules as at the last day of the Annual Reporting Period or Quinquennial Reporting Period (as the case may be);
- 2.28 a section setting out the professional rules or standards which apply to the Independent Financial Verifier (or to the key personnel who have prepared the Financial Verification Report);
- 2.29 a section setting out the curriculum vitae of the key personnel who have prepared the Financial Verification Report and/or any other details of the Independent Financial Verifier qualifications and experience which it wishes to provide; and
- 2.30 a statement of any limits of liability subject to which the Secretary of State may rely on the Independent Financial Verifier's assessment.

SECTION 2: Requirements for the Calculation Confirmation Report

The Calculation Confirmation Report shall be a document comprising:

- 2.31 a summary of the report's contents;
- 2.32 the following statements:
 - 2.32.1 confirmation that the Independent Financial Verifier is not an affiliate of the Operator or the FDP Implementation Company;
 - 2.32.2 confirmation that the Independent Financial Verifier has acted in the capacity of an independent professional in preparing the Calculation Confirmation Report; and
 - 2.32.3 any other reasons that the Independent Financial Verifier wishes to give for considering that it is independent of the Operator and the FDP Implementation Company;
- 2.33 a statement of whether, in the Independent Financial Verifier's reasonable opinion, the Draft Contributions Notice calculated by the Operator complies with the specified obligation in paragraph 10.16 of the Annual Review Process or paragraph 3.19 of Quinquennial Review Process (as the case may be);
- 2.34 a confirmation that the method followed by the Independent Financial Verifier to give the statement in paragraph 2.33 was to cross-check the Draft Contributions Notice against its own calculation of the relevant amounts and rates performed in accordance with the Minimum Contribution Calculation Rules;
- 2.35 a statement of whether (and by what amount) the Fund Assets Value at the end of the Annual Reporting Period or Quinquennial Reporting Period (as the case may be), together with the Specified Security was at, above or below the Required Value for the Current Financial Period;
- 2.36 a confirmation that the method followed by the Independent Financial Verifier to give the statement in paragraph 2.35 was to independently calculate the Required Value for the Current Financial Period and to compare it to the aggregate of:
 - 2.36.1 the Fund Assets Value for the end of the Annual Reporting Period or Quinquennial Reporting Period (as the case may be) as stated in the relevant Annual Fund Assets Report;
 - 2.36.2 the Annual Contribution for the Current Financial Period as stated in the last Contributions Notice;
 - 2.36.3 the Correction Contribution for the Next Financial Period as stated in the Draft Contributions Notice; and
 - 2.36.4 any factual evidence of an Overpayment made in the Current Financial Period given to it by the Operator or the FDP Implementation Company;
- 2.37 if the Alternative Long Term Discount Rate calculated by the Operator under paragraph 8.1 (*Election of an Alternative Long Term Discount Rate*) of Schedule 3 (*Minimum Contribution Calculation Rules*) is more than zero point one percent (0.1%) greater than the 20 Year Gilt Rate:
 - 2.37.1 a confirmation from the Independent Financial Verifier of whether or not the investment portfolio used for the purposes of calculating the Alternative Long Term Discount Rate is consistent with the criteria set out in paragraph 8.1.2 and 8.1.3 of Section 4 (*Formulae Sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*);
 - 2.37.2 a statement of whether, in the Independent Financial Verifier's reasonable opinion, the portfolio used by the Operator for the purposes of calculating the Alternative Long Term Discount Rate achieves a reasonably close match to the maturity, currency and RPI exposure of the DTM Costs, taking into account the assumptions in paragraph 8.1 (*Election of an Alternative Long Term Discount*

Rate) of Section 4 (*Formulae Sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*); and

- 2.37.3 a confirmation from the Independent Financial Verifier of whether or not the Alternative Long Term Discount Rate has been properly calculated;
- 2.38 a section setting out the professional rules or standards which apply to the Independent Financial Verifier (or to the key personnel who have prepared the Calculation Confirmation Report);
- 2.39 a section setting out the curriculum vitae of the key personnel who have prepared the Calculation Confirmation Report and/or any other details of the Independent Financial Verifier's qualifications and experience which it wishes to provide; and
- 2.40 a statement of any limits of liability subject to which the Secretary of State may rely on the Independent Financial Verifier's assessment.

SCHEDULE 12**REQUIREMENTS FOR THE ANNUAL FUND ASSETS REPORT**

The Annual Fund Assets Report is a document produced by the FDP Company Administrator, an FDP Custodian or any Investment Execution Manager comprising:

- 2.41 a summary setting out the Fund Assets Value as at the end of the relevant Financial Period;
- 2.42 the following statements:
 - 2.42.1 confirmation that the person who produced the Annual Fund Assets Report is not an affiliate of the Operator or the FDP Implementation Company;
 - 2.42.2 confirmation that the person who produced the Annual Fund Assets Report has acted in the capacity of an independent professional in preparing the Annual Fund Assets Report; and
 - 2.42.3 any other reasons that the person who produced the Annual Fund Assets Report wishes to give for considering that it is independent of the Operator and the FDP Implementation Company;
- 2.43 a confirmation that the method followed by the person who produced the Annual Fund Assets Report to give the Fund Assets Value was:
 - 2.43.1 for any Fund Assets the value of which is published, to aggregate the value of those Fund Assets as published as at the last day of the Previous Financial Period; or
 - 2.43.2 otherwise, to rely on a valuation of the relevant Fund Assets by a suitably qualified person that:
 - (A) for Real Estate, was obtained no more than three (3) years prior to the last day of the Previous Financial Period;
 - (B) for Infrastructure, was obtained no more than three (3) years prior to the last day of the Previous Financial Period; and
 - (C) for assets of a type other than Real Estate or Infrastructure, was obtained no more than one (1) year prior to the last day of the Previous Financial Period;
- 2.44 a statement that the Annual Fund Assets Report has been prepared to a reasonable standard with due care and attention;
- 2.45 a section setting out the curriculum vitae of the key personnel who have prepared the Annual Fund Assets Report and/or any other details of the qualifications and experience of the person who produced the Annual Fund Assets Report which it wishes to provide; and
- 2.46 a statement of any limits of liability subject to which the Secretary of State may rely on the assessment of the person who produced the Annual Fund Assets Report.

SCHEDULE 13**REQUIREMENTS FOR THE MODIFICATION VERIFICATION REPORT**

The Modification Verification Report is a document produced by the FDP Company Administrator, an FDP Custodian or any Investment Execution Manager comprising:

- 2.47 a summary of the contents of the Modification Verification Report;
- 2.48 the following statements:
 - 2.48.1 confirmation that the person who produced the Modification Verification Report is not an affiliate of the Operator or the FDP Implementation Company;
 - 2.48.2 confirmation that the person who produced the Modification Verification Report has acted in the capacity of an independent professional in preparing the Modification Verification Report; and
 - 2.48.3 any other reasons that the person who produced the Modification Verification Report wishes to give for considering that it is independent of the Operator and the FDP Implementation Company;
- 2.49 a statement of the Fund Assets Value as at the date of the Modification Verification Report;
- 2.50 a confirmation that the method followed by the person who produced the Modification Verification Report was the same as the method followed in respect of the Annual Fund Assets Report;
- 2.51 a statement of whether, in the reasonable opinion of the person who produced the Modification Verification Report, the Annual Report or Quinquennial Report submitted by the Operator complies with the specified obligation in paragraph 10.19 of the Annual Review Process or paragraph 7.2 of the Quinquennial Review Process (as the case may be);
- 2.52 a confirmation that the method followed by the person who produced the Modification Verification Report to confirm the compliance of the Annual Report or Quinquennial Report (as applicable) was to cross-check the Annual Report or Quinquennial Report submitted by the Operator against the relevant requirements set out in this Agreement;
- 2.53 a statement that the Modification Verification Report has been prepared to a reasonable standard with due care and attention;
- 2.54 a section setting out the curriculum vitae of the key personnel who have prepared the Modification Verification Report and/or any other details of the qualifications and experience of the person who produced the Modification Verification Report which it wishes to provide; and
- 2.55 a statement of any limits of liability subject to which the Secretary of State may rely on the assessment of the person who produced the Modification Verification Report.

SCHEDULE 14**REQUIREMENTS FOR ANNUAL OPERATOR DIRECTORS' CERTIFICATE**

The Annual Operator Directors' Certificate is a document signed by two (2) directors of the Operator, one of whom is the chief executive officer or managing director of the Operator, which includes (subject to Clauses 40 (*Programme for Disbursements Period and Decommissioning Period Annual Review*) and 41 (*Programme for Disbursements Period and Decommissioning Period Quinquennial Review*)):

1. MATERIAL OPERATIONAL EVENTS STATEMENT

A statement setting out whether or not, having made due and careful enquiry, the Operator is aware that any of the following occurred in the relevant Annual Reporting Period or Quinquennial Reporting Period (as the case may be):

1.1 Material breach of the FDP

A Payment Default or other breach of this Agreement which could reasonably be expected to have a Material and Adverse Effect.

1.2 Material Litigation

Any litigation, arbitration, administrative proceedings, adjudication, expert determination, Tax claim, or investigation before, any court, arbitral body or agency which is reasonably likely to have a Material and Adverse Effect if such claim is adversely determined.

1.3 Material Environmental Claim

Any Environmental Claim which has been commenced against it where that claim has or is reasonably likely to have a Material and Adverse Effect if such claim is adversely determined.

1.4 Loss of licence

A written notice has been received from any regulator with jurisdiction over the Operator which contains a clear and unequivocal statement that the Nuclear Site Licence will be terminated by such regulator (without replacement or substitution) with or without conditions.

1.5 Insurance

Whether or not the Operator has been able to obtain or maintain a material damage insurance policy as referred to in Clause 29 (*Maintenance of material damage insurance policy*).

2. REVIEW OF OPERATOR BUSINESS RESTRICTIONS AND OPERATOR FINANCIAL RESTRICTIONS

2.1 A statement setting out whether or not, having made due and careful enquiry and on the basis of the best information available to the Operator at the time the statement is given, the Operator is aware of any non-compliance with the Operator Business Restrictions during the Annual Reporting Period or the last Financial Period of the Quinquennial Reporting Period (as applicable).

2.2 In the period beginning on the Regearing Date and ending on the last day of the Primary Funding Period, in every Annual Review and Quinquennial Review, a statement of whether the Operator is in compliance with Permitted Gearing Levels as calculated in accordance with Clause 23.3 (*Permitted Gearing Level*), together with reasonable supporting evidence.

2.3 After the end of the Primary Funding Period, in every Annual Review or Quinquennial Review in which the Draft Contribution Notice shows a Deficit, a statement of whether the Operator is in compliance with Permitted Gearing Levels as calculated in accordance with Clause 23.3 (*Permitted Gearing Level*), together with reasonable supporting evidence.

3. WORKING CAPITAL STATEMENT

A statement setting out whether or not, having made due and careful enquiry and on the basis of the best available information to the Operator at the time the statement is given, the Operator believes it will be able to pay the next Annual Contribution when it falls due and whether or not, on the basis of those enquiries, the Operator has any current reason to believe that it will be unable to pay the Annual Contribution falling due twelve (12) months after the next Annual Contribution.

4. CASH SWEEP AMOUNT

If an Annual Reporting Period or the last Financial Period of a Quinquennial Reporting Period (as the case may be) is a Qualifying Cash Sweep Period, a statement setting out:

- 4.1.1 the Estimated Available Operator Cash Flow for such Qualifying Cash Sweep Period (together with a breakdown and reasonable supporting information to demonstrate how the amount has been calculated in accordance with Schedule 17 (*Available Operator Cash Flow for Qualifying Cash Sweep Period*));
- 4.1.2 if applicable, the Adjusted Available Operator Cash Flow for the preceding Qualifying Cash Sweep Period; and
- 4.1.3 the Operator's calculation of the Cash Sweep Payment due on the Cash Sweep Payment Date in that Qualifying Cash Sweep Period.

5. RELEASES FOLLOWING THE QUALIFYING CASH SWEEP PERIOD

If:

- 5.1.1 there is a Deficit and a Remaining Switch Period Deficit as at the end of the Annual Reporting Period or the last Financial Period of a Quinquennial Reporting Period (as the case may be);
- 5.1.2 that Annual Reporting Period or that last Financial Period of a Quinquennial Reporting Period (as the case may be) is one of the two (2) Financial Periods occurring immediately after the end of the final Qualifying Cash Sweep Period; and
- 5.1.3 any Permitted Allocation made by the Operator during the Qualifying Cash Sweep Periods was Released or used in circumstances of financial distress, in whole or in part, during the Annual Reporting Period or the last Financial Period of a Quinquennial Reporting Period (as the case may be),

a statement setting out:

- 5.1.4 the amount of the relevant Permitted Allocation which was Released;
- 5.1.5 the amounts (if any) paid to the FDP Implementation Company pursuant to Clause 27.2 (*Release of Over-Provision*); and
- 5.1.6 if the Operator has not made a payment, or has made a reduced payment, on the basis that such payment would have caused financial distress, reasonable supporting evidence of why it formed this view.

SCHEDULE 15**PAYMENTS AND DISBURSEMENTS REQUIREMENTS****SECTION 1: Requirements for Annual Work Plan and Budget**

Each Annual Work Plan and Budget shall contain:

- 5.2 a description of all of the works and activities to be undertaken by the Operator in relation to the Designated Technical Matters during the forthcoming Financial Period. Such description shall be in a form and include a level of detail that would constitute an executable plan, including as to scope, schedule, resources and interdependencies with other works;
- 5.3 a detailed breakdown of the Allowable Costs that it is estimated will become payable by the Operator in respect of such works and activities during the forthcoming Financial Period (or which were undertaken during a previous Financial Period, but which will become payable in the forthcoming Financial Period);
- 5.4 a breakdown of the Allowable Costs that it is estimated will become payable by the Operator in respect of works and activities to be undertaken up to the Half Year End;
- 5.5 a reconciliation of the planned works and activities and the estimated Allowable Costs for the forthcoming Financial Period to the Detailed DWMP;
- 5.6 a summary of the works and activities that the Operator expects to undertake in the two (2) Financial Periods after the forthcoming Financial Period, together with indicative estimates of the Allowable Costs that will become payable in respect of such works and activities and a reconciliation of such works and activities to the DWMP. Such summary shall include descriptions as to scope, schedule, resources and interdependencies with other works; and
- 5.7 a summary of the Operator's overall contracting strategy in relation to the Designated Technical Matters.

SECTION 2: Requirements for Mid-Year Report

Each Mid-Year Report shall contain:

- 5.8 a summary of all the works and activities set out in the Annual Work Plan and Budget which have been completed by the Operator as at the Half Year End;
- 5.9 a summary of the Allowable Costs which have been incurred by the Operator for works and activities undertaken up to the Half Year End;
- 5.10 a reconciliation between the costs incurred by the Operator as at the Half Year End and the costs that the Operator estimated would be incurred up to the Half Year End as set out in the Annual Work Plan and Budget;
- 5.11 if the works and activities are over budget by twenty percent (20%) or more compared to the schedule and estimates set out in the Annual Work Plan and Budget:
 - 5.11.1 a summary of how the cost overruns have arisen; and
 - 5.11.2 a summary of any action that the Operator has taken or plans to take in order to mitigate the circumstances that have given rise to such cost overruns;
- 5.12 the Operator's indicative assessment of whether it expects there to be a DTM Costs Overrun in the then current Financial Period, and its estimate of such DTM Costs Overrun; and
- 5.13 any other information that the Operator considers is reasonably required in order to enable a comparison of the actual performance of the Operator to the Half Year End against the expected performance set out in the Annual Work Plan and Budget for such period.

SECTION 3: Requirements for Contract Verification Report

Each Contract Verification Report shall contain:

- 5.14 a description of the Long Term Contract or Material Affiliate Contract to which it relates;
- 5.15 a statement of whether, in the Independent Technical Verifier's reasonable opinion, any amount to which the scope under the Long Term Contract or Material Affiliate Contract (as the case may be) gives rise, constitutes Disallowable Costs; and
- 5.16 if the Independent Technical Verifier considers, acting reasonably, that more than £1.5 million, Indexed per year of Disallowable Costs will be incurred under the Long Term Contract or Material Affiliate Contract (as the case may be), a detailed description of the relevant provisions and a summary of the reasons for the Independent Technical Verifier's view.

SCHEDULE 16**ANNUAL RECONCILIATION REVIEW**

Explanatory note: in the Disbursements Period, the Annual Reconciliation Review will form part of the Annual Review Programme.

SECTION 1: Process for Annual Reconciliation Review**STAGE 1: SUBMISSION OF DRAFT OPERATOR RECONCILIATION REPORT**

- 5.17 The Operator shall prepare each Operator Reconciliation Report and shall use its reasonable endeavours to procure that the Operator Reconciliation Report is complete and up to date in all material respects as at the date of submission.
- 5.18 The Operator shall submit the Operator Reconciliation Report to the FDP Implementation Company and the Independent Technical Verifier within two (2) months of the end of each Reconciliation Period.

STAGE 2: SUBMISSION OF RECONCILIATION CERTIFICATE

- 5.19 The Operator shall submit to the FDP Implementation Company and the Independent Technical Verifier a certificate signed by two (2) directors, one of whom shall be the managing director or the chief executive, of the Operator, which contains either:
- 5.19.1 a statement that all Operator Expenditure during the Reconciliation Period was solely in respect of Allowable Costs; or
- 5.19.2 a statement of the amounts of Operator Expenditure that the Operator considers were made in respect of Disallowable Costs, together with an explanation of why the Disallowable Costs arose and the steps that the Operator intends to take to prevent such circumstances arising in the future.

STAGE 3: VERIFICATION OF OPERATOR EXPENDITURE**5.20 Operator Reconciliation Report will be reviewed**

Following receipt of the Operator Reconciliation Report, the FDP Implementation Company shall use its reasonable endeavours to procure that the Independent Technical Verifier reviews the Operator Reconciliation Report as soon as reasonably practicable.

5.21 Technical Verification will be performed in accordance with Agreed Procedures

Within thirty (30) Business Days after receipt of the Operator Reconciliation Report, the Independent Technical Verifier shall:

- 5.21.1 undertake the Agreed Reconciliation Verification Procedures; and
- 5.21.2 submit a Reconciliation Verification Report.

STAGE 4: OPERATOR FORMULATES ANNUAL RECONCILIATION REPORT

The Operator shall produce the Annual Reconciliation Report containing the documents referred to in Section 5 (*Requirements for the Annual Reconciliation Report*) of this Schedule 16 (*Annual Reconciliation Review*).

STAGE 5: REVIEW OF ANNUAL RECONCILIATION REVIEW PROCESS COMPLIANCE

The FDP Implementation Company shall use its reasonable endeavours to procure that one of the FDP Company Administrator, an FDP Custodian or an Investment Execution Manager gives a Modification Verification Report to the Operator as soon as reasonably practicable after it receives the Annual Reconciliation Report from the Operator, confirming that the Annual Reconciliation Report contains all the documents referred to in Section 5 (*Requirements for the Annual Reconciliation Report*) of this Schedule 16 (*Annual Reconciliation Review*).

STAGE 6: OPERATOR SUBMITS ANNUAL RECONCILIATION REPORT

The Operator shall formulate the Annual Reconciliation Report and shall submit it to the Secretary of State and the FDP Implementation Company within five (5) Business Days after receipt of the Modification Verification Report from the FDP Company Administrator, an FDP Custodian or an Investment Execution Manager.

SECTION 2: Requirements for Operator Reconciliation Report

Each Operator Reconciliation Report shall contain:

- 5.22 a description of the Designated Technical Matters undertaken by the Operator during the Reconciliation Period;
- 5.23 a statement of the opening balance of the Operator DTM Control Account as at the start of the Reconciliation Period;
- 5.24 a statement of the aggregate amount of the DTM Payments received by the Operator during the Reconciliation Period;
- 5.25 a statement of the aggregate amount of drawings made by the Operator from the Operator DTM Control Account during the Reconciliation Period;
- 5.26 a statement of the closing balance of the Operator DTM Control Account as at the end of the Reconciliation Period;
- 5.27 a statement of the amount of any other Operator Expenditure during the Reconciliation Period that constitutes an Unclaimed Allowable Cost;
- 5.28 on the basis of paragraphs 5.25 and 5.27 above, a statement of the aggregate amount of all Operator Expenditure made by the Operator during the Reconciliation Period;
- 5.29 a statement of the amounts, if any, which the Operator considers to have been incorrectly paid to it by the FDP Implementation Company during the Reconciliation Period; and
- 5.30 a reconciliation of the work and activities undertaken by the Operator and the Operator Expenditure as against the corresponding Annual Work Plan and Budget (as amended pursuant to Clause 46 (*DTM costs overruns may be claimed*)).

SECTION 3: Agreed Reconciliation Verification Procedures**5.31 Within scope of verification**

- 5.31.1 The FDP Implementation Company may, if it considers it appropriate, instruct the Independent Technical Verifier to perform a review in accordance with paragraph 5.31.3 of this Section 3 in order to confirm so far as is practicable that the Allowable Costs and Unclaimed Allowable Costs reported by the Operator in the Operator Reconciliation Report have been accurately stated.
- 5.31.2 If the FDP Implementation Company intends to request the Independent Technical Verifier to perform such a review, it shall give a notice to the Operator as soon as reasonably practicable after the receipt of the Operator Reconciliation Report.
- 5.31.3 The Independent Technical Verifier shall be entitled to select for review:
- (A) a representative sample of material contracts and/or invoices, being those contracts and/or invoices which each individually represent more than five percent (5%) by value of the Allowable Costs Contracts and Allowable Cost Invoices which are referred to in the Operator Reconciliation Report; and
 - (B) a representative sample of minor contracts and/or invoices which collectively represent no more than a further five percent (5%) by value of the Allowable Costs Contracts and Allowable Costs Invoices which are referred to in the Operator Reconciliation Report.
- 5.31.4 The Operator shall provide a copy of the Allowable Costs Contracts and Allowable Costs Invoices requested by the Independent Technical Verifier in accordance with paragraph 5.31.3 of this Section 3, Schedule 16 as soon as reasonably practicable and in any event within five (5) Business Days of the Independent Technical Verifier's request.

5.32 Limitations applicable to verification

The Independent Technical Verifier shall take into account that the Operator must be responsible for making all relevant assessments and judgements such that it:

- 5.32.1 retains primary responsibility for safety and is the controlling mind for those activities for which the Nuclear Site Licence has been granted (including making all technical judgements and deciding all interpretations in relation to the requirements of Applicable Law); and
- 5.32.2 is the intelligent customer for the goods and services being procured in the discharge of its responsibilities under the Nuclear Site Licence.

SECTION 4: Requirements for the Reconciliation Verification Report

The Reconciliation Verification Report shall contain:

- 5.33 a statement of whether the Operator Reconciliation Report complies with the requirements of Section 2 (*Requirements for Operator Reconciliation Report*) of this Schedule 16 (*Annual Reconciliation Review*);
- 5.34 a statement of whether, in the Independent Technical Verifier's reasonable opinion, subject to any limitations set out in their appointment, the Operator's assessment of the Allowable Costs, Disallowable Costs and Unclaimed Allowable Costs that occurred during the Reconciliation Period is reasonable; and
- 5.35 a statement of whether, in the Independent Technical Verifier's reasonable opinion, as revised, the Draft DWMP properly identifies the reduction in scope and associated costs following the discharge of liabilities.

SECTION 5: Requirements for the Annual Reconciliation Report

The Annual Reconciliation Report shall comprise:

- 5.36 the Operator Reconciliation Report;
- 5.37 the Reconciliation Verification Report (if any); and
- 5.38 any binding determination made pursuant to the Independent Expert Referral Procedure in the course of the Operator Reconciliation Report review.

SECTION 6: Disputes arising at an Annual Reconciliation Review**1. PARTIES WILL ATTEMPT TO RESOLVE DISPUTES**

1.1 If, at any stage during an Annual Reconciliation Review:

- 1.1.1 a dispute arises between the Operator and the Independent Technical Verifier in respect of the Operator Reconciliation Report or the Reconciliation Verification Report; or
- 1.1.2 any of the Review Participants fails to submit a document required by the Annual Reconciliation Review Process when due and this has not been remedied within five (5) Business Days,

then appropriate representatives from the Review Participants shall meet to discuss the matter within the next five (5) Business Days and shall attempt to resolve any disagreements. The FDP Implementation Company shall use its reasonable endeavours to procure the relevant Review Participants (other than the Operator) attend any such meeting.

1.2 For the avoidance of doubt, a dispute will arise for the purposes of paragraph 5.31.1 if:

- 1.2.1 a Review Participant indicates in any response or report produced as part of the Annual Reconciliation Review Process that it does not agree with the relevant assessment made by the Operator; or
- 1.2.2 any response or report produced as part of the Annual Reconciliation Review Process does not contain a statement that it is required to contain under this Agreement.

2. REFERRAL TO INDEPENDENT DISPUTE RESOLUTION CAN BE MADE

If the Review Participants cannot resolve their disagreements within a further five (5) Business Days after the deadline for the discussion meeting referred to in paragraph 1 (*Parties will attempt to resolve disputes*) of this Section 6, then either Party may refer the matter to an Independent Expert in accordance with the Independent Expert Referral Procedure.

3. DISPUTE RESOLUTION WILL BE DISCONTINUED IF PARTIES SUCCESSFULLY RESOLVE DISPUTE

3.1 Any dispute referred to Independent Expert Referral Procedure under paragraph **Error! Reference source not found.** (*Referral to independent dispute resolution can be made*) shall be discontinued immediately if:

- 3.1.1 the Operator and the Verifier confirm in writing that the dispute has been resolved at any time before the Independent Expert makes a binding determination; or
- 3.1.2 the Operator withdraws the referral to the Independent Expert by giving notice to the FDP Implementation Company and the relevant Verifier at any time before a binding determination is made confirming that an agreement has been reached with the Verifier.

SCHEDULE 17

AVAILABLE OPERATOR CASH FLOW FOR QUALIFYING CASH SWEEP PERIODS

For both the calculation of the Estimated Available Operator Cash Flow and the calculation of the Adjusted Available Operator Cash Flow, the Available Operator Cash Flow shall be, in respect of any Qualifying Cash Sweep Period, an amount equal to:

	the net increase / decrease in cash and cash equivalents as set out in the consolidated cash flow statement in the Operator's latest annual financial statements for the Qualifying Cash Sweep Period	[•]
<hr/>		
Plus	Prior period Permitted Allocation to a cash reserve	[•]
	The amount of the Annual Contribution paid by the Operator during the Financial Period	[•]
	Any principal, interest, guarantee fee or other amount paid in cash in respect of its Borrowings, Subordinated Shareholder Loans, SoS/LCCC Amounts, and (to the extent it does not involve double counting) any Relevant Guarantee	[•]
	The amount of cash dividends or any Distribution paid during the Financial Period, excluding any payment in respect of Subordinated Shareholder Loans	[•]
	The aggregate amount of Cash Sweep Payments paid by the Operator during the Financial Period	[•]
	To the extent accounted for as a cash payment of the Operator the aggregate amount of any payments made from the Excluded Bank Accounts during the Financial Period	[•]
Less	Any amount which constitutes a Permitted Allocation to a cash reserve	[•]
	The amount of the Annual Contribution, which will fall due on the next Annual Contribution Date	[•]
	Any amount received due to the issuance of new equity of the Operator or the incurrence of a New Borrowing in each case in that Financial Period	[•]
	Available Operator Cash Flow	<hr/> <hr/> [•]

SCHEDULE 18**GOVERNANCE ARRANGEMENTS**

Explanatory note: This Schedule sets out the general principles of the governance arrangements for the FDP Implementation Company, the full details and terms of which are set out in the Articles (as they may be amended from time to time in accordance with Applicable Law and the terms of this Agreement).

SECTION 1: Shareholder Governance Arrangements**1. SHAREHOLDER MEETINGS****1.1 Quorum for a general meeting**

The quorum for a general meeting shall be a representative of the Operator and at least two (2) Independent Director Shareholders (or proxies for such Independent Director Shareholders) present at the meeting.

1.2 Voting at a general meeting

Subject to Clause 66.4 (*Operator may vote only where necessary to protect the FDP*), the voting rights in the FDP Implementation Company at a general meeting shall be divided equally between the Independent Director Shareholders.

SECTION 2: Board Governance Arrangements**1. BOARD MEETINGS****1.1 Quorum for a Board meeting**

Subject to Clause 66.4 (*Operator may vote only where necessary to protect the FDP*), the quorum for a Board meeting shall be at least one (1) Operator Director and two (2) Independent Directors present at the meeting.

1.2 Board meeting where insufficient Directors are appointed

If the total number of Directors appointed is fewer than the quorum required; the Directors cannot take any decision except:

1.2.1 a decision to appoint further Directors; or

1.2.2 if there are no Independent Directors, a decision to call a general meeting so as to enable the FDP Company Administrator to appoint a chairman of the Board on the basis of the Independence Criteria set out in the Articles.

1.3 Voting at a Board meeting

Subject to Clause 66.4 (*Operator may vote only where necessary to protect the FDP*):

1.3.1 each Independent Director (or his delegate) shall be entitled to one (1) vote; and

1.3.2 the chairman of the Board shall have a casting vote in the event that there is an even number of votes for and against any Board resolution.

2. MANDATORY CONFLICTS OF INTEREST REQUIREMENTS

2.1.1 Each of the Directors must disclose the nature and extent of any material interest prior to:

(A) becoming a party to, or otherwise interested in, any material transaction or arrangement with the FDP Implementation Company or in which the FDP Implementation Company is otherwise interested;

(B) becoming a director or other officer of, or employed by, or a party to any material transaction or arrangement with, or otherwise interested in, any

- body corporate in which the FDP Implementation Company is interested, including the Operator or any of its Affiliates; and/or
- (C) becoming a director or other officer of, or employed by, or a party to any material transaction or arrangement with, or otherwise interested in, any group undertaking in relation to the FDP Implementation Company, or any body corporate in which any such group undertaking is interested, including the Operator or any of its Affiliates.
- 2.1.2 The Board of the FDP Implementation Company shall be entitled to authorise any conflicts of interest notified to the FDP Implementation Company and no Director shall vote on a Board resolution in respect of which he has disclosed a conflict unless he has been so authorised.

SECTION 3: Reserved Matters and FDP Protection Triggers

1. RESERVED MATTERS

The following shall be Reserved Matters requiring the unanimous approval of the Shareholders eligible to vote on the matter:

- 1.1.1 the amendment, alteration, variation or replacement in any way of all or any of the provisions of the Articles;
- 1.1.2 the alteration or variation of the FDP Implementation Company's share capital, including:
- (A) the variation of any rights attaching to the Non-Voting Operator Share or any of the Independent Director Shares;
- (B) the issue or allotment of any shares (other than the taking of shares in the FDP Implementation Company by a subscriber or an incoming Independent Director in accordance with the Articles);
- (C) any alteration of share capital or the purchase or redemption by the FDP Implementation Company of any shares (other than the redemption of the Independent Director Share of an outgoing Independent Director Shareholder in accordance with the Articles); and
- (D) the entering into of any agreement to effect any such alteration or variation;
- 1.1.3 the creation or issue by the FDP Implementation Company of, or the entering into any agreement by the FDP Implementation Company to create or issue, any options in respect of any shares in the FDP Implementation Company;
- 1.1.4 the transfer or other disposal of, or of any right or interest in, the Independent Director Shares or the entering into of any agreement or arrangement with respect to, or to the exercise of any rights attaching to, such Independent Director Shares;
- 1.1.5 the passing of a resolution for a members' voluntary winding-up of the FDP Implementation Company;
- 1.1.6 the declaration, making or payment of any dividend (interim or final) or other distribution of capital or otherwise (deemed or otherwise);
- 1.1.7 the creation or issue, or the entering into of any agreement to create or issue, any loan capital or the giving, or the making of any commitment to give, any option in respect of any loan capital of the FDP Implementation Company;
- 1.1.8 the issue of any debenture; and
- 1.1.9 any change to the FDP Implementation Company's accounting reference date.

2. FDP PROTECTION TRIGGERS

An FDP Protection Trigger occurs if, at any time, the Independent Director Shareholders of the FDP Implementation Company fail to pass a resolution within a reasonable time to:

- 2.1.1 give effect to a modification to the FDP approved by the Secretary of State;
- 2.1.2 give effect to a direction given by the Secretary of State under section 58 of the Energy Act 2008;
- 2.1.3 give effect to an adjudication under this Agreement (without prejudice to any subsequent arbitration under the terms of this Agreement);
- 2.1.4 give effect to the result of an arbitration or expert determination under this Agreement (without prejudice to any subsequent appeal under the terms of this Agreement);
- 2.1.5 give effect to any court order (without prejudice to any subsequent appeal); and/or
- 2.1.6 give effect to any provision of the FDP (including entry into the FDP or any third party rights of a Security Trustee under the FDP).

SECTION 4: Mandatory Articles

The Mandatory Articles are the following provisions as at the date of this Agreement (as may be amended or renumbered in accordance with this Agreement from time to time):

Article 3 – Objects
Article 4 – Powers
Article 5 – Asset Lock
Article 6 – Amendments to Mandatory Articles
Article 9 – Directors may delegate
Article 10 – Committees of Directors
Article 11 – Directors to take decisions collectively
Article 15 – Quorum for directors’ meetings
Article 17 – Conflicts of interest
Article 20 – Appointment of Directors
Article 22 – Termination of Director’s appointment
Article 31 – Classes of Shares
Article 32 – The Non-Voting Operator Share
Article 33 – Operator Shareholder’s Reserved Matters
Article 34 – The Independent Director Shares
Article 39 – Quorum for General Meetings
Article 52 – Registered Office and COMI

SCHEDULE 19

INDEPENDENT EXPERT REFERRAL PROCEDURE

1. INDEPENDENT EXPERT REFERRAL PROCEDURE

- 1.1 Where a matter is referred to the Independent Expert Referral Procedure under this Agreement, the Independent Expert(s) shall finally settle and determine any such matter in accordance with the provisions of this Schedule 19 (*Independent Expert Referral Procedure*).
- 1.2 Each Party shall act reasonably and cooperate to give effect to the provisions of this Schedule 19 (*Independent Expert Referral Procedure*) and may by agreement on a case by case basis vary the procedure and/or timetable set out below.
- 1.3 In order to refer the matter to the Independent Expert Referral Procedure, the referring Party shall issue to the non-referring Party a notice of referral of the matter for determination in accordance with this Schedule 19 (the "**Independent Expert Referral Notice**").
- 1.4 The Operator shall, at its sole and absolute discretion, decide whether one (1) or a panel of three (3) Independent Experts shall be appointed to resolve the dispute and shall notify the FDP Implementation Company of its decision in writing within five (5) Business Days of the issuance of the Independent Expert Referral Notice. In the absence of such notification a panel of three (3) Independent Experts shall be appointed to resolve the dispute.
- 1.5 Any Independent Expert(s) appointed under this Schedule 19 (*Independent Expert Referral Procedure*) 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

- 1.6 In the event that the Operator has decided that a single Independent Expert should be appointed to resolve the matter, the Independent Expert shall be appointed by agreement between the Operator and the FDP Implementation Company. If the Independent Expert has not been so appointed by agreement within five (5) Business Days of the receipt by the FDP Implementation Company of the Operator's decision that a single Independent Expert should resolve the dispute, the Independent Expert shall be appointed by the LCIA on the application of either Party in accordance with the provisions below.
- 1.7 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 the alternative Independent Expert has not been appointed within five (5) Business Days of the 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 in accordance with the provisions below.

Appointment of panel of three Independent Experts

- 1.8 In the event that the Operator has decided that a panel of three (3) Independent Experts should be appointed to resolve the matter (or a panel of three (3) Independent Experts is to be appointed in default of such decision in accordance with paragraph 1.4 above), each Party shall within five (5) Business Days of the receipt by the FDP Implementation Company of the Operator's decision that a panel of three (3) Independent Experts should resolve the dispute (or if the Operator has not made such a decision, then within ten (10) Business Days of the issuance of the Independent Expert Referral Notice) appoint an Independent Expert and the two Party-appointed Independent Experts shall within five (5) Business Days of their appointment appoint a further Independent Expert to act as chairman. If either or both of the Parties fail to appoint an Independent Expert or the two (2) Party-appointed Independent Experts cannot within five (5) Business Days of the date on which the last of them was appointed agree on the identity of the further Independent

Expert to be appointed as chairman, the relevant Independent Experts and/or chairman shall be appointed by the LCIA on the application of either Party in accordance with the provisions below.

Application to the LCIA as appointing authority

- 1.9 If a Party wishes to apply to the LCIA to appoint an 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 that the applying Party wishes to bring to the attention of the LCIA for the purposes of selecting the Independent Expert or chairman (as appropriate), with a copy of such application being sent simultaneously to the other Party.
- 1.10 Within five (5) Business Days of service of the application the other Party shall send a reply to any matters raised in such application to the LCIA, with a copy of such reply being sent simultaneously to the other Party.
- 1.11 The LCIA shall endeavour to appoint the Independent Expert or chairman within five (5) Business Days of service of the reply, or as soon as reasonably practicable thereafter.
- 1.12 The LCIA's charges for acting as appointing authority shall be in accordance with its schedule of arbitration fees and costs, as in force at the time of the application.
- 1.13 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 this paragraph 1 (*Independent Expert Referral Procedure*) shall be liable to any 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

- 1.14 In respect of any such matters referred to an Independent Expert or panel of three Independent Experts (in either case, the "**Panel**") pursuant to this paragraph 1 (*Independent Expert Referral Procedure*):
- 1.14.1 Schedule 19A (*Independent Investment Expert Referral Procedure*), Schedule 19B (*Annual Work Plan and Budget Independent Expert Referral Procedure*) or Schedule 19C (*Valuation Procedure*) shall not apply and Schedule 20 (*Claims, Disputes and Arbitration*) shall apply in relation to the enforcement of or challenge to any determination made by the Panel;
- 1.14.2 any Independent Expert appointed under this paragraph 1 shall act as an independent expert and not as an arbitrator(s), and the law relating to arbitration shall not apply;
- 1.14.3 the Parties shall each have the right to make representations to the Panel;
- 1.14.4 the Parties 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;
- 1.14.5 the Panel shall be entitled to take the initiative to ascertain the facts and the law relating to the matters referred to the Panel (save as set out at paragraph 1.15 below) to settle them as shall seem best in the Panel's absolute discretion;
- 1.14.6 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 any determination, unless agreed by the Parties);
- 1.14.7 the Panel shall proceed with the determination even if a Party fails to comply with any direction issued by the Panel;

- 1.14.8 the Panel shall have the power to instruct technical advisors, including legal advisors if required but shall not delegate any decision-making functions to them;
- 1.14.9 the procedure shall be conducted, and the determination of the Panel shall be written, in the English language;
- 1.14.10 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;
- 1.14.11 the determination of the Panel shall include reasons for the Panel's decision;
- 1.14.12 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;
- 1.14.13 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;
- 1.14.14 once made and published to the Parties pursuant to paragraph 1.14.10 of this Schedule 19, in the absence of fraud or manifest error, or error on a point of law, the determination of the Panel shall be final and binding on the Parties (subject to paragraph 1.14.12 above), 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);
- 1.14.15 in the event that one Party wishes to challenge a determination of the Panel as permissible by law and this Schedule 19 (*Independent Expert Referral Procedure*), that challenge shall be a Dispute and that Party shall directly refer the Dispute to be resolved by Arbitration in accordance with paragraph 4 (*Arbitration*) of Schedule 20 (*Claims, Disputes and Arbitration*);
- 1.14.16 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 advisors instructed by the Panel) shall be borne by the Operator and the FDP Implementation Company in equal shares. In the event that one Party fails to pay its share of the fees, costs and expenses the other Party may pay the costs in full and then reclaim the balance from the non-paying Party as a debt due on demand. The Parties shall each bear their own costs of appointing the Panel and conducting the reference;
- 1.14.17 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 in another independent capacity in a subsequent dispute between the Parties;
- 1.14.18 the Parties and the Panel shall (save as required by Applicable Law to which the Parties are subject or by any regulatory authority charged with regulating nuclear matters in the United Kingdom):
- (A) 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
 - (B) 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; and

- 1.14.19 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 it in pursuance of the Panel's appointment under this Schedule 19 (*Independent Expert Referral Procedure*).
- 1.15 Where the matter referred to the Independent Expert Referral Procedure pursuant to this Schedule 19 (*Independent Expert Referral Procedure*) contains a dispute as to a Verified Item, the Panel shall in making its determination not include or imply any value for that Verified Item that is greater than the greatest such value asserted by either of the Parties (or, if applicable, the Independent Technical Verifier) in their representations or less than the least such value asserted by the Parties in their representations (or, if applicable, the Independent Technical Verifier).
- 1.16 Nothing in this Schedule 19 (*Independent Expert Referral Procedure*) 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 paragraph 1.14.10 of this Schedule 19.
- 1.17 The following provisions shall apply only to disputes arising at Annual Review (under Schedule 8 (*Annual Review Programme*) hereof) and disputes arising at a Quinquennial Review (under Schedule 9 (*Quinquennial Review Programme*) hereof):
- 1.17.1 paragraph 1.14.14 above shall be read as if the words "or error on a point of law" were deleted, and the determination of the Panel shall be final, conclusive and binding and the Parties waive irrevocably their right to any form of appeal review or recourse to any arbitral tribunal, court or other judicial authority (including on points of law or contractual construction);
- 1.17.2 in circumstances where a Panel has decided (as all or part of a determination) on a question of law or contractual construction, and the same question of law or contractual construction arises for determination by a Panel in a subsequent dispute arising at Annual Review or at a Quinquennial Review, then either Party may refer the issue to be finally resolved by arbitration in accordance with paragraph 4 (*Arbitration*) of Schedule 20 (*Claims, Disputes and Arbitration*) (and for the avoidance of doubt the provisions of paragraphs 1-4 inclusive of Schedule 20 shall not apply);
- 1.17.3 for the avoidance of doubt, in such case the final award of the Tribunal (after any appeal, if appropriate) shall be binding as a precedent on any Panel or Tribunal determining a dispute under this Agreement; and
- 1.17.4 in the event that such a question of law, or contractual construction has been referred to a Tribunal at a time when the same question is also being considered for determination by a Panel under a dispute arising at Annual Review or at a Quinquennial Review, then the Parties may agree to vary the timetable of such determination of the Panel provided that if the Parties are unable to agree on a suitable variation of the timetable to enable the Tribunal's final award to be taken into consideration by the Panel, then the Panel shall proceed to determine the question in the ordinary course, and the Parties shall be bound by the Panel's determination in this instance, in accordance with paragraphs 1.14.14 and 1.14.12 above, and the Tribunal's decision shall be binding on subsequent Panel determination.
- 1.18 In the event that an Independent Technical Verifier considers that the Draft DWMP submitted by the Operator is deficient in identifying the necessary scope either through omission of scope or the inclusion of scope which is not technically deliverable and does not verify the DWMP submitted by the Operator, either Party may refer such matter to be resolved by the Panel in accordance with this Schedule 19 (*Independent Expert Referral*

Procedure), in which case the following procedure will also apply in addition to the other provisions of this Schedule 19 (*Independent Expert Referral Procedure*):

- 1.18.1 The Panel can either (i) conclude that the cost estimate included in the Draft DWMP is reasonable; or (ii) conclude that the Draft DWMP is deficient in identifying the necessary scope either through omission of scope or the inclusion of scope which is not technically deliverable and will need to be amended in order for the cost estimate to be reasonable.
- 1.18.2 If the Panel concludes in accordance with (i) in paragraph 1.18.1 above that the cost estimate included in the Draft DWMP is reasonable, the Panel will give its determination accordingly by way of an Expert Verification Report.
- 1.18.3 If the Panel concludes in accordance with (ii) in paragraph 1.18.1 above that the Draft DWMP is deficient in identifying the necessary scope either through omission of scope or the inclusion of scope which is not technically deliverable and will need to be amended in order for the cost estimate to be reasonable, the following additional procedure will apply:
- (A) The Panel will issue a notice to the Operator, the FDP Implementation Company and the Independent Technical Verifier stating that the Panel has concluded that the Draft DWMP is deficient in identifying the necessary scope either through omission of scope or the inclusion of scope which is not technically deliverable and will need to be amended in order for the cost estimate to be reasonable.
 - (B) The Operator shall within ten (10) Business Days of receipt of the notice from the Panel submit its proposals to the Panel, the FDP Implementation Company and the Independent Technical Verifier addressing the deficiencies identified by the Panel together with a related cost estimate.
 - (C) The FDP Implementation Company shall within ten (10) Business Days of receipt of the Operator's proposals, use its best endeavours to procure that the Independent Technical Verifier submits its comments to the Operator and the Panel addressing the deficiencies identified by the Panel together with a related cost estimate.
 - (D) The Panel will then consider these proposals and give its determination within ten (10) Business Days by way of an Expert Verification Report which remedies the deficiencies identified by the Independent Technical Verifier and provides a related cost estimate.

SCHEDULE 19A

INDEPENDENT INVESTMENT EXPERT REFERRAL PROCEDURE

- 1.19 Where a matter is referred by the Operator to the Independent Investment Expert Referral Procedure pursuant to Section C (*Investment of Contributions and Fund Assets*), the Independent Investment Expert shall finally settle and determine any such matter in accordance with the provisions of this Schedule 19A (*Independent Investment Expert Referral Procedure*).
- 1.20 Each Party shall act reasonably and cooperate to give effect to the provisions of this Schedule 19A (*Independent Investment Expert Referral Procedure*).
- 1.21 In order to refer the matter to the Independent Investment Expert, the Operator shall issue to the FDP Implementation Company a notice of referral of the matter for determination in accordance with this Schedule 19A (an "**Independent Investment Expert Referral Notice**").
- 1.22 The Operator shall, at its sole and absolute discretion, decide whether one (1) or a panel of three (3) Independent Investment Experts shall be appointed to resolve the dispute and shall notify the FDP Implementation Company of its decision in writing within five (5) Business Days of the issuance of the Independent Investment Expert Referral Notice. In the absence of such notification a panel of three (3) Independent Investment Experts shall be appointed to resolve the dispute.
- 1.23 Any Independent Investment Expert(s) appointed under this Schedule 19A (*Independent Investment Expert Referral Procedure*) 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 Investment Expert.

Appointment of single Independent Investment Expert

- 1.24 In the event that the Operator has decided that a single Independent Investment Expert should be appointed to resolve the matter the Independent Investment Expert shall be appointed by agreement between the Operator and the FDP Implementation Company or if the Independent Investment Expert has not been so appointed by agreement within five (5) Business Days of the receipt by the FDP Implementation Company of the Operator's decision that a single Independent Investment Expert should resolve the dispute, the Independent Investment Expert shall be appointed by the LCIA on the application of either Party in accordance with the provisions below.
- 1.25 If an Independent Investment Expert has been appointed, but fails to complete, or refuses to proceed with, the reference, an alternative Independent Investment Expert shall be appointed by the Parties. If the alternative Independent Investment Expert has not been appointed within five (5) Business Days of the receipt of the request to appoint an alternative Independent Investment Expert, the Independent Investment Expert shall be appointed by the LCIA on the application of either Party in accordance with the provisions below.

Appointment of panel of three Independent Investment Experts

- 1.26 In the event that the Operator has decided that a panel of three (3) Independent Investment Experts should be appointed to resolve the matter (or a panel of three (3) Independent Experts is to be appointed in default of such decision in accordance with paragraph 1.22), each Party shall within five (5) Business Days of the receipt by the FDP Implementation Company of the Operator's decision that a panel of three (3) Independent Investment Experts should resolve the dispute (or if the Operator has not made such a decision within five (5) Business Days of the issuance of the notice referred to in paragraph 1.3) appoint an Independent Investment Expert and the two Party-appointed Independent Investment Experts shall within five (5) Business Days of their appointment appoint a further Independent Investment Expert to act as chairman. If either or both of the Parties fail to appoint an Independent Investment Expert or the two Party-appointed Independent

Investment Experts cannot within five (5) Business Days of the date on which the last of them was appointed agree on the identity of the further Independent Investment Expert to be appointed as chairman, the relevant Independent Investment Experts and/or the chairman shall be appointed by the LCIA on the application of either Party in accordance with the provisions below

Application to the LCIA as appointing authority

- 1.27 If a Party wishes to apply to the LCIA to appoint an Independent Investment 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 that the applying Party wishes to bring to the attention of the LCIA for the purposes of selecting the Independent Investment Expert or chairman (as appropriate), with simultaneous copy of the application being sent to the other Party.
- 1.28 Within five (5) Business Days of service of the application the other Party shall send to the LCIA, with simultaneous copy being sent to the applying Party, a reply to any matters raised in the application.
- 1.29 The LCIA shall endeavour to appoint the Independent Investment Expert or chairman within five (5) Business Days of service of the reply, or as soon as reasonably practicable thereafter.
- 1.30 The LCIA's charges for acting as appointing authority shall be in accordance with its schedule of arbitration fees and costs, as in force at the time of the Application.
- 1.31 None of the LCIA, the LCIA Court (including its President, Vice-Presidents and individual members), the registrar, any deputy Registrar, or any Independent Investment Expert, acting pursuant to this Schedule 19A (*Independent Investment Expert Referral Procedure*) shall be liable to any 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 Investment Expert(s)

- 1.32 In respect of any such matters referred to an Independent Investment Expert or panel of three Independent Investment Experts (in either case, the "**Panel**") pursuant to this Schedule 19A (*Independent Investment Expert Referral Procedure*):
- 1.32.1 Schedule 19 (*Independent Expert Referral Procedure*), Schedule 19B (*Annual Work Plan and Budget Independent Expert Referral Procedure*) or Schedule 19C (*Valuation Procedure*) shall not apply. Schedule 20 (*Claims, Disputes and Arbitration*) shall apply in relation to the enforcement of or challenge to any determination made by the Panel;
- 1.32.2 any Independent Investment Expert appointed under this Schedule 19A (*Independent Investment Expert Referral Procedure*) shall act as an independent expert and not as an arbitrator, and the law relating to arbitration shall not apply;
- 1.32.3 within two (2) Business Days of the appointment of the Panel in accordance with paragraphs 1.24 to 1.31 above, the Operator shall provide to the Panel (with a copy to the FDP Implementation Company) its written submissions together with any supporting data, calculations, information and evidence in support of those submissions (the "**Referral**"). The Referral shall not consist of more than ten thousand (10,000) words;
- 1.32.4 within five (5) Business Days of receipt of the Referral by the FDP Implementation Company, the FDP Implementation Company shall provide its submissions in response together with any supporting data, calculations, information and evidence in support of those submissions (the "**Response to**

- Referral**"). The Response to Referral shall not consist of more than ten thousand (10,000) words;
- 1.32.5 within five (5) Business Days of receipt of the Response to Referral, the Operator shall submit its submissions in reply together with any supporting data, calculations, information and evidence in support of those submissions (the **"Reply"**). The Reply shall not consist of more than ten thousand (10,000) words;
- 1.32.6 the Panel shall consider the Referral, Response to Referral, Reply and such other information obtained during the procedure and shall produce and publish to the Parties its determination within twenty eight (28) Business Days of its appointment. Prior to the issuance of its determination, the Panel shall have the power to:
- (A) request further written information;
 - (B) meet and question the Parties and their representatives;
 - (C) request the production of documents or the attendance of people who it thinks could assist;
 - (D) set a timetable for (A) to (C) above;
 - (E) proceed with the determination even if a Party fails to comply with any direction issued by the Panel;
 - (F) instruct technical advisors, including legal advisors, if required but shall not delegate any decision-making functions to them; and
 - (G) issue such further directions as it considers appropriate (but not to extend the time for the publication of any determination beyond twenty-eight (28) Business Days from the date of the Panel's appointment save if otherwise agreed by the Parties);
- 1.32.7 the Panel shall be entitled to take the initiative to ascertain the facts and the law relating to the matters referred to him, and (save as set out at paragraph 1.33 below) to settle them as shall seem best in the Panel's absolute discretion;
- 1.32.8 the procedure shall be conducted, and the determination of the Panel shall be written, in the English language;
- 1.32.9 the determination of the Panel shall include reasons for the Panel's decision;
- 1.32.10 in the event that a panel of three (3) Independent Investment 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;
- 1.32.11 once made and published to the Parties, in the absence of fraud or manifest error, or error on a point of law, the determination of the Panel shall be final and binding on the Parties, provided that the Panel shall have the power, on the application of either Party, to correct any orthographic, clerical, arithmetical or minor error in the Panel's determination within five (5) Business Days of it being published by the Panel to the Parties (or in the case of a corrected determination, within five (5) Business Days of such corrected determination being published by the Panel to the Parties);
- 1.32.12 in the event that one Party wishes to challenge a determination of the Panel as permissible by law and this Schedule 19A (*Independent Investment Expert Referral Procedure*), that challenge shall be a Dispute and that Party shall directly refer the Dispute to be resolved by Arbitration in accordance with paragraph 4 (*Arbitration*) of Schedule 20 (*Claims, Disputes and Arbitration*);
- 1.32.13 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 advisors instructed by the Panel shall be borne by the Operator and the FDP Implementation Company in equal shares. In the event that one Party fails to pay its share of the fees, costs and expenses incurred by the Panel the other Party

may pay the costs in full and then reclaim the balance from the non-paying Party as a debt due on demand. The Parties shall each bear their own costs of appointing the Panel and conducting the reference;

- 1.32.14 save in respect of any matters involving fraud or bad faith, any individual appointed, or previously appointed, as an Independent Investment 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 Investment Expert or in another independent capacity in a subsequent dispute between the Parties;
- 1.32.15 the Parties and the Panel shall (save as required by Applicable Law to which the Parties are subject or by any regulatory authority charged with regulating nuclear matters in the United Kingdom):
- (A) 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
 - (B) 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; and
- 1.32.16 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 Schedule 19A (*Independent Investment Expert Referral Procedure*).
- 1.33 Where the matter referred to the Independent Investment Expert Referral Procedure pursuant to this Schedule 19A (*Independent Investment Expert Referral Procedure*) contains a dispute as to a Verified Item, the Panel shall in making its determination not include or imply any value for that Verified Item that is greater than the greatest such value asserted by either of the Parties in their representations or less than the least such value asserted by the Parties in their representations.
- 1.34 Nothing in this Schedule 19A (*Independent Investment Expert Referral Procedure*) 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 paragraph 1.14.6.

SCHEDULE 19B**ANNUAL WORK PLAN AND BUDGET INDEPENDENT EXPERT REFERRAL PROCEDURE**

- 1.35 Where a matter is referred by the Operator to the Annual Work Plan and Budget Independent Expert Referral Procedure pursuant to Section J (*Payments and Disbursements Policy*), the AWPB Independent Expert shall determine any such matter in accordance with the provisions of this Schedule 19B (*Annual Work Plan and Budget Independent Expert Referral Procedure*).
- 1.36 Each Party shall act reasonably and cooperate to give effect to the provisions of this Schedule 19B (*Annual Work Plan and Budget Independent Expert Referral Procedure*).
- 1.37 In order to refer the matter to the AWPB Independent Expert, the Operator shall issue to the FDP Implementation Company a notice of referral of the matter for determination in accordance with this Schedule 19B (the "**AWPB Independent Expert Referral Notice**").
- 1.38 The Operator shall, at its sole and absolute discretion, decide whether one (1) or a panel of three (3) AWPB Independent Experts shall be appointed to resolve the dispute and shall notify the FDP Implementation Company of its decision in writing within five (5) Business Days of the issuance of the AWPB Independent Expert Referral Notice. In the absence of such notification a panel of three (3) AWPB Independent Experts shall be appointed to resolve the dispute.
- 1.39 Any AWPB Independent Expert(s) appointed under this Schedule 19B (*Annual Work Plan and Budget Independent Expert Referral Procedure*) 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 AWPB Independent Expert.

Appointment of single AWPB Independent Expert

- 1.40 In the event that the Operator has decided that a single AWPB Independent Expert should be appointed to resolve the matter the AWPB Independent Expert shall be appointed by agreement between the Operator and the FDP Implementation Company or, if the AWPB Independent Expert has not been so appointed by agreement within five (5) Business Days of the receipt by the FDP Implementation Company of the Operator's decision that a single AWPB Independent Expert should resolve the dispute, the AWPB Independent Expert shall be appointed by the LCIA, on the application of either Party in accordance with the provisions below.
- 1.41 If an AWPB Independent Expert has been appointed, but fails to complete, or refuses to proceed with, the reference, an alternative AWPB Independent Expert shall be appointed by the Parties. If the alternative AWPB Independent Expert has not been appointed within five (5) Business Days of the receipt of the request to appoint an alternative AWPB Independent Expert, the AWPB Independent Expert shall be appointed by the LCIA on the application of either Party in accordance with the provisions below.

Appointment of panel of three AWPB Independent Experts

- 1.42 In the event that the Operator has decided that a panel of three (3) AWPB Independent Experts should be appointed to resolve the matter, (or a panel of three (3) Independent Experts is to be appointed in default of such decision in accordance with paragraph 1.38 above), each Party shall within five (5) Business Days of the receipt by the FDP Implementation Company of the Operator's decision that a panel of three (3) AWPB Independent Experts should resolve the dispute (or if the Operator has not made such a decision within five (5) Business Days of the issuance of the AWPB Independent Expert Referral Notice) appoint an AWPB Independent Expert and the two Party-appointed AWPB Independent Experts shall within five (5) Business Days of their appointment appoint a further AWPB Independent Expert to act as chairman. If either or both of the Parties fail to appoint an AWPB Independent Expert or the two Party-appointed AWPB Independent Experts cannot within five (5) Business Days of the date on which the last of them was appointed agree on the identity of the further AWPB Independent Expert to be appointed

as chairman, the relevant AWPB Independent Experts and/or chairman shall be appointed by the LCIA on the application of either Party in accordance with the provisions below.

Application to the LCIA as appointing authority

- 1.43 If a Party wishes to apply to the LCIA to appoint an AWPB 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 that the applying Party wishes to bring to the attention of the LCIA for the purposes of selecting the AWPB Independent Expert or chairman (as appropriate), with simultaneous copy of the application being sent to the other Party.
- 1.44 Within five (5) Business Days of service of the application the other Party shall send to the LCIA, with simultaneous copy being sent to the applying Party, a reply to any matters raised in the application.
- 1.45 The LCIA shall endeavour to appoint the AWPB Independent Expert or chairman within five (5) Business Days of service of the reply, or as soon as reasonably practicable thereafter.
- 1.46 The LCIA's charges for acting as appointing authority shall be in accordance with its schedule of arbitration fees and costs, as in force at the time of the Application.
- 1.47 None of the LCIA, the LCIA Court (including its President, Vice-Presidents and individual members), the registrar, any deputy registrar, or any AWPB Independent Expert, acting pursuant to this Schedule 19B (*Annual Work Plan and Budget Independent Expert Referral Procedure*) shall be liable to any 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 AWPB Independent Expert(s)

- 1.48 In respect of any such matters referred to an AWPB Independent Expert or panel of three AWPB Independent Experts (in either case, the "**Panel**") pursuant to this Schedule 19B (*Annual Work Plan and Budget Independent Expert Referral Procedure*):
- 1.48.1 Schedule 19 (*Independent Expert Referral Procedure*), Schedule 19A (*Independent Investment Expert Referral Procedure*) or Schedule 19C (*Valuation Procedure*) shall not apply. Schedule 20 (*Claims, Disputes and Arbitration*) shall apply in relation to the enforcement of or challenge to any determination made by the Panel;
- 1.48.2 any AWPB Independent Expert appointed under this Schedule 19B (*Annual Work Plan and Budget Independent Expert Referral Procedure*) shall act as an independent expert and not as an arbitrator, and the law relating to arbitration shall not apply;
- 1.48.3 within two (2) Business Days of the appointment of the Panel in accordance with paragraphs 1.40 to 1.47 above, the Operator shall provide to the Panel (with a copy to the FDP Implementation Company) its written submissions together with any supporting data, calculations, information and evidence in support of those submissions (the "**AWPB Referral**"). The AWPB Referral shall not consist of more than ten thousand (10,000) words;
- 1.48.4 within five (5) Business Days of receipt of the AWPB Referral by the Operator, the FDP Implementation Company shall provide its submissions in response together with any supporting data, calculations, information and evidence in support of those submissions (the "**AWPB Response to Referral**"). The AWPB Response to Referral shall not consist of more than ten thousand (10,000) words;
- 1.48.5 within five (5) Business Days of receipt of the AWPB Response to Referral, the Operator shall submit its submissions in reply together with any supporting data, calculations, information and evidence in support of those submissions (the

- "**AWPB Reply**"). The AWPB Reply shall not consist of more than ten thousand (10,000) words;
- 1.48.6 the Panel shall consider the AWPB Referral, AWPB Response to Referral, AWPB Reply and such other information obtained during the procedure and shall produce and publish to the Parties its determination within twenty-eight (28) Business Days of its appointment. Prior to the issuance of its determination, the Panel shall have the power to:
- (A) request further written information;
 - (B) meet and question the Parties and their representatives;
 - (C) request the production of documents or the attendance of people who it thinks could assist;
 - (D) set a timetable for (A) to (C) above;
 - (E) proceed with the determination even if a Party fails to comply with any direction issued by the Panel;
 - (F) instruct technical advisors, including legal advisors, if required but shall not delegate any decision-making functions to them;
 - (G) issue such further directions as it considers appropriate (but not to extend the time for the publication of any determination beyond twenty-eight (28) Business Days from the date of his appointment);
- 1.48.7 the Panel shall be entitled to take the initiative to ascertain the facts and the law relating to the matters referred to it, and (save as set out at paragraph 1.49 below) to settle them as shall seem best in the Panel's absolute discretion;
- 1.48.8 the procedure shall be conducted, and the determination of the Panel shall be written, in the English language;
- 1.48.9 the determination of the Panel shall include reasons for the Panel's decision;
- 1.48.10 in the event that a panel of three (3) AWPB 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;
- 1.48.11 once made and published to the Parties, in the absence of fraud or manifest error, or error on a point of law, any decision of the Panel shall be binding until the matter is either finally agreed between the Parties or finally determined by the Independent Expert in each case in the Annual Reconciliation Review undertaken in respect of the relevant Reconciliation Period in accordance with Clause 49 (*Annual Reconciliation Review*);
- 1.48.12 the Panel shall have the power, on the application of either Party, to correct any orthographic, clerical, arithmetical or minor error in his determination within five (5) Business Days of it being published by the Panel to the Parties (or in the case of a corrected determination, within five (5) Business Days of such corrected determination being published by the Panel to the Parties);
- 1.48.13 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 Panel) shall be borne by the Operator and the FDP Implementation Company in equal shares. In the event that one Party fails to pay its share of the fees, costs and expenses the other Party may pay the costs in full and then reclaim the balance from the non-paying Party as a debt due on demand. The Parties shall each bear their own costs of appointing the Panel and conducting the reference;
- 1.48.14 save in respect of any matters involving fraud or bad faith, any individual appointed, or previously appointed, as an AWPB 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 AWPB Independent Expert or in another independent capacity in a subsequent dispute between the Parties;
- 1.48.15 in the event that one Party wishes to challenge a determination of the Panel as permissible by law and this Schedule 19B (*Annual Work Plan and Budget Independent Expert Referral Procedure*), that challenge shall be a Dispute and that Party shall directly refer the Dispute to be resolved by Arbitration in accordance with paragraph 4 (*Arbitration*) of Schedule 20 (*Claims, Disputes and Arbitration*), subject always to the provisions of paragraph 1.48.11 above;
- 1.48.16 the Parties and the Panel shall (save as required by Applicable Law to which the Parties are subject or by any regulatory authority charged with regulating nuclear matters in the United Kingdom):
- (A) 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
 - (B) 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; and
- 1.48.17 the Panel, his employees and agents shall not be liable, save in the case of 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 Schedule 19B (*Annual Work Plan and Budget Independent Expert Referral Procedure*).
- 1.49 Where the matter referred to the Annual Work Plan and Budget Independent Expert Referral Procedure pursuant to this Schedule 19B (*Annual Work Plan and Budget Independent Expert Referral Procedure*) contains a dispute as to a Verified Item, the Panel shall in making his or their determination not include or imply any value for that Verified Item that is greater than the greatest such value asserted by either of the Parties in their representations or less than the least such value asserted by the Parties in their representations.
- 1.50 Nothing in this Schedule 19B (*Annual Work Plan and Budget Independent Expert Referral Procedure*) 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 this Schedule 19B (*Annual Work Plan and Budget Independent Expert Referral Procedure*) (subject always to the provisions of paragraph 1.48.11 above).

SCHEDULE 19C**VALUATION PROCEDURE****1. APPOINTMENT OF VALUER**

1.1 Subject to paragraph 5 below, where:

1.1.1 Clause 23.4 (*Assessment of Permitted Gearing Level*) applies; and

1.1.2 the Operator is relying on Clause 23.3.2 for the purposes of assessing whether the Operator has maintained the Permitted Gearing Level,

the Operator shall promptly, and where Clause 23.4.2(A) applies, not more than sixty (60) Business Days after the relevant date on which the Operator's Permitted Gearing Level is to be tested, and where Clause 23.4.3(A) applies, not more than twenty (20) Business Days after the relevant Draft Contributions Notice, notify the FDP Implementation Company of the person the Operator proposes shall be a Valuer to undertake the Valuation Procedure in accordance with this Schedule 19C (*Valuation Procedure*).

1.2 The FDP Implementation Company may object to the person proposed by the Operator pursuant to paragraph 1.1 above on the basis that the proposed Valuer is:

1.2.1 not a bank or accounting firm of good repute with demonstrable expertise in the valuation of businesses such as that of the Operator;

1.2.2 not regulated by an appropriate regulator in the UK; or

1.2.3 not sufficiently independent of the Operator such as either:

(A) the Operator or its Affiliates exercises control over that entity; or

(B) the Operator's Auditor; or

(C) the Operator or its Affiliates has an existing business relationship with that entity which is likely to affect the entity's ability to exercise independent judgement including, where a New Borrowing is being incurred, such entity is involved as a lender, arranger or agent in respect of such New Borrowing.

1.3 If the FDP Implementation Company, in accordance with paragraph 1.2 above, objects to the person proposed by the Operator pursuant to paragraph 1.1 above within fifteen (15) Business Days of the notice referred to in paragraph 1.1 above, either the Operator or the FDP Implementation Company may request that the President from time to time of the Institute of Chartered Accountants in England and Wales appoints the Valuer and such appointment shall be binding on the Operator and the FDP Implementation Company.

1.4 The Operator shall request that the Valuer:

1.4.1 determines either (as elected by the Operator) the Accounting Enterprise Value or the Fair Enterprise Value within twelve (12) weeks after its appointment in accordance with this Schedule 19C (*Valuation Procedure*);

1.4.2 makes its assessment as at the relevant Financial Year End or, if the assessment is being carried out in respect of an incurrence of New Borrowings, as at the date on which the New Borrowings is proposed to be incurred; and

1.4.3 notifies the Operator and the FDP Implementation Company in writing of its final reasoned determination (which shall include an explanation of the rationale for the selected valuation metric and of the underlying assumptions used).

2. INFORMATION

2.1 The Operator shall procure that the Valuer is given all reasonable access to such of the Operator's accounting records, business plans, budgets and other information as are relevant to the Valuer's determination of the Accounting Enterprise Value or the Fair Enterprise Value (as applicable) and the Outstanding Net Debt Amount in accordance with this Schedule 19C (*Valuation Procedure*).

2.2 The Operator shall promptly provide all reasonable assistance required by the Valuer in order to make its determination.

3. FAIR ENTERPRISE VALUE

3.1 The "Fair Enterprise Value" means the net present value of the enterprise cash flows of the Operator using a Suitable Discount Rate calculated in accordance with this paragraph 3 (*Fair Enterprise Value*).

Explanatory note: Paragraphs 3.2 and 3.3 set out what should be included by the Valuer in the calculation of Fair Enterprise Value. Paragraph 3.2.5 (B) states that the Outstanding Net Debt should exclude cash raised by new borrowings. This is because if cash raised was included, this would in effect net off the additional debt raised. However, if the new cash raised is excluded from the calculation of the Outstanding Net Debt, then the use of that cash should also be excluded from the calculation of the Fair Enterprise Value – hence 3.2.5 (A), which excludes any expenditure funded by new borrowings.

Paragraph 3.3 states that the Valuer should take into account the proposed use of new borrowings. Therefore, when considering the position of the Operator pre and post the proposed new borrowings, the Valuer should take into account any effect on future cash flows caused by the proposed use of the New Borrowings. The Valuer will need to ensure that the cash flow forecasts include both the benefits and increased operational costs arising from the additional capital expenditure funded by the new borrowings, but exclude the additional capital expenditure itself.

3.2 The Valuer shall estimate the Fair Enterprise Value of the Operator as follows:

- 3.2.1 the enterprise cash flows will be the Operator's forecast of the pre-financing, post tax operating cash flows less capital expenditure;
- 3.2.2 the enterprise cash flows shall exclude all payments made to shareholders, all payments made in respect of Financial Indebtedness and other financing costs and any payments in respect of Subordinated Shareholder Loans;
- 3.2.3 any tax payments included in the enterprise value cash flows shall be calculated based on the Operator's existing and forecast capital structure;
- 3.2.4 taking into account, amongst other things:
 - (A) the expected life of the plant, its operating efficiency and likely outages;
 - (B) factors relevant to the nuclear power generation industry and the markets in which the Operator operates;
 - (C) trade and other similar receivables and payables of the Operator;
 - (D) the mark-to-market position under any derivative arrangements or other financial instruments associated with the sale of electricity which the Operator has entered into;
 - (E) amounts owed to and receivable from the FDP Implementation Company; and
 - (F) the Contributions and DTM Costs, employee benefit provisions and other contingent or future liabilities of the Operator;
- 3.2.5 relying on, amongst other things, the following assumptions:
 - (A) the Fair Enterprise Value shall not include any expenditure funded by New Borrowings where the Valuer is making an assessment pursuant to Clause 23.4.1(A);
 - (B) the Outstanding Net Debt Amount shall exclude, where the Valuer is making an assessment pursuant to Clause 23.4.1(A) the cash raised by New Borrowings and exclude any existing Borrowings due to be subsequently repaid by such New Borrowings after the test date;

- (C) the valuation of Enterprise Value shall assume that the Operator is free of all restrictions, liens, charges and other encumbrances; and
 - (D) the power purchase agreements which the Operator has in force will stay in effect for the duration of the stated term and that thereafter the Reactors will be operated on a merchant basis, based on expected power prices.
- 3.3 The Valuer shall take into account the proposed use of the New Borrowings in the enterprise cash flows, including (amongst other things):
 - 3.3.1 any improved performance in the Reactor or any change in the costs made possible by any associated investment; and
 - 3.3.2 the exclusion of any capex or other investments financed by the New Borrowings.
- 3.4 The determination of the Fair Enterprise Value by the Valuer shall be a single point, and not a range, quoted in pounds sterling.
- 3.5 If any difficulty arises in determining the Fair Enterprise Value then the Valuer shall resolve that difficulty in such manner as it in its absolute discretion thinks fit.
- 4. **ACCOUNTING ENTERPRISE VALUE**

Where Clause 23.4.1(A) applies, and the reference date for the assessment is not a Financial Year End, then the Valuer shall use the values from the Operator's most recent balance sheet, as reconciled between the Financial Year End and the date of the test.
- 5. **ACTING AS EXPERT**

The Valuer shall act as expert and not as arbitrator and its determination shall be final and binding on the parties (in the absence of fraud or manifest error).

SCHEDULE 20**CLAIMS, DISPUTES AND ARBITRATION****1. OUTLINE OF THE DISPUTE RESOLUTION PROCESS**

- 1.1 Except as otherwise expressly provided in this Agreement, in the event a Dispute arises:
- 1.1.1 the Parties to the Dispute shall seek to resolve the Dispute by convening a meeting of the Senior Representatives of the Parties to the Dispute in accordance with paragraph 3 (*Senior Representatives*) of this Schedule 20; and
 - 1.1.2 a Dispute which is not otherwise settled, compromised or resolved in accordance with any Dispute Resolution Procedure contained within these Dispute Resolution Rules shall be finally resolved by referring it to the Tribunal in accordance with paragraph 4 (*Arbitration*) of this Schedule 20.
- 1.2 Notwithstanding any other provision of the Dispute Resolution Rules, any Party may at any time:
- 1.2.1 apply to the courts of England for:
 - (A) an order restraining a Party from doing any act or compelling a Party to do any act; or
 - (B) judgment to enforce a Senior Representative Settlement Agreement, any other settlement agreed by the Parties, or an award of the Tribunal; and/or
 - 1.2.2 serve a notice of arbitration so as to prevent the expiry of any applicable period of limitation or prescription, or the application of the equitable doctrine of laches.

2. COMMENCEMENT OF THE DISPUTE RESOLUTION PROCESS

- 2.1 Either Party may refer any Dispute to the Dispute Resolution Procedure by serving a Dispute Notice on the other Party. The Dispute Notice shall insofar as is reasonably practicable include the following details:
- 2.1.1 the subject matter of the Dispute and the issues to be resolved;
 - 2.1.2 the position the referring Party believes is correct and the referring Party's reasons for that position;
 - 2.1.3 the identity of the other Party;
 - 2.1.4 the identity of the referring Party's Senior Representative;
 - 2.1.5 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;
 - 2.1.6 copies of any documents which the referring Party considers to be important and/or relevant; and
 - 2.1.7 a statement of the relief, determination, remedy or recourse which the referring Party seeks.

3. SENIOR REPRESENTATIVES

- 3.1 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 Dispute Notice, and if necessary meet more than once, to seek to resolve the Dispute by agreement.
- 3.2 If the Senior Representatives are successful in resolving the Dispute, the agreement reached by the Senior Representatives shall be recorded by way of a Senior Representative Settlement Agreement.

- 3.3 Any Senior Representative Settlement Agreement shall be in writing and signed by the Senior Representative of each Party to the Dispute and shall not be legally binding unless and until both Parties have observed and complied with this paragraph 3.3.
- 3.4 Unless the Parties to the Dispute otherwise agree in writing, any statement, concession, waiver or agreement (other than a Senior Representative Settlement Agreement) made by a Party in the course of discussions pursuant to this paragraph 3 (*Senior Representatives*) 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 (other than a Senior Representative Settlement Agreement) in any subsequent mediation, adjudication, arbitration or other legal proceedings whether related to the Dispute or otherwise.

4. **ARBITRATION**

- 4.1 If the Senior Representatives of the Parties to the Dispute are unable to resolve the Dispute within twenty (20) Business Days of the service of the Dispute Notice (or within such further time as the Senior Representatives to the Dispute may agree in writing), either Party to the Dispute shall refer the Dispute to be finally resolved by arbitration in accordance with this paragraph 4 (*Arbitration*) of this Schedule 20 (*Claims, Disputes and Arbitration*).
- 4.2 Any Dispute referred to arbitration shall be resolved under the LCIA Rules (as amended by this paragraph 4 (*Arbitration*)).
- 4.3 The number of arbitrators shall be three (together, the "**Tribunal**").
- 4.4 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 shall within fifteen (15) days of the appointment of the second (2nd) arbitrator agree upon a third (3rd) arbitrator who shall act as chairman of the Tribunal. Notwithstanding anything to the contrary in the LCIA Rules, in agreeing upon the chairman, the two (2) 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 (2nd) arbitrator, the LCIA Court shall expeditiously nominate and appoint a third (3rd) arbitrator to act as chairman of the Tribunal.
- 4.5 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 Schedule 20 (*Claims, Disputes and Arbitration*): "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 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).
- 4.6 The seat, or legal place, of arbitration shall be London.
- 4.7 The language to be used in the arbitration shall be English.
- 4.8 The law of the arbitration agreement shall be the law of England and Wales.

5. **JOINDER AND CONSOLIDATION**

- 5.1 In the event that the Secretary of State and the Operator agree that a Related Dispute arises which raises or concerns issues or facts which are substantially the same as or connected with issues or facts raised in or concerned with a Dispute which has been referred to arbitration under paragraph 4, then the Operator (at his sole and absolute discretion) may by notice in writing to the other Party require the Related Dispute to be consolidated before the Tribunal appointed or to be appointed in respect of the Dispute.
- 5.2 In the event that the Secretary of State and the Operator agree that a party to a Related Contract may be joined as an additional party to any arbitration commenced pursuant to this Agreement, each Party grants the power to the arbitrators to allow that party to be so joined.

SCHEDULE 21

DEFINITIONS AND INTERPRETATION

1. DEFINITIONS

1.1 In this Agreement (including the recitals) words and expressions shall have the meanings set out in this Schedule 21 (*Definitions and Interpretation*) (or as otherwise specified in this Agreement):

"20 Year Gilt Rate" means, in respect of an Annual Reporting Period or Quinquennial Reporting Period (as applicable), the Real Gross Redemption Yield as at the end of that Annual Reporting Period or Quinquennial Reporting Period on the shortest dated Index Linked Gilt which has both:

- (a) an issuance size at that time of at least £3 billion, Indexed from the date of this Agreement in real terms (allowing for indexation of principal); and
- (b) a maturity of at least twenty (20) years,

as read together with the Specified Adjustments, if relevant;

"2006 Act" means the Companies Act 2006;

"Accelerated Decommissioning Contributions Amount" means either:

- (a) if the Security Trigger Event Action is taken on or before the end of the Primary Funding Period, an amount equal to the Year 37 Decommissioning Target (based on the most recent Annual Report or Quinquennial Report, as applicable), discounted on an annual compound basis at the Long Term Discount Rate from the last day of the Primary Funding Period until the last day of the Financial Period in which the Security Trigger Event Action is taken; or
- (b) if the Security Trigger Event Action is taken after the end of the Primary Funding Period but on or before the end of the Secondary Funding Period, an amount equal to the End of Generation Decommissioning Target (based on the most recent Annual Report or Quinquennial Report, as applicable), discounted on an annual compound basis at the Long Term Discount Rate from FYE End of Generation until the last day of the Financial Period in which the Security Trigger Event Action is taken, or
- (c) if the Security Trigger Event Action is taken after the Secondary Funding Period, an amount equal to the End of Generation Decommissioning Target less the value of the liabilities which have been discharged from the DWMP (based on the most recent Annual Report or Quinquennial Report, as applicable),

and in each case minus the Fund Assets Value as at the last day of the Previous Financial Period as stated in the relevant Annual Fund Assets Report (after subtracting an amount equal to the Funded SF Transfer Fee and the Funded ILW Transfer Fee to be paid to the Operator under Clause 33 (*Funded SF Transfer Fee and Funded ILW Transfer Fee will be released if Security Trigger Event Action is taken*) or Clause 35 (*Repayment of Unspent DTM Payments if Security Trigger Event Action is taken*));

"Accounting Enterprise Value" means the sum of the capital, retained earnings, other components of equity including any Subordinated Shareholder Loans and Outstanding Net Debt Amount, of the Operator as set out in the most recent balance sheet of the Operator;

"Actual Decommissioning Start Date" is, in respect of any Reactor, the date certified in a certificate provided by the Operator to the FDP Implementation Company and the Secretary of State, signed by two (2) directors of the Operator and as the date that such Reactor will, in the Operator's judgment Permanently Cease to Generate Electricity being no earlier than the date of the certificate;

"Actual Reactor Outage Days" in respect of a Qualifying Cash Sweep Period means the number of days, in that Qualifying Cash Sweep Period, during which a Reactor is not

generating any electricity, such number to be aggregated for both of the Reactors and rounded up to the nearest whole day;

"Additional Storage Amount" means the amount calculated in accordance with paragraph 5.4 (*Additional Storage Amount*) of Section 4 (*Formulae sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*);

"Adjusted Available Operator Cash Flow" means, in respect of any Qualifying Cash Sweep Period, the amount by which the Available Operator Cash as reconciled to the Audited Accounts for that Qualifying Cash Sweep Period is different from the Estimated Available Operator Cash stated in the Annual Operator Directors' Certificate given in respect of such Qualifying Cash Sweep Period;

"Affected Party" has the meaning given in Clause 54.1 (*Suspension of Obligations for a Force Majeure Event*);

"Affiliate" means in relation to any person:

- (a) any person holding twelve and a half percent (12.5%) or more of the shares or able to exercise twelve and a half percent (12.5%) or more of the voting rights in the person from time to time and a Parent or Subsidiary of such person from time to time but (in relation to EDF S.A.) excluding, for such time as EDF S.A. is under the control of the government of the French Republic, any parent undertaking of EDF S.A. and any subsidiary undertaking of such parent undertaking (other than EDF S.A. and its subsidiary undertakings) but including any parent undertaking of EDF S.A. which became such a parent undertaking as a consequence of a restructuring transaction pursuant to which such parent undertaking has substantially the same shareholders and assets as EDF S.A. had immediately prior to such transaction, disregarding its ownership of EDF S.A. itself; and
- (b) any Subsidiary of the person except (in relation to the Operator) the FDP Implementation Company and any Subsidiary of the FDP Implementation Company;

"Agreed Reconciliation Verification Procedures" means the procedures set out in Section 3 (*Agreed Reconciliation Verification Procedures*) of Schedule 16 (*Annual Reconciliation Review*);

"Allowable Costs" means, in respect of any Financial Period within the Disbursements Period:

- (a) in circumstances where there has been a Unplanned Permanent Shutdown, the costs and expenses arising in that Financial Period in relation to Designated Technical Matters including Attributable Overhead (and the amount of any Value Added Tax incurred thereon or, as the context requires, estimated to be incurred (taking account of any enacted or announced changes in rates) and which is reasonably expected not to be recoverable by the Operator or the representative member of its Value Added Tax group registration) in relation to the Site excluding any Disallowable Costs;
- (b) any costs to which the Detailed DWMP gives rise in relation to that Financial Period, including the estimated Investment Advice Fees subject to compliance with the Investment Fees Criteria and provided that the aggregate amount of Investment Advice Fees payable in that Financial Period shall not exceed the Investment Fees Cap;
- (c) any contingency or overrun drawn down in accordance with this Agreement;
- (d) any costs arising in that Financial Period directly from any instructions from a regulator with jurisdiction over the Operator, except to the extent such costs fall under paragraph (b); and
- (e) any other costs of Designated Technical Matters which have been agreed in writing with the FDP Implementation Company as comprising Allowable Costs;

"Allowable Costs Certificate" means a certificate signed by two (2) of the Operator's directors acting on behalf of the Operator's board, one of whom must be the managing director or chief executive officer of the Operator, confirming that, to the best of their knowledge and belief, all the costs set out in an Annual Work Plan and Budget are Allowable Costs;

"Allowable Costs Contract" means any agreement between the Operator and a Third Party under which the Operator has incurred costs that it has stated are Allowable Costs in an Operator Reconciliation Report;

"Allowable Costs Invoice" means any invoice received by the Operator from a Third Party relating to costs included in an Operator Reconciliation Report;

"Alternative Currency" has the meaning given in Clause 82.1 (*Adoption of Alternative Currency*);

"Alternative Currency Effective Date" has the meaning given in Clause 82.1 (*Adoption of Alternative Currency*);

"Alternative Long Term Discount Rate" means a rate calculated in accordance with paragraph 8 of Section 4 (*Formulae Sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*);

"Alternative WTC Trigger" means, for any reason whatsoever:

- (a) the provision for either a capped price per m³ of packaged ILW under the ILWTC or a capped price per tU under the SFTC has become illegal, unenforceable, ineffective, inoperable or otherwise ceases to be binding on the Secretary of State; or
- (b) the provision for the price per m³ of packaged ILW payable by the Operator under the ILWTC or the price per tU payable by the Operator under the SFTC to be fixed (subject only to adjustment in order to reflect indexation) at or before the Price Setting Date has become illegal, unenforceable, ineffective, inoperable or otherwise ceases to be binding on the Secretary of State.

"Annual Contribution" means the payment made or to be made by the Operator (or which are voluntarily made by another person) to the FDP Implementation Company on an Annual Contribution Date and calculated in accordance with the methodology set out in Schedule 3 (*Minimum Contribution Calculation Rules*) less any amounts to be netted off pursuant to clause 25.2.1(B)(2);

"Annual Contribution Date" means:

- (a) if the Contribution is the first (1st) Annual Contribution to be made, the date that is five (5) Business Days before the expected date of First Criticality; or
- (b) thereafter, the first (1st) Business Day of each subsequent Financial Period up to and including the Second Decommissioning Period;

but only, in each case, if the Secretary of State has not taken any Security Trigger Event Action;

"Annual DTM Claim Amount" means, in respect of any Financial Period during the Disbursements Period, the amount claimed by the Operator from the FDP Implementation Company in an Annual DTM Claim Notice;

"Annual DTM Claim Notice" means a notice from the Operator setting out the amount of payment that it claims from the FDP Implementation Company in respect of any Financial Period during the Disbursements Period, up to a maximum of:

- (a) the aggregate of the Allowable Costs (excluding the Appropriate Contingency Amount) expected to be payable in the relevant Financial Period, as set out in the verified or determined Annual Work Plan and Budget; plus
- (b) the Appropriate Contingency Amount; plus or minus (as appropriate)

(c) the Reconciling Amounts from the most recent Reconciliation Verification Report (if any);

"Annual DTM Payment" means a payment made by the FDP Implementation Company to the Operator in connection with an Annual DTM Claim Notice;

"Annual DTM Payment Date" means the first (1st) Business Day of a Financial Period in the Disbursements Period;

"Annual Fund Assets Report" means a report on the Fund Assets produced as part of an Annual Review or Quinquennial Review in accordance with Schedule 12 (*Requirements for the Annual Fund Assets Report*);

"Annual Milestone" means, in respect of a Financial Period from and including the year in which First Criticality occurs, up to and including the First Decommissioning Period, the target value for the Fund Assets on the last day of that Financial Period, calculated in accordance with Section 4 (*Formulae sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*);

"Annual Operator Directors' Certificate" means the certificate described in Schedule 14 (*Requirements for Annual Operator Directors' Certificate*);

"Annual Reconciliation Report" means the report described in Section 5 (*Requirements for the Annual Reconciliation Report*) of Schedule 16 (*Annual Reconciliation Review*);

"Annual Reconciliation Review" means a reconciliation of Operator Expenditure undertaken in respect of any Reconciliation Period in accordance with Clause 49 (*Annual Reconciliation Review*) as part of an Annual Review or Quinquennial Review (as applicable);

"Annual Reconciliation Review Process" means the process set out in Section 1 (*Process for Annual Reconciliation Review Process*) of Schedule 16 (*Annual Reconciliation Review*);

"Annual Report" means a report submitted to the Secretary of State following an Annual Review in accordance with Schedule 8 (*Annual Review Programme*);

"Annual Reporting Period" means, after the first Quinquennial Review and before the end of the Disbursements Period, each Financial Period except the last Financial Period of a Quinquennial Reporting Period;

"Annual Review" means a review of an Annual Reporting Period undertaken in accordance with Schedule 8 (*Annual Review Programme*) in an Annual Review Year;

"Annual Review Process" means the process set out in Section 1 (*Annual Review Process*) of Schedule 8 (*Annual Review Programme*);

"Annual Review Year" means the Financial Period starting immediately after each Annual Reporting Period;

"Annual Work Plan and Budget" means a plan of work and budget for a Financial Period produced by the Operator in accordance with Section 1 (*Requirements for Annual Work Plan and Budget*) of Schedule 15 (*Payments and Disbursements Requirements*);

"Annual Work Plan and Budget Independent Expert Referral Procedure" means the procedure set out in Schedule 19B (*Annual Work Plan and Budget Independent Expert Referral Procedure*);

"Applicable Law(s)" means all applicable laws, regulations, directives, statutes, subordinate legislation, common law and civil codes of any jurisdiction, all judgments, orders, notices, instructions, decisions and awards of any court or Competent Authority or tribunal and all codes of practice having force of law including the Nuclear Site Licence and the instructions of any regulator with relevant jurisdiction;

"Appropriate Contingency Amount" means ten percent (10%) of the Allowable Costs within limb (b) of the definition of Allowable Costs;

"Approved Operator Business Scope" means:

- (a) activities related to the development of nuclear electricity generation facilities in the UK, including the acquisition, construction, operation and decommissioning of nuclear generation capabilities together with ancillary activities and services; and
- (b) activities related to the development of non-nuclear low carbon electricity generation facilities in the UK, including the acquisition or construction, operation and decommissioning of non-nuclear low carbon generating capabilities, provided that between the date that First Criticality occurs and the end of generation from a nuclear reactor for which the Operator is the holder of a nuclear site licence the proportion of installed non-nuclear generation capacity shall not exceed five percent (5%) of all installed generator capacity of the Operator;

"Approved P Value" means:

- (a) for the Costs of Decommissioning, P80;
- (b) for the Costs of Spent Fuel Management:
 - (i) P80 in relation to the DWMP SF Management Line Items not included in limb (b)(ii) below (if applicable); and
 - (ii) in relation to the Tail-End ILW only components of the DWMP SF Management Line Items, the ILW Transfer Price for the projected volumes of Tail-End ILW (such volumetric projections being at P80); or
 - (iii) the Fixed SF Management Line Items (if applicable)
- (c) for the Costs of ILW Disposal, the ILW Transfer Payment; or
- (d) for the Costs of the Spent Fuel Disposal, the SF Transfer Payment.

"Articles" means the articles of association (or other constitutional documents) of the FDP Implementation Company in force from time to time;

"Attributable Overhead" means an internal cost, or appropriate proportion of an internal cost, of the Operator or an Affiliate which is properly attributable to the Costs of Decommissioning and/or the Costs of Spent Fuel Management and/or the Costs of ILW Disposal and/or the Costs of Spent Fuel Disposal carried out in relation to an Annual Work Plan and Budget;

"Audited Accounts" means the annual accounts published by a company and audited in accordance with Applicable Law;

"Audited Balance Sheet" means the balance sheet contained in Audited Accounts;

"Authorised Representative" means any person that the Operator authorises from time to time to issue Investment Orders by giving notice to the FDP Implementation Company;

"Authority" means the Gas and Electricity Markets Authority established pursuant to section 1 of the Utilities Act 2000;

"Available Cash" has the meaning given to that term in Clause 11 (*Investments may be made with Available Cash*);

"Available Operator Cash Flow" has the meaning given to it in Schedule 17 (*Available Operator Cash Flow for Qualifying Cash Sweep Periods*);

"Award" means any award made by any arbitrator or arbitral tribunal appointed in accordance with Schedule 20 (*Claims, Disputes and Arbitration*);

"AWPB Independent Expert" means such professional or trade body as may be appointed from time to time in accordance with the Annual Work Plan and Budget Independent Expert Referral Procedure;

"AWPB Independent Expert Referral Notice" has the meaning given in paragraph 1.21 of Schedule 19B (*Annual Work Plan and Budget Independent Expert Referral Procedure*);

"AWPB Referral" has the meaning given to that term in paragraph 1.14.3 (*Role and duties of the Independent Investment Expert(s)*) of Schedule 19B (*Annual Work Plan and Budget Independent Referral Procedure*);

"AWPB Reply" has the meaning given to that term in paragraph 1.14.5 (*Role and duties of the Independent Investment Expert(s)*) of Schedule 19B (*Annual Work Plan and Budget Independent Referral Procedure*);

"AWPB Response to Referral" has the meaning given to that term in paragraph 1.14.4 (*Role and duties of the Independent Investment Expert(s)*) of Schedule 19B (*Annual Work Plan and Budget Independent Referral Procedure*);

"Bank of England" means the central bank of the United Kingdom;

"Base Case Contribution" means the amount calculated in accordance with paragraph 2.9 of Section 2 (*Calculation of Base Case Contributions during the Primary Funding Period*) of Schedule 3 (*Minimum Contribution Calculation Rules*);

"Board" means the board of Directors of the FDP Implementation Company from time to time;

"Borrowings" means any transaction falling under paragraphs (a), (b), (c), (d), (e), (f), (h), (i), (j) and (k) of the definition of Financial Indebtedness other than the following:

- (a) Subordinated Shareholder Loans provided that if the criteria in paragraphs (i) and (ii) of the definition of Subordinated Shareholder Loans are not met in respect of any shareholder loan agreement, then any such agreements shall be deemed to be Borrowings;
- (b) any amount of liability under an advance or deferred purchase agreement if such agreement is in respect of the supply of assets or services and payments is due more than ninety (90) days after the date of supply;
- (c) in respect of trade creditors, the amount of any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution in respect of an underlying liability which is not otherwise a Borrowing;
- (d) SoS/LCCC Amounts; and
- (e) to the extent it would involve double counting, any Relevant Guarantee;

"BSC" means the Balancing and Settlement Code that is provided for in Standard Condition C3 (Balancing and Settlement Code (BSC)) of the Transmission Licence;

"Business Day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom;

"Calculation Confirmation Report" means a report by the Independent Financial Verifier regarding whether the Draft Contributions Notice has been properly calculated by the Operator in accordance with the Minimum Contribution Calculation Rules in accordance with Section 2 (*Requirements for the Calculation Confirmation Report*) of Schedule 11 (*Financial Verification*);

"Cash and Cash Equivalents" means at any time:

- (a) cash in hand or cash on deposit with a reputable bank;
- (b) certificates of deposit maturing within one year after the relevant date of calculation and issued by a reputable bank;
- (c) any investment in marketable debt obligations issued or guaranteed by:
 - (i) the government of the United States of America or the United Kingdom;
 - (ii) the government of any member state of the European Economic Area or the European Union having a credit rating of either A+ or higher from S&P or A+ or higher from Fitch or A1 or higher from Moody's or any

Replacement Credit Rating (read with any Specified Credit Rating Criteria Adjustments); or

- (iii) an instrumentality or agency of any of the governments set out in subparagraphs (i) and (ii) above having an equivalent credit rating, in each case, maturing within one year after the relevant date of calculation and not convertible or exchangeable to any other security;
- (d) commercial paper not convertible or exchangeable to any other security:
 - (i) for which a recognised trading market exists;
 - (ii) issued by an issuer incorporated in the United States of America, the United Kingdom, any member state of the European Economic Area or the European Union;
 - (iii) which matures within one year after the relevant date of calculation; and
 - (iv) which has a credit rating of either A-1 or higher by S&P or F1 or higher by Fitch or P-1 or higher by Moody's or any Replacement Credit Rating (read with any Specified Credit Rating Criteria Adjustments), or, if no rating is available in respect of the commercial paper, the issuer of which has, in respect of its long-term unsecured and non-credit enhanced debt obligations, an equivalent rating;
- (e) sterling bills of exchange eligible for rediscount at the Bank of England and accepted by a reputable bank (or their dematerialised equivalent); or
- (f) any investment in money market funds which:
 - (i) have a credit rating of either A-1 or higher by S&P or F1 or higher by Fitch or P-1 or higher by Moody's or any Replacement Credit Rating (read with any Specified Credit Rating Criteria Adjustments);
 - (ii) which invest substantially all their assets in securities of the types described in paragraphs (b) to (d); and
 - (iii) can be turned into cash on not more than thirty (30) Business Days' notice.

"Cash Sweep Lock-Up Period" has the meaning given to that term in Clause 26 (*Distribution Block applies during Qualifying Cash Sweep Periods*);

"Cash Sweep Payment" means, as the context requires, a Provisional Cash Sweep Payment and/or a Cash Sweep Reconciliation Payment;

"Cash Sweep Payment Date" means (as applicable) an Annual Contribution Date or a Provisional Cash Sweep Payment Date;

"Cash Sweep Reconciliation Payment" means a payment made or to be made by the Operator (or which are voluntarily made by another person) to the FDP Implementation Company pursuant to Clause 25.2 (*Cash Sweep Reconciliation Payment*);

"Cash Sweep Reconciliation Payment Date" means, in respect of any Qualifying Cash Sweep Period, the Annual Contribution Date occurring immediately after the Provisional Cash Sweep Payment Date for that period;

"CfD Contracting Policy" has the meaning given to that term in the HPC CfD;

"Code Subsidiary Documents" has the meaning given to that term in the BSC;

"Collective Investment Scheme" means a collective investment scheme, as defined in section 235 of the Financial Services and Markets Act 2000 (*Collective Investment Schemes*) which is in summary:

- (a) any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the

acquisition, holding, management or disposal of the property or sums paid out of such profits or income; and

- (b) which are not excluded by the Financial Services and Markets Act 2000 (*Collective Investment Schemes*) Order 2001 (SI 2001/1062);

"Commercially Sensitive Information" means the sub-set of Confidential Information designated as commercially sensitive in accordance with Clause 81.3 (*Commercially Sensitive Information*);

"Competent Authority" means:

- (a) any international, national, federal, regional, state, local, European Union, the Euratom or other court, arbitral tribunal, administrative agency or commission or other governmental, administrative or regulatory body, authority, agency or instrumentality;
- (b) any private body to the extent it carries out one or more public functions; or
- (c) any other body which has jurisdiction in respect of the Operator, the Site, the Reactors, this Agreement or any other document,

and includes the Authority, ONR, the International Atomic Energy Agency, the Environment Agencies and the Secretary of State;

"Compliance Event" means a compliance event arising under Clause 52.2 (*Compliance Events*);

"Confidential Information" means:

- (a) information of whatever nature concerning the business, finances, assets, liabilities, dealings, transactions, know how, customers, suppliers, processes or affairs of the Parties;
- (b) any information which is expressly indicated to be confidential or is imparted by one Party to another Party in circumstances importing an obligation of confidence;
- (c) any communication containing Sensitive Nuclear Information,

which any Party may from time to time receive or obtain (orally or in writing or in disk or electronic form) as a result of entering into, or performing its obligations pursuant to, this Agreement or otherwise related thereto;

"Contract Verification Report" means a report produced in accordance with Section 3 (*Requirements for Contract Verification Report*) of Schedule 15 (*Payments and Disbursements Requirements*);

"Contribution" means an Annual Contribution and/or an Overpayment and/or Cash Sweep Payment, as the context requires;

"Contributions Notice" means a notice setting out the Annual Contribution to be made in a Financial Period;

"Contributions Payment Procedures" means the payment procedures set out in Section 1 (*Contributions Payment Procedures*) of Schedule 4 (*Payment Procedures*);

"Control" means a person:

- (a) directly or indirectly holds (whether legally or beneficially) a majority of the voting rights in the body corporate;
- (b) is a member of the body corporate and has the right to appoint or remove a majority of the body corporate's board of directors; or
- (c) is a member of the body corporate and controls alone, pursuant to an agreement with other members, a majority of the voting rights in the body corporate;

"Convertible" means, as defined in the FCA Rules, a security which gives the investor the right to convert the security into a share at an agreed price or on an agreed basis, or a

security which is: (a) convertible into, or exchangeable for, other securities; or (b) accompanied by a warrant or option to subscribe for or purchase other securities;

"Corporate Bond" means any security creating or acknowledging indebtedness, issued by a corporation;

"Correction Adjustment Percentage" means the percentage for the corresponding Financial Period as set out in Section 3 (*Correction Adjustment Percentages*) of Schedule 2 (*Funding Paths*);

"Correction Contribution" means the amount calculated in accordance with Section 3 (*Calculation of the Correction Contribution*) of Schedule 3 (*Minimum Contribution Calculation Rules*);

"Costs of Decommissioning" means the aggregate of:

- (a) the costs and expenses in relation to Designated Technical Matters, including Attributable Overheads in relation to the Site, incurred or, as the context requires, estimated to be incurred to carry out and complete Decommissioning of the Site in accordance with the DWMP and/or Annual Work Plan and Budget (as applicable) before the date that the Site End State is achieved including the costs of management of ILW and Spent Fuel during that period but excluding the Operational DTM Costs, the Costs of ILW Disposal the Costs of Spent Fuel Disposal, the Costs of Spent Fuel Management and the operational costs of any remaining Reactors during that period; and
- (b) the amount of any Value Added Tax incurred or, as the context requires, estimated to be incurred (taking account of any enacted or announced changes in rates) which is referable to the costs in paragraph (a), and which is reasonably expected not to be recoverable by the Operator or the representative member of its Value Added Tax group registration;

"Costs of ILW Disposal" means the aggregate of:

- (a) the ILW Transfer Payment which is estimated to fall due under the ILW Transfer Contract; and
- (b) the amount of any Value Added Tax incurred or, as the context requires, estimated to be incurred (taking account of any enacted or announced changes in rates) which is referable to the costs in paragraphs (a) or (b), and which is reasonably expected not to be recoverable by the Operator or the representative member of its Value Added Tax group registration;

"Costs of Spent Fuel Disposal" means the aggregate of:

- (a) the SF Transfer Payment which is estimated to fall due under the SF Transfer Contract; and
- (b) the amount of any Value Added Tax incurred or, as the context requires, estimated to be incurred (taking account of any enacted or announced changes in rates) which is referable to the costs in paragraphs (a) or (b), and which is reasonably expected not to be recoverable by the Operator or the representative member of its Value Added Tax group registration;

"Costs of Spent Fuel Management" means the cost estimates in relation to the Waste and Spent Fuel Management Services (if any), being :

- (a) (unless (b) or (c) applies) the aggregate of:
 - (i) each DWMP SF Management Line Item; and
 - (ii) the amount of any Value Added Tax incurred or, as the context requires, estimated to be incurred (taking account of any enacted or announced changes in rates) which is referable to the costs in paragraph (i), and which is reasonably expected not to be recoverable by the Operator or the representative member of its Value Added Tax group registration; or

- (b) following the delivery of an SF Transfer Contract Certificate confirming the occurrence of GDF Site Selection Delay (unless and until (c) applies) the aggregate of:
- (i) each Fixed SF Management Line Item; and
 - (ii) the amount of any Value Added Tax incurred or, as the context requires, estimated to be incurred (taking account of any enacted or announced changes in rates) which is referable to the costs in paragraph (i), and which is reasonably expected not to be recoverable by the Operator or the representative member of its Value Added Tax group registration; or
- (c) where either:
- (i) the SF Transfer Date is not a date which is prior to the earliest SF Disposal Date; or
 - (ii) following the delivery of an SF Transfer Contract Certificate setting out the revised SF Transfer Price resulting from an SF Contract Assumption Deviation,
- zero;

Explanatory note: the amount is zero if limb (c) of the definition of the Costs of Spent Fuel Management applies as:

- *in the case of (c)(i), any costs in relation to the Waste and Spent Fuel Management Service shall be comprised in the revised SF Transfer Price resulting from the SF Contract Assumption Deviation under the SF Transfer Contract; and*
- *in the case of (c)(ii) there would not be any period of time between the SF Transfer Date and the SF Disposal Dates and therefore there would not be any Waste and Spent Fuel Management Services.*

"Counsel" means a practising barrister or Queen's Counsel with appropriate and relevant experience;

"Counterparty Group" means, in respect of any counterparty (excluding any counterparty under the Control of the government of any state), the counterparty itself, any person which the counterparty Controls, any person which Controls the counterparty and any person under common control with the counterparty;

"Credit Rating Change Event" has the meaning given to that term in Clause 84.2.2 (*Withdrawal of Credit Rating Criteria*);

"Current Financial Period" means the Annual Review Year or Quinquennial Review Year (as the case may be) that is then occurring, except if the Minimum Contribution Calculation Rules are being applied to calculate the first (1st) Contributions Notice, in which case it means the Financial Period immediately prior to the Financial Period in which First Criticality is expected to occur;

"CUSC" means the Connection and Use of System Code that is provided for in Standard Condition C10 (Connection and Use of System Code (CUSC)) of the Transmission Licence;

"Deal" means, in relation to the benefit of this Agreement, to assign (whether absolutely or by way of security and whether in whole or in part), transfer, mortgage, charge, declare itself a trustee for a third party of, or otherwise dispose of (in any manner whatsoever) and **"Dealing"** shall be construed accordingly;

"Deal Directly" means, in relation to any Fund Asset, acquire or dispose of such investment directly as a principal but, for the avoidance of doubt, does not include the issue of an Investment Order;

"Decommissioning" means those activities which are necessary for, and are to be (or have been) undertaken at the Site in connection with, achieving the Site End State during the Disbursements Period;

"Decommissioning Period" means the period beginning on the Actual Decommissioning Start Date and ending on the date the Site End State is achieved;

"Decommissioning Start Date" means, in relation to the first Reactor to begin Decommissioning after FYE Year 37, the anticipated date of the commencement of Decommissioning, or the Actual Decommissioning Start Date, of such Reactor;

"Decommissioning Strategy" means the strategy for Decommissioning as set out in the latest version of the DWMP;

"Deed of Undertaking" means the deed of undertaking in relation to the imposition of liabilities on third parties between, initially, the shareholders of the Operator and the Secretary of State;

"Default Amount" means the amount that was due on an Annual Contribution Date or on a Provisional Cash Sweep Payment Date and remains unpaid, together with all interest accruing on it pursuant to Clause 86 (*Interest to run on default*);

"Default Payment Date" means the day immediately after the end of the Remedy Period in respect of the relevant payment obligation;

"Deficit" means that the Fund Assets Value is less than the Annual Milestone for a given Financial Period;

"Derivative" means, as defined in the FCA Rules, a contract for differences, a future, a forward, a swap or an option;

"Designated Technical Matters" has the meaning given to that term in the Energy Act 2008 and the Nuclear Decommissioning and Waste Handling (Designated Technical Matters) Order 2010;

"Detailed DWMP" means the detailed decommissioning and waste management plan that supports the Draft DWMP or DWMP (as the case may be);

"Directive" means, in relation to either Party, any ordinance, code, decision, directive, order, decree, regulation, determination, award, standard or rule of any Competent Authority which is legally binding upon that Party or, if not legally binding upon that Party, with which that Party would ordinarily comply, acting (in the case of the Operator) reasonably;

"Director" means a director appointed to the Board of the FDP Implementation Company (including both an Independent Director and an Operator Director);

"Direct Investment Portfolio" means the total value of the Fund Assets, excluding any investments in Collective Investment Schemes;

"Disallowable Costs" means costs which are not Allowable Costs and, for the avoidance of doubt, includes costs to the extent they are or are a portion of costs attributable to:

- (a) costs of investments in shares and securities and of investment advice (except any such costs arising in relation to the FDP Implementation Company and/or the Fund Assets where an estimate of such costs has been included in the DWMP or the Detailed DWMP);
- (b) costs of raising and servicing capital;
- (c) general reserve, contingent liabilities and provisions (including bad debt provisions);
- (d) subscriptions and donations of a political nature;
- (e) donations, including cash, property and services, regardless of recipient;
- (f) marketing, advertising and selling expenses;
- (g) costs of the Operator and any companies in which the Operator, directly or indirectly, has a shareholding or any other form of economic interest arising out of mergers, business combinations and business re-organisations including:
 - (i) mergers and acquisitions;

- (ii) de-mergers;
- (iii) joint ventures;
- (iv) raising capital;
- (h) appropriation of profits, transfer of profits to reserves, dividends paid or payable by the Operator and/or corporate tax on the chargeable profits of the Operator;
- (i) Value Added Tax and any other Tax in respect of or in connection with any Disallowable Costs;
- (j) any cost which relates to any Value Added Tax or any other Tax (in each case incurred by any direct or indirect supplier of the Operator) to the extent that the same is eligible for recovery from HM Revenue and Customs or any other tax authority;
- (k) costs of membership in social, dining or other similar organisations and excessive costs for entertainment and/or social activities;
- (l) cost incurred by the Operator which are attributable to, and fines and penalties imposed on the Operator as a result of, a breach of Applicable Law;
- (m) the amount of any debt due and payable by the Operator to the FDP Implementation Company pursuant to this Agreement;
- (n) costs which are recoverable by the Operator from one or more third parties but which the Operator has not used reasonable endeavours to recover from such third parties; and
- (o) the Operational DTM Costs;

"Disallowable Costs Notice" means a notice from the Independent Technical Verifier specifying the works and activities and related costs estimates set out in the relevant Annual Work Plan and Budget to which the notice relates together with reasonable details regarding why the Independent Technical Verifier considers that those proposed works and activities would constitute Disallowable Costs;

"Disbursements Period" means the period commencing on the first day of the first (1st) Financial Period during which DTM Costs were paid by the Operator (or are scheduled to be paid in the Detailed DWMP) and ending on the later of:

- (a) the date that all of the Operator's liabilities under the SFTC have been discharged; or
- (b) the date that the Site achieves the Site End State;

"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 (for example, industrial disruptions, supplier failure, discovery of unexpected hazardous conditions on site or increased waste);

"Dispute" means any dispute or difference arising out of or in connection with this Agreement including, but not limited to, any question regarding its existence, interpretation, validity, construction or termination but excluding any dispute or difference specified in this Agreement as being subject to Schedule 19 (*Independent Expert Referral Procedure*), Schedule 19A (*Independent Investment Expert Referral Procedure*), Schedule 19B (*Annual Work Plan and Budget Independent Expert Referral Procedure*) or Schedule 19C (*Valuation Procedure*);

"Dispute Notice" means a notice in writing that has the meaning given to that term in paragraph 2 (*Commencement of the Dispute Resolution Process*) of Schedule 20 (*Claims, Disputes and Arbitration*);

"Dispute Resolution Procedure" means the procedure for the resolution of Disputes which is set out in the Dispute Resolution Rules;

"Dispute Resolution Rules" means the rules, obligations and procedures set out in Schedule 20 (*Claims, Disputes and Arbitration*);

"Distribution" means any payment, repayment, redemption (by way of set-off, counterclaim or otherwise) or other distribution or similar payment, including paying any dividend to shareholders or making any payment of interest, principal or fees in respect of any shareholder debt or subordinated debt or any Subordinated Shareholder Loan (other than, in each case, the SoS/LCCC Amounts), whether in cash or in kind and whether pursuant to the terms of an agreement or otherwise or by way of gift, but excluding any payment which is either: (i) in respect of contracts for goods and/or services; or (ii) in respect of operational and/or maintenance and/or capital and/or decommissioning expenditure of the Operator; or (iii) in respect of intellectual property or know how; and, in each case, made in accordance with the CfD Contracting Policy and **"Distributed"** is to be construed accordingly;

"Distribution Licence" means a licence granted or treated as granted pursuant to section 6(1)(c) of the Electricity Act 1989;

"Documents" means any or all of (as applicable):

- (a) this Agreement;
- (b) the Shareholders' Agreement;
- (c) the Articles;
- (d) the FDP Budget and Services Agreement;
- (e) the Section 46 Agreement;
- (f) the Deed of Undertaking;
- (g) the FDP Security Documents;
- (h) the SF Transfer Contract;
- (i) the ILW Transfer Contract; and
- (j) any FDP Direct Agreement.

"Dollar Bond All Stocks Investment Grade Index" means:

- (a) the iBoxx USD Overall All Stocks Index (or the equivalent Merrill Lynch Index) and all its sub-indices; or
- (b) if applicable, any Replacement Index (read with any Specified Index Change Adjustments);

"Draft Contributions Notice" means the draft Contributions Notice most recently calculated by the Operator as part of an Annual Review or a Quinquennial Review (as the case may be) or the notice given in respect of the first two (2) Annual Contributions in accordance with Clause 4.1 (*First Contributions Notice will be produced before First Criticality*);

"Draft DWMP" means the draft DWMP most recently prepared by the Operator as part of an Annual Review or a Quinquennial Review (as the case may be);

"DTM Costs" means the sum of:

- (a) the estimated undiscounted amount of the Costs of Decommissioning;
- (b) the estimated undiscounted amount of the Costs of Spent Fuel Management for the expected life of the Reactors (if any);
- (c) the estimated undiscounted amount of the Costs of ILW Disposal for the expected life of the Reactors; and
- (d) the estimated undiscounted amount of the Costs of Spent Fuel Disposal for the expected life of the Reactors,

in each case calculated at the Approved P Value and set out in the Draft DWMP;

"DTM Costs Overrun" means, in a Financial Period, the amount by which the Allowable Costs expected to be paid by the Operator during such Financial Period will exceed the

amount that is available to the Operator to discharge Allowable Costs in the Operator DTM Control Account;

"DTM Costs Overrun Certificate" means a certificate signed by two (2) directors of the Operator acting on behalf of the Operator's board of directors confirming that, to the best of their knowledge and belief, the DTM Costs Overrun claimed by the Operator from the FDP Implementation Company in an amended Annual Work Plan and Budget are Allowable Costs;

"DTM Costs Overrun Claim Notice" means a notice of the DTM Costs Overruns in respect of a Financial Period in the Disbursements Period which is given by the Operator in accordance with Clause 47.1 (*Operator must specify the DTM Costs Overruns claimed from the Fund*);

"DTM Overrun Payment" means a payment made by the FDP Implementation Company to the Operator in connection with a DTM Costs Overrun Claim Notice;

"DTM Overrun Payment Date" means the date that is twenty (20) Business Days after the submission by the Operator of an amended Annual Work Plan and Budget pursuant to Clause 46.1 (*Operator must submit an amended Annual Work Plan and Budget before cost overruns can be claimed*);

"DTM Payment" means an Annual DTM Payment, a delayed payment under Clause 45.5, a DTM Overrun Payment or an Emergency DTM Payment (as the case may be);

"DTM Purpose Trust" means the trust created in accordance with Clause 42.3 (*DTM Purpose Trust*);

"DWMP" means the decommissioning and waste management plan that forms part of the FDP for Hinkley Point C from time to time;

"DWMP SF Management Line Items" means each line item of the cost estimate in relation to the Waste and Spent Fuel Management Services calculated at the Approved P Value and set out in the Draft DWMP from the SF Transfer Date to the SF Disposal Date;

"Early Closure Trigger Event" means that either:

- (a) any creditors of the Operator have accelerated or put on demand amounts of £500 million (Indexed) or more, in aggregate, in accordance with the terms of the applicable financing documents because either: (x) both of the Reactors have closed early; or (y) a creditor of the Operator, acting reasonably, anticipates the early closure of both Reactors; unless within twenty (20) Business Days:
 - (i) the creditors have withdrawn accelerations or demands, such that less than £500 million (Indexed) remains accelerated or placed on demand; or
 - (ii) the Operator has paid the creditors either from resources external to the Operator which have been provided to the Operator for that purpose, and/or from the Operator's distributable reserves, such that less than £500 million (Indexed) is then so due, and the Operator remains able to pay its debts as they fall due after making such payment (and provided that no payment is made (nor may be made) to such creditors of such amounts accelerated or placed on demand otherwise than in accordance with this paragraph (ii)); or
- (b) any Secured Creditor enforces a floating charge as a result of the actual or anticipated early closure of the Reactors (in which case the Qualifying Floating Charges held by the Secretary of State and the FDP Implementation Company will crystallise automatically immediately before such enforcement);

"EDF S.A." means Electricité de France S.A. (RCS Paris B552081314), a French société anonyme whose principal place of business is at 22-30 avenue de Wagram, 75008 Paris, France;

"EEA" or "European Economic Area" means the trading area established by the European Economic Area Agreement signed on 2 May 1992;

"Emergency Allowable Costs Certificate" means a certificate signed by two (2) of the Operator's directors acting on behalf of the Operator's board, one of whom must be the managing director or chief executive officer of the Operator, confirming that, to the best of their knowledge and belief, the amounts being claimed as Emergency DTM Payments reflect the Operator's good faith estimate of the costs expected to be incurred under paragraph (a) of the definition of Allowable Costs;

"Emergency DTM Payment" mean a payment made pursuant to Clause 43.3 (*Requirement for funds in respect of Safety Critical Expenditure following Unplanned Permanent Shutdown*) in the amount of the Operator's good faith estimate of the costs incurred or to be incurred (as applicable) for the relevant month in respect of Safety Critical Expenditure;

"Emerging Market Equity Index" means:

- (a) the MSCI World Emerging Market Equity Index (Bloomberg code: MXEF index) (or the equivalent FTSE Index) and all its sub-indices; or
- (b) if applicable, any Replacement Index (read with any Specified Index Change Adjustments);

"End of Generation Decommissioning Target" means the amount calculated in accordance with Paragraph 4.1 (*End of Generation Decommissioning Target*) of Section 4 (*Formulae sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*);

"End of Generation ILW Disposal Target" means the amount calculated in accordance with Paragraph 6.2 (*End of Generation ILW Disposal Target*) of Section 4 (*Formulae sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*);

"End of Generation Management Target" means the amount calculated in accordance with Paragraph 5.2 (*End of Generation Management Target*) of Section 4 (*Formulae sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*);

"End of Generation Spent Fuel Disposal Target" means the amount calculated in accordance with Paragraph 7.2 (*End of Generation Spent Fuel Disposal Target*) of Section 4 (*Formulae sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*);

"End of Generation Target" means the amount calculated in accordance with paragraph 3.1 (*End of Generation Target*) of Section 4 (*Formulae sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*);

"Energy Act 2008" means the Energy Act 2008 or such legislation or regulation as shall replace or supplement the Energy Act 2008, or parts of it, from time to time with a similar effect;

"Environment" means air, water (including territorial and coastal and inland waters, groundwater) and land (including soil and sub-soil), and any organisms or ecosystems supported by the air, water and land, but excluding humans;

"Environment Agencies" means any regulator or public authority with responsibility for, and/or jurisdiction over, any matter relating to the Environment or Environmental Law;

"Environmental Claim" means any proceedings or a regulatory notice brought against the Operator relating to any breach of Environmental Law by the Operator;

"Environmental Information Regulations" means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant UK Government department in relation to such regulations;

"Environmental Law" means any law or regulation relating to the pollution or protection of the Environment;

"Enterprise Value" means the Accounting Enterprise Value or the Fair Enterprise Value (as applicable);

"Equity Holding" means shares comprised in a company's equity share capital, and securities convertible into such shares;

"Established Government Issuer" means each of the United Kingdom, the United States of America, France, the Netherlands and Germany;

"Estimated Available Operator Cash Flow" has the meaning given to it in Schedule 17 (*Available Operator Cash Flow for Qualifying Cash Sweep Periods*);

"Estimating Uncertainty" means uncertainty associated with possible cost performance for project or operational work scope (for example uncertainty in work content, labour rates, outputs, durations; pricings for equipment and material or quantities of material);

"Euratom" means the European Atomic Energy Community;

"Euro Investment Grade Index" means:

- (a) the iBoxx EUR Overall All Stocks Index (or the equivalent Merrill Lynch Index) and all its sub-indices; or
- (b) if applicable, any Replacement Index (read with any Specified Index Change Adjustments);

"European Union" means the European Union as established by the Treaty of Rome 1957 and reconstituted from time to time and for the time being comprising the following countries: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom;

"Excess Sums" has the meaning given to that term in the FDP Budget and Services Agreement;

"Excluded Bank Accounts" means, from time to time, any of the Operator's bank accounts which are identified as such in any FDP Direct Agreement or any FDP Security Document;

"Excluded Borrowings" means: (i) any Borrowings falling within limb (f) of the definition of Financial Indebtedness provided that the aggregate outstanding amount of such Borrowings do not exceed £10,000,000; and (ii) any Borrowings falling within limb (i) of the definition of Financial Indebtedness provided that the aggregate outstanding amount of such Borrowings do not exceed £10,000,000;

"Exempt Modification" means a modification of the FDP which does not require approval by the Secretary of State in accordance with the Energy Act 2008 and Applicable Law from time to time, subject to compliance with any requirements of Applicable Law (including any notice requirements);

"Expert Verification Report" means a report that is produced by the Independent Expert in accordance with Schedule 10 (*Technical Verification*);

"Fair Enterprise Value" means the most recent valuation of the enterprise value of the Operator as determined in accordance with the Valuation Procedure;

"FCA Rules" means the Financial Conduct Authority Rules as published on 1 April 2013;

"FDP" means the funded decommissioning programme in respect of the Site approved by the Secretary of State under section 46 of the Energy Act 2008 comprising, as at the date of this Agreement:

- (a) this Agreement; and
- (b) the DWMP,

in each case as may be amended from time to time under section 49 of the Energy Act 2008;

"FDP Budget and Services Agreement" means the agreement between the FDP Implementation Company and the Operator governing how the FDP Implementation Company is administered and funded dated on or about the date of this Agreement as may be amended from time to time;

"FDP Company Administrator" means any professional company administrator appointed by the FDP Implementation Company from time to time;

"FDP Custodian" means one or more professional custodian of any of the Fund Assets as appointed by the FDP Implementation Company from time to time;

"FDP Direct Agreement" means, (a) as at the date of this Agreement, the standstill agreement in the form agreed between the Operator and the Secretary of State; and/or (b) any direct agreement or other intercreditor agreement in respect of this Agreement (and, if applicable, certain other Documents) that has been entered into between, amongst others, the Operator, the Secretary of State, relevant Financing Parties and (if relevant) the FDP Implementation Company from time to time which regulates priority as between the beneficiaries of any Security and to which the Operator and the Secretary of State are parties (together with the FDP Implementation Company if relevant any other relevant creditors) provided that if the FDP Implementation Company is not a party to such agreement, the Secretary of State has confirmed to the FDP Implementation Company that the FDP (taking into account the terms of such FDP Direct Agreement) makes prudent provision for the DTM Costs;

"FDP Guidance" means the *Funded Decommissioning Programme Guidance for New Nuclear Power Stations* published by the Department of Energy and Climate Change on 8 December 2011;

"FDP Implementation Company Budget" means the "Annual Budget" or "Approved Annual Budget" as applicable and each as defined in the FDP Budget and Services Agreement;

"FDP Implementation Company Contributions Bank Account" means the bank account designated by the FDP Implementation Company from time to time for the receipt of Contributions in accordance with the Contributions Payment Procedures;

"FDP Implementation Company Insolvency Event" means that:

- (a) the FDP Implementation Company is unable or admits inability to pay its debts as they fall due;
- (b) the value of the assets of the FDP Implementation Company is less than its liabilities (taking into account contingent and prospective liabilities);
- (c) a moratorium or other protection from its creditors is declared or imposed in respect of any indebtedness of the FDP Implementation Company; or
- (d) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the FDP Implementation Company or any of its assets;

"FDP Implementation Company Opex Bank Account" has the meaning given to that term in the FDP Budget and Services Agreement;

"FDP Implementation Company Warranties" means the warranties set out in Section 1 (*FDP Implementation Company Warranties*) of Schedule 1 (*Warranties*) and given by the FDP Implementation Company on the date of this Agreement;

"FDP Modification Event" means:

- (a) the Operator proposes a revision to the DWMP in a notice to the Secretary of State accompanying an Annual Report or Quinquennial Report which constitutes an Exempt Modification;
- (b) the Operator proposes a revision to the DWMP in a notice to the Secretary of State accompanying an Annual Report or Quinquennial Report which constitutes a Non-Exempt Modification and the Parties receive notice of the approval of the modification by the Secretary of State under section 49 of the Energy Act 2008;
- (c) the Operator proposes a variation to any term of this Agreement and the Parties receive notice of the approval by the Secretary of State under section 49 of the Energy Act 2008; and/or

- (d) the Parties receive notice from the Secretary of State under section 49 of the Energy Act 2008 that a revision to the DWMP or a variation to any term of this Agreement is required (without prejudice to the Operator and the FDP Implementation Company's and, if relevant, a Security Trustee's right to challenge the right of the Secretary of State to impose such modifications under the terms of the Section 46 Agreement or the Deed of Undertaking);

"FDP Order" means the Nuclear Decommissioning and Waste Handling (Designated Technical Matters) Order 2010;

"FDP Protection Powers" means the reserve powers of the Operator as set out in Clause 66.4 (*Operator may vote only where necessary to protect the FDP*) that apply on the occurrence of, and strictly in relation to, an FDP Protection Trigger;

"FDP Protection Trigger" means any event or circumstance described in paragraph 2 (*FDP Protection Triggers*) of Section 3 (*Reserved Matters and FDP Protection Triggers*) of Schedule 18 (*Governance Arrangements*);

"FDP Qualifying Floating Charges" has the meaning given to that term in Clause 31.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*);

"FDP Regulations" means the Nuclear Waste and Decommissioning (Finance and Fees) Regulations 2013;

"FDP Secured Liabilities" has the meaning given to it in Clause 31.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*);

"FDP Security Documents" means, initially, the form of FDP Qualifying Floating Charges agreed by the Secretary of State and the FDP Implementation Company as at the date of this Agreement or any alternative document which may be agreed by the Secretary of State and the FDP Implementation Company from time to time, under which Security is granted by the Operator in respect of the FDP Secured Liabilities (whether directly to the relevant creditor to whom the relevant FDP Secured Liabilities are owed or indirectly under a Project Security Document to a Security Trustee who holds that Security on trust for secured creditors including the Secretary of State and FDP Implementation Company (as contemplated by Clause 31.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*)));

"Final Primary Funding Periods" means the last five (5) Financial Periods of the Primary Funding Period;

"Final Secondary Funding Periods" means the last five (5) Financial Periods of the Secondary Funding Period;

"Financial Indebtedness" means, excluding any transaction under or entered into pursuant to the HPC CfD or the Operator's electricity trading arrangements, any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a finance or capital lease;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) having the principal commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of

- any derivative transaction, only the net marked to market value shall be taken into account);
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution;
 - (i) any amount of any liability under an advance or deferred purchase agreement if one of the primary reasons behind the entry into the agreement is to raise finance or to finance the acquisition or construction of the asset or service in question or the agreement is in respect of the supply of assets or services and payment is due more than ninety (90) days after the date of supply;
 - (j) any amount raised by the issues of shares which are redeemable (other than at the option of the issuer); and
 - (k) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (j) above;

"Financial Period" means the Operator's accounting period for its annual Audited Accounts;

"Financial Restriction" means those restrictions set out in Clause 23 (*Operator Financial Restrictions*);

"Financial Verification Report" means a report produced by the Independent Financial Verifier in accordance with Section 1 (*Requirements for the Financial Verification Report*) of Schedule 11 (*Financial Verification*);

"Financial Year End" means the last day of a given Financial Period;

"Financing Party" means any third party lender, any bondholder or any guarantor to the Operator, the Issuer or any direct or indirect shareholder of the Operator (but not including any person who is a creditor in relation to a Subordinated Shareholder Loan) as well as any trustee or agent on any of their behalfs;

"First Criticality" means the date on which a self-sustaining nuclear chain reaction first occurs at a Reactor on the Site;

"First Cash Sweep Period" means the first Financial Period which commences after the Switch Date;

"First Decommissioning Period" means the Financial Period beginning immediately after FYE End of Generation;

"First Derisking Date" means FYE Year 25;

"Fitch" means Fitch Ratings Limited, or any successor rating agency thereto;

"Fixed Assumptions" mean the assumptions in paragraph 1 (*Fixed Assumptions*) of Section 4 (*DWMP Assumptions*) of Schedule 9 (*Quinquennial Review Programme*);

"Fixed SF Management Line Items" means the DWMP SF Management Line Items as set out in the GDF Site Selection Delay Quinquennial Report and as Indexed;

"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:

- (a) an act of God;
- (b) fire, flood, typhoon, tsunami, volcanic activity, earthquake or extreme weather conditions;
- (c) war (including civil war), hostilities (whether or not war has been declared), invasion, coup, guerrilla activity or blockade;
- (d) terrorist acts or a threat of a terrorist act;
- (e) riot, insurrection, civil commotion, public demonstration, sabotage, embargo or acts of vandalism;

- (f) acts of any civil or military authority or direction of any Governmental Authority;
- (g) change in law or regulation;
- (h) epidemic or pandemic (as classified or advised by the World Health Organisation);
- (i) delay in transportation or communications;
- (j) the order of any court, arbitral body or Governmental Authority; and
- (k) any strike, lock out or other industrial trade dispute or action;

"Freedom of Information Act 2000" means the Freedom of Information Act 2000 or such legislation or regulation as shall replace or supplement the Freedom of Information Act 2000, or parts of it, from time to time with a similar effect;

"FTSE Index" means an index published by the Financial Times Stock Exchange or any successor thereto;

"Fund Assets" means all assets held by the FDP Implementation Company as at the relevant date, excluding:

- (a) all funds standing to the credit of the FDP Implementation Company Opex Bank Account; and
- (b) any other assets held by the FDP Implementation Company for the purposes of the operation of the FDP Implementation Company;

"Fund Assets Value" means the total value of the Fund Assets as certified in the Annual Fund Assets Report for the relevant date;

"Fund Co Qualifying Floating Charge" has the meaning given in Clause 31.2.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*);

"Funded ILW Transfer Fee" has the meaning given to that term in the ILW Transfer Contract;

"Fund Payment Procedures" means the procedures set out in Section 2 (*Fund Payment Procedures*) of Schedule 4 (*Payment Procedures*);

"Funded SF Transfer Fee" has the meaning given to that term in the SF Transfer Contract;

"FYE End of Generation" means either:

- (a) FYE Year 60; or
- (b) if:
 - (i) the board of the Operator has resolved that both of the Reactors will Permanently Cease to Generate Electricity on a date that falls between FYE Year 37 and FYE Year 60; and
 - (ii) the Secretary of State has approved a DWMP which reflects the revised lifetime assumptions of the Operator (including an ILW Transfer Payment and a SF Transfer Payment which are calculated based on the volumes of Waste expected to be generated up to the revised expected date of closure),

the Financial Year End of the Financial Period during which the permanent shutdown of Reactor 2 is expected to occur as stated in the DWMP;

"FYE Year *n*" means the *n*th Financial Year End occurring after the commencement of the Primary Funding Period, for example FYE 25 means the 25th Financial Year End occurring after the commencement of the Primary Funding Period;

"GB System Operator" means the operator of the GB Transmission System, acting in that capacity;

"GDF Site Selection Delay" means the circumstance where Schedule 9 (*GDF Site Selection Delay*) of the ILWTC and Schedule 8 (*GDF Site Selection Delay*) of the SFTC apply;

"GDF Site Selection Delay Quinquennial Report" means the most recent Quinquennial Report as at the time of an SF Transfer Contract Certificate confirming the occurrence of GDF Site Selection Delay;

"Gilt Yield Notification" means a notice produced by the Operator setting out a rate of return that is the real yield (based on the UK implied real spot curve) with the shortest maturity over a year as published by the Bank of England on the last working day of the Previous Financial Period (read together with the Specified Adjustments, if relevant);

"Good Industry Practice" means standards, practices, methods and procedures conforming to Applicable Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances;

"Governmental Authority" means any government or state or supranational authority (such as the European Union) and any ministry, department or political subdivision thereof, and any person, including without limitation any body corporate or partnership, exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government (including any independent regulator) or any other governmental entity, instrumentality, agency, authority, corporation, committee or commission under the direct or indirect control of a government;

"Government Security" means a loan stock, bond or other instrument creating or acknowledging indebtedness, issued by the government of any country or territory;

"Grid Code" means the Grid Code that is required to be prepared by the GB System Operator and approved by the Authority pursuant to Standard Condition C14 (Grid Code) of the Transmission Licence;

"Group" means the Operator and its Subsidiaries, excluding the FDP Implementation Company and the Subsidiaries of the FDP Implementation Company;

"Guarantee" means any guarantee issued by the Guarantor pursuant to the IUK Guarantees Scheme in respect of which:

- (a) the Operator has provided a counter-indemnity to the Guarantor; or
- (b) the Operator has guaranteed or otherwise acted as a surety or a credit support provider in respect of the obligations of a person who has provided a counter-indemnity to the Guarantor;

"Guaranteed Bonds" means any bonds which benefit from a Guarantee;

"Guaranteed Construction Bonds" means any Guaranteed Bonds which are fixed rate bonds and issued within the availability period specified in the Project Finance Secured Documents;

"Guarantor" means The Lords Commissioners of Her Majesty's Treasury;

"Half Year End" means, in respect of any Financial Period, the date that is six (6) months after the commencement of such Financial Period;

"HPC CfD" means the contract for difference in respect of the electricity generation facility at Hinkley Point C between the Operator and Low Carbon Contracts Company Limited (registered number 08818711);

"Hinkley Point C" means the land, plant and buildings known as Hinkley Point C Power Station;

"Holder" in relation to shares, means the person whose name is entered in the register of members as the holder of shares;

"ILW" has the meaning given to that term in the ILWTC;

"ILW Transfer Contract" or **"ILWTC"** means any agreement (as applicable) entered into between the Secretary of State and the Operator in relation to the transfer of the title to the ILW;

"ILW Transfer Contract Certificate" means a "WTC Certificate" as the term is defined in the ILWTC and as delivered by the Operator to the FDP Implementation Company;

"ILW Transfer Date" means

- (a) (until (b) applies) the relevant disposal schedule for ILW Waste which is set out in the Draft DWMP; and then
- (b) (unless (c) applies) either:
 - (i) (where (ii) and (iii) do not apply and unless and until (iv) applies) the "Assumed Disposal Dates" (as such term is defined in the ILWTC and identified as such in the most recent relevant ILW Transfer Contract Certificate); or
 - (ii) (where the Secretary of State provides an ILW Transfer Contract Certificate prior to the Price Setting Date stating that the "Onsite Transfer Principle" (as such term is defined in the ILW Contract) applies) the SF Transfer Date (being a single date as updated from time to time in the Draft DWMP); or
 - (iii) (where the Secretary of State provides an ILW Transfer Contract Certificate on the occurrence of GDF Site Selection Delay) the SF Transfer Date (being a single date as updated from time to time in the Draft DWMP); or
 - (iv) (where (i) would otherwise apply but an ILW Transfer Contract Certificate states that Schedule 9 (Contract Assumption Deviation) of the ILW Transfer Contract has become applicable) the relevant disposal schedule for ILW Waste which is set out in the Draft DWMP.

"ILW Transfer Payment" means the amount calculated in accordance with paragraph 6.1 (*ILW Transfer Payment*) of Section 4 (*Formulae sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*);

"ILW Transfer Price" means:

- (a) (initially and until (b) applies) £23,034 per m3 of packaged ILW in September 2012 money values as Indexed; and then
- (b) the "Expected Waste Transfer Price" or "Waste Transfer Price" as applicable and as such terms are defined in the ILW Transfer Contract and identified as such in the most recent relevant ILW Transfer Contract Certificate; and
- (c) following the delivery of a relevant ILW Transfer Contract Certificate, the Indexed price per m3 of packaged ILW as set out in such certificate;

"ILW Waste" means "Waste" as such term is defined in the ILW Transfer Contract;

"Inconsistent Investment Notice" means a notice from the FDP Implementation Company specifying the Investment Order to which it relates and setting out reasonable details regarding why the FDP Implementation Company considers that the sale or purchase proposed in such Investment Order would constitute a Prohibited Practice or Prohibited Direct Investment;

"Inconsistent Portfolio" means that the Fund Assets (taken as a whole) are not consistent with the Investment Rules;

"Independence Criteria" means that the relevant person:

- (a) has affirmed independence from the Operator and any of its Affiliates and undertaken to maintain that independence for the duration of their appointment;
- (b) is independent in character and judgement;

(c) has been approved as independent by the Board in accordance with Clause 67.2 (*Independent Directors must satisfy the Independence Criteria*);

"Independent Chairman" means the independent chairman of the FDP Implementation Company appointed in accordance with the Articles from time to time;

"Independent Director" means an independent director appointed to the FDP Implementation Company in accordance with the Articles from time to time;

"Independent Director Share" means a redeemable share in the FDP Implementation Company with the class rights set out in the Articles;

"Independent Director Shareholder" means the Independent Director whose name is entered in the register of members of the FDP Implementation Company as the holder of an Independent Director Share;

"Independent Expert" means such professional or trade body as may be appointed from time to time in accordance with the Independent Expert Referral Procedure;

"Independent Expert Referral Notice" has the meaning given in paragraph 1.3 of Schedule 19 (*Independent Expert Referral Procedure*);

"Independent Expert Referral Procedure" means the procedure set out in Schedule 19 (*Independent Expert Referral Procedure*);

"Independent Financial Verifier" means one or more financial verifiers appointed by the FDP Implementation Company from time to time in accordance with the FDP Budget and Services Agreement;

"Independent Investment Expert" means such investment professional or trade body as may be appointed from time to time in accordance with the Independent Investment Expert Referral Procedure;

"Independent Investment Expert Referral Notice" has the meaning given in paragraph 1.3 of Schedule 19A (*Independent Investment Expert Referral Procedure*);

"Independent Investment Expert Referral Procedure" means the procedure set out in Schedule 19A (*Independent Investment Expert Referral Procedure*);

"Independent Technical Verifier(s)" mean one or more technical verifiers appointed by the FDP Implementation Company from time to time in accordance with the FDP Budget and Services Agreement;

"Index Change Event" has the meaning given to that term in Clause 84.1.1 (*Withdrawal of Reference Index*);

"Index Linked Gilts" are gilts issued by the UK government with coupon and redemption payments linked to RPI or any appropriate alternative agreed between the Parties from time to time;

"Indexed" means escalated at the annual rate of RPI or the Replacement Inflation Index over the relevant period (on an annual compound basis where relevant) (read together with the Specified Adjustments, if relevant) and **"Indexation"** and **"Index"** shall be construed accordingly;

"Industry Documents" means all licences, agreements, codes, standards and instruments regulating the generation, transmission, distribution, supply or trading of electricity in Great Britain, including the Transmission Licence, the Grid Code, the SOTO Code, the BSC, the Code Subsidiary Documents, the CUSC, the Master Registration Agreement, any Distribution Code, any Distribution Connection and Use of System Agreement and any other connection or use of system agreement with a Transmission Licensee or Licensed Distributor and **"Industry Document"** shall be construed accordingly;

"Infrastructure" means the basic physical systems of a country including:

- (a) water, electricity, gas, telecommunications, sewerage or other public services and utilities;
- (b) railway facilities (including rolling stock), roads or other transport facilities;

- (c) health or educational facilities; and
- (d) court or prison facilities;

"Infrastructure-Linked Indices" mean indices linked to corporations involved in, and generating their revenues directly from Infrastructure;

"Insolvency Regulation" means the EC Regulation No 1346/2000 of 29 May 2000 on insolvency proceedings (as amended or replaced from time to time);

"Insolvency Remote" means, in relation to the FDP Implementation Company, that no creditor of the Operator or any of the Operator's Affiliates would be able to make a successful claim against the Fund Assets on the occurrence of a Security Trigger Event or an equivalent event in relation to an Affiliate, except in relation to the Funded SF Transfer Fee or the Funded ILW Transfer Fee, and **"Insolvency Remoteness"** shall be construed accordingly;

"International Atomic Energy Agency" means the organisation within the United Nations that promotes the safe, secure and peaceful use of nuclear technologies;

"Investment Advice Fees" means fees for investment management or advisory services to be incurred by the Operator in relation to the Fund Assets during the Decommissioning Period;

"Investment Execution Manager" means any person who is appointed by the FDP Implementation Company from time to time in accordance with Clause 15.1 (*FDP Implementation Company may appoint Investment Execution Managers*) in order to implement Investment Orders and/or monitor compliance with the Investment Rules;

"Investment Fees Cap" means:

- (a) the amount provided for Investment Advice Fees in the Detailed DWMP at the end of generation in relation to the Financial Period plus a further contingency of twenty five percent (25%); or
- (b) such greater amount to the extent that the Operator can demonstrate to the Independent Financial Verifier's satisfaction that it is not reasonably possible to procure the required investment management or advisory services for less than the amount referred to in paragraph (a) above.

"Investment Fees Criteria" means either that:

- (a) the Investment Advice Fees are to be paid to a Third Party; or
- (b) if Investment Advice Fees are to be paid to any Affiliate, such fees have been agreed on a reasonable basis between the Operator and the Affiliate;

"Investment Order" means a notice given by or on behalf of the Operator setting out any instructions in relation to the purchase and/or sale of any Fund Assets;

"Investment Rules" means the rules set out in Schedule 7 (*Investment Rules*);

"Issuer" means NNB Finance Company (HPC) Ltd. and/or any replacement or supplemental issuer in respect of any Guaranteed Bonds;

"IUK Guarantees Scheme" means the UK Guarantees scheme pursuant to the Infrastructure (Financial Assistance) Act 2012;

"Key Generation Asset" means any asset without which the Operator would not be able to operate Hinkley Point C in a manner consistent with the arrangements made under its Nuclear Site Licence;

"LCIA" means the London Court of International Arbitration or its successors;

"LCIA Court" means the Court of the LCIA or its successors;

"LCIA Rules" means the arbitration rules published under that name by the LCIA or any successor arbitration rules published by the LCIA;

"Licensed Distributor" means a person who is authorised pursuant to a Distribution Licence to distribute electricity, acting in that capacity;

"Long Term Contract" means any contract entered into by the Operator for a term of more than twelve (12) months which is for the Costs of Decommissioning in relation to the Site and for which payment will be made in the Decommissioning Period;

"LTDR" or **"Long Term Discount Rate"** means, as applicable, the rate calculated in accordance with paragraph **Error! Reference source not found.** (*Calculation of Long Term Discount Rate*) of Section 1 (*Annual Review Process*) of Schedule 8 (*Annual Review Programme*) or paragraph **Error! Reference source not found.** (*Calculation Of Discount Rates and Cash Sweep*) of Section 1 (*Quinquennial Review Process*) of Schedule 9 (*Quinquennial Review Programme*);

"Mandatory Articles" means the numbered provision of the Articles in force at the date of this Agreement specified in Section 4 (*Mandatory Articles*) of Schedule 18 (*Governance Arrangements*) as may be updated, renumbered or replaced from time to time in accordance with this Agreement;

"Mandatory Budget and Services Agreement Terms" means clauses 5.9 (*Safekeeping*), 8.1, 8.4, 9.1, 9.2.2, 9.2.8, 9.2.9, 9.2.10, 9.3, 9.5.1 and 9.6 (*Appointments and Agreements*) and 10 (*Operator Proposed Modifications*) and Schedule 4 (*Independent Investment Expert Referral Procedure*) of the FDP Budget and Services Agreement;

"Mandatory Material Breach Requirements" means the principles identified as such in the Material Breach Policy that is in effect as at the date of this Agreement;

"Mandatory Shareholders' Agreement Terms" means clauses 2 (*Business of the FDP Implementation Company*), 3 (*Undertakings in relation to Insolvency Remoteness*) and 19.1 (*Undertaking to achieve the Objects*) of the Shareholders' Agreement;

"Master Registration Agreement" means the agreement that a Licensed Distributor is required to maintain in force in a form approved by the Authority pursuant to Standard Condition 23 (Master Registration Agreement) of a Distribution Licence;

"Material Affiliate Contract" means any contract entered into by the Operator with an Affiliate with a value of £10 million or more, Indexed, under which Costs of Decommissioning in relation to the Site will be incurred and for which payment will be made in the Decommissioning Period;

"Material and Adverse Effect" means an event or circumstance having a material and adverse impact on the Operator's ability to make the Annual Contributions as they fall due;

"Material Breach Policy" means the material breach policy of the FDP Implementation Company in effect as at the date of this Agreement and initialled by the Parties for identification purposes as may be amended by the FDP Implementation Company from time to time in accordance with this Agreement;

"Merrill Lynch Index" means an index published by Merrill Lynch or any successor thereto;

"Mid-Year Report" means the report described in Section 2 (*Requirements for Mid-Year Report*) of Schedule 15 (*Payments and Disbursements Requirements*);

"Minimum Contribution Calculation Rules" means the rules set out in Schedule 3 (*Minimum Contribution Calculation Rules*);

"Miscellaneous Expenses" means any costs, expenses or disbursements reasonably anticipated to be properly incurred by the FDP Implementation Company and/or the FDP Company Administrator arising out of or incidental to their obligations under this Agreement as provided for in the FDP Implementation Company Budget;

"Modification Verification Report" means the report described at Schedule 13 (*Requirements for the Modification Verification Report*);

"Moody's" means Moody's Investor Services Inc., or any successor rating agency thereto;

"Net Debt" means the aggregate sum of Borrowings and associated accrued interest, less Cash and Cash Equivalents and for the avoidance of doubt, excluding:

- (a) where any Borrowings are issued at a discount, the amount of such discount as adjusted for the proportion of the original debt outstanding;

- (b) employee benefit provisions;
- (c) nuclear provisions;
- (d) amounts owed to and receivable from FDP Implementation Company;
- (e) derivatives or financial instruments associated with the sale of electricity; and
- (f) Subordinated Shareholder Loans provided that if the criteria in paragraphs (i) and (ii) of the definition of Subordinated Shareholder Loans are not met in respect of any shareholder loan agreement, then any amounts outstanding under such agreements shall be deemed to be Net Debt;

"New Borrowings" has the meaning given to that term in Clause 23.4.1;

"Next Financial Period" means the Financial Period immediately following the Annual Review Year or Quinquennial Review Year (as the case may be) that is then occurring, except if the Minimum Contribution Calculation Rules are being applied to calculate the first (1st) Annual Contribution, in which case it means the Financial Period in which First Criticality is expected to occur;

"NNB Holdco" means NNB Holding Company (HPC) Limited, a company incorporated under the laws of England and Wales with registered number 06937080;

"Nominal Short Term Discount Rate" means a rate of return that is the nominal yield (based on the UK implied nominal spot curve) with the shortest maturity over a year as published by the Bank of England on the last working day of the Previous Financial Period;

"Non Contribution Trigger Event" means a Payment Default has occurred and is continuing;

"Non-Exempt Modification" means a modification of the FDP which requires approval of the Secretary of State in accordance with the Energy Act 2008 and Applicable Law from time to time;

"Non-Voting Operator Share" means the non-transferable ordinary share in the FDP Implementation Company held by the Operator with the class rights set out in the Articles;

"Notifiable Assumptions" means the assumptions in paragraph 2 (*Notifiable Assumptions*) of Section 4 (*DWMP Assumptions*) of Schedule 9 (*Quinquennial Review Programme*);

"Notifiable Circumstance" means any circumstance that is likely to affect, or could appear to affect a prospective Independent Director's judgement in relation to the FDP, as set out in the Articles from time to time and to include:

- (a) the existence of any relationships or circumstances that are referred to in the independence criteria of the UK Corporate Governance Code from time to time; and
- (b) the following relationships or circumstances:
 - (i) the person is, or has been in the five (5) years preceding the appointment, an employee of the Operator or any of its Affiliates;
 - (ii) the person has direct or indirect investments in the Operator or any of its Affiliates which may, or could reasonably be perceived to, give rise to actual or potential conflicts of interest;
 - (iii) the person has, or has had in the three (3) years preceding the appointment, a material business relationship with the Operator or any of its Affiliates either directly or as a partner, shareholder, director or senior employee of a body that has such a relationship with the Operator;
 - (iv) the person receives, or has received, an additional fee or remuneration from the Operator or any of its Affiliates in connection with the appointment;

- (v) the person participates in any share option or performance-related pay scheme of the Operator or any of its Affiliates or is a member of a pension scheme operated by the Operator or any of its Affiliates;
- (vi) the person has close family ties with the advisors, directors or senior employees of the Operator or any of its Affiliates;
- (vii) the person holds cross directorships or has significant links with other Directors or the directors of the Operator or any of its Affiliates through involvement in other companies or bodies;
- (viii) the person represents a significant shareholder of the Operator or any of its Affiliates; and/or
- (ix) the person is providing, or has provided in the three (3) years preceding the appointment, financial, accounting, actuarial or legal advice or services to the Operator or any of its Affiliates as an external advisor;

"Nuclear Site Licence" means a nuclear site licence granted in relation to the Site pursuant to section 1 of the Nuclear Installations Act 1965;

"ONR" means the Office for Nuclear Regulation or any other independent regulator of nuclear facilities with jurisdiction over the Operator which succeeds it;

"Operational Change" means, in relation to a Site:

- (a) the modification or removal of, or change or amendment to, a safety case, process, practice or procedure; or
- (b) the introduction in whole or part of any new safety case, process, practice or procedure; or
- (c) the modification, replacement, removal or decommissioning of, or change to, any building or fixed or moveable plant (or part of it) which was installed or commissioned at the Site; or
- (d) the construction, installation or commissioning of any building or fixed or moveable plant at the Site; or
- (e) the carrying out at the Site of any non-routine task, including any experiments;

"Operational DTM Costs" means the aggregate of:

- (a) costs associated with the construction and maintenance of an interim waste or spent fuel store where the store is built during the operation of a nuclear installation on the Site; and
- (b) the amount of any Value Added Tax incurred or, as the context requires, estimated to be incurred (taking account of any enacted or announced changes in rates) which is referable to the costs in paragraph (a), and which is reasonably expected not to be recoverable by the Operator or the representative member of the Value Added Tax group registration;

"Operational Period" means the period commencing on the date of First Criticality and ending on the Decommissioning Start Date;

"Operator Business Restrictions" means the restrictions on the conduct of the Operator's business set out in Section 1 (*Business Restrictions*) of Schedule 5 (*Operator Business and Financial Restrictions*);

"Operator Director" means the director of the FDP Implementation Company appointed by the Operator from time to time;

"Operator DTM Control Account" means the UK bank account designated by the Operator from time to time for the receipt of DTM Payments;

"Operator Expenditure" means, in respect of any Financial Period, any expenditure by the Operator from the Operator DTM Control Account and any other expenditure by the Operator that is an Unclaimed Allowable Cost;

"Operator Insolvency Event" means that:

- (a) the Operator is unable or admits inability to pay its debts as they fall due;
- (b) a moratorium or other protection from its creditors is declared or imposed in respect of any indebtedness of the Operator;
- (c) a resolution is proposed for the winding up, dissolution or administration of the Operator; or
- (d) the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of the Operator or any of its assets, or an application is made or petition presented to a court, or notice is given or filed, in relation to the appointment of such an officer (other than in relation to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 30 days of commencement);

"Operator Reconciliation Report" means a reconciliation report submitted by the Operator as part of an Annual Reconciliation Review;

"Operator Undertakings" means the undertakings set out in Schedule 6 (*Operator Undertakings*);

"Operator Warranties" means the warranties set out in Section 2 (*Operator Warranties*) of Schedule 1 (*Warranties*) and given by the Operator on the date of this Agreement;

"Outage Extension Period" means, if the total number of the Actual Reactor Outage Days during the first four (4) Qualifying Cash Sweep Periods exceeded the total number of the Planned Reactor Outage Days for those four (4) periods, then:

- (a) the Financial Period immediately following the end of those four (4) periods, if the excess is between 1 and 730;
- (b) each of the two (2) Financial Periods immediately following the end of those four (4) periods, if the excess is between 731 and 1460; and
- (c) each of the three (3) Financial Periods immediately following the end of those four (4) periods, if the excess is between 1460 and 2190;

"Outage Extension Proportion" means, in respect of each Outage Extension Period, the number of days by which the Actual Reactor Outage Days exceeded the Planned Reactor Outage Days attributed to each Outage Extension Period as follows:

- (a) the excess between 1 and 730 shall be attributed to the first (1st) Outage Extension Period;
- (b) the excess between 731 and 1460 shall be attributed to the second (2nd) Outage Extension Period; and
- (c) the excess between 1460 and 2190 shall be attributed to the third (3rd) Outage Extension Period;

then, in each case, divided by seven hundred and thirty (730);

"Outstanding Net Debt Amount" means, at the relevant time, the outstanding Net Debt of the Operator;

"Overpayment" means any payment made to the FDP Implementation Company (other than an Annual Contribution or Cash Sweep Payment) which is accompanied by a direction to pay the amount into the Fund Assets;

"Overrun Objection Notice" means a notice from the Independent Technical Verifier specifying the works and activities and related costs estimates as set out in the relevant amended Annual Work Plan and Budget to which the notice relates, together with reasonable details regarding the grounds on which the Independent Technical Verifier is challenging the works and activities in accordance with Clause 46.4 (*Independent Technical Verifier must review works and activities included in the Annual Work Plan and Budget if overruns exceed 25% contingency*);

"P50" means the value which represents a fifty percent (50%) probability that the final cost will be at or below the relevant estimate;

"P50 DTM Costs" means the DTM Costs, save that all of the references in the associated definition of "Approved P Value" to "P80" shall be replaced with "P50";

"P80" means the value which represents an eighty percent (80%) probability that the final cost will be at or below the estimate calculated on the basis set out in paragraph 3.6 (*Basis on which DTM Costs to be calculated in the Draft DWMP*) of Schedule 9 (*Quinquennial Review Programme*);

"Parent" means a parent undertaking (as defined in section 1162 of the 2006 Act);

"Party" or **"Parties"** means a party or parties to this Agreement;

"Payment Default" means that the Default Amount is not paid to the FDP Implementation Company on or before the Default Payment Date;

"Peak Debt" means either:

- (a) the principal amount which is drawn down (together with any capitalised interest thereon) under the Project Finance Secured Documents on or immediately prior to the Regearing Date; or
- (b) an amount equivalent to the principal amount which could have been drawn down or was permitted under the Project Finance Secured Documents assuming that all conditions precedent were satisfied and no drawstops occurred (together with any capitalised interest thereon) on or immediately prior to the Regearing Date, provided that where such amount is drawn down under a different financing agreement the purposes of borrowing such amounts is to fund (or reimburse or refinance funding) for construction;

"Perfecting Action" has the meaning given to it in Clause 36.2.2 (*Undertaking to preserve priority*);

"Permanently Cease to Generate Electricity" means where, in relation to any Reactor, a Reactor is shut down with no intention of future use for the purpose of exporting electricity and **"Permanently Ceased to Generate Electricity"** shall be construed accordingly;

"Permitted Allocation" means an allocation of cash to a reserve by the Operator's board for the purposes of, in the next twelve (12) months:

- (a) meeting operating working capital requirements of the Operator (including costs of taxation and ordinary course pension arrangements and the provision of collateral for such purposes);
- (b) meeting operating expenditure and maintenance costs of the Reactors;
- (c) funding expenditure, the primary purposes of which is any of the following:
 - (i) non-recurring maintenance of the Reactors;
 - (ii) repair of the Reactors of a capital nature;
 - (iii) enabling aggregate annual output of either Reactors to be maximised over its operational life;
- (d) maintaining the agreed collateral under the Operator's electricity trading arrangements (or similar trading agreements);
- (e) an appropriate contingency of up to ten percent (10%) on the aggregate of (a) to (c); and
- (f) (for the avoidance of doubt) any pre-existing balances as at the end of the Switch Period in reserves which the Secured Creditors have required the Operator to maintain;

"Permitted Derivative" means a Derivative which complies with the criteria set out in paragraph 3.6 (*Permitted Derivatives*) of Schedule 7 (*Investment Rules*);

"Permitted Gearing Level" has the meaning given to it in Clause 23.3 (*Permitted Gearing Level*);

"Permitted Investments" means the investments specified in paragraph 3 of Schedule 7 (*Investment Rules*);

"Permitted Loan" means:

- (a) any trade credit extended by the Operator to its customers on normal commercial terms and in the ordinary course of its trading activities;
- (b) any loan made by the Operator to an employee or director of any member of the Group, provided that the amount of that loan when aggregated with the amount of all loans to employees and directors made by the Operator or by members of the Group does not exceed £20 million, Indexed (or its equivalent in other currencies) at any time;
- (c) any prepayments made by the Operator on normal commercial terms and in the ordinary course of its trading activities;
- (d) any loan made by the Operator to any of its direct or indirect shareholders (including a direct or indirect minority shareholder who is not an Affiliate) or any member of such a shareholder's group, in each case on terms that the amounts loaned are repayable on demand (including any such loans made as part of arrangements for pooling of account balances with that shareholder or member of its group);
- (e) any loan made by the Operator to a Third Party, provided that: the aggregate amount of the Financial Indebtedness under any such loans does not exceed £20 million, Indexed (or its equivalent in other currencies) at any time; or the Secretary of State (or a person authorised to act on her behalf) provides his prior written consent;
- (f) Financial Indebtedness arising under a spot, forward delivery or other derivative transaction entered into in connection with protection against or benefit from fluctuation in the price of any commodity (including electricity) or the spread between the price of any two commodities, in each case, in the ordinary course of business;
- (g) Financial Indebtedness arising under a spot, forward delivery or other derivative transaction entered into in connection with protection against fluctuation in currency or interest rates where that foreign exchange or interest rate exposure arises in the ordinary course of business, but not a foreign exchange or interest rate transaction for investment or speculative purposes;
- (h) Financial Indebtedness of any person acquired by the Operator or a member of the Group after the date of this Agreement which is incurred under arrangements in existence at the date of acquisition, but not incurred or increased or having its maturity date extended in contemplation of, or since, that acquisition, and outstanding only for a period of six months following the date of acquisition;
- (i) Financial Indebtedness under finance or capital leases of vehicles, plant, equipment or computers, provided that the aggregate capital value of all such items so leased under outstanding leases by the Operator or members of the Group does not exceed £20 million, Indexed (or its equivalent in other currencies) at any time;
- (j) any transaction under or entered into pursuant to the Documents or the HPC CfD; and
- (k) any transaction under or entered into pursuant to the Operator's electricity trading arrangements.

"Permitted Objective" means that the financial instrument has the effect of hedging or mitigating risks which arise in relation to the Fund Assets and the liabilities in relation to the discounted DTM Costs in connection with inflation, duration, interest rate, currency and

counterparty credit risk (and, for the avoidance of doubt, including the impact of changes in the Long Term Discount Rate), and provided that a principal intention of the Operator in making the proposed investment could not reasonably be regarded as a subversion of the restrictions in paragraphs 5 (*Derisking Requirements at the First Derisking Date*) to 8 (*Derisking Requirements during the Final Secondary Funding Periods*) of Schedule 7 (*Investment Rules*);

"Planned Reactor Outage Days" means the number of days corresponding to the relevant Cash Sweep Period as set out below:

First Cash Sweep Period	77
First Cash Sweep Period + 1	103
First Cash Sweep Period + 2	49
First Cash Sweep Period + 3	75

"Portfolio Compliance Deadline" means:

- (a) if a Financial Verification Report is received by the Operator which states that there is an Inconsistent Portfolio on or before the deadline for such report to be issued as set out in the Annual Review Process or the Quinquennial Review Process (as applicable) and the assessment of whether or not there is an Inconsistent Portfolio in such Financial Verification Report is not disputed by the Operator, the last day of the Current Financial Period; or
- (b) otherwise, as soon as reasonably practicable after the end of the Current Financial Period and in any event by the last day of the Next Financial Period;

"Potential Cash Sweep Period" has the meaning given to that term in Clause 24.1 (*Potential Cash Sweep Periods*);

"Potential Compliance Event" means any event or circumstance which would:

- (a) with the expiry of a Remedy Period; or
- (b) if such event or circumstance had not been referred for determination under the Dispute Resolution Procedure (or, if available, the Independent Expert Referral Procedure, Annual Work Plan and Budget Independent Expert Referral Procedure or the Independent Investment Expert Referral Procedure) by the end of the relevant Remedy Period,

be a Compliance Event;

"Pre Closure Planning Costs" means the aggregate amount of the cash flows in the Detailed DWMP which are scheduled to occur before the Decommissioning Start Date (or, for the purposes of Clause 43.2, before the Actual Decommissioning Start Date);

"Previous Financial Period" means the Financial Period occurring immediately prior to the Annual Review Year or Quinquennial Review Year (as the case may be) that is then occurring;

"Price Setting Date" has the meaning given to that term in the SFTC and ILWTC (as applicable);

"Primary Business" means that the relevant business activity accounts for more than fifty percent (50%) of the company's revenues;

"Primary Funding Path" means the figures set out in the table at Section 1 (*Primary Funding Path*) of Schedule 2 (*Funding Paths*);

"Primary Funding Path Percentage" means, in respect of a Financial Period which occurs during the Primary Funding Period, the percentage corresponding to that Financial Period as set out in Section 1 (*Primary Funding Path*) of Schedule 2 (*Funding Paths*);

"Primary Funding Period" means the period beginning on the date of First Criticality and ending on the 37th Financial Year End occurring after that date;

"Process Event" has the meaning given to that term in an FDP Direct Agreement;

"Prohibited Direct Investment" means any direct investment prohibited:

- (a) as a Prohibited Practice under paragraph 1 (*Prohibited Practices*) of Schedule 7 (*Investment Rules*); or
- (b) as not being a Permitted Practice under paragraph 2 (*Permitted Practices*) of Schedule 7 (*Investment Rules*); or
- (c) as not being in accordance with the portfolio restriction requirements under paragraph 4.1.1 (*Portfolio Concentration Restrictions and Minimum Allocations*) of Schedule 7 (*Investment Rules*);

"Prohibited Practice" means any practice prohibited under paragraph 1 (*Prohibited Practices*) of Schedule 7 (*Investment Rules*);

"Project Finance Secured Documents" means the documents which are designated as such by the Operator and the Secretary of State (including in an FDP Direct Agreement if relevant);

"Project Security Document" means, any document (in a form approved by the Secretary of State and the FDP Implementation Company) granting Security that incorporates the FDP Qualifying Floating Charges to a Security Trustee who holds that Security on trust for secured creditors including the Secretary of State and the FDP Implementation Company (as contemplated by Clause 31.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*));

"Projected DTM Costs" means DTM Costs Indexed to the date of payment or transfer (as applicable);

"Projected Inflation Rate" means the implied annual percentage RPI rate (based on the shortest maturity spot yields of twelve (12) months or more as published by the Bank of England) on the last working day of the Previous Financial Period;

"Proposed Modification" has the meaning given to that term in the Section 46 Agreement;

"Provisional Cash Sweep Amount" has the meaning given to that term in Clause 25.1 (*Provisional Cash Sweep Payment*);

"Provisional Cash Sweep Payment" means a payment made or to be made by the Operator (or which are made voluntarily by another person) to the FDP Implementation Company pursuant to Clause 25.1 (*Provisional Cash Sweep Payment*);

"Provisional Cash Sweep Payment Date" means, in respect of any Qualifying Cash Sweep Period, 30 June in the Financial Period commencing immediately after such period;

"Provisional Correction Amount" means, in respect of any relevant Annual Contribution Date, the amount calculated in accordance with paragraph 2.11.2 of Section 3 of Schedule 3 (*Minimum Contribution Calculation Rules*);

"Purpose" has the meaning given to that term in Clause 61.1 (*Sole purpose of the FDP Implementation Company to be the implementation and enforcement of this Agreement*);

"Qualifying Cash Sweep Period" has the meaning given to it in Clause 24.2 (*Qualifying Cash Sweep Periods*);

"Qualifying Floating Charge" means a Security constituting a qualifying floating charge for the purposes of the Insolvency Act 1986;

"Quinquennial Report" means the report submitted to the Secretary of State following a Quinquennial Review;

"Quinquennial Reporting Period" means:

- (a) in respect of the first Quinquennial Review, the period falling between the date of this Agreement and the Financial Year End of the Financial Period in which First Criticality occurs; or

- (b) otherwise, a period of five (5) Financial Periods beginning on the first day of the Financial Period occurring immediately after the previous Quinquennial Reporting Period and ending on the fifth (5th) Financial Year End after that date;

"Quinquennial Review" means a review of the Quinquennial Reporting Period undertaken in accordance with Schedule 9 (*Quinquennial Review Programme*) in a Quinquennial Review Year;

"Quinquennial Review Process" means the process set out in Section 1 (*Quinquennial Review Process*) of Schedule 9 (*Quinquennial Review Programme*);

"Quinquennial Review Year" means the Financial Period immediately following the end of the Quinquennial Reporting Period;

"Reactor" means each nuclear reactor that has reached First Criticality and associated land and nuclear installations at the Site as described in the DWMP;

"Reactor 2" means the Reactor which will be the last to begin decommissioning as described in the DWMP;

"Real Estate" means any freehold or leasehold land to be held for investment or development purposes (including, without limitation, retail premises, retail warehouses, office or residential accommodation or other property producing or capable of producing rental income arising primarily from tenancy or occupancy by a third party) but excluding any investment in land associated with power generation, electricity supply or nuclear related real estate;

"Real Gross Redemption Yield" is a yield calculated on an asset or a portfolio of assets and Permitted Derivatives consisting in aggregate of only RPI (or the Replacement Inflation Index) linked cash flows by way of income (including distributions) and redemption amounts as the annual compounded rate of interest that equates the present value of the real cashflows (i.e. the cashflows without RPI (or the Replacement Inflation Index) inflation escalation) to the current market value of the asset or portfolio of assets. To the extent that a portfolio consists of cash flows that are not fully RPI (or the Replacement Inflation Index) linked for example due to lags in indexation in market standard instruments, market standard pricing conventions for quoting real yields on these instruments or relevant inflation assumptions published by the Bank of England as appropriate are used to convert non RPI (or the Replacement Inflation Index) linked cash flows to these real cash flows before performing the calculation. Such rate of interest may, in respect of gilts, be the relevant rate published by the UK Debt Management Office (provided that the UK Debt Management Office calculates such rate consistent with the foregoing requirements of this definition at the relevant time) (read together with the Specified Adjustments, if relevant);

"Reasonable and Prudent Standard" means the standard of a person seeking honestly and diligently to comply with its obligations under any contract, regulation or Industry Document and, in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence and foresight that would reasonably and ordinarily be expected from a skilled and experienced person complying with all Applicable Laws, Directives, Industry Documents and Required Authorisations and engaged in the same type of undertaking under the same or similar circumstances and conditions, including taking account of nuclear safety procedures and relevant guidance;

"Reconciled Cash Sweep Amount" has the meaning given to that term in Clause 25.2 (*Reconciliation Cash Sweep Payment*);

"Reconciliation Period" means a Financial Period that has been completed during the Disbursements Period in respect of which the Operator produces an Annual Reconciliation Report;

"Reconciliation Verification Report" means a report produced by the Independent Technical Verifier in relation to the Operator Reconciliation Report in accordance with Section 4 (*Requirements for the Reconciliation Verification Report*) of Schedule 16 (*Annual Reconciliation Review*);

"Reconciling Amount" means, in respect of any Financial Period occurring during the Disbursements Period:

- (a) the amount of Unclaimed Allowable Costs paid by the Operator during the relevant Reconciliation Period as identified in the most recent Annual Reconciliation Report; less
- (b) the amount of unspent DTM Payments expected by the Operator to remain standing to the credit of the Operator DTM Control Account as at the end of the Financial Period which occurred immediately before the Financial Period covered by the relevant Annual Work Plan and Budget; less
- (c) any amount which the Operator considers to have been incorrectly paid to it by the FDP Implementation Company (for any reason including arithmetic or administrative error) during the Financial Period which occurred immediately before the Financial Period covered by the relevant Annual Work Plan and Budget and which exceeded the total amount of DTM Payments that should have been paid to the Operator in accordance with this Agreement during that Financial Period; less
- (d) the aggregate amount of DTM Payments that the Operator applied to discharge Disallowable Costs during the relevant Reconciliation Period, as identified in the most recent Annual Reconciliation Report;

"Reference Index" means:

- (a) the Dollar Bond All Stocks Investment Grade Index and all its sub-indices;
- (b) the Sterling Investment Grade Index and all its sub-indices;
- (c) the World Equity Indices and all its sub-indices;
- (d) the Emerging Market Equity Index and all its sub-indices;
- (e) the Euro Investment Grade Index and all its sub-indices;
- (f) the FTSE Index and all its sub-indices;
- (g) the Merrill Lynch Index and all its sub-indices; or
- (h) if applicable, any Replacement Index,

in each case read with any Specified Index Change Adjustments;

"Referral" has the meaning given to that term in paragraph 1.14.3 (*Role and duties of the Independent Investment Expert(s)*) of Schedule 19A (*Independent Investment Expert Referral Procedure*);

"Regearing Date" means the later of:

- (a) the Reactor Two Start Date (as defined in the HPC CfD) or, if the Reactor Two Start Date has not occurred within five (5) years of the Reactor One Start Date (as defined in the HPC CfD) and there is no reasonable prospect of a Reactor Two Start Date occurring, then the fifth (5th) anniversary of the Reactor One Start Date; and
- (b) if any Guaranteed Bonds are issued and remain outstanding as at the date referred to under paragraph (a), the date after which no further Guaranteed Construction Bonds are capable of being issued;

"Regearing Period" means the Financial Period during which the Regearing Date occurs;

"Related Contract" means the Section 46 Agreement;

"Related Dispute" means a Dispute arising under or in connection with a Related Contract including any question as to its existence, validity or termination;

"Related Dispute Tribunal" means the arbitral tribunal appointed or to be appointed in respect of any Related Dispute(s);

"Released" means, in respect of a Permitted Allocation, a Permitted Allocation which has been released or disbursed for any purpose when such purpose could have been funded from the Operator's revenues in the Financial Period in which the release or disbursement is made or could be Distributed to a shareholder or Affiliate or fund a payment in respect of the Subordinated Shareholder Loans, in each case without causing, in the Operator's view, acting reasonably, financial distress and **"Release"** is to be construed accordingly;

"Relevant Guarantee" means any guarantee, indemnity, bond, standby or documentary letter of credit or other instrument issued by the Guarantor or any bank or financial institution in respect of a liability of the Operator which is itself a Borrowing and the guarantee by the Operator of the Issuer's obligations under the guarantee and indemnity agreement in respect of the Guarantee;

"Relevant Regulators" means the ONR and the Environment Agency;

"Remaining Switch Period Deficit" means the amount (if positive) equal to the Switch Period Deficit, escalated on an annual compound basis at the Nominal Short Term Discount Rate from the Financial Year End of the Switch Period to the Financial Year End of the Qualifying Cash Sweep Period (or any other Financial Period in respect of which this calculation is required to be performed) for which the calculation is being performed, minus:

- (a) the aggregate of all Cash Sweep Payments paid by the Operator to the FDP Implementation Company from the Financial Year End of the Switch Period to the Financial Year End of the Qualifying Cash Sweep Period for which the calculation is being performed; and
- (b) twelve point five percent (12.5%) of the Switch Period Deficit multiplied by the number of Qualifying Cash Sweep Periods for which the Financial Year End has occurred, but excluding the first (1st) Qualifying Cash Sweep Period (which deduction shall be instead of apportioning any amount of the Correction Contributions notionally paid during each Qualifying Cash Sweep Period in respect of the Switch Period Deficit); and
- (c) the aggregate of all Overpayments made by the Operator to the FDP Implementation Company from the Financial Year End of the Switch Period to the Financial Year End of the Qualifying Cash Sweep Period (or other period) for which the calculation is being performed,

each of (a) to (c) being escalated on an annual compound basis at the Nominal Short Term Discount Rate from the day on which the payment was made to the Financial Year End of the Qualifying Cash Sweep Period for which the calculation is being performed. If the result of the calculation performed above is zero (0) or a negative number then, for all purposes under this Agreement, there shall be deemed to be no Remaining Switch Period Deficit;

"Remedy Period" means one (1) month or such different remedy period as is referred to in respect of the obligation in this Agreement provided that such period shall cease to run from the date that a referral to dispute resolution is made in accordance with this Agreement and shall recommence on the date that a final and binding determination of the dispute is made under this Agreement (or on the date that the dispute is withdrawn);

"Replacement Credit Rating Criteria" has the meaning given to that term in Clause 85.1.1 (*Withdrawal of Credit Rating Criteria*);

"Replacement Index" has the meaning given to that term in Clause 84.1.1 (*Withdrawal of Reference Index*);

"Replacement Inflation Index" has the meaning given to that term in Clause 83.1 (*Withdrawal of index*);

"Reply" has the meaning given to that term in paragraph 1.14.5 (*Role and duties of the Independent Investment Expert(s)*) of Schedule 19A (*Independent Investment Expert Referral Procedure*);

"Request for Arbitration" shall have the same meaning as in the LCIA Rules;

"Required Authorisation" means, in relation to the Operator, each authorisation, licence, accreditation, permit, consent, certificate, resolution, clearance, exemption, order, confirmation, permission or other approval of or from any Competent Authority required at the relevant time to enable the Operator:

- (a) to perform and comply with its obligations under this Agreement and the other financing documents to which it is a party; and
- (b) to design, develop, construct, install, complete, test, commission, operate, maintain and decommission the Site or the Reactors or either of them;

"Required Value" has the meaning given to that term in Clause 76 (*Required Value*);

"Reserved Matter" has the meaning given to that term in paragraph 1 (*Reserved Matters*) of Section 3 (*Reserved Matters and FDP Protection Triggers*) of Schedule 17 (*Governance Arrangements*);

"Response" shall have the same meaning as in the LCIA Rules;

"Response to Referral" has the meaning given to that term in paragraph 1.14.4 (*Role and duties of the Independent Investment Expert(s)*) of Schedule 19A (*Independent Investment Expert Referral Procedure*);

"Return of Surplus Payment" means the payment calculated in accordance with Section 1 (*Calculation of the next Annual Contribution*) of Schedule 3 (*Minimum Contribution Calculation Rules*);

"Review Participants" means the FDP Implementation Company, the Operator, the Independent Technical Verifier, the Independent Financial Verifier and, if applicable, an FDP Custodian, any Investment Execution Manager and the FDP Company Administrator;

"Revised Policy Waste Acceptance Criteria" has the meaning given to that term in the SF Transfer Contract;

"RPI" means:

- (a) subject to (b) 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
- (b) the Replacement Inflation Index agreed or determined under Clause 83 (*RPI*), read together with the Specified Adjustments;

"RPI Index Change Event" has the meaning given to that term in Clause 83.1 (*Withdrawal of index*);

"RICS" means the Royal Institution of Chartered Surveyors, or any successor entity thereto;

"RICS Valuation – Professional Standards" means the mandatory rules, best practice guidance and related commentary for undertaking asset valuations issued by RICS from time to time;

"RWM Waste Packaging Advice" has the meaning given to that term in the SF Transfer Contract;

"S&P" means Standard and Poor's Rating Services, or any successor rating agency thereto;

"Safety Critical Expenditure" means any expenditure of the Operator which has been defined as being safety critical by the Operator's board of directors acting reasonably;

"Second Decommissioning Period" means the Financial Period beginning immediately after the First Decommissioning Period;

"Second Derisking Date" means FYE Year 32;

"Secondary Funding Path" means the figures calculated in accordance with Section 2 (*Secondary Funding Path*) of Schedule 2 (*Funding Paths*);

"Secondary Funding Path Percentage" means in respect of a Financial Period which occurs during the Secondary Funding Period, the percentage corresponding to that Financial Period as set out in Section 2 (*Secondary Funding Path*) of Schedule 2 (*Funding Paths*);

"Secondary Funding Period" means the period beginning on the day immediately after FYE Year 37 and ending on FYE End of Generation;

"Secretary of State" means the Secretary of State for Energy and Climate Change or such other member or authority for the time being having the right to exercise the powers now conferred on the Secretary of State for Energy and Climate Change under Chapter 1 of Part 3 of the Energy Act 2008 or such other person that is authorised to act on behalf of the Secretary of State for Energy and Climate Change or such other member or authority;

"Section 46 Agreement" means the agreement entered into between the Operator, the FDP Implementation Company and the Secretary of State under section 46(3C) of the Energy Act 2008 on or about the date of this Agreement;

"Secured Creditor" means any person (other than the Secretary of State or the FDP Implementation Company) from time to time who is the beneficiary of any Project Security Document or any replacement of that Project Security Document granted in accordance with Clause 31.5.1(B);

"Security" means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect;

"Security Trigger Event" means:

- (a) a Non Contribution Trigger Event;
- (b) an Operator Insolvency Event; and/or
- (c) an Early Closure Trigger Event;

"Security Trigger Event Action" means:

- (a) the taking of any steps to enforce or require the enforcement of any FDP Qualifying Floating Charges (including the crystallisation of any floating charge forming part of the FDP Qualifying Floating Charges or the appointment of an insolvency official);
- (b) initiating, petitioning, applying or voting for, or the taking of any steps in relation to, any composition, compromise, assignment or arrangement with the Operator; or
- (c) initiating, petitioning, applying or voting for, or the taking of any steps (including the appointment of any liquidator, receiver, administrator or similar officer) in relation to (i) the winding up, dissolution, administration, receivership or reorganisation of the Operator, or any of the Operator's assets; or (ii) any suspension of payments or moratorium of any indebtedness of the Operator; or (iii) any scheme of arrangement, voluntary arrangement or assignment for the benefit of any creditors of the Operator; or (iv) any analogous procedure or step in any jurisdiction;

"Security Trustee" means any person who is appointed from time to time pursuant to an FDP Direct Agreement as trustee to hold the Security granted by the Operator pursuant to the FDP Security Documents for the benefit of the Secretary of State, the FDP Implementation Company and other beneficiaries;

"Senior Representative" means the senior employee or officer selected by a Party to represent it in relation to paragraph 3 (*Senior Representatives*) of Schedule 20 (*Claims, Disputes and Arbitration*);

"Senior Representative Settlement Agreement" means any agreement reached by the Senior Representatives which resolves the Dispute or any part of the Dispute under paragraph 3 (*Senior Representatives*) of Schedule 20 (*Claims, Disputes and Arbitration*);

"Sensitive Nuclear Information" has the meaning given in section 77(7) of the Anti-Terrorism, Crime and Security Act 2001;

"Service Agreement" means the service agreement in force from time to time between the FDP Implementation Company and each of the then current Independent Directors;

"SF Contract Assumption Deviation" has the meaning given to the term "Contract Assumption Deviation" in the SFTC;

"SF Disposal Date" means each of the "Assumed Disposal Dates" as such term is defined in the SFTC as initially set out in the Draft DWMP and thereafter as updated as set out in the relevant SF Transfer Contract Certificate;

"SF Transfer Contract" or **"SFTC"** means any waste transfer agreement (as applicable) relating to the transfer of spent fuel arising from Hinkley Point C entered into between the Secretary of State and the Operator;

"SFTC Discount Rate" has the meaning given to the term "Discount Rate" in the SF Transfer Contract;

"SF Transfer Contract Certificate" means a "WTC Certificate" as the term is defined in the SFTC and as delivered by the Operator to the FDP Implementation Company;

"SF Transfer Date" means the date upon which transfer of title to and liability for SF Waste is anticipated to occur as set out in the Draft DWMP;

"SF Transfer Payment" means the amount calculated in accordance with paragraph 7.1 (*SF Transfer Payment*) of Section 4 (*Formulae sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*);

"SF Transfer Price" means:

- (a) (initially and until (b) applies) £585,475 per tU in September 2012 money values as Indexed; and then
- (b) the "Expected Waste Transfer Price" or "Waste Transfer Price" as applicable and as such term is defined in the SFTC and identified as such in the most recent relevant SF Transfer Contract Certificate; and
- (c) following the delivery of a relevant SF Transfer Contract Certificate, the Indexed price per tU as set out in such certificate;

"SF Waste" means "Waste" as such term is defined in the SFTC;

"Share" means a share in the FDP Implementation Company;

"Shareholder" means the Operator or an Independent Director Shareholder;

"Shareholders' Agreement" means the shareholders' agreement in force from time to time between the Operator, the FDP Implementation Company and the Independent Director Shareholders;

"Short Term Discount Rate" or **"STDR"** means, in any Annual Review or Quinquennial Review undertaken prior to the Financial Year End of the Switch Period, a real annual rate equal to one point five percent (1.5%) and, thereafter, the expected real annual rate of return (relative to RPI or the Replacement Inflation Index) for the relevant Financial Period on UK Government Securities based on the latest Gilt Yield Notification (read together with the Specified Adjustments, if relevant);

"Significant Borrowings" means any Borrowings of the Operator owed to a Secured Creditor and any other Borrowings of the Operator in an individual amount of £10 million (Indexed) or more;

"Significant Creditor" means a Secured Creditor and any other person who has made or extended a Borrowing to the Operator or in respect of whom the Operator has incurred a Borrowing of £10,000,000 Indexed or more;

"Significant Event" means any Operational Change, receipt of ILW Transfer Contract Certificate or SF Transfer Contract Certificate, the result of which either singularly or

cumulatively in combination with any other changes is anticipated to have an effect (being either an increase or decrease) of one percent (1%) or more, excluding Indexation, and on one or more of:

- (a) the Costs of Decommissioning aggregated with the Costs of Spent Fuel Management; and
- (b) the aggregate of the Costs of ILW Disposal and the Costs of Spent Fuel Disposal;

"Significant Event Assessment" means an assessment of whether a Significant Event occurred in an Annual Reporting Period undertaken in accordance with Section 1 (*Annual Review Process*) of Schedule 8 (*Annual Review Programme*);

"Significant Event Assessment Notice" means a notice from the Operator setting out whether, in the Operator's reasonable opinion, a Significant Event has occurred during an Annual Reporting Period;

"Site" means the land situated near Stogursey in the District of West Somerset in the County of Somerset, shown outlined in red on the Operator's drawing referenced HPC-NNBOSL-XX-000-DRW-000001 dated 4 October 2012 as annexed to Nuclear Site Licence 97, granted on 26 November 2012, or any replacement thereof (subject to the terms of any FDP Direct Agreement);

"Site End State" means the site end state specified in the DWMP;

"SoS/LCCC Amounts" means an amount (if any) provided by the Secretary of State or the Low Carbon Contracts Company Limited (registered number 08818711) to the Operator in the form of a subordinated loan or other similar funding;

"SoS Qualifying Floating Charge" has the meaning given to that term in Clause 31.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*);

"SOTO Code" means the System Operator – Transmission Owner Code required to be in place pursuant to Standard Condition B12 (System Operator – Transmission Owner Code) of the Transmission Licence;

"Specified Adjustments" has the meaning given to that term in Clause 83.1 (*Withdrawal of index*);

"Specified Credit Rating Criteria Adjustments" has the meaning given to that term in Clause 85.1.2 (*Withdrawal of Credit Rating Criteria*);

"Specified Compliance Event" means the occurrence of any event specified in Clauses 52.2.1(A) to 52.2.1(D);

"Specified Government Securities" means any securities issued by or guaranteed by:

- (a) the UK Government; or
- (b) any other government whose issued or guaranteed securities are rated at least AA (S&P) or Aa2 (Moody's) or any Replacement Credit Rating Criteria (read with any Specified Credit Rating Criteria Adjustments) at the date of investment; or
- (c) if the securities issued or guaranteed by the UK Government are rated below BBB- (S&P) or Baa3 (Moody's) or any Replacement Credit Rating Criteria (read with any Specified Credit Rating Criteria Adjustments) and there is an insufficient volume of securities issued or guaranteed by the jurisdictions referred to in paragraph (b) of this definition with appropriate maturities and issue size to satisfy the requirements of Schedule 7 (*Investment Rules*), any Established Government Issuer with a higher credit rating than the UK Government at the date of investment;

"Specified Index Change Adjustments" has the meaning given to that term in Clause 84.1.2 (*Withdrawal of Reference Index*);

"Specified Security" means the aggregate of:

- (a) any Annual Contribution received by the FDP Implementation Company during the Current Financial Period; plus

- (b) any Overpayment received by the FDP Implementation Company during the Current Financial Period; plus or minus (as appropriate)
- (c) the Correction Contribution due on the next Annual Contribution Date as set out in the Draft Contributions Notice or Contributions Notice for the Next Financial Period (as applicable);

"**Spent Fuel**" has the meaning given to that term in the SFTC;

"**Standstill Period**" has the meaning given to that term in the FDP Security Documents or an FDP Direct Agreement;

"**Sterling Investment Grade Index**" means:

- (a) the iBoxx GBP Overall All Stocks Index (or the equivalent Merrill Lynch Index) and all its sub-indices; or
- (b) if applicable, any Replacement Index (read with any Specified Index Change Adjustments);

"**Subordinated Shareholder Loans**" means loans made to the Operator by a direct or indirect shareholder which (i) are subordinated to the Operator's other Financial Indebtedness and to the Operator's obligations to pay the Contributions; and (ii) provide that the lending shareholder is only entitled to repayment of the interest and principal outstanding on the loan if both:

- (a) the Operator has sufficient available cash to meet the payment amount which has fallen due; and
- (b) the Operator is permitted to make the payment under its financing documents;

"**Subsidiary**" means a subsidiary as defined in section 1159 of the 2006 Act provided that the term shall also include a subsidiary undertaking (as defined in section 1162 of the 2006 Act);

"**Suitable Discount Rate**" means, at any time, a discount rate selected by the Valuer reflective of: (i) the project risk at the relevant time; (ii) the cash flows being discounted and (iii) the existing and forecast capital structure of the Operator;

"**Surplus**" means that the Fund Assets Value is more than the Annual Milestone for a given Financial Period;

"**Switch Date**" means 30 June 2056;

"**Switch Period**" means the Financial Period in which the Switch Date occurs;

"**Switch Period Deficit**" means:

- (a) if a Deficit was identified as part of the Annual Review or Quinquennial Review which relates to the Switch Period, then the amount of that Deficit which is attributable to the change during the Switch Period from the use of an assumed LTDR to a LTDR reflecting the floating market rate, calculated as the difference between the amount of the Deficit calculated in accordance with Schedule 3 (*Minimum Contribution Calculation Rules*) using a LTDR of one point five percent (1.5%) and the amount of the Deficit calculated in accordance with Schedule 3 (*Minimum Contribution Calculation Rules*) using the LTDR reflecting the then applicable market rate; or
- (b) otherwise, zero (0);

"**SZC Bonds**" means any Guaranteed Bonds (or any refinancing thereof) issued on or following the Regearing Date when the Sizewell C Condition (as defined in the HPC CfD) has not occurred in a maximum aggregate amount of £1 billion and which are repayable following the occurrence of the Sizewell C Condition;

"**Tail-End ILW**" has the meaning given to that term in the SFTC;

"Tax" or "Taxation" means:

- (a) all forms of tax, levy, duty, impost, withholding, contributions, rate, charge or other imposition or withholding in the nature of or in respect of taxation whenever created or imposed and whether of the United Kingdom or elsewhere, payable to or imposed by any Taxation Authority; and
- (b) all charges, interest, penalties and fines incidental or relating to any Taxation falling within (a) above or which are reasonably or properly incurred as a result of the failure to pay any Taxation on the due date or to comply with any obligation relating to Taxation;

"Taxation Authority" means the Commissioners of HM Revenue and Customs and any other governmental or other authority whatsoever competent to impose, collect or administer any Taxation whether in the United Kingdom or elsewhere;

"Technical Matters" has the meaning given to that term in the Energy Act 2008;

"Technical Verification Report" means a report that is produced by the Independent Technical Verifier as part of an Annual Review or a Quinquennial Review (as applicable) in accordance with Schedule 10 (*Technical Verification*);

"Test Date" has the meaning given to that term in Clause 23.8 (*Valuation in same financial period*);

"Third Party" means any person or persons other than the Operator, its shareholders, its Affiliates and the FDP Implementation Company;

"Third Party Insurance Market" means the insurance market open to all companies on normal commercial terms through the nuclear insurance pool and excludes any policy which could be obtained from an Affiliate of the Operator or through recourse to captive insurance arrangements;

"Total Correction Amount" means the amount calculated in accordance with paragraph 2 of Section 4 (*Formulae sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*);

"Total Secondary Funding Amount" means the amount calculated in accordance with Paragraph 1.3 (*Total Secondary Funding Amount*) of Section 4 (*Formulae sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*);

"Transfer Date Management Target" means the amount calculated in accordance with Paragraph 5.1 (*Transfer Date Management Target*) of Section 4 (*Formulae sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*);

"Transmission Licence" means an electricity transmission licence granted or treated as granted pursuant to section 6(1)(b) of the Electricity Act 1989 that authorises a person to transmit electricity;

"Transmission Licensee" means any person who is authorised by a Transmission Licence to transmit electricity, acting in that capacity;

"Transmission System" means those parts of the GB Transmission System that are owned by a Transmission Licensee within the transmission area specified in its Transmission Licence;

"Treaty of Rome" means the international agreement that led to the founding of the European Union;

"Tribunal" shall have the same meaning as in the LCIA Rules;

"tU" has the meaning given in the SF Transfer Contract;

"UCITS" means, as defined in the FCA Rules, undertakings for collective investment in transferable securities that are established in accordance with the European Parliament and Council Directive of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (No 2009/65/EC), as amended;

"UK" or "United Kingdom" means the United Kingdom of Great Britain and Northern Ireland;

"Unclaimed Allowable Cost" means, in respect of any Financial Period occurring during the Disbursements Period, any Allowable Costs incurred by the Operator during such Financial Period in excess of the DTM Payments received during that Financial Period together with the amounts drawn from the other funds available in the Operator Bank Account (except to the extent such cost is included in the subsequent Annual Work Plan and Budget);

"Underwriting" means to undertake a firm commitment to buy a specified quantity of new securities on a given date and at a given price if no other has purchased or acquired them; and so that:

- (a) new is defined in Clause 7.8.12R (*New securities*) of the BIPRU Prudential sourcebook for Banks, Building Societies and Investment Firms; and
- (b) a firm still underwrites securities at a time before the exact quantity of securities being underwritten or their price has been determined if it is committed at that time to Underwrite them when the quantity and price is fixed;

"Unplanned Early Permanent Shutdown" means that, in the Operator's view, both Reactors will Permanently Cease to Generate Electricity, or both Reactors have Permanently Ceased to Generate Electricity (as the case may be), in each case prior to FYE Year 37;

"Unplanned Permanent Shutdown" means that, in the Operator's view, both Reactors will Permanently Cease to Generate Electricity, or both Reactors have Permanently Ceased to Generate Electricity (as the case may be) in circumstances where it has not been possible or practical to prepare an Annual Work Plan and Budget or to comply with Section J (*Payments and Disbursements Policy*) of this Agreement;

"Valuation Procedure" means the procedure set out in Schedule 19C (*Valuation Procedure*);

"Value Added Tax" means value added tax charged in accordance with the provisions of the Value Added Tax Act 1994, and any other tax on value or turnover which is enacted in addition to or in substitution for it;

"Valuer" means the UK headquarter office of an international firm which is subject to the jurisdiction of a UK regulator (which may include the Financial Conduct Authority, the Institute of Chartered Accountants in England and Wales, or any equivalent body), such firm:

- (a) being of good repute and having demonstrable expertise in the valuation of businesses such as that of the Operator; and
- (b) acting in the capacity of an independent professional.

"Verified Item" means a Significant Event Assessment Notice, a Draft DWMP, a Gilt Yield Notification, a proposed Alternative Long Term Discount Rate and a Draft Contributions Notice;

"Verifier" means, as the context requires, an Independent Financial Verifier, the FDP Company Administrator, an Investment Execution Manager, an FDP Custodian and/or an Independent Technical Verifier;

"Warrants" means, as defined in the FCA Rules, a warrant or other instrument entitling the holder to subscribe for a share, debenture, alternative debenture or Government Security;

"Waste and Spent Fuel Disposal Strategy" means the transfer of title to the SF Waste under the SF Transfer Contract;

"Waste and Spent Fuel Management Service" means the services provided in relation to Waste Management after the SF Transfer Date in accordance with the SF Transfer Contract;

"Waste Management" has the meaning given to that term in the SF Transfer Contract;

"Waste Transfer Contract" means the SF Transfer Contract or ILW Transfer Contract (as applicable);

"Winding-up Costs" means any cost, expense or Tax liability that the FDP Implementation Company reasonably expects to incur in connection with undertaking a members' voluntary winding (or equivalent process) up following termination of this Agreement;

"World Equity Indices" means:

- (a) the MSCI World Index (Bloomberg code: MXWO index) (or the equivalent FTSE Index) and all its sub-indices; or
- (b) if applicable, any Replacement Index read with any Specified Index Change Adjustments;

"World Health Organisation" means the directing and coordinating authority for health within the United Nations system;

"WTCs Debt" means if Security Trigger Event Action has been taken, the aggregate of the Security Trigger Event Action Fees as such term is defined in each of the SF Transfer Contract and the ILW Transfer Contract as in force as at the date of this Agreement;

"Year 25" means the 25th Financial Period ending after the commencement of the Primary Funding Period;

"Year 30" means the 30th Financial Period ending after the commencement of the Primary Funding Period;

"Year 37" means the 37th Financial Period ending after the commencement of the Primary Funding Period;

"Year 37 Target" means the amount calculated in accordance with paragraph 3.2 (*Year 37 Target*) of Section 4 (*Formulae sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*);

"Year 37 Decommissioning Target" means the amount calculated in accordance with paragraph 4.2 (*Year 37 Decommissioning Target*) of Section 4 (*Formulae sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*);

"Year 37 ILW Disposal Target" means the amount calculated in accordance with paragraph 6.3 (*Year 37 ILW Disposal Target*) of Section 4 (*Formulae sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*);

"Year 37 Management Target" means the amount calculated in accordance with Paragraph 5.3 (*Year 37 Management Target*) of Section 4 (*Formulae sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*); and

"Year 37 Spent Fuel Disposal Target" means the amount calculated in accordance with Paragraph 7.3 (*Year 37 Spent Fuel Disposal Target*) of Section 4 (*Formulae sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*).

2. INTERPRETATION

2.1 In this Agreement, except where the context otherwise requires:

- 2.1.1 any reference to this Agreement includes a reference to the Schedules, each of which forms part of this Agreement for all purposes;
- 2.1.2 if there is an inconsistency between any of the provisions of this Agreement and the provisions of an FDP Direct Agreement, the provisions of this Agreement shall prevail;
- 2.1.3 a reference to an enactment or statutory provision shall include a reference to any subordinate legislation made under the relevant enactment or statutory provision. Any reference to an enactment, statutory provision or subordinate legislation is a reference to that enactment, statutory provision or subordinate

- legislation as from time to time amended, consolidated, modified, re-enacted or replaced;
- 2.1.4 references to an enactment or statutory provision include a reference to any repealed statute or statutory provision which it re-enacts (with or without modification);
- 2.1.5 words in the singular shall include the plural and vice versa;
- 2.1.6 references to one gender include other genders;
- 2.1.7 references to a person shall be construed so as to include its successors in title, permitted assignees and permitted transferees and, where a person ceases to exist, any other person to which some or all of its duties, functions, liabilities, obligations, powers or responsibilities may from time to time be transferred;
- 2.1.8 a reference to a person shall include a reference to a firm, a body corporate, an unincorporated association, a partnership or to an individual's executors or administrators;
- 2.1.9 a reference to any other document referred to in this Agreement is a reference to that other document as amended, varied, novated, supplemented or superseded at any time;
- 2.1.10 a reference to a clause, sub clause, paragraph, section (other than to a section to a statutory provision), Schedule (other than to a Schedule to a statutory provision) shall be a reference to a clause, sub clause, paragraph, section, Schedule (as the case may be) of or to this Agreement;
- 2.1.11 any reference to a "day" (including within the phrase "Business Day") shall mean a period of 24 hours running from midnight to midnight;
- 2.1.12 if a period of time is specified as from a given day, or from the day of an act or event, it shall be calculated exclusive of that day;
- 2.1.13 references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates the English legal term in that jurisdiction and references to any English statute or enactment shall be deemed to include any equivalent or analogous laws or rules in any other jurisdiction;
- 2.1.14 references to writing shall include any modes of reproducing words in any legible form and shall include:
- (A) email, attachment to an email or publication on a website;
 - (B) material included in a prospectus, an information memorandum or a circular;
 - (C) providing a reference or hyperlink to the relevant material where such reference or hyperlink is set out in a document that is published or addressed to the recipient; and/or
 - (D) providing physical or electronic access to the relevant material,
- in each case, except where expressly stated otherwise;
- 2.1.15 a reference to "includes" or "including" shall mean "includes without limitation" or "including without limitation";
- 2.1.16 the contents page and headings in this Agreement are for convenience only and shall not affect its interpretation;
- 2.1.17 references to this Agreement include this Agreement as amended or supplemented in accordance with its terms and Applicable Law;
- 2.1.18 a reference to "cost" or "expense" of any person shall not include any amount paid or payable in respect of Value Added Tax that is recoverable by that person or the representative member of its Value Added Tax group registration;

- 2.1.19 references to Value Added Tax being "recoverable" shall mean credit (as input tax) being allowable in respect of the relevant amount of Value Added Tax, in accordance with the Value Added Tax Act 1994 and any regulations made under it, or (in the case of any other tax on value or turnover which is enacted in addition to or in substitution of value added tax charged in accordance with that Act) relief having corresponding economic effect being allowable;
- 2.1.20 all amounts are stated in nominal values as at the date of this Agreement; and
- 2.1.21 any reference to a credit rating in this Agreement shall be deemed to be immediately preceded by the following words: "or, where applicable, the relevant Replacement Credit Rating";
- 2.1.22 if any person pays an amount expressed to be payable by the Operator to the FDP Implementation Company under this Agreement then this shall lead to a (pro tanto) £ for £ discharge of the Operator's obligation to make such payments;
- 2.1.23 a Compliance Event (or the adverse effect of a Compliance Event) is continuing if none of the following has occurred:
 - (A) the event or circumstance which caused the Compliance Event to arise has been remedied;
 - (B) substitute performance has been rendered which causes the innocent Party to be in an equivalent position as it would have been if the Compliance Event had not occurred; or
 - (C) the event or circumstance has been waived by the innocent Party in accordance with this Agreement.