

CC Draft Date: 21 July 2025

**SIZEWELL C LIMITED
AND
SZC NUCLEAR DECOMMISSIONING FUND COMPANY LIMITED**

**FUNDING ARRANGEMENTS PLAN FOR
SIZEWELL C**

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THIS AGREEMENT is made on _____ 2025 and made as a deed

BETWEEN:

- (1) **SIZEWELL C LIMITED**, a company incorporated in England (registered number 09284825) and whose registered office is at 25 Copthall Avenue, London, England, EC2R 7BP (the "**Operator**"); and
- (2) **SZC NUCLEAR DECOMMISSIONING FUND COMPANY LIMITED**, a company incorporated in England (registered number [●]) and whose registered office is at [●] (the "**FDP Implementation Company**").

RECITALS

(A) THE FDP

(a) Approval of an FDP is a legal requirement

- (i) 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.
- (ii) 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.
- (iii) The Operator intends to develop two (2) Reactors at Sizewell 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 Sizewell C.

(b) 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:

- (i) details of the steps to be taken under the programme in relation to the Technical Matters;
- (ii) estimates of the costs likely to be incurred in connection with the Designated Technical Matters; and
- (iii) details of any security to be provided in connection with those costs.

(c) DWMP sets out cost estimates and plan of the technical steps

- (i) 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 (i) and (ii) 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.

- (ii) The DWMP does not confer any legal rights or impose any legal obligations on either of the Parties to this Agreement.
- (d) **This Agreement sets out the terms on which the DTM Costs will be financed**
- (i) 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.
 - (ii) No term of this Agreement may be amended or modified without the Secretary of State's consent.
- (e) **This Agreement and DWMP together form the FDP**
- This Agreement and the DWMP together constitute the FDP.
- (f) **This Agreement is a contract between the Parties**
- This Agreement is a private law contract and the Parties have agreed pursuant to Clause 80.7 (*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 47.4 (*Remedies*) and shall be available:
- (i) to each Party if the other commits a breach of its obligations under this Agreement; and
 - (ii) to the Secretary of State if either Party commits a breach of its obligations under this Agreement in the circumstances provided for in Clause 80.3 (*Third party rights*).
- (g) **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.
- (h) **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 them 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.

(i) **Compliance with this Agreement constitutes compliance with the FDP**

- (i) 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:
 - (I) in order to update the DWMP (other than in relation to Exempt Modifications);
 - (II) in relation to unlawful obligations under Clause 48.2 (*Modification will be proposed in respect of unlawful obligations*);
 - (III) in relation to long term Force Majeure Events under Clause 49.2 (*Modification will be proposed in respect of a long term Force Majeure Event*);
 - (IV) in relation to an Early Permanent Shutdown Decision under Clause 33 (*Early Permanent Shutdown Decision*);
 - (V) in relation to proposed amendments to mandatory terms of the Shareholders' Agreement under Clause 58.2 (*Mandatory Shareholders' Agreement Terms not to be amended*);
 - (VI) in relation to proposed amendments to mandatory terms of the FDP Budget and Services Agreement under Clause 66.4 (*Mandatory Budget and Services Agreement Terms not to be amended*); and
 - (VII) in relation to proposed amendments to mandatory terms of the FDP Implementation Company's constitution under Clause 59 (*Constitution of the FDP Implementation Company*).
- (ii) The Secretary of State, the FDP Implementation Company and the Operator has entered into or will enter into the Intercreditor Agreement, the Common Security Documents and the FDP Additional Security Documents on or about the date of this Agreement which contain certain standstill provisions.
- (iii) Under certain circumstances, including at the end of the term or on revocation of the special conditions of the SZC Economic Licence, the Secretary of State may (but is not obliged to), subject to conditions agreed make a Nuclear Transfer Scheme:
 - (I) to transfer securities of the Operator, property, rights and liabilities of the Operator; and
 - (II) to transfer securities of the FDP Implementation Company,

to the Nuclear Decommissioning Authority or a publicly owned company or implement another method of transfer (in each case, subject to Applicable Laws).

- (iv) 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:
- (I) the DWMP has been costed in line with a P80 calculated on the basis of a hybrid model;
 - (II) 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 per cent.;
 - (III) the target Fund Assets Value is designed to ensure that the (1) End of Primary Funding Period Target is reached by the FYE End of Primary Funding Period; and (2) the End of Generation Target is reached in accordance with the Funding Path by FYE End of Secondary Funding Period, in each case in accordance with the Funding Path and the Investment Rules;
 - (IV) the approach and timings of the Growth Portfolio, Long Term Portfolio and De-Risking Period phases of the Investment Strategy required by the Investment Rules;
 - (V) 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;
 - (VI) the periods of time (1) within which deficits in the Fund Assets are made up by way of Correction Contributions; and (2) over which any surplus amounts shall be applied as a set off against scheduled Contributions, in each case being the shorter of:
 - (A) the period commencing on the first day of the Financial Period following the determination of the applicable Correction Contribution and ending on the Financial Year End of the ninth (9th) Financial Period thereafter;
 - and
 - (B) the number of years remaining until the end of the Secondary Funding Period,(as applicable, the "**Spreading Period**");
 - (VII) the calculations of liabilities for waste disposal and management are derived from the Waste Transfer Contracts; and
 - (VIII) under the SZC Economic Licence, the Operator is entitled to an Allowed Revenue which includes a specific FDP Allowance Building Block, which is sized to cover (i) the Contributions that the Operator is required

to make to the FDP Implementation Company in accordance with this Agreement; and (ii) the operating costs of the FDP Implementation Company.

(B) Economic regulation, Allowed Revenue and FDP Allowance Building Block

- (a) The Operators electricity generation licence has been modified in accordance with the Nuclear Energy (Financing) Act 2022 which provides the legislative framework to implement a regulated asset-base model in respect of the two (2) Reactors at Sizewell C.
- (b) Pursuant to the SZC Economic Licence, the Operator is entitled to a regulated revenue in each Charging Year (as defined in the SZC Economic Licence) (the "**Allowed Revenue**"). The Financial Periods under this Agreement align with the Charging Years under the SZC Economic Licence. The Operator may earn the Allowed Revenue through market revenues, any difference payments payable under the Revenue Collection Contract and/or a combination thereof.
- (c) The Operator's Allowed Revenue includes an FDP Allowance Building Block, intended to cover (1) any Contributions (excluding any Overpayment) that the Operator is required to make to the FDP Implementation Company; and (2) the operating costs of the FDP Implementation Company.

(C) PRIMARY FUNDING PERIOD, SECONDARY FUNDING PERIOD AND FUNDING PATH

(a) 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, the estimated Costs of Spent Fuel Disposal 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 per cent. (25%) in respect of the Costs of Decommissioning and the Costs of Spent Fuel Management, by funding such costs through Contributions in each Financial Period during the Primary Funding Period. The Primary Funding Period is expected to be fifty-five (55) years from the date of First Criticality. This period has been proposed by the Operator because this means that full funding of the End of Primary Funding Period Target should be achieved during a period when its revenues are most stable, predictable and benefits from the FDP Allowance Building Block.

(b) 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 Contributions in each Financial Period during the Primary Funding Period and the Secondary Funding Period.

(c) 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 Monthly 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.

(d) Costs will be estimated at the Approved P Value

- (i) 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.
- (ii) The Approved P Value for the Costs of Decommissioning is P80 (representing an eighty per cent. (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 per cent. (25%) contingency that the Operator will provide in relation to the Costs of Decommissioning.
- (iii) 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 per cent. (25%) contingency in relation to the Costs of Spent Fuel Management.

(e) Funding Path shows how funding towards the targets will be built up

The Funding Path will be updated following each Quinquennial Review and will show the expected value of Fund Assets at the end of each Financial Period during the Primary Funding Period and the Secondary Funding Period (expressed in monetary terms as at the date of the relevant Quinquennial Review).

(D) MINIMUM CONTRIBUTION CALCULATION RULES AND FDP CONTRIBUTIONS

(a) The First Contributions Notice and the Initial Investment Strategy

- (i) The Operator shall produce the First Contributions Notice based on the form of contributions notice provided for at **Schedule 20** (*First Contributions Notice*).
- (ii) The amounts for the First Contributions Notice shall be as set out in the form provided at **Schedule 20** (*First Contributions Notice*), Indexed.
- (iii) The FDP Implementation Company shall produce the Initial Investment Strategy.

(b) Contributions Notice will be produced annually

Save in respect of the First Contributions Notice which shall be produced by the Operator, the FDP Implementation Company shall produce a Contributions Notice 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 Contributions so that the Annual Milestones in each Financial Period are met based on assumptions determined in accordance with this

Agreement and to provide a reasonable period for the correction of deficits and surpluses.

(c) 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 over the forthcoming Annual Contribution Period, which shall then be payable by way of Monthly Contributions. The Operator shall ensure that the value of each Annual Contribution has been paid in full to the FDP Implementation Company on or before the end of the Annual Contribution Period in accordance with this Agreement, save in the case of certain delays in Operator receipts to which the provisions of sub-clause 47.3.2 apply.

(d) First Criticality Payment and monthly payments to the FDP Implementation Company

Save in respect of the First Criticality Payment which shall be paid on the First Criticality Payment Date, the Operator shall pay Monthly Contributions to the FDP Implementation Company in accordance with this Agreement.

(E) SECURITY PACKAGE

(i) The Operator has agreed to enter into FDP Additional Security Documents on terms consistent with this Agreement so as: (1) to grant Security which will benefit the Secretary of State and the FDP Implementation Company directly; and (2) so that, subject to the detailed terms of the FDP Additional Security Documents, certain claims of the Secretary of State and the FDP Implementation Company will be prioritised.

(ii) The Operator has also agreed to enter into Common Security Documents on terms consistent with this Agreement: (i) so as to grant Security which will benefit the Secretary of State and the FDP Implementation Company (together with others as beneficiaries of a security trust); and (ii) so that, subject to the detailed terms of the Common Security Documents, certain claims of the Secretary of State and the FDP Implementation Company will be prioritised. The Parties intend that these Security arrangements will be effected by way of a Common Security Package.

(F) 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 22 (*Definitions and Interpretation*).

1.2 Interpretation

The interpretative provisions set out in paragraph 2 (*Interpretation*) of Schedule 22 (*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. THE FIRST CRITICALITY PAYMENT AND PAYMENT OF CONTRIBUTIONS

- 2.1 The First Criticality Payment shall be paid on the First Criticality Payment Date.
- 2.2 Subject to Clause 2.5, on each Monthly Contribution Date occurring within an Annual Contribution Period, the Operator shall pay the applicable Monthly Contribution to the FDP Implementation Company.
- 2.3 Subject to Clause 2.5, by no later than the last Business Day of a relevant month during an Annual Contribution Period ("**Monthly Contribution Date**"), the Operator shall transfer the next payable Monthly Contribution from the FDP Account to the FDP Implementation Company.
- 2.4 To the extent sub-clause 47.3 (*Compliance Events not causing breach*) applies in respect of any scheduled Contribution, the Operator's liability to make payment at the times specified in this Clause 2 shall be limited accordingly. Upon the relevant issue being resolved and the Operator receiving payment of any such delayed receipts, the Operator shall pay the FDP Implementation Company promptly following receipt of the relevant amount by the Operator.
- 2.5 For the Financial Period in which the First Criticality Payment Date occurs and any Annual Contribution Period thereafter (for the purpose of this Clause 2.5 the "relevant period"), where:
- 2.5.1 either:
- (a) Special Condition 13.8 of the SZC Economic Licence has applied to determine the FDP Allowance for a relevant period; or
 - (b) there is a reconciliation of FDP Allowance pursuant to the K-factor under the SZC Economic Licence; and
- 2.5.2 the FDP Allowance to which the Operator is entitled and which is recognised by the Authority (in each case) in accordance with SZC Economic Licence is less or more than that determined as the Annual Contribution for the corresponding relevant period in accordance with this Agreement,
- then, the Contributions in respect of that relevant period otherwise payable under this Agreement shall be reduced or increased (as applicable) to the amount so attributable to and recognised by the Authority for such Contribution(s) under the SZC Economic Licence in respect of that relevant period.

3. ANY PERSON MAY MAKE CONTRIBUTIONS

A Contribution (including an Overpayment) 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: As the first review will not be undertaken until an 'as built' DWMP can be prepared (around the time of First Criticality) and will then be reflected in the first Quinquennial Review, the Operator will need to calculate the initial two Contributions separately based on the DWMP submitted on approval of the FDP.

After the first two Contributions, Annual Contributions will be calculated in accordance with the Minimum Contribution Calculation Rules set out in Schedule 3 (Minimum Contribution Calculation Rules) and which will be subject to 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). Each Quinquennial Review will produce a set of Annual Contributions for each Annual Contribution Period to occur until the next Quinquennial Review has determined an updated set of Base Contributions and Correction Contributions (if applicable). As between Quinquennial Reviews, as part of each Annual Review, each Annual Contribution produced as part of a Quinquennial Review will be Indexed and submitted to the Authority.

4.1 Initial Key Assumptions, Initial Investment Strategy and Initial Funding Path will be determined before First Criticality

- 4.1.1 It is acknowledged that the First Contributions Notice has been prepared prior to the date of this Agreement by reference to the Initial Key Assumptions and the Initial Funding Path.
- 4.1.2 By no later than 9 months before the commencement of the Financial Period in which the First Criticality Payment Date is expected to occur, the FDP Implementation Company shall prepare the first draft Investment Strategy by reference to the requirements set out in Schedule 7 (*Investment Rules*) which, unless Clause 4.1.3 applies, shall be the Initial Investment Strategy.
- 4.1.3 The Operator may challenge a draft Investment Strategy if it is of the opinion that the same is materially inconsistent with the requirements set out in Schedule 7 (*Investment Rules*) and, in which case, the provisions of paragraph 1.13 of Section 1 (*Quinquennial Review Process*) of Schedule 9 (*Quinquennial Review Programme*) shall apply *mutatis mutandis*.
- 4.1.4 The FDP Implementation Company shall use reasonable endeavours to procure that the Initial Investment Strategy is verified by the Independent Financial Verifier, by reference to the requirements set out at Section 1 of Part A of Schedule 11 (*Financial Verification*).

4.2 First Contributions Notice will be produced before First Criticality

- 4.2.1 The Operator shall produce the First Draft Contributions Notice setting out the first (1st) and second (2nd) Annual Contributions. The amounts shall be as set out in the form provided at **Schedule 20** (*First Contributions Notice*), Indexed.

4.2.2 The Operator shall submit:

- (a) the First Contributions Notice;
- (b) the Initial Investment Strategy (to the extent then in effect); and
- (c) any verification report in respect of the Initial Investment Strategy (to the extent successful procured in accordance with Clause 4.1.4),

to the Secretary of State and the FDP Implementation Company as soon as reasonably practicable before the First Criticality Payment Date and in any event by no later than 1 November of the Financial Period immediately prior to the Financial Period in which the First Criticality Payment Date is expected to occur.

Explanatory note: The Operator is required, to the extent practicable, to submit the details of the first contributions to the Authority in accordance with the SZC Economic Licence by no later than 1 November of the Financial Period immediately prior to the Financial Period in which the First Criticality Payment Date is expected to occur. Therefore, once submitted to the Secretary of State and the FDP Implementation Company in accordance with 4.2.2, it might be that the Operator submits the First Contributions Notice to the Authority in parallel.

4.2.3 The Operator may update the First Contributions Notice in respect of the second Annual Contribution for the purpose of submitting a Contributions Notice to the Authority in accordance with the SZC Economic Licence, Indexing for the period between: (A) the date of the First Contributions Notice; and (B) the date of the latest available CPI data (as calculated by the Operator). To the extent the Operator elects to update the First Contributions Notice in accordance with this sub-clause 4.2.3, the Operator shall:

- (a) use reasonable endeavours to procure that the Indexation is verified by the Independent Financial Verifier; and
- (b) deliver any such updated Contributions Notice to the FDP Implementation Company and the Secretary of State, together with any Calculation Confirmation Report from the Independent Financial Verifier (to the extent successfully procured).

4.2.4 Each of:

- (a) the Initial Investment Strategy; and
- (b) the First Contributions Notice,

will enter into effect for the purpose of this Agreement from the date submitted to the FDP Implementation Company and the Secretary of State under sub-clause 4.2.2.

4.3 Review and update of the Investment Strategy, the Key Assumptions and the Funding Path pursuant to a Quinquennial Review

- 4.3.1 As part of each Quinquennial Review, the Investment Strategy, the Key Assumptions and the Funding Path shall be reviewed and updated in accordance with Schedule 9 (*Quinquennial Review Programme*).
- 4.3.2 Any draft Investment Strategy, draft Funding Path and / or draft Key Assumptions shall be produced and verified (as applicable) in accordance with Schedule 9 (*Quinquennial Review Programme*).
- 4.3.3 A draft Investment Strategy, draft Funding Path and / or draft Key Assumptions shall take effect as an Investment Strategy, Funding Path and / or Key Assumptions (as applicable) once submitted to the Secretary of State as part of a Quinquennial Report.
- 4.3.4 Any Investment Strategy, Funding Path and / or Key Assumptions updated pursuant to sub-clause 4.3.3 shall become fully effective for the purpose of this Agreement from the start of the Annual Contribution Period which commences immediately after the end of the relevant Quinquennial Review Year in which the relevant update occurred.

4.4 Contributions Notices will be produced annually up to the First Decommissioning Period

- 4.4.1 The FDP Implementation Company shall produce a Draft Contributions Notice at each Annual Review and each Quinquennial Review in accordance with Schedule 8 (*Annual Review Programme*) or Schedule 9 (*Quinquennial Review Programme*) (as applicable) undertaken in accordance with Clauses 17 (*Programme for Annual Review*) and 18 (*Programme for Quinquennial Review*) (as applicable) and a Draft Contributions Notice shall contain the following:
 - (a) to the extent prepared by the FDP Implementation Company as part of a Quinquennial Review:
 - (i) the information required in accordance with paragraph 1.25 of Schedule 9 (*Quinquennial Review Programme*); and
 - (ii) details of the relevant Annual Milestones required pursuant to paragraph 1.24.3(f) of Schedule 9 (*Quinquennial Review Programme*); and
 - (b) to the extent prepared by the FDP Implementation Company as part of an Annual Review:
 - (i) the information required in accordance with paragraph 1.9 of Schedule 8 (*Annual Review Programme*); and
 - (ii) details of the relevant Annual Milestone pursuant to paragraph 2.1.2 of Schedule 8 (*Annual Review Programme*).

- 4.4.2 A Draft Contributions Notice relating to a relevant Annual Contribution Period shall enter into effect as the Contributions Notice on the date that is submitted to the Secretary of State as part of the Annual Report or Quinquennial Report (as the case may be), provided that:
- (a) for a Contributions Notice that has been determined as part of a Quinquennial Review:
 - (i) notwithstanding that such Contributions Notice will include details of the scheduled Annual Contributions for each Annual Contribution Period over the forthcoming Quinquennial Reporting Period, such Contributions Notice shall determine the Annual Contribution (and associated Monthly Contributions) scheduled to be made in the first Annual Contribution Period to occur after such Quinquennial Review Year, only; and
 - (ii) for the avoidance of doubt, such remaining Annual Contributions calculated and set out as part of the Contributions Notice will enter into effect for the purpose of scheduled payment of Contributions only after they have been updated for Indexation and verified pursuant to a subsequent Annual Review process;
 - (b) this sub-clause 4.4.2 is subject to the exception set out in sub-clause 4.4.3, such that the terms of sub-clause 4.4.3, to the extent applicable, shall apply in priority over this sub-clause 4.4.2; and
 - (c) this sub-clause 4.4.2 does not apply in respect of the First Contributions Notice, which is determined pursuant to sub-clause 4.2.4.
- 4.4.3 To the extent that, on or after the date which is twenty (20) Business Days prior to the Authority Contribution Submission Date a Draft Contributions Notice for the next Annual Contribution Period has not entered into effect as a Contributions Notice in accordance with sub-clause 4.4.2 (including as a result of a delay or dispute, irrespective of cause or fault), then:
- (a) for the purpose of submitting a Contributions Notice to the Authority by the Authority Contribution Submission Date or otherwise setting the FDP Allowance for the forthcoming Annual Contribution Period in accordance with Special Condition 13.8 of the SZC Economic Licence, the Operator shall be entitled (at its discretion) to prepare and determine a Draft Contributions Notice by:
 - (i)
 - (A) utilising the values of the Contributions set out in Contributions Notice for the previous Annual Contribution Period ("**Previous Contributions Notice**"); and

- (B) Indexing the same for the relevant period between: (A) the date the Previous Contributions Notice was Indexed in accordance with this Agreement; and (B) the latest available CPI data (as calculated by the Operator); or
 - (ii) in the event the relevant delay has been caused by a dispute, an amount which is determined by the Operator (acting reasonably) as being the undisputed portion;
 - (b) a Draft Contributions Notice prepared by the Operator in accordance with this sub-clause 4.4.3, shall be delivered to the FDP Implementation Company, the Independent Financial Verifier and the Secretary of State;
 - (c) the Operator shall use reasonable endeavours to procure that the Independent Financial Verifier produces a Calculation Confirmation Report prior to the submission of the Contributions Notice to the Authority and to the extent successfully procured, any such Calculation Confirmation Report shall be delivered to the FDP Implementation Company and the Secretary of State;
 - (d) subject to Clause 2.5, a Draft Contributions Notice prepared by the Operator in accordance with this sub-clause 4.4.3 shall enter into effect as a Contributions Notice for all purposes under this Agreement (including the setting of the next Annual Contribution and the associated Monthly Contributions), on the date that is sent to the FDP Implementation Company, the Secretary of State and the Independent Financial Verifier in accordance with paragraph (b) above;
 - (e) any determining of a Contributions Notice in accordance with this sub-clause 4.4.3 shall be without prejudice to the Parties' obligations to resolve the relevant dispute or delay and otherwise comply with the provisions of a relevant Annual Review Process or Quinquennial Review Process, as applicable; and
 - (f) after the determination of a Contributions Notice in accordance with this sub-clause 4.4.3, the reconciliation processes set out in paragraphs 1.9.3 and 1.9.4 of Schedule 8 (*Annual Review Programme*) and / or paragraph 1.24.3(b) of Schedule 9 (*Quinquennial Review Programme*) shall apply in respect of the next Draft Contributions Notice which is produced in accordance with this Agreement.
- 4.4.4 The Operator shall submit each Contributions Notice to the Secretary of State by no later than 1 November of the Financial Period immediately prior to the Annual Contribution Period to which the relevant Contributions Notice relates (for the avoidance of doubt, such 1 November date is intended to align with the date on which the Operator is required to submit updated Contributions Notices to the Authority in accordance with the SZC Economic Licence ("**Authority Contribution Submission Date**").

4.5 **Operational DTM Costs**

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

4.6 **Initial Regulatory Period and Primary Funding Period**

- 4.6.1 As at the date of this Agreement, the Primary Funding Period is the period from First Criticality until FYE Year 55.
- 4.6.2 If there is a delay to First Criticality such that the FDP Allowance Building Block shall be scheduled to be in effect under the SZC Economic Licence for less than sixty (60) Financial Periods from First Criticality ("**FDP Building Block Term Event**"), the Primary Funding Period referred to in sub-clause 4.6.1 shall be reduced by the number of Financial Periods (as a positive number) which is the difference between: (i) the number of Financial Periods for which the FDP Allowance Building Block is available under the SZC Economic Licence; and (ii) sixty (60).
- 4.6.3 For the avoidance of doubt, First Criticality may occur part way through a Financial Period and provided that there are at least fifty nine (59) full Financial Periods after the Financial Year End of the Financial Period in which First Criticality occurs in respect of which the FDP Allowance Building Block is in full effect under the Economic Licence, there shall be no requirement to reduce the Primary Funding Period in accordance with sub-clause 4.6.2.
- 4.6.4 For the purpose of this Agreement, it is assumed that the duration of the Secondary Funding Period shall be five (5) full Financial Periods from FYE End of Primary Funding Period.
- 4.6.5 As soon as reasonably practicable following the Operator becoming aware of an FDP Building Block Term Event, the Operator shall:
 - (a) notify the FDP Implementation Company and the Secretary of State of the occurrence of such FDP Building Block Term Event; and
 - (b) calculate the new Primary Funding Period and notify the FDP Implementation Company and the Secretary of State of the updated Primary Funding Period.
- 4.6.6 If the duration of the Primary Funding Period is reduced in accordance with sub-clause 4.6.2, the Key Assumptions, the Funding Path and the Annual Contributions in effect at the time that such reduction is determined shall remain in effect and shall not be adjusted until the next Quinquennial Review to occur.

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

- 5.1 Save as expressly permitted by any Intercreditor Agreement and save to the extent otherwise agreed by the Secretary of State, if a Contribution has become due and has not been paid by the Operator then for such period as a Contribution remains unpaid the Operator shall not:

- 5.1.1 pay, repay or prepay any principal, interest or other amount on or in respect of its Borrowings 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 or any Relevant Guarantee; or
- 5.1.4 redeem, purchase, acquire or defease any of its Borrowings 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 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 the First Criticality Payment and Monthly Contributions).

SECTION C
INVESTMENT OF CONTRIBUTIONS AND FUND ASSETS

8. FDP IMPLEMENTATION COMPANY OBJECTIVE

8.1 It is acknowledged that:

8.1.1 the FDP Implementation Company's objective is to:

- (a) pursue an Investment Strategy, as determined in accordance with Schedule 7 (*Investment Rules*);
- (b) invest Fund Assets in accordance with the Investment Strategy in effect from time to time:
 - (i) with the intention of:
 - (A) achieving the End of Primary Funding Period Target by FYE End of Primary Funding Period; and
 - (B) achieving the End of Generation Target by no later than FYE End of Secondary Funding Period; and
 - (ii) following FYE End of Secondary Funding Period, so as to ensure that the value of the Fund Assets is sufficient to discharge the Operator's DTM Costs during the Disbursements Period; and

8.1.2 notwithstanding Clause 8.1.1 and Clause 8.2, any investments made by the FDP Implementation Company shall be subject to market volatility in the ordinary course.

8.2 The FDP Implementation Company shall use reasonable endeavours to invest Fund Assets in such a way which seeks to achieve, over the long term, the investment returns anticipated by the Funding Path in effect from time to time.

9. INVESTMENT RULES APPLY TO ALL FDP INVESTMENTS

9.1 The FDP Implementation Company shall use reasonable endeavours to comply with and ensure that all investments are undertaken in compliance with the Investment Rules.

9.2 The FDP Implementation Company shall use reasonable endeavours to procure that the investments making up the Fund Assets as a whole are consistent with the Investment Rules as at:

9.2.1 the last day of each Annual Reporting Period; and

9.2.2 the last day of each Quinquennial Reporting Period.

- 9.3 Without prejudice to the generality of Clause 9.1 and Clause 9.2, the FDP Implementation Company shall ensure that no Prohibited Practice nor any Prohibited Direct Investment is undertaken in respect of the Fund Assets.

10. 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.

11. ALL FDP INVESTMENTS WILL BE MADE UNDER INVESTMENT ORDERS

11.1 FDP investments must be made under Investment Orders

11.1.1 Neither the FDP Implementation Company nor the Operator shall knowingly Deal Directly with the Fund Assets at any time.

11.1.2 The FDP Implementation Company or its Authorised Representatives must provide the Operator with a copy of each Investment Order.

11.1.3 Subject to Clause 13 (*Operator will Monitor All Investment Orders*) the FDP Implementation Company shall make all investments and disposals of the Fund Assets in accordance with an Investment Order.

11.2 FDP Implementation Company to issue Investment Orders

11.2.1 The FDP Implementation Company shall ensure that each Investment Order contains a statement stating that the FDP Implementation Company has no reason to believe that the Investment Order being made will cause or represent a breach of the Investment Rules set out in Schedule 7 (*Investment Rules*).

11.2.2 No Party is permitted to issue an Investment Order except the FDP Implementation Company or an Authorised Representative, who may issue an Investment Order at any time on or after the First Criticality Payment Date.

11.3 Investment Orders must comply with the investment prohibitions

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

12. INVESTMENTS MAY BE MADE WITH AVAILABLE CASH

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

12.1.1 uninvested Contributions;

- 12.1.2 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
 - 12.1.3 any other Fund Assets that are held in cash at the time that the investment is made.
- 12.2 The FDP Implementation Company may pay Investment Management Fees using Available Cash. If there is insufficient Available Cash to pay such Investment Management Fees, the FDP Implementation Company may liquidate a portion of the Fund Assets into cash so as to generate Available Cash for the purpose of paying Investment Management Fees.

13. OPERATOR MAY MONITOR ALL INVESTMENT ORDERS

13.1 The Operator may review Investment Orders

- 13.1.1 The Operator shall be entitled to review each Investment Order after it has been received from the FDP Implementation Company or an Authorised Representative. For the avoidance of doubt, the FDP Implementation Company shall not be required to wait on the Operator's review of or response to an Investment Order before it implements such Investment Order in accordance with sub-clause 13.1.3.
- 13.1.2 If the Operator considers, acting reasonably, that the implementation of the Investment Order would constitute a Prohibited Practice and / or a Prohibited Direct Investment, it shall give the FDP Implementation Company an Inconsistent Investment Notice as soon as reasonably practicable following receipt of the relevant Investment Order.
- 13.1.3 The FDP Implementation Company shall implement the Investment Order (or cause the FDP Company Administrator or an Investment Execution Manager to implement the Investment Order) promptly following the issue of such Investment Order unless the FDP Implementation Company does not have sufficient Available Cash. If the FDP Implementation Company does not have sufficient Available Cash, it may elect to dispose of certain Fund Assets in order to make the investments specified in such Investment Order, only to the extent required in order to implement the Investment Order.
- 13.1.4 If the FDP Implementation Company elects to make a disposal in accordance with sub-clause 13.1.3, it shall give notice to the Operator, as soon as reasonably practicable following the decision to make such disposal, specifying the value of the Fund Assets subject to such disposal.

13.2 FDP Implementation Company must dispute Inconsistent Investment Notice or withdraw Investment Order

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

- 13.2.1 the FDP Implementation Company and the Operator shall meet to discuss the matter within the next ten (10) Business Days and shall attempt to resolve any disagreements in respect of the relevant Investment Order; and

13.2.2 if the FDP Implementation Company and the Operator cannot resolve their disagreements within a further five (5) Business Days after the deadline for the discussion meeting referred to in sub-clause 13.2.1, the FDP Implementation Company shall either:

- (a) refer the question of whether the implementation of the Investment Order would constitute a Prohibited Practice, a Prohibited Direct Investment or otherwise a breach of the Investment Rules for determination in accordance with the Independent Investment Expert Referral Procedure; or
- (b) withdraw or reverse (as applicable) the specified Investment Order (and the FDP Implementation Company shall be deemed to have withdrawn or reversed the Investment Order if it has not referred the matter for determination within five (5) Business Days after the deadline for the discussion meeting referred to in sub-clause 13.2.1). A withdrawal shall only be applicable under this paragraph (b) to the extent an Inconsistent Investment Notice has been delivered prior to the time when the specified Investment Order has been implemented in accordance with sub-clause 13.1.3.

13.3 FDP Implementation Company not to implement Investment Order in specific circumstances

The FDP Implementation Company shall not implement an Investment Order if:

13.3.1 an Inconsistent Investment Notice has been issued in accordance with sub-clause 13.1.2 (*FDP Implementation Company must challenge all non-compliant Investment Orders*);

13.3.2 such Inconsistent Investment Notice has been issued prior to the time when a specified Investment Order has been implemented in accordance with sub-clause 13.1.3; and

13.3.3 that Inconsistent Investment Notice has not been withdrawn;

unless and until:

- (a) the Inconsistent Investment Notice is withdrawn by the Operator; or
- (b) that Investment Order is determined not to constitute a Prohibited Practice and / or a Prohibited Direct Investment, as applicable, in accordance with the Independent Investment Expert Referral Procedure.

14. OPERATOR AND THE SECRETARY OF STATE MAY REQUEST INFORMATION ON FUND ASSETS

The Operator and Secretary of State 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 or Secretary of State (as the case may be) as soon as

reasonably practicable and in any event within ten (10) Business Days of the Operator's request.

15. ONGOING COMPLIANCE WITH THE INVESTMENT RULES

15.1 FDP Implementation Company must restore compliance of portfolio within the deadline

15.1.1 Subject to sub-clause 15.1.2 and sub-clause 15.1.3, 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) (an "**Inconsistent Portfolio Event**"), the FDP Implementation Company 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.

Explanatory note: It is possible that consistency with the Investment Strategy (for example around asset allocation) 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 FDP Implementation Company will not need to take any active steps to satisfy this sub-clause 15.1.1.

15.1.2 Following the occurrence of an Inconsistent Portfolio Event, the Operator and the FDP Implementation Company (acting reasonably) may agree that no action shall be carried out under sub-clause 15.1.1 on the basis that:

- (a) the consistency of the Fund Assets with the Investment Rules will likely be restored over time without the need for immediate action; and
- (b) the costs of correcting such Inconsistent Portfolio outweigh its advantages at the relevant time,

and, in which case, the FDP Implementation Company's obligations in accordance with sub-clause 15.1.1 shall be suspended in respect of such Inconsistent Portfolio Event until subject to further review as part of the next Annual Review or Quinquennial Review to occur, as applicable.

15.1.3 If any part of the Investment Rules is modified following a Proposed Modification pursuant to the terms of the Section 46 Agreement, then the FDP Implementation Company 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 9 (*Investment Rules apply to all FDP investments*) and sub-clause 15.1.1 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.

15.2 Real Estate Valuation

15.2.1 The FDP Implementation Company shall use its reasonable endeavours to procure that:

- (a) if the Fund Assets consist of 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.

15.2.2 The FDP Implementation Company shall procure that each valuation of a Real Estate investment under this Clause 15.2 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.

15.3 Infrastructure Valuation

The FDP Implementation Company shall use its reasonable endeavours to procure that:

15.3.1 each individual Infrastructure investment is revalued at least once in every three (3) Financial Periods; and

15.3.2 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:
 - (i) the size or proportion of the interest held in the relevant Infrastructure; or
 - (ii) 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.

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

16.1 FDP Implementation Company may appoint Investment Execution Managers

16.1.1 Subject to sub-clauses 16.1.4 and 16.1.5, 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) advise on the investment or disposal of the Fund Assets in accordance with the Investment Rules;
- (b) review or prepare Investment Orders and assess whether any Prohibited Practices, Prohibited Direct Investments or breach of the Investment Rules have been proposed; and / or
- (c) implement Investment Orders.

16.1.2 The FDP Implementation Company shall not appoint the Operator or any Affiliate of the Operator as an Investment Execution Manager.

16.1.3 A person may be appointed by the FDP Implementation Company as an Investment Execution Manager only if:

- (a) such person has all regulatory approvals that it is required to have in order to act as Investment Execution Manager under Applicable Law;
- (b) such person has complied and, at the time of such appointment, complies with all applicable laws to the extent that any failure to have so complied (or to so comply) may (i) affect such person's ability to perform its obligations as an Investment Execution Manager; and/or (ii) have an adverse impact on the Fund, the Fund Assets and/or the FDP;
- (c) such person has experience of carrying out similar activities to those required of an Investment Execution Manager with other comparable funds (which shall include funds which are institutional investments with a medium or long-term investment horizon);
- (d) such person has not been convicted of fraud or corruption;
- (e) such person has not been deemed to be unable to pay its debts pursuant to section 123 of the Insolvency Act 1986 (as if the words "proved to the satisfaction of the court" did not appear);
- (f) no corporate action, legal proceedings or other procedure or step has been taken (or any analogous procedure or step has been taken in any jurisdiction) in relation to: (i) such person's winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise); or (ii) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of such person's assets, and

such action, legal proceedings or other procedures are not stayed or dismissed within twenty-one (21) calendar days;

- (g) no adverse determinations by a governmental body in relation to violations of human rights has been made in respect of such person; and
- (h) such person is not a Sanctioned Entity.

16.1.4 Without prejudice to Clause 16.4, the FDP Implementation Company shall promptly remove any Investment Execution Manager who ceases to meet the criteria set out in sub-clause 16.1.3.

16.1.5 To the extent instructed in accordance with Clause 16.4 or 46.5.1(b), the FDP Implementation Company shall comply with such instruction in respect of an Investment Execution Manager, FDP Custodian or relevant Authorised Representative (as applicable) promptly.

16.2 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.

16.3 FDP Implementation Company to appoint FDP Custodians

16.3.1 The FDP Implementation Company shall appoint an FDP Custodian on or before the First Criticality Payment 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.

16.3.2 A person may be appointed by the FDP Implementation Company as an FDP Custodian only if:

- (a) such person has all regulatory approvals that it is required to have in order to act as FDP Custodian under Applicable Law;
- (b) such person has complied and, at the time of such appointment, complies with all applicable laws to the extent that any failure to have so complied (or to so comply) may (i) affect such person's ability to perform its obligations as an FDP Custodian; and/or (ii) have an adverse impact on the Fund, the Fund Assets and/or the FDP;
- (c) such person has experience of carrying out similar activities to those required of an FDP Custodian with other comparable funds (which shall include funds which are institutional investments with a medium or long-term investment horizon);
- (d) such person has not been convicted of fraud or corruption;

- (e) such person has not been deemed to be unable to pay its debts pursuant to section 123 of the Insolvency Act 1986 (as if the words "proved to the satisfaction of the court" did not appear);
- (f) no corporate action, legal proceedings or other procedure or step has been taken (or any analogous procedure or step has been taken in any jurisdiction) in relation to: (i) such person's winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise); or (ii) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of such person's assets, and such action, legal proceedings or other procedures are not stayed or dismissed within twenty-one (21) calendar days;
- (g) no adverse determinations by a governmental body in relation to violations of human rights has been made in respect of such person; and
- (h) such person is not a Sanctioned Entity.

16.3.3 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.

16.4 Change of Investment Execution Manager etc

- 16.4.1 To the extent that the Operator considers (acting reasonably) that an Investment Execution Manager, FDP Custodian or any other Authorised Representative fails to meet any criteria which is required as a condition to its appointment or otherwise ceases to meet such criteria after its appointment, then the Operator may inform the FDP Implementation Company in writing that a replacement is required.
- 16.4.2 Within ten (10) Business Days of receipt by the FDP Implementation Company of a notice in accordance with sub-clause 16.4.1 above, the Parties shall meet to discuss whether an alternative appointment is required and, if it is required, the identity of any replacement Investment Execution Manager, FDP Custodian or other Authorised Representative, as appropriate.
- 16.4.3 If the Parties are unable to agree on whether or not an alternative appointment is required accordance with sub-clause 16.4.2 within thirty (30) Business Days of receipt of a notice under sub-clause 16.4.1, then the matter may be referred by either Party for determination in accordance with the Independent Expert Referral Procedure.

SECTION D

REVIEWING, REPORTING AND VERIFICATION

17. PROGRAMME FOR ANNUAL REVIEW

Without prejudice to Clause 35 (*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.

18. PROGRAMME FOR QUINQUENNIAL REVIEW

18.1 Programme for Quinquennial Review

Without prejudice to Clause 36 (*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.

18.2 Programme for Funding Outcomes Report

Without prejudice to Clause 36 (*Programme for Disbursements Period and Decommissioning Period Quinquennial Reviews*), the Operator and the FDP Implementation Company shall procure that an Assessment of the Likelihood of Funding Outcomes is carried out in each Funding Outcomes Report Period and that an Funding Outcomes Report is prepared and delivered in accordance with Schedule 21 (*Funding Outcomes Report Process*).

19. 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.

Explanatory note: Using a statistical model to produce a probability distribution from which an appropriate P value can be derived is the best practice basis of estimation for the foreseeable future. It also aligns with the proposed approach for Sizewell C's sister power station, Hinkley Point C. In the future, it is possible that best practice will change. In such case, the relevant Sizewell C and Hinkley Point C teams will discuss the matter and then each apply to the Secretary of State for any necessary modifications to their respective funded decommissioning programmes.

20. 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 1.5.4 of Section 1 (*Quinquennial Review Process*) of Schedule 9 (*Quinquennial Review Programme*).

SECTION E
WARRANTIES, UNDERTAKINGS AND BUSINESS RESTRICTIONS

21. 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.

22. 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.

23. OPERATOR BUSINESS RESTRICTIONS

23.1 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*) except as agreed otherwise in writing by the Secretary of State.

23.2 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.

23.3 Cooperation Agreement

If at any time the Secretary of State informs the Operator in writing that it intends to effect any transfer or reorganisation in relation to the Operator, the FDP Implementation Company and/or any of their property, rights and liabilities (including the Site), on and from the later of (i) the date of such notice and (ii) the date falling on FYE EPFP – 5, the Operator shall use its reasonable endeavours to execute a Cooperation Agreement by no later than FYE EPFP with either:

23.3.1 the Nuclear Decommissioning Authority or any other publicly owned entity undertaking the decommissioning of UK and/or English nuclear sites at that time; or

23.3.2 if the Operator reasonably anticipates that any transfer or reorganisation (including a Nuclear Transfer Scheme in accordance with Clause 25.2 if applicable) in relation to the Operator and/or any of its property, rights and liabilities will result in any publicly-owned or publicly-controlled entity (other than any entity referred to in Clause 23.3.1 above) assuming control and/or ownership of the Operator and/or any of its property, rights and liabilities (including the Site), any such entity or entities.

SECTION F INSURANCE REQUIREMENTS

24. 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 Worldwide Insurance Market on reasonable commercial terms (including cost) **provided that** if at any time such insurance is not available within the Worldwide Insurance Market on reasonable commercial terms (including cost), the Operator shall retest the Worldwide Insurance Market once every six (6) months and shall use its reasonable endeavours to take out such insurance in the event that it subsequently becomes available on reasonable commercial terms (including cost).

SECTION G
OPERATOR INSOLVENCY AND CONSEQUENCES OF SECURITY TRIGGER
EVENT ACTION BEING TAKEN

25. OPERATOR INSOLVENCY EVENT AND NUCLEAR TRANSFER SCHEME

Explanatory note: pursuant to the terms of the SZC Economic Licence, the Operator shall be entitled to the Allowed Revenue, of which the FDP Allowance Building Block is one component part. To the extent that the actual market revenues received by the Operator in a Charging Year are less than or greater than the Operator's Allowed Revenue entitlement, a difference payment will be received from, or made to, the Revenue Collection Counterparty (as applicable) under the Revenue Collection Contract. A difference payment may be made by the Revenue Collection Counterparty, for example, in circumstances where an RLNC administration order has been issued in respect of the Operator in accordance with section 31 of the Nuclear Energy (Financing) Act 2022.

25.1 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 been threatened, is pending or has occurred.

25.2 Each of FDP Implementation Company and the Operator consent to the Secretary of State effecting a Nuclear Transfer Scheme to transfer, as applicable:

25.2.1 the Operator's property, rights and liabilities;

25.2.2 the Operator;

25.2.3 the FDP Implementation Company; and/or

25.2.4 the FDP Implementation Company's property, rights and liabilities (including the Fund Assets),

in each case, to the Nuclear Decommissioning Authority or a publicly-owned company in accordance with:

(a) the terms of the Nuclear Administration and Statutory Transfers Agreement;

(b) section 32 of the Nuclear Energy (Financing) Act 2022 as a means of achieving the objective of the relevant licensee nuclear company administration; and / or

(c) the terms of the SZC Economic Licence.

25.3 Without prejudice to the terms of the Nuclear Administration and Statutory Transfers Agreement which specifies a list of additional "Protected Assets", the Fund Assets and any amounts standing to the credit of the FDP Account and the Operator DTM Control Account shall constitute "protected assets" for the purposes of section 56 of the Energy Act 2008.

26. SECURITY PACKAGE TO BE GRANTED

26.1 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:

- 26.1.1 if any fixed charge or any floating charge is granted by the Operator, then the relevant Secured Creditor gives a similar acknowledgement; and
- 26.1.2 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.

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

Subject to Clause 26.5 (*Prohibition on granting a fixed charge*) and the terms of any Intercreditor Agreement, 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 26.4.3 (*FDP Security Documents*)):

- 26.2.1 the Secretary of State benefits, either directly or indirectly as a beneficiary of a security trust, from Security in the form of the FDP Additional Security Documents and Common Security Documents 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
- 26.2.2 the FDP Implementation Company is a beneficiary, either directly or indirectly, of a security trust of Security in the form of the FDP Additional Security Documents and Common Security Documents (jointly with the Secretary of State ranking either *pari passu* with the Secretary of State or junior to the Secretary of State) which secures, amongst other things, the payment to the FDP Implementation Company (in each case, in accordance with this Agreement) of:
 - (a) the Contributions (excluding, for the avoidance of doubt, any Overpayments);
 - (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 sub-clauses 26.2.1 and 26.2.2 being, together, the "**FDP Secured Liabilities**").

26.3 **First Criticality shall not occur until Security has been granted**

Save as otherwise agreed between the Operator and the Secretary of State, the Operator undertakes to the FDP Implementation Company that it will not permit First Criticality to occur unless and until the Security referred to in Clause 26.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*) has been granted.

26.4 **FDP Security Documents**

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

26.4.1 the Security in Clause 26.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*) remain in full force and effect;

26.4.2 the Security in Clause 26.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*) retains the ranking and priority required under Clause 26.2 (*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 31.1 (*Payments in relation to Safety Critical Expenditure*); and
- (b) as otherwise expressly agreed in the FDP Security Documents or in an Intercreditor Agreement (including with respect to any bank accounts which the Secretary of State has agreed to designate as Excluded Bank Accounts in such Intercreditor Agreement); and

26.4.3 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.

26.5 **Prohibition on granting a fixed charge**

26.5.1 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 Common 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 26.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*)) ("**Common Security Package**");
- (b) under an FDP Additional Security Document to a Security Trustee who holds the Security on trust for the relevant creditors including the Secretary of State and the FDP Implementation Company (as

contemplated by Clause 26.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*));

- (c) in connection with the novation or replacement of any Security contemplated in paragraphs (a) and / or (b) above, **provided that** such document is itself a Common Security Document or FDP Additional Security Document; or
- (d) to a Significant Creditor in respect of bank accounts of the Operator which the Secretary of State has agreed in an Intercreditor Agreement will constitute Excluded Bank Accounts.

26.5.2 Subject to sub-clause 26.5.1, 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.

26.6 **Intercreditor Agreement**

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

- 26.6.1 the Secretary of State is to be a party to that proposed Intercreditor Agreement;
- 26.6.2 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 Intercreditor Agreement) makes prudent provision for the DTM Costs or otherwise the full effectiveness of the Intercreditor Agreement as it relates to the governing of rights and obligations deriving from the FDP is conditional upon such confirmation;
- 26.6.3 the Intercreditor Agreement or entry into it does not conflict with Applicable Law;
- 26.6.4 the Security in Clause 26.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*) meets the requirements set out in sub-clause 26.2.2;
- 26.6.5 the Intercreditor 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;
- 26.6.6 the Intercreditor 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
- 26.6.7 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 and the Operator on the proposed terms of the Intercreditor Agreement.

27. ENTITLEMENT TO TAKE SECURITY TRIGGER EVENT ACTION

27.1 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:**

27.1.1 a Security Trigger Event has occurred and is continuing; and

27.1.2 if any Intercreditor Agreement is then in effect, the action is permitted under and is taken in accordance with that Intercreditor Agreement.

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

27.2.1 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 (or has instructed a Security Trustee to take) equivalent Security Trigger Event Action in accordance with Clause 27.1 (*Secretary of State's right to take Security Trigger Event Action*), except that it may exercise any remedy available to it under Clause 47.4 (*Remedies*) in relation to an amount which has become due and payable under this Agreement at any time other than during a Standstill Period.

27.2.2 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 (or to instruct a Security Trustee to take) Security Trigger Event Action pursuant to sub-clause 27.2.1 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.

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

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

28.1.1 If the Secretary of State takes (or instructs a Security Trustee to take) Security Trigger Event Action, unless agreed otherwise by the Operator and the Secretary of State 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 Secretary of State 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 28.2 (*Payment of the Funded SF Transfer Fee and Funded ILW Transfer Fee will be deferred if there is insufficient Available Cash*).

28.1.2 Payment directly to the Secretary of State in accordance with sub-clause 28.1.1 shall:

- (a) 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
- (b) 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.

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.

28.2 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 28.1 (*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 28.3 (*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.

28.3 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 28.1 (*Payment of Funded SF Transfer Fee and Funded ILW Transfer Fee*) pursuant to Clause 28.2 (*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:

- 28.3.1 notify the Operator and make 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 sub-clause 28.3.2 **provided that** the amount to be so liquidated must not exceed the value of the Fund Assets; and
- 28.3.2 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 28.2 (*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.

29. 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 (or instructing a Security Trustee to take) Security Trigger Event Action in the period between First Criticality and the Financial Year End of the Second Decommissioning Period.

30. 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 (or instructing a Security Trustee to take) 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.

31. PRIORITY OF THE SECURITY

31.1 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.

31.2 Undertaking to preserve priority

Subject to Clause 31.1 (*Payments in relation to Safety Critical Expenditure*), the Operator:

31.2.1 shall not take any action to impair the ranking of the Security in Clause 26.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*) and the priority of the FDP Secured Liabilities as set out in Clause 26.4 (*FDP Security Documents*); and

31.2.2 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 Security in Clause 26.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*) ("**Perfecting Action**").

31.3 Dividends cannot be paid until perfection of security

If the Operator becomes aware that either:

- 31.3.1 it has taken action which has impaired the ranking the Security in Clause 26.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*) and priority of the FDP Secured Liabilities as set out in Clause 26.4 (*FDP Security Documents*), and the Operator has not yet restored such ranking and priority; or
- 31.3.2 it has become necessary for the Operator to undertake a Perfecting Action as set out in Clause 31.2 (*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 Security in Clause 26.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*) and priority of the FDP Secured Liabilities as set out in Clause 26.4 (*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 sub-clause 31.3.1 or 31.3.2 (as applicable) as soon as reasonably practicable.

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

If the Secretary of State takes or, if relevant, instructs a Security Trustee to take Security Trigger Event Action or if a Nuclear Transfer Scheme is effected or a transfer of shares, property, rights and/or liabilities is effected in accordance with the Nuclear Administration and Statutory Transfers Agreement, the Operator and the FDP Implementation Company will cooperate with each other, the Secretary of State, the Nuclear Decommissioning Authority or any other party to whom a transfer of shares, property, rights and/or liabilities is effected in accordance with Clause 25.3 (*Operator Insolvency Event and Nuclear Transfer Scheme*) or otherwise in accordance with the Nuclear Administration and Statutory Transfers Agreement 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 EARLY PERMANENT SHUTDOWN DECISION

33. EARLY PERMANENT SHUTDOWN DECISION AND PARTIAL REVOCATION

33.1.1 As soon as reasonably practicable after the date of an Early Permanent Shutdown Decision, the Operator shall:

- (a) notify the FDP Implementation Company and the Secretary of State of the decision to undertake an Early Permanent Shutdown Decision and the circumstances which have given rise to that decision;
- (b) notify the FDP Implementation Company and the Secretary of State of its current financial position; and
- (c) 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 Early Permanent Shutdown Decision, any mitigation measures which may be appropriate and the expected financial consequences (including in respect of shortening the Primary Funding Period and/or Secondary Funding Period and associated Funding Path, any adjustment of the Key Assumptions and Investment Strategy to mitigate the consequences of any such Early Permanent Shutdown Decision) of such Early Permanent Shutdown Decision, including for the FDP and the Secured Creditors.

33.1.2 The Operator shall, as soon as reasonably practicable after it becomes aware that an Early Permanent Shutdown Decision is expected to occur (for avoidance of doubt, being no earlier than the time required under the SZC Economic Licence), propose a modification under the Energy Act 2008 to modify this Agreement and review the DWMP with the aim of amending the FDP such that the target Fund Assets Value is designed to ensure that the expected costs are fully funded by the FYE End of Generation (as such FYE End of Generation is expected to be stated in the DWMP to be approved by the Secretary of State on the occurrence of an Early Permanent Shutdown Decision) in accordance with the Investment Rules.

33.1.3 It is acknowledged that where the Authority intends to implement a Partial Revocation in accordance with paragraph [6] of [Special Condition 12] of the SZC Economic Licence, the Operator shall be required to determine the then applicable FDP Final Amount and FDP Shortfall and subsequently propose a modification to align this Agreement with the Partial Revocation Period.

33.1.4 In the event that the Authority has notified the Operator of its intention to implement a Partial Revocation in accordance with paragraph [6] of [Special Condition 12] of the SZC Economic Licence or the Operator otherwise believes that a Partial Revocation may, in its opinion, occur, the Operator shall notify the FDP Implementation Company and shall:

- (a) determine the estimates of the FDP Final Amount and FDP Shortfall (which shall include calculating any known or expected Safety Critical Expenditure and any other necessary operational costs of the Operator from the date of Authority's notice of an intention to implement a Partial Revocation to then expected end of the Partial Revocation Period); and
- (b) prepare the necessary proposed modification to the FDP for submission to the Secretary of State, including in respect of the new FYE End of Generation, the adjusted Primary Funding Period and / or Secondary Funding Period.

**34. 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 34 shall not prevent the continued operation of the other Reactor.

SECTION I
DISBURSEMENTS PERIOD AND DECOMMISSIONING PERIOD PROCEDURES

35. 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:

- 35.1.1 an Annual Review in accordance with Clause 17 (*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
- 35.1.2 thereafter, an Annual Review in each Annual Review Year in respect of each Annual Reporting Period, but disregarding the requirements set out in Stage 5 (*Review of Contributions Notice*) of Section 1 (*Annual Review Process*) of Schedule 8 (*Annual Review Programme*),

but in the case of sub-clause 35.1.1 and 35.1.2, only paragraph 1 of the Annual Operator Directors' Certificate shall apply in the Decommissioning Period.

36. 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:

- 36.1.1 a Quinquennial Review in accordance with Clause 18 (*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
- 36.1.2 thereafter, a Quinquennial Review in each Quinquennial Review Year in respect of each Quinquennial Reporting Period but disregarding the requirements set out in Stage 5 (*Review of Contributions Notice*) of Section 1 (*Quinquennial Review Process*) of Schedule 9 (*Quinquennial Review Programme*),

but in the case of sub-clause 36.1.1 and 36.1.2, only paragraph 1 of the Annual Operator Directors' Certificate shall apply in the Decommissioning Period.

SECTION J PAYMENTS AND DISBURSEMENTS POLICY

37. RULES APPLY FOR THE CLAIM AND USE OF DTM PAYMENTS

37.1 Procedure applies for claim of DTM Payments

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

37.2 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.

37.3 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.

38. RELEASE OF FUNDS FOLLOWING AN UNPLANNED PERMANENT SHUTDOWN OR SINGLE REACTOR EARLY SHUTDOWN

38.1 Delivery of a Shutdown Notice

Without prejudice sub-clause 33.1.1(a) (*Early Permanent Shutdown Decision*), 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 or Single Reactor Early Shutdown is likely to occur (in each case, a "**Shutdown Notice**").

38.2 Drawdown of funds prior to the Actual Decommissioning Start Date

38.2.1 From the date of a Shutdown Notice until the Actual Decommissioning Start Date:

- (a) the costs associated with operating and maintaining the Site (including in respect of defueling and making the same safe pending the Actual Decommissioning Start Date) are expected to be funded in the following order of priority:
 - (i) firstly, from any available operational revenues;
 - (ii) secondly, from any available make safe reserves; and

- (iii) thirdly, from payments from the Fund constituting Emergency DTM Payments in accordance with Clause 38.3 (*Requirement for funds following a Shutdown Notice*); and
- (b) in respect of a Shutdown Notice which relates to a Single Reactor Early Shutdown, the costs with operating and maintaining the Site (including in respect of defueling and making the same safe pending the Actual Decommissioning Start Date) are expected to be funded in the following order of priority:
 - (i) firstly, from any available operational revenues (which shall include operational revenues generated by other such Reactor which has not been subject to the Shutdown Notice);
 - (ii) secondly, from any available make safe reserves; and
 - (iii) thirdly, from payments from the Fund constituting Emergency DTM Payments in accordance with Clause 38.3 (*Requirement for funds following a Shutdown Notice*).

38.3 Requirement for funds following a Shutdown Notice

- 38.3.1 For up to two (2) Financial Periods following the date of a Shutdown Notice 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 38 (*Release of Funds Following an Unplanned Permanent Shutdown or Single Reactor Early Shutdown*):
- (a) Clauses 39 (*Annual Work Plan and Budget*) to 44 (*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.
- 38.3.2 Following receipt of a request and an Emergency Allowable Costs Certificate pursuant to sub-clause 38.3.1 and subject to sub-clause 38.3.3, 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 38.3 applies.
- 38.3.3 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 sub-clause 38.3.4 shall apply.

38.3.4 If an Emergency DTM Payment was not paid in full within the five (5) Business Days payment period referred to in sub-clause 38.3.2, the FDP Implementation Company shall:

- (a) 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 sub-clause 38.3.2 (and notify the Operator of the same by way of providing copies of the relevant Investment Orders); and
- (b) make further payments to the Operator in an aggregate amount equal to the difference between:
 - (i) the Emergency DTM Payment claimed by the Operator; and
 - (ii) the amount paid to the Operator pursuant to sub-clause 38.3.3, as soon as reasonably practicable after the FDP Implementation Company has Available Cash.

38.3.5 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.

38.3.6 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 44 (*Annual Reconciliation Review*) and the Annual Reconciliation Review Process in that Financial Period shall apply with such changes as are necessary.

39. ANNUAL WORK PLAN AND BUDGET

39.1 Operator must submit an Annual Work Plan and Budget

39.1.1 Subject to Clauses 38.2 (*Drawdown of funds prior to the Actual Decommissioning Start Date*) and 38.3 (*Requirement for funds following a Shutdown Notice*), the Operator shall prepare an Annual Work Plan and Budget in respect of each Financial Period in the Disbursements Period or, where an Unplanned Permanent Shutdown has occurred, in respect of each Financial Period remaining in the Operational Period in accordance with this Clause 39.1.

39.1.2 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.

39.1.3 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 and Budget 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 and the other being an independent director 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 sub-clause 39.1.2 together with its reasons for its belief.

39.1.4 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.

39.1.5 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.

39.2 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.

39.3 Independent Technical Verifier must challenge Disallowable Costs included in the Annual Work Plan and Budget

39.3.1 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.

39.3.2 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 two hundred and fifty thousand pounds (£250,000), 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.

39.3.3 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 45 (*Verification of Long Term Contracts and Material Affiliate Contracts*), except to the extent permitted under Clause 45.6 (*Effect of contract verification on reconciliation exercise*).

39.4 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:

39.4.1 refer the matter of whether the Annual Work Plan and Budget gives rise to Disallowable Costs which in aggregate will be more than two hundred and fifty thousand pounds (£250,000), Indexed, for determination in accordance with the Annual Work Plan and Budget Independent Expert Referral Procedure; or

39.4.2 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.

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

40.1 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.

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

40.2.1 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 40.5 (*Further payment will be made if any Annual DTM Payment is reduced due to lack of Available Cash*) shall apply.

40.2.2 If the FDP Implementation Company believes, acting reasonably, that sub-clause 40.2.1(b) or 40.2.1(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.

40.3 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 40.4 (*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.

40.4 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.

40.5 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 sub-clause 40.2.1(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 sub-clause 40.2.1(c) as soon as reasonably practicable after the FDP Implementation Company has cash equal to such difference available.

40.6 Payment Procedures apply to DTM Payments

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

40.7 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 40 (*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.

41. DTM COSTS OVERRUNS MAY BE CLAIMED

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

41.1.1 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 41.1(*Operator must submit an amended Annual Work Plan and Budget before cost overruns can be claimed*).

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

- (a) each amended Annual Work Plan and Budget:
 - (i) 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;
 - (ii) separately identifies the amount of the DTM Costs Overruns likely to arise within the then current Financial Period;
 - (iii) 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;
 - (iv) 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;
 - (v) 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.

41.1.3 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.

41.1.4 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.

41.2 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.

41.3 Verification of significant DTM Costs Overruns is required

If:

- 41.3.1 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 ten per cent. (110%) of the DTM Costs falling within paragraph (b) of the definition of Allowable Costs, then Clause 40.2 (*FDP Implementation Company will calculate the Annual DTM Payment due to the Operator*) shall apply; or

41.3.2 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 ten per cent. (110%) or more of the DTM Costs falling in paragraph (b) of the definition of Allowable Costs, then:

- (a) Clause 42 (*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 ten per cent. (110%) of the DTM Costs falling in paragraph (b) of the definition of Allowable Costs; and
- (b) Clause 41.4 (*Independent Technical Verifier must review works and activities included in the Annual Work Plan and Budget if overruns exceed 25 per cent. contingency*) shall apply in respect of the portion of the DTM Costs Overruns that is more than one hundred and ten per cent. (110%) of the DTM Costs falling in paragraph (b) of the definition of Allowable Costs.

41.4 Independent Technical Verifier must review works and activities included in the Annual Work Plan and Budget if overruns exceed 25 per cent. contingency

41.4.1 Where this Clause 41.4 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.

41.4.2 If either:

- (a) the Independent Technical Verifier, acting reasonably, considers that:
 - (i) 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
 - (ii) the aggregate Disallowable Costs that may be incurred as a result of all such works or activities are likely to amount to more than one hundred and fifty thousand pounds (£150,000), 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.

41.4.3 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 45 (*Verification of Long Term Contracts and Material Affiliate Contracts*), except to the extent permitted under Clause 45.6 (*Effect of contract verification on reconciliation exercise*); or
- (b) in respect of anything contained in the original Annual Work Plan and Budget.

41.5 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:

41.5.1 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 one hundred and fifty thousand pounds (£150,000), 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

41.5.2 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.

42. FDP IMPLEMENTATION COMPANY WILL CALCULATE DTM OVERRUN PAYMENTS

42.1 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 41.4 (*Independent Technical Verifier must review works and activities included in the Annual Work Plan and Budget if overruns exceed 25 per cent. contingency*) applies, verification or determination of the relevant proportion of the DTM Costs Overruns.

42.2 Process applies for making DTM Costs Overrun Payment

If the FDP Implementation Company receives a DTM Costs Overrun Claim Notice under Clause 42.1 (*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 40 (*Annual DTM Payment will be calculated by the FDP Implementation Company*) shall apply with such changes as are necessary.

43. 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.

44. 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.

45. VERIFICATION OF LONG TERM CONTRACTS AND MATERIAL AFFILIATE CONTRACTS

45.1 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 45 (*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).

45.2 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 (such tender to be publicly announced and open for a reasonable amount of time) 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 45 (*Verification of Long Term Contracts and Material Affiliate Contracts*) before entering into such Material Affiliate Contract **provided that** where the participants in such tender process comprise solely Affiliates of the Operator this shall not constitute a tender on a competitive basis for the purposes of this Clause 45.2.

45.3 Verification that Allowable Costs will be incurred under the contract

- 45.3.1 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.
- 45.3.2 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.

45.4 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 that a Material Affiliate Contract is not on arm's length terms (or if there is a delay in the Independent Technical Verifier submitting the Contract Verification Report in accordance with Clause 45.3 (*Verification that Allowable Costs will be incurred under the contract*)), the Operator shall either:

45.4.1 refer the matter of whether:

- (a) the relevant Long Term Contract or Material Affiliate Contract contains scope which gives rise to a Disallowable Cost; and / or
- (b) in the case of a Material Affiliate Contract, whether such Material Affiliate Contract is on arm's length terms,

to an Independent Expert for determination in accordance with the Independent Expert Referral Procedure;

45.4.2 make such amendments to the relevant Long Term Contract or Material Affiliate Contract as are necessary to:

- (a) remove the scope which gives rise to a Disallowable Cost; and / or
- (b) in the case of a Material Affiliate Contract, amend the Material Affiliate Contract such that it is on arm's length terms (and provided that the Independent Technical Verifier has confirmed that, as amended, the Material Affiliate Contract is on arm's length terms); or

45.4.3 other than in determining whether a Material Affiliate Contract is on arm's length terms, 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.

45.5 Effect of dispute on claim of Annual DTM Payment

If the Operator has referred a dispute to an Independent Expert in accordance with sub-clause 45.4.1, 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 39.1 (*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 41.1 (*Operator must submit an amended Annual Work Plan and Budget before cost overruns can be claimed*) but shall be entitled to either:

- 45.5.1 perform such works and activities and claim such costs as Unclaimed Allowable Costs as part of an Annual Reconciliation Review; or
- 45.5.2 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).

45.6 Effect of contract verification on reconciliation exercise

- 45.6.1 Subject to sub-clause 45.6.2, 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.
- 45.6.2 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 45 (*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 five hundred thousand pounds (£500,000), Indexed;
 - (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); or

(c) result in the Material Affiliate Contract not being on arm's length terms, then the Operator shall notify the FDP Implementation Company and the Independent Technical Verifier and the process under this Clause 45 (*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

46. MATERIAL BREACH SHALL BE NOTIFIED TO THE SECRETARY OF STATE

46.1 Certain events will be notified by the FDP Implementation Company to the Operator

46.1.1 The FDP Implementation Company shall notify the Operator as soon as reasonably practicable if it believes that any of the events referred to in sub-clauses 46.3.1(a) to 46.3.1(f) has occurred, specifying which event(s) it believes to have occurred in as much detail as reasonably practicable (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).

46.1.2 As soon as reasonably practicable (and in any event within ten (10) Business Days) after receipt of a notice under sub-clause 46.1.1, 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 sub-clauses 46.3.1(a) to 46.3.1(f) has occurred and, subject to Clause 46.5, shall, save to the extent sub-clause 46.1.3 applies, at the same time notify the FDP Implementation Company of any steps being taken to cure the relevant events (and the adverse effect of the same).

46.1.3 To the extent that a notice delivered by the FDP Implementation Company under sub-clause 46.1.1 relates to a breach of this Agreement by the FDP Implementation Company or otherwise an event for which the FDP Implementation Company is responsible for, such notice delivered by the FDP Implementation Company shall specify any of the steps being taken to cure the relevant events or its adverse effect(s).

46.2 Certain events will be notified by the Operator to the FDP Implementation Company

46.2.1 To the extent the Operator becomes aware of:

- (a) any of the events referred to in sub-clause 46.3.1(c) or sub-clause 46.3.1(d) having occurred; or
- (b) a Compliance Event or Potential Compliance Event within the meaning sub-clause 46.3.1(f) in respect of obligations of the FDP Implementation Company, having been threatened, being pending or having occurred,

and to the extent such event(s) have not been notified by the FDP Implementation Company in accordance with sub-clause 46.1.1, the Operator shall notify the FDP Implementation Company as soon as reasonably practicable specifying which event(s) it believes to have occurred in as much detail as reasonably practicable (and followed up by the Operator making a telephone call and sending an email to the

FDP Implementation Company as soon as reasonably practicable after the notice is served).

- 46.2.2 Within ten (10) Business Days after receipt of a notice under sub-clause 46.2.1, the FDP Implementation Company shall notify the Operator setting out whether, in the FDP Implementation Company's reasonable opinion, any of the relevant events referred to in sub-clauses 46.3.1(c), 46.3.1(d) or 46.3.1(f) has occurred and, subject to Clause 46.5, shall at the same time notify the Operator of any steps being taken to cure the relevant events (and the adverse effect of the same).

46.3 Certain events will be notified to the Secretary of State by the FDP Implementation Company and the Operator

- 46.3.1 On or after the tenth (10th) Business Day following receipt (being the date of deemed receipt in accordance with sub-clause 73.4.2) of the notice referred to in sub-clause 46.1.1 or sub-clause 46.2.1, as applicable, the relevant notifier (the "relevant notifier" shall be determined pursuant to sub-clause 46.3.2, below) shall notify the Secretary of State if it continues to believe that any of the following has occurred:

- (a) a Payment Default;
- (b) 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*);
- (c) the FDP Implementation Company is in breach of any of its material obligations under this Agreement or any agreement it has with any other party;
- (d) a Compliance Event or Potential Compliance Event in respect of the FDP Implementation Company's obligations under sub-clause 11.1.1 (*FDP investments must be made under Investment Orders*);
- (e) any Security granted under Clause 26.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*) ceases to have full force and effect; or
- (f) a Compliance Event or Potential Compliance Event in respect of either the FDP Implementation Company or the Operator's obligations under Clause 55.3 (*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).

- 46.3.2 For the purpose of sub-clause 46.3.1:

- (a) if a notice has been issued in accordance with sub-clause 46.1.1, the "relevant notifier" shall be the FDP Implementation Company; and

- (b) if a notice has been issued in accordance with sub-clause 46.2.1, the "relevant notifier" shall be the Operator.

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

46.5 FDP Implementation Company obligations and associated Operator rights to remedy

Following a notice issued in accordance with sub-clause 46.1.1 or sub-clause 46.2.1, as applicable, which relates to obligations of the FDP Implementation Company:

46.5.1 then the Operator may:

- (a) to the extent the Operator is not satisfied, acting reasonably, that the FDP Implementation Company has demonstrated within an FDP Implementation Company Mitigation Notice that the relevant Compliance Event shall be cured within the Remedy Period, then within a period twenty (20) Business Days from the date of receipt of the FDP Implementation Company Mitigation Notice; or
- (b) such event(s) giving rise to the relevant notice is continuing by the end of the Remedy Period,
 - (i) instruct the FDP Implementation Company to provide further detail and information relating to the relevant Compliance Event, in terms how and why the event occurred and how the same shall be cured; and / or
 - (ii) to the extent the relevant event is attributable to the performance of the Investment Execution Manager, an FDP Custodian or any other Authorised Representative (as determined by the Operator, acting reasonably), instruct the FDP Implementation Company to replace such person promptly; and / or

46.5.2 to the extent the relevant event relates to an obligation of the FDP Implementation Company to make an assessment, an appointment, issue an instruction or determination (or, in each, an obligation procure the same) in connection with an Annual Review, Quinquennial Review or otherwise in accordance with this Agreement (including in respect of the Key Assumptions, the Fund Assets held from time to time, the Funding Path, the Investment Strategy or a Contributions Notice):

- (a) the Operator shall be entitled, immediately, to make such assessment, determination or produce the relevant information in place of the FDP Implementation Company as though the relevant provision of this Agreement referred to the Operator being responsible for the same;
- (b) the exercise of any rights by the Operator in accordance with paragraph (a) above, shall not excuse the FDP Implementation Company from any obligation under this Agreement; and
- (c) the FDP Implementation Company shall provide all reasonably necessary assistance to the Operator for the Operator to effect its rights in accordance with this sub-clause 46.5.2.

46.6 Adoption and amendment of the Material Breach Policy

- 46.6.1 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.
- 46.6.2 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.
- 46.6.3 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.

47. BREACH AND ENFORCEMENT

47.1 Compliance Events constitute breaches of this Agreement

Without prejudice to Clause 47.3 (*Compliance Events not causing breach*), Clause 48 (*Unlawful obligations*) and Clause 49 (*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.

47.2 Compliance Events

47.2.1 Except where Clause 48 (*Unlawful obligations*) or Clause 49 (*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 sub-clauses 47.2.2 and 47.2.3, 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 or the FDP Implementation Company (in the case of sub-clause (b)) (as applicable):

- (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 10 (*FDP Implementation Company will hold the Fund Assets remote from the Operator*) or sub-clause 11.1.1 (*FDP investments must be made under Investment Orders*); or
- (c) knowingly acts, or fails to act, in contravention of Clause 31.2 (*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*).

47.2.2 Each Party 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.

47.2.3 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 a relevant Party ceases to act in compliance with sub-clause 47.2.2, 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.

47.3 Compliance Events not causing breach

47.3.1 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:
 - (i) the provision giving rise to the Compliance Event is unlawful or unenforceable; and/or
 - (ii) the provision conflicts with any of the Operator or the FDP Implementation Company's other obligations under Applicable Law (in accordance with Clause 48.2 (*Modification will be proposed in respect of unlawful obligations*)); and/or
 - (iii) 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
 - (iv) performance of the obligation has been affected by a long term Force Majeure Event (in accordance with Clause 49.2 (*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:
 - (i) is or is caused by the appointment of any administrator, administrative receiver, receiver or other similar person under or pursuant to the FDP Additional Security Documents, any Common Security Documents or any other document under which the Operator creates or purports to create Security in connection this Agreement (**provided that** such action is consistent with the requirements referred to in Clause 26.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*));
 - (ii) is or is caused by the non-payment of the First Criticality Payment or Monthly Contribution during a Standstill Period;

- (iii) is or is caused by the taking of any steps to enforce the FDP Additional Security Documents, any Common 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 requirements referred to in Clause 26.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*));
- (iv) 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*) or an Intercreditor 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
- (v) is performed, remedied or cured in accordance with the terms of the FDP Security Documents or the Intercreditor Agreement;
- (d) if the Operator has exercised its rights under and cured any such Compliance Event in accordance with Clause 46.5 (*FDP Implementation Company obligations and associated Operator rights to remedy*); and / or
- (e) in respect of non-payment of an amount which is due but not due and payable under this Agreement (including as a result of Clause 47.3.2),

provided that nothing in this sub-clause 47.3.1 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 27 (*Entitlement to take Security Trigger Event Action*) either:

- (i) if there is an Intercreditor Agreement in effect, in accordance with that Intercreditor Agreement; and / or
- (ii) otherwise, in accordance with the FDP Additional Security Documents or any Common Security Documents if a Security Trigger Event is continuing;

47.3.2 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 of a Contribution on a scheduled date and such inability to pay is a direct result of:

- (a) any failure by the Revenue Collection Counterparty to pay amounts under the Revenue Collection Contract;

- (b) a continuing payment default by the Secretary of State under clause 5.6 of the Nuclear Administration and Statutory Transfers Agreement; or
- (c) non-payment or reduced payment to the Operator under the Revenue Collection Contract which arises as a result of the operation of the pay when paid mechanism implemented under the Nuclear Energy (Financing) Act 2022) due to a systemic failure of the electricity market,

then such amount shall only become payable pursuant to Clause 2.4 and neither the Operator nor the FDP Implementation Company shall be in breach of this Agreement nor any of the Documents nor have any liability to a party to the extent such breach is a direct result of such inability of the Operator to make payment.

47.4 Remedies

- 47.4.1 Without prejudice to any rights which may arise under Clause 27 (*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 them under Clause 80.3 (*Third party rights*)) in respect of any breach of this Agreement shall be those set out in sub-clause 47.4.2. 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.
- 47.4.2 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 them under Clause 80.3 (*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.
- 47.4.3 Nothing in this Clause 47.4 is intended to prevent a non-defaulting Party from taking any of the following actions:
 - (a) waiving a breach, if permitted under Clause 80.6 (*No waiver*);

- (b) referring the matter to the Secretary of State and requesting that he exercise his 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).

47.4.4 Nothing in this Clause 47.4 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.

48. UNLAWFUL OBLIGATIONS

48.1 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).

48.2 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.

49. FORCE MAJEURE

49.1 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**:

- 49.1.1 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;
- 49.1.2 to the extent that such information is not reasonably available at the time a notice is given pursuant to sub-clause 49.1.1, such information shall be notified by the Affected Party to the other Party as soon as reasonably practicable after it becomes reasonably available; and
- 49.1.3 the Party whose obligations have been suspended pursuant to this Clause 49.1 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.

49.2 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).

50. VARIATION OF THIS AGREEMENT

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

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

51. FDP MODIFICATIONS MUST BE IMPLEMENTED BY THE PARTIES

51.1 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.

51.2 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.

52. SECRETARY OF STATE DIRECTIONS MUST BE IMPLEMENTED BY THE PARTIES

52.1 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).

52.2 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.

53. DISPUTE DETERMINATIONS MUST BE IMPLEMENTED BY THE PARTIES

53.1 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.

53.2 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.

54. 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

55. STRUCTURE OF THE FDP IMPLEMENTATION COMPANY

55.1 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.

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

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

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

55.2.3 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.

55.3 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).

56. ROLE OF THE FDP IMPLEMENTATION COMPANY

56.1 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:

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

56.1.2 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**").

56.2 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:

- 56.2.1 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;
- 56.2.2 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;
- 56.2.3 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;
- 56.2.4 the FDP Implementation Company is not permitted to pledge the FDP Implementation Company's credit for the benefit of others;
- 56.2.5 the FDP Implementation Company is not permitted to borrow money or issue securities other than issuing the Non-Voting Operator Share and the redeemable Independent Director Shares;
- 56.2.6 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 **provided that** nothing in this Agreement shall prevent the FDP Implementation Company from investing in bonds, notes or any other similar instrument; and
- 56.2.7 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.

56.3 Undertaking to ensure compliance with restrictions

The FDP Implementation Company undertakes to comply with the restrictions referred to in Clause 56.2 (*Powers of the FDP Implementation Company to be restricted*).

57. OWNERSHIP OF THE FDP IMPLEMENTATION COMPANY

57.1 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:

57.1.1 the Independent Directors; or

57.1.2 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 2.2 (*Board meeting where insufficient Directors are appointed*) of Section 2 (*Board Governance Arrangements*) of Schedule 17 (*Governance Arrangements*) shall apply.

57.2 Two classes of shares in the FDP Implementation Company

57.2.1 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.

57.2.2 No classes of shares in the FDP Implementation Company may be created other than the Non-Voting Operator Share and the Independent Director Shares.

57.3 Operator must own one Share

57.3.1 The Operator shall own one (1) Non-Voting Operator Share at all times.

57.3.2 The Operator has subscribed for and fully paid up the Non-Voting Operator Share.

57.3.3 The Non-Voting Operator Share shall not be transferable to any other person other than pursuant to Security granted under the Common Security Documents and **provided that** (subject to the terms of any Intercreditor 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) (whether pursuant to a Nuclear Transfer Scheme 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).

57.4 Independent Directors must each own one Share

57.4.1 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.

57.4.2 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.

57.4.3 The Independent Director Shares shall not be transferable to any other person.

57.5 No other shares

57.5.1 The FDP Implementation Company shall allot and issue shares in the FDP Implementation Company in accordance with the requirements of Clause 57.3 (*Operator must own one Share*), Clause 57.4 (*Independent Directors must each own one Share*) and (if applicable) sub-clause 57.1.2 (*Majority of Shares to be independently owned*).

57.5.2 No shares in the FDP Implementation Company shall be allotted or issued other than in accordance with Clause 57.3 (*Operator must own one Share*) and Clause 57.4 (*Independent Directors must each own one Share*) and (if applicable) sub-clause 57.1.2 (*Majority of Shares to be independently owned*).

57.6 Shares of outgoing Independent Directors must be cancelled and redeemed

57.6.1 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 Shareholder ceases to be an Independent Director.

57.6.2 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.

58. THE SHAREHOLDERS' AGREEMENT

58.1 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 Shareholders 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.

58.2 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.

59. 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.

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

60.1 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.

60.2 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

61. FDP IMPLEMENTATION COMPANY TO BE GOVERNED INDEPENDENTLY

61.1 FDP Implementation Company to be governed by Independent Directors

61.1.1 The Board shall be comprised of a majority of Independent Directors, except if sub-clause 61.1.2 applies.

61.1.2 If, at any time, the Board is not comprised of a majority of Independent Directors, then paragraph 2.2 (*Board meeting where insufficient Directors are appointed*) of Section 2 (*Board Governance Arrangements*) of Schedule 17 (*Governance Arrangements*) shall apply.

61.2 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 as soon as reasonably practicable following the date of First Criticality.

61.3 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 61.4 (*Operator may vote only where necessary to protect the FDP*) applies.

61.4 Operator may vote only where necessary to protect the FDP

61.4.1 Any shareholder or Board resolution of the FDP Implementation Company in respect of a Reserved Matter shall be deemed to be a variation of the rights attaching to the Non-Voting Operator Share and shall accordingly be effective only with the consent in writing of the Operator and without such consent shall not be done or caused to be done.

61.4.2 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 per cent. (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).

- 61.4.3 The Operator shall send a notice to the Secretary of State detailing any actions taken pursuant to sub-clause 61.4.2 within ten (10) Business Days of taking such any such action.

61.5 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.

61.6 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 17 (*Governance Arrangements*) at all times after the date of this Agreement.

62. APPOINTMENT OF INDEPENDENT DIRECTORS

62.1 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 62.6 (*Board meetings where insufficient Directors are appointed*) applies.

62.2 Independent Directors must satisfy the Independence Criteria

- 62.2.1 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:

- (a) the Independent Directors are satisfied that the Notifiable Circumstances do not apply in respect of the prospective appointee; or
- (b) 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.

- 62.2.2 It is acknowledged and agreed that prior to the date which is 6 months after the date of this Agreement, the Operator may take responsibility for onboarding and securing the services of the first Independent Directors (which may include the appointment and payment for services and expenses of the relevant Independent Directors directly by the Operator on behalf of or otherwise for the benefit of

the FDP Implementation Company), and by no later than such date the Operator and the FDP Implementation Company shall ensure a transfer of any such assumed responsibilities from the Operator to the FDP Implementation Company ("**Interim Services Arrangements**").

62.3 Articles must specify the Notifiable Circumstance relating to independence

62.3.1 The FDP Implementation Company and the Operator shall procure that the Notifiable Circumstances are set out in the Articles.

62.3.2 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 (**provided that**, unless required by Applicable Laws, any such amendments shall not include amendments which have the effect of excluding directors of HPC FundCo as Independent Directors by virtue of their role as directors of HPC FundCo).

62.4 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).

62.5 FDP Implementation Company to have an Independent Chair

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

62.6 Board meetings where insufficient Directors are appointed

62.6.1 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 Chair; 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 2.2 (*Board meeting where insufficient Directors are appointed*) of Section 2 (*Board Governance Arrangements*) of Schedule 17 (*Governance Arrangements*).

62.6.2 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 Chair at a general meeting in accordance with paragraph 2.2 (*Board meeting where insufficient Directors are appointed*) of Section 2 (*Board Governance Arrangements*) of Schedule 17 (*Governance Arrangements*) as soon as reasonably practicable.

63. REMOVAL OF INDEPENDENT DIRECTORS

63.1 Independent Directors who breach FDP may be removed

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

63.1.1 terminate the appointment of any Independent Director who is determined to have ceased to be independent in accordance with Clause 63.2 (*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

63.1.2 suspend any such Independent Director in accordance with sub-clause 63.3.1, in each case with immediate effect.

63.2 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.

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

63.3.1 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 sub-clause 63.3.3, 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 sub-clause 63.3.2.

63.3.2 Unless sub-clause 63.3.3 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.

63.3.3 If there is an insufficient number of Independent Directors to convene a Board meeting in accordance with sub-clause 63.3.2, then the Operator shall refer the matter for dispute resolution in accordance with the Dispute Resolution Procedure and, despite being suspended under sub-clause 63.3.1, 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 sub-clause 63.3.3 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.

64. ARTICLES MUST BE CONSISTENT WITH GOVERNANCE REQUIREMENTS

64.1 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 61 (*FDP Implementation Company to be governed independently*) to 63 (*Removal of Independent Directors*).

64.2 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 61 (*FDP Implementation Company to be governed independently*) to 63 (*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).

65. 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:

65.1.1 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;

- 65.1.2 specify that the relevant Independent Director 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);
- 65.1.3 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;
- 65.1.4 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;
- 65.1.5 give the FDP Implementation Company the right to terminate and/or suspend his or her appointment in the circumstances mentioned in Clause 63 (*Removal of Independent Directors*); and
- 65.1.6 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.

66. THE FDP BUDGET AND SERVICES AGREEMENT

66.1 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.

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

- 66.2.1 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 making and the execution of Investment Orders (including any transaction fees, brokerage fees, commissions or equivalent, management costs of Investment Execution Managers);
- (e) Miscellaneous Expenses;
- (f) any applicable insurance costs; and
- (g) the annual fee payable to the FDP Implementation Company and an appropriate contingency amount reflecting the level of uncertainty in the expected costs referred to in paragraphs (a) to (f) above.

66.2.2 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.

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

66.3.1 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.

66.3.2 As soon as reasonably practicable after exercising its rights under sub-clause 66.3.1 (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 sub-clause 66.2.2 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.

66.4 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.

66.5 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 65 (*Independent Director Service Agreements to be on Mandatory Terms*) and 66 (*The FDP Budget and Services Agreement*).

66.6 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 65 (*Independent Director Service Agreements to be on Mandatory Terms*) and 66 (*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

67. DETERMINED AMOUNTS

67.1 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 67.2 (*Amount payable on a binding determination if there is insufficient Available Cash*) applies.

67.2 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 67.1 (*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 67.3 (*Further payment will be made if any amount payable on a binding determination is reduced due to lack of Available Cash*) shall apply.

67.3 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 67.1 (*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 67.1 (*Amount payable on a binding determination*) and the amount paid to the Operator pursuant to Clause 67.2 (*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

68. RELEVANT MODIFICATIONS

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

- 68.1.1 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;
- 68.1.2 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 Assets Report) together with the Specified Security was at or above the Required Value; and
- 68.1.3 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.

69. REQUIRED VALUE

The Parties acknowledge that the "required value" for the purposes of Regulation 12 of the FDP Regulations and for the purposes of sub-clause 68.1.2 (*Relevant Modifications*) is ninety per cent. (90%) of the Annual Milestone for the Current Financial Period (as calculated in accordance with Schedule 3 (*Minimum Calculation Contribution Rules*)).

70. 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 Section 46 Agreement and the Energy Act 2008.

SECTION P
WINDING-UP OF THE FDP IMPLEMENTATION COMPANY

71. WINDING-UP OF THE FDP IMPLEMENTATION COMPANY

71.1 Termination of this Agreement

71.1.1 Neither Party shall be entitled to terminate this Agreement, for any reason whatsoever, except in accordance with this Clause 71.1.

71.1.2 The Parties shall cease to have any further obligations to each other under this Agreement, except for those under this Clause 71, Clause 1 (*Definitions and Interpretation*), and Clauses 73 (*Notices*) to 80 (*Miscellaneous*), on the earliest of:

- (a) subject to any Intercreditor 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 Sizewell C; or
- (b) the FDP Implementation Company having disbursed all of the Fund Assets in accordance with this Agreement; or
- (c) the later of:
 - (i) the date that all of the Operator's liabilities under the SFTC have been discharged; or
 - (ii) 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 Intercreditor Agreement shall be deemed to be such an approved FDP); or
- (e) 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.

71.2 Winding-up of the FDP Implementation Company

71.2.1 The Operator shall not petition to wind up the FDP Implementation Company other than in accordance with this Clause 71.2 (*Winding-up of the FDP Implementation Company*).

71.2.2 Where the FDP Implementation Company ceases to have any further obligations to the Operator under this Agreement pursuant to Clause 71.1 (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 Intercreditor 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.

71.2.3 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

72. 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.

73. NOTICES

73.1 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):

73.1.1 must be in writing in the English language;

73.1.2 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);
- (c) by email, **provided that** if sent by email, such notice shall only take effect if it has been actually received (or made available) in readable form; and/or
- (d) any alternative method agreed in writing between the Parties from time to time; and

73.1.3 must be given in accordance with the notice delivery details specified by the other Party from time to time in accordance with this Clause 73 (*Notices*) or by the Secretary of State (if applicable).

73.2 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: [●]

Attention: [●]

The Operator

Address: 25 Copthall Avenue, London, England, EC2R 7BP
Attention: Company Secretary

The Secretary of State

Address: [●]
Attention: [Permanent Secretary]

73.3 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 73.1 (*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 73.3 are no longer appropriate for the service of notice to such Party.

73.4 Receipt of notices

73.4.1 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 sub-clause 73.4.2.

73.4.2 Subject to sub-clause 73.4.3, 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.

73.4.3 A notice that would be otherwise be deemed in accordance with sub-clause 73.4.2 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.

74. CONFIDENTIALITY AND ANNOUNCEMENTS**74.1 Applicable Law**

This Clause 74 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.

74.2 Disclosure of this Agreement

The Parties agree that the provisions of this Agreement shall, subject to Clause 74.3 (*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.

74.3 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 74.2 (*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 74.4 (*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.

74.4 Maintaining confidentiality

Each Party shall:

- 74.4.1 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
- 74.4.2 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 74 (*Confidentiality and announcements*) as if such person were a party to this Agreement.

74.5 Permitted disclosures

Clause 74.3 (*Commercially Sensitive Information*) and 74.4 (*Maintaining confidentiality*) shall not apply to:

- 74.5.1 any disclosure of information to the Secretary of State in connection with any matter relating to this Agreement;
- 74.5.2 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;

- 74.5.3 any disclosure of information to the Authority to the extent such disclosure is required under the SZC Economic Licence;
- 74.5.4 any disclosure of information to the Secretary of State to the extent such disclosure is required under the Nuclear Administration and Statutory Transfers Agreement;
- 74.5.5 any disclosure of information to the Revenue Collection Counterparty to the extent such disclosure is required under the Revenue Collection Contract;
- 74.5.6 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);
- 74.5.7 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 74.5;
- 74.5.8 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;
- 74.5.9 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;
- 74.5.10 any disclosure of information that is already lawfully in the possession of the receiving party, before its disclosure by the disclosing party;
- 74.5.11 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
- 74.5.12 any disclosure of information to the Verifiers in accordance with this Agreement.

74.6 **Third party compliance**

Where disclosure is permitted under Clause 74.5 (*Permitted Disclosures*), other than sub-clauses 74.5.3, 74.5.9, 74.5.10 and 74.5.11 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.

74.7 **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).

74.8 **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 74.8 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.

74.9 **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.

75. **CONVERSION TO ALTERNATIVE CURRENCY**

75.1 **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**");

75.1.1 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;

75.1.2 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

- 75.1.3 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.

75.2 **Currency conversions**

Any conversions from sterling to the Alternative Currency that is made by either Party pursuant to Clause 75.1 (*Adoption of Alternative Currency*) shall be at the relevant conversion rate provided for by English law for the purposes of adopting the Alternative Currency.

76. **CPI**

76.1 **Withdrawal of index**

- 76.1.1 If the index referred to in limb (a) of the definition of CPI or any subsequent Replacement Inflation Index ceases to be published by the Office for National Statistics (a "**CPI 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**".

- 76.1.2 On a CPI 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 CPI Index Change Event (the "**Specified Adjustments**") and the necessary payments and repayments shall be made between the Parties together with interest at the Short Term Interest Rate for the Financial Period during which the original payment fell due (which shall be apportioned appropriately to give a daily rate).

76.2 **Reference Date Change**

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

76.3 **Reference to the Independent Expert Referral Procedure on CPI**

- 76.3.1 If any dispute or difference shall arise between the Parties under or in respect of Clause 76 (*CPI*) (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 76.1 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.
- 76.3.2 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.

77. INDEX CHANGE EVENT

77.1 Withdrawal of Reference Index

77.1.1 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**".

77.1.2 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**").

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

77.2.1 If any dispute or difference shall arise between the Parties under or in respect of this Clause 77 (*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.

77.2.2 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.

78. CREDIT RATING CHANGE EVENT

78.1 Withdrawal of Credit Rating Criteria

78.1.1 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**".

- 78.1.2 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**").

78.2 **Reference to the Independent Expert Referral Procedure of Credit Rating Criteria**

- 78.2.1 If any dispute or difference shall arise between the Parties under or in respect of this Clause 78 (*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.
- 78.2.2 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.

79. **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 Short Term Interest Rate for the Financial Period during which the amount becomes due (which shall be apportioned appropriately to give a daily rate) or, if the Short Term Interest Rate is negative, then zero (0).

80. **MISCELLANEOUS**

80.1 **Assignment**

Neither Party may Deal with the benefit of this Agreement or its performance under this Agreement, except (i) in accordance with any Intercreditor 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 80.1 shall be ineffective.

80.2 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.

80.3 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:

80.3.1 the Secretary of State: (i) under Clause 27 (*Entitlement to take Security Trigger Event Action*); (ii) under Clause 63.3 (*Operator has the right to request removal of an Independent Director who breaches FDP*); or (iii) 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

80.3.2 in relation to Clause 46 (*Material breach shall be notified to the Secretary of State*), sub-clause 74.5.3 (*Permitted disclosures*) and paragraph 6 (*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.

80.4 Entire Agreement

80.4.1 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 76 (*CPI*) to 77.2.2 (*Reference to the Independent Expert Referral Procedure of a Reference Index*), the DWMP and the Section 46 Agreement, the SF Transfer Contract, the ILW Transfer Contract, any Intercreditor Agreement which is entered into from time to time, the FDP Security Documents, the Shareholders' Agreement, the FDP Budget and Services Agreement, the Articles and the Nuclear Administration and Statutory Transfers Agreement (but agree that those documents, other than the DWMP, are not incorporated as part of the FDP).

80.4.2 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).

80.5 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.

80.6 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).

80.7 Governing Law and Jurisdiction

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

80.7.2 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 19 (*Claims, Disputes and Arbitration*), except as otherwise specified in this Agreement as being subject to Schedule 18 (*Independent Expert Referral Procedure*), Schedule 18A (*Independent Investment Expert Referral Procedure*) or Schedule 18B (*Annual Work Plan and Budget Independent Expert Referral 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
SIZEWELL C LIMITED**

acting by

.....
(Name of authorised director)

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

in the presence of

Witness's signature: Name:

Name:

Address:

.....

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

acting by

.....
(Name of authorised director)

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

in the presence of

Witness's signature: Name:

.....

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 PATH

Explanatory Note: Where any adjustments are required to any data item to be in monetary terms as of a required date, this should be Indexed (with no averaging, and where feasible, no lag (difference) between the month of the required date and the month reference used for the Indexation.

1. Funding Path and Base Case Contributions

- 1.1 The FDP Implementation Company shall revise the Funding Path at each Quinquennial Review in accordance with Section 1 (*Quinquennial Review Process*) of Schedule 9 (*Quinquennial Review Programme*).

1.2 Calculation of End of Generation Target

The FDP Implementation Company shall calculate the End of Generation Target in accordance with paragraph 2.1 (*End of Generation Target*) of Schedule 3 (*Minimum Contribution Calculation Rules*).

1.3 Calculation of Funding Path Starting Asset Value

Explanatory note: the Funding Path Starting Asset Value is the projected asset value as at the current QQR Reference Date taken from the previous Funding Path and expressed in monetary terms as at the QQR Reference Date.

The FDP Implementation Company shall calculate the Funding Path Starting Asset Value as at the first day of the Quinquennial Review Year, which shall be:

- 1.3.1 for the purposes of the first Quinquennial Review, zero (0); and
- 1.3.3 for the purposes of each subsequent Quinquennial Review, the Annual Milestone as at the last day of the Quinquennial Reporting Period, Indexed from the date on which the Funding Path most recently in effect became effective to the date on which the revised Funding Path comes into effect.

1.4 Calculate the Base Case Contributions

Explanatory Note: the Base Contributions are the set of level annual contributions expressed in monetary terms as at the date the new Funding Path comes into effect, which, when paid into the Fund, are such that the Fund is projected to accumulate to the End of Generation Target. It is assumed that the Projected Inflation Rate will be a single rate assessed to be appropriate over a suitable long term period but in exceptional circumstances this may change to a single rate annualised equivalent.

- 1.4.1 The FDP Implementation Company shall project the Fund Assets from the first day of the Quinquennial Review Year to FYE End of Generation. This projection should assume that the asset returns are:

- (a) in respect of the Growth Portfolio, the Growth Rate less the Projected Inflation Rate;

- (b) in respect of the De-Risking Period, such combination of the Growth Rate and the LTDR, less the Projected Inflation Rate as the FDP Implementation Company considers appropriate; and
 - (c) in respect of the Long Term Portfolio, the LTDR less the Projected Inflation Rate.
- 1.4.2 During a Quinquennial Review Year, the projection should allow for the Base Case Contribution to be received to be the Base Case Contribution as set out in the most recent Contributions Notice.
- 1.4.3 When preparing the Funding Path for determination the FDP Implementation Company shall:
 - (a) calculate the Base Case Contributions such that:
 - (i) the projected Fund Assets Value as at the first day of the revised Funding Path is equal to the Funding Path Starting Asset Value;
 - (ii) during the Primary Funding Period, the amount of each Base Case Contribution is equal to the amount of each other Base Case Contribution set out in the Funding Path when expressed in real monetary terms (for the avoidance of doubt, without uplifting for Indexation) after any pro-rata adjustment for any Base Case Contributions related to any Annual Contribution Period in the Funding Path which is not equal to 12 months, and with the exception of the Base Case Contribution in the Quinquennial Review Year referred to in paragraph 1.4.2 above;
 - (iii) the projected Fund Assets Value as at FYE End of Primary Funding Period is equal to the End of Primary Funding Period Target;
 - (iv) during the Secondary Funding Period, the projected Fund Assets Value as at FYE End of Secondary Funding Period is equal to the then applicable estimate of the End of Generation Target; and
 - (v) when paid into the Fund from the Financial Period following the Quinquennial Review Year until FYE End of Primary Funding Period, and remain invested to FYE End of Generation, the expected Fund Assets at FYE End of Generation are equal to the End of Generation Target; and
 - (b) assume that:
 - (i) the Annual Contributions will be received on a monthly basis as Monthly Contributions; and
 - (ii) returns will be calculated on an annual basis and assumed to be constant in each Financial Period.

- 1.5 Once the Funding Path has been determined in accordance with this Schedule 2 (*Funding Path*) it shall be adopted as the Funding Path for the remainder of the Primary Funding Period and Secondary Funding Period until a revised Funding Path is calculated in accordance with Schedule 9 (*Quinquennial Review Programme*).

SCHEDULE 3

MINIMUM CONTRIBUTION CALCULATION RULES

Explanatory note: The base case is that the Annual Milestones will be achieved in each Financial Period in accordance with the Funding Path prepared pursuant to Schedule 2 provided that the Key Assumptions are realised in the future and allowing for the Base Case Contributions to be paid. If any Deficits or Surpluses arise, then they will be corrected (or spread) over a period which is the lesser of (i) the period commencing on the first day of the Financial Period following the determination of the applicable Correction Contribution and ending on the Financial Year End of the ninth (9th) Financial Period thereafter; and (ii) the number of years remaining until the end of the Secondary Funding Period. As set out at Clause 2.4, there is potential of delayed Operator receipts giving rise to delays to the payment of Contributions by the Operator to the FDP Implementation Company. In this case, the delayed payments should be made promptly once the Operator receives the relevant funds and the impact of any delays on the funding path will be picked up on the Contribution adjustment processes.

SECTION 1: Calculation of the Next Annual Contribution and the associated Monthly Contributions

1.1 Minimum Contribution Calculation

The Annual Contribution that will be due from the Operator in the course of the Annual Contribution Period in the Next Financial Period shall be:

- 1.1.1 the Base Case Contribution for that Annual Contribution Period, calculated in accordance with paragraph 1.3 of Section 2; and
- 1.1.2 plus (if there is a Deficit) and minus (if there is a Surplus) the Correction Contribution for that Annual Contribution Period (calculated in accordance with Section 3).

If the calculation performed in accordance with paragraph 1.1.1 and 1.1.2 results in a negative number, the Annual Contribution that will be due from the Operator to the FDP Implementation Company in the next Annual Contribution Period shall be zero (0).

1.2 Monthly Contributions for a relevant Annual Contribution Period

The Monthly Contribution payable on each Monthly Contribution Date for the Next Financial Period shall be the amount which is the Annual Contribution for such period (for the avoidance of doubt, in respect of the First Annual Contribution Period only, after deducting the First Criticality Payment against the relevant Annual Contribution) divided by the Number of Payment Months in such period.

"Number of Payment Months" means the number of scheduled Monthly Contribution Dates from the start of the Annual Contribution Period.

SECTION 2: Calculation of Base Case Contributions

Explanatory note: The Funding Path is 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.

The Funding Path is 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). Therefore, 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.

1.3 Base Case Contribution Calculation

- 1.3.1 The Base Case Contributions (for the avoidance of doubt, excluding those Contributions deriving from the First Contributions Notice) shall be derived from the Funding Path in accordance with Schedule 2 (*Funding Path*).

SECTION 3: Calculation of the Correction Contribution

Explanatory note: The basic position is that if a surplus or deficit arises when it comes to a Quinquennial Review, then it will be corrected going forward over the period which is the shorter of (i) nine (9) years; and (ii) the number of years remaining until the end of the Secondary Funding Period, beginning on the first day of the Financial Period following the Financial Period in which such deficit or surplus was determined.

The total correction amount is calculated based on the position of the Fund as at the last day of the Previous Financial Period for the relevant Quinquennial Review. 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.

1.4 Correction Contribution Calculation

At each Quinquennial Review during the Primary Funding Period the FDP Implementation Company shall determine the Correction Contribution Calculation to be applied on each Annual Contribution in accordance with the following process:

- 1.4.1 determine the Actual Fund Assets as at the QQR Reference Date;
- 1.4.2 determine the value of the Fund Assets against the expected Fund Assets at such time by reference to the applicable Annual Milestones showing in the relevant Funding Path, Indexed to be in monetary terms as at the QQR Reference Date;
- 1.4.3 consider any Provisional Contributions Notices and any subsequent updated Contributions Notices covering the equivalent Annual Contribution Period. For the avoidance of doubt, without double counting any shortfalls or surplus determined as part of paragraph 1.4.2;
- 1.4.4 determine the first and last dates in the applicable Spreading Period;
- 1.4.5 determine the End of Spreading Period Funding Target; and
- 1.4.6 calculate the Correction Contributions as follows:
 - (a) starting from the Actual Fund Assets as at the QQR Reference Date, project the Fund Assets over the Spreading Period, making the following assumptions:

- (i) the asset returns are:
 - (A) in respect of the Growth Portfolio, the Growth Rate less the Projected Inflation Rate;
 - (B) in respect of the De-Risking Period, such combination of the Growth Rate and the LTDR, less the Projected Inflation Rate as the FDP Implementation Company considers appropriate; and
 - (C) in respect of the Long Term Portfolio, the LTDR less the Projected Inflation Rate;
- (ii) for the Quinquennial Review Year, the Annual Contribution is the amount set out in the most recent Contributions Notice; and
- (iii) over the Spreading Period, the Base Case Contributions are paid into the Fund in accordance with the revised Funding Path;
- (b) over the Spreading Period, determine the additional level of Correction Contributions required such that the projected value of the Fund Assets is equal to the End of Spreading Period Funding Target. When calculating the Correction Contributions, the value shall be assumed to be invested from the date on which they are paid and accrue investment returns (such assumed returns being at rates which are equal to those applied during the period between the date on which a Correction Contribution is paid and FYE End of Secondary Funding Period (as applicable) as set out in Schedule 2, paragraph 1.4.1 and as determined in accordance with the most recent Quinquennial Review); and
- (c) where a set of Correction Contributions have been determined as part of a previous Quinquennial Review pursuant to the 9 year Spreading Period, such Correction Contributions shall be superseded and replaced pursuant to the outcomes produced by the process in this paragraph 1.4.

1.5 In each Quinquennial Review Year, the Annual Contributions for each of the five (5) Financial Periods in the following Quinquennial Reporting Period shall be determined pursuant to the relevant Quinquennial Review. At each Annual Review, the FDP Implementation Company shall update the forthcoming Annual Contribution for the relevant Financial Period to account for CPI adjustments from the date of the Quinquennial Review determination to the date of the Annual Review determination.

SECTION 4: Targets

2. OVERALL END OF GENERATION TARGET AND END OF PRIMARY FUNDING PERIOD TARGET

2.1 End of Generation Target

The End of Generation Target will be calculated by adding:

- 2.1.1 one hundred and twenty-five per cent. (125%) of the End of Generation Decommissioning Target;
- 2.1.2 one hundred and twenty-five per cent. (125%) of the End of Generation Management Target;
- 2.1.3 the End of Generation ILW Disposal Target; and
- 2.1.4 the End of Generation Spent Fuel Disposal Target.

2.2 End of Primary Funding Period Target

The End of Primary Funding Period Target will be calculated by adding:

- 2.2.1 one hundred and twenty-five per cent. (125%) of the End of Primary Funding Period Decommissioning Target;
- 2.2.2 one hundred and twenty-five per cent. (125%) of the End of Primary Funding Period Management Target;
- 2.2.3 the End of Primary Funding Period ILW Disposal Target; and
- 2.2.4 the End of Primary Funding Period Spent Fuel Disposal Target.

3. 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.

3.1 End of Generation Decommissioning Target

Explanatory note: This is the net present value of the DWMP cost cashflows allowing for the Nuclear Inflation Premium and discounted back to FYE End of Secondary Funding Period at the Long Term Discount Rate (in monetary terms as of the QQR date).

The End of Generation Decommissioning Target is the sum of:

- 3.1.1 the cash flows from the Draft DWMP which relate to the Costs of Decommissioning other than Pre Closure Planning Costs, inflated on an annual compound basis at one (1) plus the Nuclear Inflation Premium:
 - (a) from the first (1st) day of the Quinquennial Review Year; to

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

and discounted on an annual compound basis at one (1) plus the Long Term Discount Rate (expressed as a decimal) less the Projected Inflation Rate:

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

- (d) to FYE End of Generation; plus

3.1.2 the cash flows from the Draft DWMP which relate to the Pre Closure Planning Costs, inflated on an annual compound basis at one (1) plus the Nuclear Inflation Premium:

- (a) from the first (1st) day of the Quinquennial Review Year; to

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

and accumulated on an annual compound basis at one (1) plus the assumed asset return determined consistently with paragraph 1.4.1 of Schedule 2 (*Funding Path*) (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); and

- (b) to FYE End of Generation; plus

3.1.3 an amount representing the present value likely Tax liabilities of the FDP Implementation Company and / or the Operator calculated pursuant to any Tax Assessment or Detailed Tax Assessment (as applicable).

3.2 End of Primary Funding Period Decommissioning Target

The End of Primary Funding Period Decommissioning Target is the End of Generation Decommissioning Target, discounted on an annual compound basis at rates which are equal to those applied during the period between FYE End of Primary Funding Period and FYE End of Secondary Funding Period as set out in Schedule 2, paragraph 1.4.1 as determined in accordance with the most recent Quinquennial Review:

3.2.1 from FYE End of Generation;

3.2.2 to the last day of the Primary Funding Period.

4. WASTE AND SPENT FUEL MANAGEMENT TARGETS

4.1 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):

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

4.1.2 to the SF Transfer Date.

4.2 End of Generation Management Target

The End of Generation Management Target is the Transfer Date Management Target, inflated by the Nuclear Inflation Premium from the first (1st) day of the Quinquennial Review Year to the SF Transfer Date and discounted on an annual compound basis at one (1) plus the Long Term Discount Rate (expressed as a decimal) less the Projected Inflation Rate:

4.2.1 from the SF Transfer Date;

4.2.2 to FYE End of Generation.

4.3 End of Primary Funding Period Management Target

The End of Primary Funding Period 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 rates which are equal to those applied during the period between FYE End of Primary Funding Period and FYE End of Secondary Funding Period as set out in Schedule 2, paragraph 1.4.1 as determined in accordance with the most recent Quinquennial Review:

4.3.1 from FYE End of Generation;

4.3.2 to the last day of the Primary Funding Period.

4.4 Additional Storage Amount

The Additional Storage Amount is twenty (20) 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 4.4 (*Additional Storage Amount*).

5. ILW DISPOSAL TARGET

5.1 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.

5.2 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) less the Projected Inflation Rate:

5.2.1 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);

5.2.2 to FYE End of Generation.

5.3 End of Primary Funding Period ILW Disposal Target

The End of Primary Funding Period ILW Disposal Target is the amount of the End of Generation ILW Disposal Target, discounted on an annual compound basis at rates which are equal to those applied during the period between FYE End of Primary Funding Period and FYE End of Secondary Funding Period as set out in Schedule 2, paragraph 1.4.1 as determined in accordance with the most recent Quinquennial Review:

5.3.1 from FYE End of Generation;

5.3.2 to the last day of the Primary Funding Period.

6. SPENT FUEL DISPOSAL TARGET

6.1 SF Transfer Payment

The SF Transfer Payment is the:

6.1.1 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

6.1.2 (for each relevant amount of projected tU as in paragraph 6.1.1 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.

6.2 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) less the Projected Inflation Rate:

6.2.1 from the SF Transfer Date;

6.2.2 to FYE End of Generation.

6.3 End of Primary Funding Period Spent Fuel Disposal Target

The End of Primary Funding Period Spent Fuel Disposal Target is the SF Transfer Payment, at the SF Transfer Date multiplied by fifty five sixtieths ($55/60^{\text{ths}}$), the result of which shall then be discounted on an annual compound basis at rates which are equal to those applied during the period between FYE End of Primary Funding Period and FYE End of Secondary Funding Period as set out in Schedule 2, paragraph 1.4.1 as determined in accordance with the most recent Quinquennial Review:

6.3.1 from the SF Transfer Date;

6.3.2 to the last day of the Primary Funding Period.

SCHEDULE 4 PAYMENT PROCEDURES

SECTION 1: Contributions Payment Procedures

1. FDP CONTRIBUTIONS AND THE APPLICABLE CONTRIBUTION DATES

- 1.1.1 The Operator shall (or any other person may, voluntarily and in accordance with Clause 3 (*Any person may make contributions*)) ensure that the value of the First Criticality Payment and each subsequent Monthly Contribution is paid to the FDP Implementation Company on or prior to the applicable payment date in accordance with Clause 2 (*First Criticality Payment and Payment of Contributions*).
- 1.1.2 The Operator shall (or any other person may, voluntarily and in accordance with Clause 3 (*Any person may make contributions*)) ensure that the value of each amount scheduled to be paid in accordance with Clause 2 (*First Criticality Payment and Payment of Contributions*), is paid to the FDP Implementation Company on or prior to the date specified in Clause 2 (*First Criticality Payment and Payment of Contributions*).
- 1.1.3 The payment obligations specified above at paragraphs 1.1.1 and 1.1.2 shall apply unless an Intercreditor Agreement is in force and a Security Trigger Event has occurred and is continuing, in which case such relevant amounts shall become payable in accordance with that Intercreditor 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 sub-clauses 40.2.1 (FDP Implementation Company will calculate the Annual DTM Payment due to the Operator).

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

The FDP Implementation Company shall issue to the Operator such Investment Orders as are required (if any) in order to cause the FDP Implementation Company to have

sufficient Available Cash to pay the Annual DTM Payment or DTM Overrun Payment due to the Operator on the date it falls due. The FDP Implementation Company shall issue such Investment Orders:

- 4.1.1 at least twenty (20) Business Days before the relevant Annual DTM Payment Date in the case of any Annual DTM Payment; or
- 4.1.2 at least five (5) Business Days before the DTM Overrun Payment Date in the case of any DTM Overrun Payment.

5. DISBURSEMENTS TO BE MADE IN CLEARED FUNDS

The FDP Implementation Company shall make all 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).

6. DESIGNATED OPERATOR DTM CONTROL ACCOUNT

- 6.1.1 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.
- 6.1.2 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.
- 6.1.3 The Operator may only make a withdrawal from the Operator DTM Control Account to make payments of (i) Allowable Costs; and/or (ii) otherwise to the extent permitted in accordance with the terms of this Agreement, Disallowable Costs.

SCHEDULE 5 OPERATOR BUSINESS

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 Intercreditor Agreement.

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 aim of this Schedule 7 is to provide a framework for the implementation of the Investment Strategy, pursuant to which the FDP Implementation Company will invest Contributions in a manner which achieves full funding by FYE End of Generation. The principles set out in paragraph 1.3 below are more particularly set out in the paper dated 23 April 2025 prepared by the Government Actuary's Department. These principles and timing periods represent what has been agreed to be the appropriate balance between risk and expected returns in relation to the Investment Strategy, seeking to minimise the overall cost of FDP payments for consumers, while taking into account all relevant factors including the extreme long term nature of the liabilities, in line with the overall aim of securing that prudent provision is made for the Technical Matters (including the financing of the Designated Technical Matters).

1. INVESTMENT STRATEGY

- 1.1 The Initial Investment Strategy shall be prepared by the FDP Implementation Company in accordance with Clause 4.1.2.
- 1.2 The FDP Implementation Company shall prepare an Investment Strategy as part of each Quinquennial Review in accordance with this Schedule 7, which shall be implemented in accordance with Section 1 (*Quinquennial Review Process*) of Schedule 9 (*Quinquennial Review Programme*) remain in effect until replaced in accordance with a subsequent Quinquennial Review. For the avoidance of doubt, each Investment Strategy shall be designed to apply for the remainder of the Primary Funding Period, the Secondary Funding Period and the Disbursements Period, **provided that** an Investment Strategy may be replaced as part of an ongoing Quinquennial Review and/or during a Quinquennial Review Period where, in extraordinary market conditions, the FDP Implementation Company reasonably considers that such an update is necessary in order to ensure that the Investment Strategy remains compliant with the Investment Rules and any updated Investment Strategy shall be determined in accordance with the process set out in Schedule 9 (*Quinquennial Review Programme*).
- 1.3 The FDP Implementation Company shall:
 - 1.3.1 make investments in a suitably diverse portfolio of assets which is appropriate to the nature and term of the liabilities;
 - 1.3.2 in determining an Investment Strategy and any associated Investment Orders, ensure that:
 - (a) during the period from First Criticality until FYE EPFP – 2, the Investment Strategy should adhere to the principles of being "risk-on, return-seeking", taking long-term views and seeking commensurately higher levels of expected return than traditional, low-risk investments ("**Growth Portfolio**");
 - (b)

- (i) during the period from FYE EPFP + 3 until FYE End of Secondary Funding Period, the Investment Strategy should reflect a more balanced split between the Growth Portfolio and the Final Long Term Portfolio (as defined below) ("**Initial Long Term Portfolio**"); and
- (ii) at the SF Transfer Date, the Investment Strategy should be a de-risked and lower returning portfolio, with allocation to cash and high quality fixed income or similar low-risk investments with low risk of default ("**Final Long Term Portfolio**"),

(together, the "**Long Term Portfolio**");

- (c) during the period from FYE EPFP – 2 until FYE EPFP + 3 (the "**De-Risking Period**"), the Investment Strategy should de-risk, lowering its risk profile from that set under the Growth Portfolio to that set under the Initial Long Term Portfolio; and
- (d) during the period from FYE End of Secondary Funding Period until the SF Transfer Date the Investment Strategy should de-risk, lowering its risk profile from that set under the Initial Long Term Portfolio to that set under the Final Long Term Portfolio,

provided that, it is acknowledged that the FDP Implementation Company, acting reasonably, may elect to de-risk (i) earlier (but not later) than FYE EPFP – 2 to the extent it is satisfied that the Fund Assets are on track to meet the End of Generation Target earlier than expected, as against the Funding Path; and/or (ii) at an accelerated rate over the period from FYE End of Secondary Funding Period to the SF Transfer Date to the extent it is satisfied that the Fund Assets are on track to meet the remaining liabilities as they fall due;

1.3.3 in developing the Investment Strategy, have regard to:

- (a) investments in entities that may provide some current or future benefit to the economy of the United Kingdom and which the FDP Implementation Company reasonably believes will support and/or generate new or existing employment opportunities and / or economic growth in the United Kingdom;
- (b) responsible investments selected to positively contribute to environmental or social objectives, including mitigating the systemic risks associated with climate change, allocating capital to projects which deliver real-world decarbonisation, a just transition to a low-carbon economy and protect the wider environment against the degradation of nature and biodiversity loss; and
- (c) acting (to the extent reasonably practicable) as a responsible steward of the assets in which it is invested, such as having reference to the principles such as those set out in the UK Stewardship Code and industry best practice with respect to investment stewardship,

provided that the FDP Implementation Company shall be entitled to conclude (acting reasonably) that in order to maximise the likelihood of achieving the target Fund Assets Value in a way that provides the best value use of the Contributions and to comply with its obligation under Clause 8 (*FDP Implementation Company Objective*) such considerations specified in this paragraph 1.3.3 may be disregarded in any given Investment Strategy period;

1.3.4 in developing the Investment Strategy, demonstrate how the Investment Strategy is appropriate in light of:

- (a) from the start of the Initial Long Term Portfolio:
 - (i) liquidity requirements for meeting the DTM Costs;
 - (ii) the outstanding average term of the liabilities (taking into account short and longer term peaks in the Operator's liabilities in respect of DTM Costs);
 - (iii) best practice for funding of long-term liabilities from a closed-end fund;
 - (iv) any relevant Tax costs of the FDP Implementation Company and the Operator and the risk that Tax liabilities may change;
- (b) price inflation risks, including the risk of differential price inflation between specific DTM Cost liabilities for the Operator and general price inflation indices;
- (c) investment concentration risk;
- (d) counterparty risk;
- (e) currency risk; and
- (f) such other risk factors as the FDP Implementation Company considers appropriate to demonstrate; and

1.3.5 in developing the Investment Strategy, ensure that the Investment Strategy includes details of:

- (a) performance measurement criteria and any relevant benchmarks;
- (b) a policy on exercising any rights (including voting rights) attached to the investments to be made in accordance with the relevant Investment Strategy; and
- (c) the mandates of any of the FDP Implementation Company's professional advisers and the Investment Execution Manager, including in respect of the fee arrangements and liability structures of such mandates.

2. PROHIBITED PRACTICES

In respect of the setting of the Investment Strategy and / or making Investment Orders, the FDP Implementation Company shall not carry out any of the following:

- 2.1.1 subject to paragraph 3.2 below, direct investment in the shares or debt instruments of any Investment Execution Manager, the Verifiers or any of their respective affiliates;
- 2.1.2 subject to paragraph 3.2 below, direct investment in the shares or debt instruments of, or Real Estate or other asset owned or occupied by, the Operator, an Affiliate or an Affiliate of the Operator;
- 2.1.3 direct investment in the shares or debt instruments (including any debt instruments which would otherwise be permitted as a Permitted Debt Transaction) of companies where their principal business activity relates to nuclear power generation;
- 2.1.4 Underwriting and sub-Underwriting of transactions;
- 2.1.5 making any loan or advance to any person where such loan or advance does not satisfy the Permitted Debt Transaction requirements;
- 2.1.6 pledging or providing security over the Fund Assets (except that the creation of any security which is required by Applicable Law is permitted);
- 2.1.7 derivative transactions (except where the purpose of such transaction is to contribute to a reduction of risks or to facilitate efficient portfolio management); and

Explanatory note: "efficient portfolio management" refers to scenarios where the purpose of using a derivative is to undertake activities such as preparing the portfolio for anticipated re-investments or creating risk and return exposures in an efficient way. The use of derivatives should not result in a material change in the Fund's risk profile or introduce any material additional risks beyond those anticipated in the Investment Strategy (with the exception of any market and counterparty credit risk inherent in the derivative itself). It would not be considered efficient portfolio management if, as a result of the use of derivatives, the investment portfolio was to be exposed to materially different types, or material changes in the level of risk exposures than those foreseen in the Investment Strategy. Speculative activities would not be considered effective portfolio management, which could include (but not limited to) significant increases in leverage or naked short sales which could endanger the quality, security or liquidity of the overall portfolio.

- 2.1.8 any other practices materially similar to, and intended to circumvent or avoid, the above prohibitions.

3. PERMITTED INVESTMENTS

- 3.1 Subject to paragraphs 1.3 (*Investment Strategy*) and 2 (*Prohibited Practices*) the FDP Implementation Company may only undertake Permitted Investments. Permitted

Investments are considered to be all other investments that are not expressly prohibited and which are consistent with the Investment Strategy.

- 3.2 For the avoidance of doubt, nothing in this Agreement shall be interpreted so as to prevent the FDP Implementation Company from making Investment Orders in respect of funds managed by an Affiliate of the Operator solely by reason of the relevant Affiliate's investment in the Operator.

4. INVESTMENT ADVICE

For the purposes of compliance with paragraph 1.3 (*Investment Strategy*) under Clause 15 (*Ongoing compliance with the Investment Rules*) the FDP Implementation Company must take professional advice on the Investment Strategy.

5. MISCELLANEOUS

5.1 Investor Reporting

5.1.1 The FDP Implementation Company shall maintain a risk register setting out the risks which the FDP Implementation Company has considered in developing the Investment Strategy in accordance with this Agreement.

5.1.2 The FDP Implementation Company shall comply with the reporting requirements set out in paragraph 1.7 of Schedule 12 (*Requirements for the Annual Fund Assets Report*) when preparing the Annual Fund Assets Report.

6. MODIFICATION TO THE INVESTMENT RULES

If the Investment Rules are modified following a Proposed Modification pursuant to the terms of the Section 46 Agreement, sub-clause 15.1 (*FDP Implementation Company 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: SIGNIFICANT EVENT ASSESSMENT

1.1 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.

1.2 Independent Technical Verifier confirms Significant Event Assessment

1.2.1 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.

1.2.2 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 2: 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 FDP Implementation Company (with a copy provided to the Operator) within twenty (20) Business Days of the end of each Annual Reporting Period.

STAGE 3: REVIEW OF DWMP

1.3 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):

- 1.3.1 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;
- 1.3.2 in the Disbursements Period, to take into account the removal of the liabilities that have been discharged from the DWMP; and
- 1.3.3 in the Disbursements Period, propose any amendments to the cost estimates after paragraphs 1.3.1 and 1.3.2 above have been applied that it considers (acting reasonably) are necessary.

1.4 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 1.2.1, 1.2.2, 1.2.3, 1.3 and 1.5 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.

1.5 Operator shall submit the Draft DWMP

The Operator shall send a copy of the Draft DWMP, updated in accordance with paragraphs 1.3 (*DWMP shall be updated to reflect the Indexation and discharge of liabilities*) and 1.4 (*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.

1.6 Technical Verification will be performed

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

- 1.6.1 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;
- 1.6.2 assess whether the Operator has correctly Indexed the cost estimates set out in the Draft DWMP; and
- 1.6.3 submit a Technical Verification Report in the form required for Annual Review to the Operator and the FDP Implementation Company.

STAGE 4: FINANCIAL VERIFICATION

1.7 Specified obligations

In addition to the obligation described in paragraph 1.13 (*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:

- 1.7.1 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 9.2; and
- 1.7.2 the obligation of the FDP Implementation Company to calculate a new Draft Contributions Notice in accordance with paragraph 1.9 of this Annual Review Process.

1.8 Financial Verification will be performed

Within thirty (30) Business Days of the end of the Annual Reporting Period, the Independent Financial Verifier shall:

- 1.8.1 assess whether the Fund Assets as a whole were consistent with the Investment Rules and the Investment Strategy as at the last day of the Annual Reporting Period; and
- 1.8.2 submit a Financial Verification Report to the Operator and the FDP Implementation Company.

STAGE 5: REVIEW OF CONTRIBUTIONS NOTICE

1.9 Draft Contributions Notice

- 1.9.1 The FDP Implementation Company shall calculate a new Draft Contributions Notice.
- 1.9.2 This shall be set by reference to the Annual Contributions determined for such period as part of the previous Quinquennial Review and updated in accordance with paragraphs 1.9.3 to 1.9.5 below.
- 1.9.3 To the extent a Contributions Notice submitted to the Authority as part of the last Annual Review or Quinquennial Review to occur, as applicable, was a Provisional Contributions Notice in accordance with sub-clause 4.4.3, then:
- (a) the FDP Implementation Company shall calculate the difference between the relevant Provisional Contributions Notice and the Contributions Notice subsequently determined for the equivalent Annual Contributions Period;
 - (b) the difference (calculated in the value as at the date of such subsequent determination referred to in paragraph (a)) shall then be Indexed to reflect the latest CPI data from the date of such determination and the date of the updated Draft Contributions Notice; and
 - (c) the difference, Indexed in accordance with paragraph (b) above, shall be added or deducted (as applicable) to the draft Annual Contribution set out in Draft Contributions Notice,
- in each case, the data deriving from (a) to (c) shall be specified and itemised in the Draft Contributions Notice. For the avoidance doubt, the time for paying any such delta is subject to Clause 2.5 and may be dependent upon the K-factor process under the SZC Economic Licence.
- 1.9.4 Without double counting any updates required in accordance with paragraph 1.9.3 above (if applicable), the Annual Contributions set out in the Draft Contributions Notice shall be Indexed to reflect the latest CPI data from the date of such determination in accordance with the Quinquennial Review and the date of the updated Draft Contributions Notice. The Draft Contributions Notice shall specify and itemise the Indexation applied in accordance with this paragraph 1.9.4.
- 1.9.5 Each Draft Contributions Notice shall set out details of the Monthly Contributions applicable over the forthcoming Annual Contribution Period.

1.10 Draft Contributions Notice to be submitted

Save in respect of any Provisional Contributions Notice, the FDP Implementation Company shall send a copy of the Draft Contributions Notice to the Operator 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:

1.10.1 the Financial Verification Report has been given pursuant to paragraph 1.8.2;
and

1.10.2 the Draft DWMP has been produced and verified or determined (as applicable).

1.11 FDP Implementation Company calculations will be verified

Save in respect of any Provisional Contributions Notice, within fifteen (15) Business Days of receipt of the Draft Contributions Notice, the Independent Financial Verifier shall:

1.11.1 verify that the Draft Contributions Notice has been calculated by the FDP Implementation Company in accordance with this Schedule 8 (*Annual Review Programme*); and

1.11.2 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 Annual Reporting Period in order to prepare the Annual Operator Directors' Certificate.

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

STAGE 7: OPERATOR FORMULATES ANNUAL REPORT

1.12 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.

1.13 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 1.12 (*Formulation of Annual Report*) of this Annual Review Process.

1.14 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 1.12 (*Formulation of Annual Report*).

STAGE 8: 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:

- 1.15 the Annual Report;
- 1.16 the Annual Fund Assets Report;
- 1.17 the Independent Technical Verifier's response to the Significant Event Assessment Notice (or confirmation from the Operator that no response was received);
- 1.18 the Technical Verification Report;
- 1.19 the Financial Verification Report;
- 1.20 the Calculation Confirmation Report;
- 1.21 any binding determination made in the course of the Annual Review;
- 1.22 the Modification Verification Report; and

1.23 a notice confirming:

- 1.23.1 the modifications to the DWMP that are contained in the Draft DWMP and which constitute Exempt Modifications;
- 1.23.2 the particular regulation under the FDP Regulations which applies to make each of those proposed modifications an Exempt Modification;
- 1.23.3 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 1.28.3 is what is intended under Regulation 14(2)(d).

- 1.23.4 the amount of the change in the costs estimates compared to the DWMP that is attributable to each Exempt Modification;
- 1.23.5 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
- 1.23.6 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

2. ANNUAL REPORT

The Annual Report shall comprise:

- 2.1.1 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;
- 2.1.2 a statement of the Annual Milestone for the Next Financial Period as set out in the Draft Contributions Notice;
- 2.1.3 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);
- 2.1.4 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;
- 2.1.5 in an Annual Review prior to the end of the Primary Funding Period, a statement of the Accelerated Decommissioning Contributions Amount;
- 2.1.6 the Significant Event Assessment Notice;

- 2.1.7 the Draft DWMP;
- 2.1.8 the Draft Contributions Notice; and
- 2.1.9 the Annual Operator Directors' Certificate.

SECTION 3: Disputes arising at Annual Review

3. PARTIES WILL ATTEMPT TO RESOLVE DISPUTES

3.1 If, at any stage during an Annual Review a dispute arises between:

- 3.1.1 the Operator and the FDP Implementation Company; and / or
- 3.1.2 (i) the Operator and / or the FDP Implementation Company (as the case may be); and (ii) any of the Verifiers

in respect of the Significant Event Assessment Notice, the Draft DWMP or the Draft Contributions Notice, then the 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.

3.2 For the avoidance of doubt, a dispute will arise for the purposes of paragraph 3.1 if:

- 3.2.1 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
- 3.2.2 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).

4. 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 3 (*Parties will attempt to resolve disputes*), either Party may refer the matter for determination in accordance with the Independent Expert Referral Procedure.

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

Any dispute referred to the Independent Expert Referral Procedure under paragraph 4 (*Referral to independent dispute resolution can be made*) shall be discontinued immediately if:

- 5.1.1 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

- 5.1.2 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. The Quinquennial Review process is a multi-stage process pursuant to which the DWMP is reviewed and updated, Fund Assets are reviewed and a range of assumptions are reviewed against market performance, the Annual Contributions are determined and a range of independent technical and financial verification is carried out.

This shall be carried out as follows, with some parallel overlaps on the sequencing:

- (a) the DWMP is updated and subject to Technical Verification;*
- (b) the Fund Assets are reviewed;*
- (c) the Investment Strategy is reviewed and updated to the extent considered necessary by the Parties in accordance with the requirements of this Agreement;*
- (d) any updated Investment Strategy is subject to Financial Verification;*
- (e) the Key Assumptions are reviewed and updated to the extent considered necessary by the Parties in accordance with the requirements of this Agreement. This will be produced and verified by the Independent Financial Verifier.*
- (f) following the calculation of the Key Assumptions, the FDP Implementation Company shall use the updated Key Assumptions to derive an updated Funding Path to cover the remaining Primary Funding Period and Secondary Funding Period. The updated Funding Path shall be produced and verified by the Independent Financial Verifier;*
- (g) the Draft Contributions Notice is prepared;*
- (h) Financial Verification shall be carried out on the Draft Contributions Notice;*
- (i) in parallel the Operator is subject to obligations to submit Contributions Notices under the SZC Economic Licence. To mitigate for delay and dispute risk, the Agreement contains mechanisms for using previously determined Investment Strategies, Key Assumptions, Funding Paths and Contribution data to the extent such delays or disputes are continuing by a given longstop date.*

The process results in a comprehensive suite of reports and certificates which are ultimately submitted by the Operator to the Secretary of State and the FDP Implementation Company and its specified representatives. Regulation 8 of the FDP Regulations requires that all such reports must be submitted within nine (9) months of the end of the "first criticality reporting period" (as defined in the FDP Regulations) and then each other "quinquennial reporting period" (as defined in the FDP Regulations).

SECTION 1: Quinquennial Review Process

STAGE 1: SUBSTANTIVE REVIEW OF DWMP

1.1 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 1.2 (*Factors to be considered by the Operator*) to 1.6 (*Draft DWMP will continue to be supported by a Detailed DWMP*) below.

1.2 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:

- 1.2.1 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 Expected Decommissioning Start Date and planned date of closure of Reactor 2;
- 1.2.2 any Operational Changes that are in the Operator's opinion, acting reasonably, relevant;
- 1.2.3 the Operator's assessment of risks and uncertainties in relation to the DWMP;
- 1.2.4 any relevant experience accumulated by Affiliates in decommissioning, to the extent available to the Operator;
- 1.2.5 the volumes of SF Waste and ILW 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
- 1.2.6 the NWS Waste Packaging Advice (or Revised Policy Waste Acceptance Criteria) then applicable under the SF Transfer Contract; and
- 1.2.7 Good Industry Practice in cost estimation taking into account the Expected Decommissioning Start Date.

1.3 Assumptions to be reflected in the Draft DWMP

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

- 1.3.1 the Fixed Assumptions; and
- 1.3.2 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).

1.4 **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 money values as at the end of the relevant Quinquennial Reporting Period.

Explanatory note: in line with the FDP Guidance the DWMP contains an explanation of the derivation of the cost estimates. The DWMP sets out the methodologies used for deriving initial P80 DTM Cost estimates. The "as built" DWMP will review the initial derived P80 value, and taking onboard lessons from the Hinkley Point C 'as built' DWMP will revise the methodology used to calculate the P80 value based on industry best practice, along with the parameters determining how the P80 value would be set.

1.5 **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:

- 1.5.1 the cost impact of any changes made to the Draft DWMP and Detailed DWMP pursuant to paragraphs 1.2 (*Factors to be considered by the Operator*) to 1.4 (*Outputs to be included in the Draft DWMP*) above;
- 1.5.2 the cost impact of the Estimating Uncertainty, as recalculated in relation to the Draft DWMP and Detailed DWMP pursuant to paragraphs 1.2 (*Factors to be considered by the Operator*) to 1.4 (*Outputs to be included in the Draft DWMP*) above;
- 1.5.3 the cost impact of the Discrete Risk, as recalculated in relation to the Draft DWMP and Detailed DWMP pursuant to paragraphs 1.2 (*Factors to be considered by the Operator*) to 1.4 (*Outputs to be included in the Draft DWMP*) above; and
- 1.5.4 from and including the first (1st) Quinquennial Review, Estimating Uncertainty and Discrete Risk and cost shall be combined using a statistical approach or in line with best practice at that time to produce a probability distribution from which an appropriate P value can be derived.

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

- 1.6.1 The Operator shall maintain a Detailed DWMP as the main supporting reference to the Draft DWMP.
- 1.6.2 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.

1.6.3 The Detailed DWMP shall be developed into an executable plan five (5) years prior to the Expected Decommissioning Start Date and thereafter on a rolling basis during the Disbursements Period in the form of Annual Work Plan and Budgets.

1.7 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:

1.7.1 an explanation of the changes, deletions and additions relative to the existing DWMP and existing Detailed DWMP;

1.7.2 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

1.7.3 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.

1.8 Technical Verification will be performed

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

1.8.1 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

1.8.2 submit a Technical Verification Report in the form required for Quinquennial Review to the Operator and the FDP Implementation Company.

STAGE 2: REVIEW OF FUND ASSETS

1.9 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 FDP Implementation Company (with a copy provided to the Operator) within twenty (20) Business Days of the end of the Quinquennial Reporting Period. To the extent a longer period of time is required, the FDP Implementation Company shall notify the Operator promptly.

1.10 Tax assessments

- 1.10.1 At the first Quinquennial Review, the FDP Implementation Company shall instruct a Tax Adviser to carry out a Tax Assessment. The Tax Assessment shall:
- (a) assess the likely Tax liabilities of the FDP Implementation Company and the Operator (**provided that** the Tax Assessment shall only assess Tax liabilities of the Operator that are likely to arise in connection with activities undertaken pursuant to limb (a) of the definition of "Approved Operator Business Scope") during the Disbursements Period;
 - (b) be based on:
 - (i) Applicable Law as at the time of the relevant Quinquennial Review; and
 - (ii) the assumption that during the Disbursements Period 100% of the Fund Assets will be invested in debt instruments; and
 - (c) specify a reasonable amount to be added to the End of Generation Target in order to meet the liabilities referred to in paragraph (a) above, taking into account the expected timing for payment of such liabilities.
- 1.10.2 At each Quinquennial Review from the first Quinquennial Review until FYE EPFP – 10, the FDP Implementation Company may instruct a Tax Adviser to carry out a Tax Assessment if it considers, acting reasonably, that there has been a material change to the basis upon which the most recently prepared Tax Assessment has been prepared (including changes to Applicable Law) such that an additional Tax Assessment is necessary.
- 1.10.3 For each Quinquennial Review from FYE EPFP – 10 until FYE End of Secondary Funding Period, the FDP Implementation Company shall instruct a Tax Adviser to carry out a Detailed Tax Assessment. The Detailed Tax Assessment shall:
- (a) assess the likely Tax liabilities of (i) the FDP Implementation Company during the remainder of the Operational Period and during the Disbursements Period; and (ii) the Operator (**provided that** (i) the Tax Assessment shall only assess Tax liabilities of the Operator that are likely to arise in connection with activities undertaken pursuant to limb (a) of the definition of "Approved Operator Business Scope"; and (ii) to the extent that any Tax liabilities of the Operator are recoverable pursuant to the terms of the SZC Economic Licence, such Tax liabilities shall not form part of the Detailed Tax Assessment) during the Disbursements Period;
 - (b) be based on:
 - (i) the Investment Strategy for the relevant Quinquennial Reporting Period; and
 - (ii) Applicable Law as at the time of the relevant Quinquennial Review **provided that** it shall not seek to make provision for any risk of changes to the basis upon which the Detailed Tax

Assessment has been prepared (including changes to Applicable Law) during the Disbursements Period; and

- (c) specify a reasonable amount to be added to the End of Generation Target in order to meet the liabilities referred to in paragraph (a) above, taking into account the expected timing for payment of such liabilities.

STAGE 3: INVESTMENT STRATEGY

1.11 For each Quinquennial Review, the FDP Implementation Company shall:

- 1.11.1 review the Investment Strategy in accordance with the requirements of Schedule 7 and prepare an updated Investment Strategy for the remainder of the Primary Funding Period and Secondary Funding Period; and
- 1.11.2 update the risk register it is required to maintain in accordance with paragraph 5.1 of Schedule 7 (*Investment Rules*) (which, for the avoidance of doubt, shall include an assessment of additional risks which have become relevant since the last review and a consideration of previously identified risks which have ceased to be relevant) (for the avoidance of doubt, it is expected that the FDP Implementation Company will be updating its risk register on an ongoing basis and not just at every Quinquennial Review).

1.12 **FDP Implementation Company shall prepare and deliver the draft Investment Strategy**

By no later than sixty (60) Business Days prior to the end of each Quinquennial Reporting Period, the FDP Implementation Company shall deliver to the Operator:

- 1.12.1 a draft Investment Strategy; and
- 1.12.2 a statement setting out the reasons why it considers that the draft Investment Strategy is consistent with the requirements of Schedule 7 (*Investment Rules*).

1.13 **Non-compliant draft Investment Strategy shall be revised**

- 1.13.1 If the Operator considers that the draft Investment Strategy (or any part thereof) is materially inconsistent with the requirements of Schedule 7 (*Investment Rules*) it shall, within twenty (20) Business Days of receipt of the draft Investment Strategy, give notice to the FDP Implementation Company stating its reasons and, promptly (and in any event within five (5) Business Days of the Operator giving such notice) the parties shall refer the matter of whether any part of the draft Investment Strategy is materially inconsistent with the Investment Rules for determination in accordance with the Independent Expert Referral Procedure.
- 1.13.2 If the Independent Expert determines that the draft Investment Strategy is not materially inconsistent with the requirements of Schedule 7 (*Investment Rules*), then the draft Investment Strategy shall be adopted as the Investment Strategy the remainder of the Primary Funding Period and Secondary Funding Period and which shall remain in effect from the date on which it is delivered to the

Operator and the Independent Financial Verifier until a revised Investment Strategy is adopted.

- 1.13.3 If the Independent Expert determines that the draft Investment Strategy is materially inconsistent with the requirements of Schedule 7 (*Investment Rules*), then the FDP Implementation Company shall, within ten (10) Business Days of receipt of the Independent Expert's determination, prepare a revised draft Investment Strategy.
- 1.13.4 If the Independent Expert considers that the revised draft Investment Strategy prepared in accordance with paragraph 1.13.3 above is not materially inconsistent with the Investment Rules, then the revised draft Investment Strategy shall be adopted as the Investment Strategy the remainder of the Primary Funding Period and Secondary Funding Period and which shall remain in effect from the date on which it is delivered to the Operator and the Independent Financial Verifier until a revised Investment Strategy is adopted.
- 1.13.5 If the Independent Expert determines that the draft Investment Strategy prepared in accordance with paragraph 1.13.3 above is still materially inconsistent with the requirements of Schedule 7 (*Investment Rules*), then the Operator shall, within ten (10) Business Days of receipt of the Independent Expert's determination, prepare a revised draft Investment Strategy.
- 1.13.6 If the Independent Expert considers that the revised draft Investment Strategy prepared in accordance with paragraph 1.13.5 above is not materially inconsistent with the Investment Rules, then the revised draft Investment Strategy shall be adopted as the Investment Strategy the remainder of the Primary Funding Period and Secondary Funding Period and which shall remain in effect the date on which it is delivered to the Operator and the Independent Financial Verifier until a revised Investment Strategy is adopted.
- 1.13.7 If the Independent Expert considers that the revised draft Investment Strategy prepared in accordance with paragraph 1.13.5 above is materially inconsistent with the Investment Rules, then the parties shall instruct the Independent Expert to determine the Investment Strategy, which shall be adopted as the Investment Strategy the remainder of the Primary Funding Period and Secondary Funding Period and which shall remain in effect from the date on which it is determined until a revised Investment Strategy is adopted.

1.14 Investment Strategy shall be verified by the Independent Financial Verifier

- 1.14.1 Save to the extent determined by an Independent Expert in accordance with paragraph 1.13, the draft Investment Strategy shall be verified in accordance with paragraph 1.14.2 below.
- 1.14.2 The FDP Implementation Company shall submit the draft Investment Strategy to the Independent Financial Verifier no later than three (3) Business Days from:
 - (a) the date which is the earlier of: (i) 20 Business Days of receipt of the draft Investment Strategy by the Operator (save to the extent the Operator has indicated that it may challenge the draft Investment

Strategy in accordance with paragraph 1.13); and (ii) the date on which the Operator notifies the FDP Implementation Company that it does not intend to challenge the draft Investment Strategy in accordance with paragraph 1.13; and

- (b) to the extent the Operator has challenged a draft Investment Strategy in accordance with paragraph 1.13, the date on which the Operator and FDP Implementation Company agree to depart from the process set out in paragraph 1.13 and refer a draft Investment Strategy for verification by an Independent Financial Verifier.

1.15 Longstop date for the determination of an updated Investment Strategy pursuant to a Quinquennial Review

- 1.15.1 If an updated draft Investment Strategy has not been prepared and approved by the Independent Financial Verifier (or otherwise determined by an Independent Expert) by the date which is twenty (20) Business Days prior to the Authority Contribution Submission Date, the Operator shall use the Investment Strategy most recently in effect for the purposes of the Quinquennial Review, the Quinquennial Report and until such time as a new Investment Strategy is determined pursuant to a subsequent Quinquennial Review.
- 1.15.2 For the avoidance of doubt, an Investment Strategy to be adopted in accordance with this paragraph 1.15 is not subject to a requirement to be re-verified as part of the then current Quinquennial Review.

STAGE 4: ASSESSMENT OF KEY ASSUMPTIONS BY THE INDEPENDENT FINANCIAL VERIFIER

1.16 FDP Implementation Company shall instruct the Independent Financial Verifier to carry out the Key Assumptions Verification

- 1.16.1 No later than forty (40) Business Days after the end of each Quinquennial Reporting Period, the FDP Implementation Company shall instruct the Independent Financial Verifier to carry out the Key Assumptions Verification in accordance with Part B of Schedule 111 (*Financial Verification*).
- 1.16.2 The Independent Financial Verifier shall carry out the Key Assumptions Verification in accordance with this Stage 4 of this Schedule 9 (*Quinquennial Review Programme*) and Section 3, Part B of Schedule 11 (*Financial Verification*).
- 1.16.3 The Independent Financial Verifier shall submit a report to the Operator and the FDP Implementation Company detailing the proposed Key Assumptions and the methodology adopted in calculating the same.
- 1.16.4 The Independent Financial Verifier shall notify the Operator and FDP Implementation Company of its findings within twenty (20) Business Days of having been instructed by the FDP Implementation Company or the Operator (as applicable) in accordance with paragraph 1.16.1 above and shall deliver a

proposed set of updated Key Assumptions to the Operator and the FDP Implementation Company.

- 1.16.5 The Parties shall adopt the Key Assumptions at the rates determined by the Independent Financial Verifier unless any findings are disputed in accordance with paragraph 2 below and provided for by an Independent Expert, in which case the Parties shall adopt the Key Assumptions determined by such Independent Expert.

1.17 Longstop date for Key Assumptions Verification

- 1.17.1 If updated draft Key Assumptions have not been prepared and approved by the Independent Financial Verifier (or otherwise determined by an Independent Expert) by the date which is twenty (20) Business Days prior to the Authority Contribution Submission Date, the Operator shall use the Key Assumptions most recently in effect for the purposes of the Quinquennial Review, the Quinquennial Report and until such time as new Key Assumptions are determined pursuant to a subsequent Quinquennial Review.
- 1.17.2 For the avoidance of doubt, Key Assumptions to be adopted in accordance with this paragraph 1.17 is not subject to a requirement to be re-verified as part of the then current Quinquennial Review.

STAGE 5: FUNDING PATH

- 1.18 At each Quinquennial Review the FDP Implementation Company shall procure that the Independent Financial Verifier revises the Funding Path in accordance with the FDP Implementation Company's obligations under Schedule 2 (*Funding Path*) and shall deliver a copy to the Operator.
- 1.19 The Parties shall adopt the Funding Path provided in accordance with paragraph 1.18 above for the next Quinquennial Reporting Period unless any findings are disputed in accordance with paragraph 2 below, in which case the Parties shall adopt the Funding Path as determined by the Independent Expert.

1.20 Longstop date for the Funding Path

- 1.20.1 If an updated draft Funding Path has not been prepared and approved by the Independent Financial Verifier (or otherwise determined by an Independent Expert) by the date which is twenty (20) Business Days prior to the Authority Contribution Submission Date, the Operator shall use the Funding Path most recently in effect for the purposes of the Quinquennial Review, the Quinquennial Report and until such time as a new Funding Path is determined pursuant to a subsequent Quinquennial Review.
- 1.20.2 For the avoidance of doubt, a Funding Path to be adopted in accordance with this paragraph 1.20 is not subject to a requirement to be re-verified as part of the then current Quinquennial Review.

STAGE 6: FINANCIAL VERIFICATION – INVESTMENT RULES, FUNDING PATH, KEY ASSUMPTIONS AND DRAFT CONTRIBUTIONS NOTICE

1.21 Specified obligations

The obligations that have been specified for the purposes of paragraph (a) of the definition of "financial verification report" in the FDP Regulations are:

- 1.21.1 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 9.2.
- 1.21.2 the obligation to update the Investment Strategy in accordance with paragraph 1.11 above;
- 1.21.3 the obligation to update the Funding Path in accordance with paragraph 1.18 above;
- 1.21.4 the obligation to update the Key Assumptions in accordance with paragraph 1.16; and
- 1.21.5 the obligation of the FDP Implementation Company to calculate a new Draft Contributions Notice in accordance with paragraph 1.24 of this Quinquennial Review Process.

1.22 Financial verification will be performed

By no later than thirty (30) Business Days of the end of the Quinquennial Reporting Period (whichever is latest), the Independent Financial Verifier shall:

- 1.22.1 assess whether or not there was an Inconsistent Portfolio as at the last day of the Quinquennial Reporting Period;
- 1.22.2 confirm whether or not the Investment Strategy is materially consistent with the requirements of Schedule 7 (*Investment Rules*);
- 1.22.3 confirm whether or not the updated Funding Path has been prepared in accordance with Schedule 2 (*Funding Path*); and
- 1.22.4 submit a Financial Verification Report to the Operator and the FDP Implementation Company (and, unless provided prior to such time the Financial Verification Report shall include the Independent Financial Verifiers Key Assumption Verification).

1.23 Interface with the Independent Financial Verifier

Notwithstanding any of the obligations to deliver documents in accordance with this Schedule and time periods attached thereto, the Operator and the FDP Implementation Company, as applicable, may consult with the Independent Financial Verifier to seek views or "minded to positions" of the Independent Financial Verifier on the preparation of the Investment Strategy, the Funding Path and the Key Assumptions Verification from time to time.

STAGE 7: REVIEW OF CONTRIBUTIONS NOTICE

1.24 Draft Contributions Notices will be updated to reflect Draft DWMP and the Key Assumptions

- 1.24.1 The FDP Implementation Company calculate a Draft Contributions Notice in accordance with the Minimum Contribution Calculation Rules, to reflect:
- (a) the Annual Contribution and associated Monthly Contributions which are proposed to be in effect over the next Annual Contribution Period to occur, once effected as Contributions Notice pursuant to sub-clause 4.4.2; and
 - (b) each of the other the Annual Contributions for each other Annual Contribution Period to occur the forthcoming Quinquennial Reporting Period.
- 1.24.2 The Annual Contributions referred to at paragraph 1.24.1(b) shall then be updated at each subsequent Annual Review Process in accordance with Schedule 8 (*Annual Review Programme*) and, for the avoidance of doubt, such Annual Contributions shall take effect as Annual Contributions which are to be paid in a given Annual Contribution Period once updated and entering into effect as a Contributions Notice as part of any such relevant Annual Review Process.
- 1.24.3 A Draft Contributions Notice produced in accordance with this paragraph 1.24 shall include:
- (a) details of the calculations run in accordance with the Minimum Contribution Calculation Rules, in a spread sheet format;
 - (b) a distinction between the Base Case Contributions and any Correction Contributions (to the extent applicable, as part of any Correction Contributions, the assessment shall include a reconciliation between any Provisional Contributions Notice and any Contributions Notice subsequently determined for the corresponding Annual Contributions Period, pursuant to the Minimum Contribution Calculation Rules);
 - (c) details of any Indexation applied;
 - (d) separate items for each proposed Contribution over each of the relevant Annual Contribution Periods;
 - (e) for each proposed Annual Contribution, details of each proposed Monthly Contribution within such Annual Contribution Period; and
 - (f) details of the Annual Milestones intended to be achieved against each relevant Annual Contribution Period.

1.25 Draft Contributions Notice to be submitted

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

- 1.25.1 the Financial Verification Report has been given and verified or determined (as applicable) pursuant to paragraph 1.22; and
- 1.25.2 the Draft DWMP has been produced and verified or determined (as applicable).

1.26 FDP Implementation Company calculations will be verified

Save to the extent produced by the Independent Financial Verifier, within fifteen (15) Business Days of receipt of the Draft Contributions Notice, the Independent Financial Verifier shall:

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

STAGE 8: ANNUAL DIRECTORS' COMPLIANCE CERTIFICATE

Each of the Operator and the FDP Implementation Company shall review compliance with the material provisions of this Agreement over the last Financial Period of the Quinquennial Reporting Period in order to prepare respective Annual Operator Directors' Certificate.

STAGE 9: OPERATOR FORMULATES QUINQUENNIAL REPORT

1.27 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.

1.28 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 1.27 (*Formulation of Quinquennial Report*) of this Quinquennial Review Process.

1.29 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 1.27 (*Formulation of Quinquennial Report*).

STAGE 10: 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:

- 1.30 the Quinquennial Report;
- 1.31 the Annual Fund Assets Report;
- 1.32 the Technical Verification Report;
- 1.33 the Financial Verification Report;
- 1.34 the Calculation Confirmation Report;
- 1.35 any binding determination made in the course of the Quinquennial Review;
- 1.36 the Modification Verification Report; and
- 1.37 a notice confirming:
 - 1.37.1 the modifications to the DWMP that are contained in the Draft DWMP and which constitute Exempt Modifications;
 - 1.37.2 the particular regulation under the FDP Regulations which applies to make each of those proposed modifications an Exempt Modification;
 - 1.37.3 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).
 - 1.37.4 the amount of the change in the costs estimates compared to the DWMP that is attributable to each Exempt Modification;
 - 1.37.5 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
 - 1.37.6 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:

- 1.38 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;
- 1.39 a statement of the Annual Milestones for each Annual Contribution Period set out in the Draft Contributions Notice;
- 1.40 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);
- 1.41 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;
- 1.42 in a Quinquennial Review prior to the end of the Primary Funding Period, a statement of the Accelerated Decommissioning Contributions Amount;
- 1.43 the Draft DWMP;
- 1.44 subject to paragraph 1.17, the draft Key Assumptions;
- 1.45 subject to paragraph 1.20, the draft Funding Path;
- 1.46 subject to paragraph 1.15, the draft Investment Strategy;
- 1.47 the Draft Contributions Notice;
- 1.48 the Annual Operator Directors' Certificate; and
- 1.49 the Annual FDP Implementation Company Directors' Certificate.

SECTION 3: Disputes Arising at a Quinquennial Review

2. PARTIES WILL ATTEMPT TO RESOLVE DISPUTES

2.1 If, at any stage during a Quinquennial Review:

- 2.1.1 a dispute arises between (A) the Operator and the FDP Implementation Company and / or (B) (i) the Operator and/or FDP Implementation Company (as the case may be) and (ii) any of the Verifiers in respect of the updated Key Assumptions, the Funding Path, the Investment Strategy, the Draft DWMP or the Draft Contributions Notice; or
- 2.1.2 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.

2.2 For the avoidance of doubt, a dispute will arise for the purposes of paragraph 2.1.1 if:

2.2.1 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

2.2.2 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).

3. **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 2 (*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.

4. **DISPUTE RESOLUTION WILL BE DISCONTINUED IF PARTIES SUCCESSFULLY RESOLVE DISPUTE**

Any dispute referred to the Independent Expert Referral Procedure under paragraph 3 (*Referral to Independent Dispute Resolution can be made*) shall be discontinued immediately if:

4.1.1 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

4.1.2 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

5. **FIXED ASSUMPTIONS**

5.1 The Fixed Assumptions are:

5.1.1 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;

5.1.2 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;

5.1.3 cost estimates will be presented in real values on a consistent basis;

- 5.1.4 decommissioning will be undertaken using equipment and techniques available at the time the Draft DWMP is prepared;
- 5.1.5 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 Expected Decommissioning Start Date and prior to achieving the Site End State will be funded as part of decommissioning activity;
- 5.1.6 the Operator shall finance the Operational DTM Costs from operational revenue (including any payments received pursuant to the Revenue Collection Contract) 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*));
- 5.1.7 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).

6. NOTIFIABLE ASSUMPTIONS

6.1 The Notifiable Assumptions are:

- 6.1.1 prompt decommissioning of the Site ("**early site clearance**") will be employed;
- 6.1.2 the operating lifetime of each of the Reactors will be sixty (60) years; and
- 6.1.3 low level waste will be dispatched to a disposal facility promptly after generation.

SCHEDULE 10 TECHNICAL VERIFICATION

PART A REQUIREMENTS FOR VERIFICATION REPORTS

SECTION 1: Requirements for the Technical Verification Report on Annual Review

The Technical Verification Report for an Annual Review shall be a document comprising:

- 1.1 a summary of the report's contents;
- 1.2 the following statements:
 - 1.2.1 confirmation that the Independent Technical Verifier is not an affiliate of the Operator or the FDP Implementation Company;
 - 1.2.2 confirmation that the Independent Technical Verifier has acted in the capacity of an independent professional in preparing the Technical Verification Report; and
 - 1.2.3 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;
- 1.3 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);
- 1.4 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
- 1.5 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

1.6 General approach

- 1.6.1 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.
- 1.6.2 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).

1.7 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.

1.8 Technical steps

The Independent Technical Verifier shall assess whether the Detailed DWMP properly identifies the necessary scope and appropriate scheduling for:

1.8.1 Decommissioning; and

1.8.2 Waste Management,

in accordance with the Decommissioning Strategy and the strategy for Waste Management (as applicable).

1.9 Technical deliverability of the Decommissioning Strategy

The Independent Technical Verifier shall assess whether the scope of the Decommissioning Strategy is technically deliverable.

1.10 Cost estimates

1.10.1 The Independent Technical Verifier shall assess whether the cost estimates in the DWMP have been prepared in accordance with Good Industry Practice.

1.10.2 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.

1.11 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 1.2 (*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:

1.12 a summary of the report's contents;

1.13 the following statements:

1.13.1 confirmation that the Independent Technical Verifier is not an affiliate of the Operator or the FDP Implementation Company;

- 1.13.2 confirmation that the Independent Technical Verifier has acted in the capacity of an independent professional in preparing the Technical Verification Report; and
- 1.13.3 any other reasons that the Independent Technical Verifier wishes to give for considering that it independent of the Operator and the FDP Implementation Company;
- 1.14 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);
- 1.15 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
- 1.16 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 18 (*Independent Expert Referral Procedure*) comprising:

- 1.17 a summary of the report's contents;
- 1.18 the following statements (subject always to paragraph 1.5 of Schedule 18 (*Independent Expert Referral Procedure*)):
 - 1.18.1 confirmation that the Independent Expert is not an affiliate of the Operator or the FDP Implementation Company;
 - 1.18.2 confirmation that the Independent Expert has acted in the capacity of an independent professional in preparing the Expert Verification Report; and
 - 1.18.3 any other reasons that the Independent Expert wishes to give for considering that it is independent of the Operator and the FDP Implementation Company;
- 1.19 an assessment, in respect of the items or lines of the Draft DWMP that have been referred to them for determination, of the costs estimates that the Independent Expert considers to be reasonable and, if paragraph 1.18.3 of Schedule 18 (*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;
- 1.20 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
- 1.21 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

PART A REQUIREMENTS FOR VERIFICATION REPORTS

SECTION 1: Requirements for the Financial Verification Report

The Financial Verification Report shall be a document comprising:

- 1.1 a summary of the report's contents;
- 1.2 the following statements:
 - 1.2.1 confirmation that the Independent Financial Verifier is not an affiliate of the Operator or the FDP Implementation Company;
 - 1.2.2 confirmation that the Independent Financial Verifier has acted in the capacity of an independent professional in preparing the Financial Verification Report; and
 - 1.2.3 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;
- 1.3 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);
- 1.4 a statement of whether, in the Independent Financial Verifier's reasonable opinion, the Investment Strategy complies with the Investment Rules;
- 1.5 a statement of whether, in the Independent Financial Verifier's reasonable opinion, the Funding Path complies with the requirements of Schedule 2 (*Funding Path*);
- 1.6 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);
- 1.7 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
- 1.8 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:

- 1.9 a summary of the report's contents;

- 1.10 the following statements:
- 1.10.1 confirmation that the Independent Financial Verifier is not an affiliate of the Operator or the FDP Implementation Company;
 - 1.10.2 confirmation that the Independent Financial Verifier has acted in the capacity of an independent professional in preparing the Calculation Confirmation Report; and
 - 1.10.3 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;
- 1.11 a statement of whether, in the Independent Financial Verifier's reasonable opinion, the Draft Contributions Notice:
- 1.11.1 calculated by the FDP Implementation Company complies with the specified obligation in paragraph 1.7 of the Annual Review Process or paragraph 1.21 of the Quinquennial Review Process (as the case may be);
- 1.12 a confirmation that the method followed by the Independent Financial Verifier to give the statement in paragraph 1.11 was to cross-check the Draft Contributions Notice against its own calculation of the relevant amounts and rates performed in accordance with:
- 1.12.1 to the extent such review is carried out in connection with a Quinquennial Review Process, the Minimum Contribution Calculation Rules;
 - 1.12.2 to the extent such review is carried out in connection with an Annual Review Process, pursuant to paragraph 1.9 of Schedule 8 (*Annual Review Programme*); and
 - 1.12.3 to the extent such review is carried out in connection with the Operator's calculation of a Draft Contributions Notice pursuant to sub-clause 4.4.3, the criteria specified in sub-clause 4.4.3(a);
- 1.13 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;
- 1.14 a confirmation that the method followed by the Independent Financial Verifier to give the statement in paragraph 1.13 was to independently calculate the Required Value for the Current Financial Period and to compare it to the aggregate of:
- 1.14.1 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;
 - 1.14.2 the Contributions payable in the current Annual Contribution Period as stated in the last Contributions Notice;

- 1.14.3 the Correction Contribution for the Next Financial Period as stated in the Draft Contributions Notice, if applicable; and
- 1.14.4 any factual evidence of an Overpayment made in the Current Financial Period given to it by the Operator or the FDP Implementation Company;
- 1.15 [Not Used]
- 1.16 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);
- 1.17 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
- 1.18 a statement of any limits of liability subject to which the Secretary of State may rely on the Independent Financial Verifier's assessment.

PART B

KEY ASSUMPTIONS VERIFICATION

SECTION 3: Requirements for Key Assumptions Verification

- 1.1 The Independent Financial Verifier shall prepare the Key Assumptions and carry out the Key Assumptions Verification exercising reasonable care and skill of an independent professional.
- 1.2 Each of the Key Assumptions shall be expressed as an annual compounded percentage rate of return.
- 1.3 The Independent Financial Verifier shall prepare the Key Assumptions and carry out the Key Assumptions Verification such that, in its view:
 - 1.3.1 the Projected Inflation Rate is consistent with market practice views with regard to long-term CPI inflation;
 - 1.3.2 in respect of the Nuclear Inflation Premium:
 - (a) the Nuclear Inflation Premium is consistent with market practice for similar nuclear decommissioning projects on the excess above or below the Projected Inflation Rate; and
 - (b) any factors which are likely to affect the future cost of decommissioning, including any lessons learned from the decommissioning experience at the Hinkley Point C nuclear power project are taken into account;

(in each case, save to the extent the same is already included in the DTM Costs set out in the DWMP);
 - 1.3.3 the LTDR is consistent with a reasonable expected annual rate of return for the Long Term Portfolio which should be calculated as a single equivalent annual

rate of return over the period from FYE End of Secondary Funding Period to the SF Transfer Date reflecting either (i) the average of the Initial Long Term Portfolio and the Final Long Term Portfolio allocations; or (ii) the level and incidence of cashflows to be paid out of the Fund Assets over such period and the intended pattern of de-risking from the Initial Long Term Portfolio to the Final Long Term Portfolio in accordance with paragraph 1.3.2 of Schedule 7 (*Investment Rules*), as appropriate;

Explanatory note: For QQRs in the period up to FYE EPFP – 5 this should be calculated as the expected return on the average of the initial and final Long Term Portfolios. For QQRs on or after FYE EPFP – 5 this should be calculated as a single rate annualised equivalent. For example:

For QQRs up to FYE EPFP – 5: if the Initial Long Term Portfolio were anticipated to comprise of 40% growth and 60% de-risked, and the Final Long Term Portfolio comprised of 100% de-risked, then the average portfolio over that period would be assumed to comprise of 20% growth and 80% de-risked. The LTDR should therefore be calculated as the reasonable expected annual return on this average 20% growth / 80% de-risked portfolio (rather than considering the precise pattern of de-risking and the individual returns in each year).

For QQRs following FYE EPFP – 5, and using the example Initial and Final Long Term Portfolio weights, we would expect the LTDR to be calculated by (i) determining a reasonable expected annual rate of return to apply in each of the years between FYE End of Secondary Funding Period and FYE EPFP +25, allowing for the pattern of assumed de-risking from the Initial to the Final Long Term Portfolio, (ii) projecting the Fund Assets from FYE End of Secondary Funding Period to the SF Transfer Date assuming these expected annual returns from (i) and allowing for the latest estimate of the pattern of liability cashflows to be paid out of the assets, and (iii) then calculating the LTDR as the equivalent single annual rate of return such that the projected asset values at both FYE End of Secondary Funding Period and the SF Transfer Date under (ii) are identical (i.e. "Flat equivalent single annual return on assets").

- 1.3.4 during the period from FYE EPFP + 3 to FYE End of Secondary Funding Period, the applicable rate should be equal to the LTDR; and
- 1.3.5 the Growth Rate is consistent with a reasonable expected annual rate of return for the Growth Portfolio as set out in the Investment Strategy.

PART C

ASSESSMENT OF THE LIKELIHOOD OF FUNDING OUTCOMES

SECTION 4: Requirements for Assessment of the Likelihood of Funding Outcomes

Explanatory Note: It is expected that the Secretary of State will review the Funding Outcomes Report and, in particular, whether the Probability Distributions therein, with the purpose of determining whether the likelihood of the Fund Assets being sufficient to discharge DWMP cashflows as they fall due based on the Investment Strategy in effect as at the time of the Assessment of the Likelihood of Funding Outcomes is sufficient based on its view of risk, value

for money considerations and any other criteria that the Secretary of State considers is appropriate at the relevant time.

- 1.1 The Independent Financial Verifier shall prepare the Funding Outcomes Report and carry out the Assessment of the Likelihood of Funding Outcomes exercising reasonable care and skill of an independent professional in accordance with the process set out in Schedule 21 (*Funding Outcomes Report Process*).
- 1.2 In carrying out the Assessment of the Likelihood of Funding Outcomes the Independent Financial Verifier shall take into account:
 - 1.2.1 the Fund Assets Value as at the date of the Assessment of the Likelihood of Funding Outcomes;
 - 1.2.2 the values of the Base Contributions and potential future Correction Contributions to be contributed to the Fund from the date of the Assessment of the Likelihood of Funding Outcomes;
 - 1.2.3 the cashflows in respect of the amounts due in accordance with this Agreement by assuming that such cashflows are to be assessed on each of a (i) P50; and (ii) P80 + 25% basis. Allowance shall be made for the potential variability of the DWMP cashflows due to future inflation. The Independent Financial Verifier may also make allowance for the anticipated variability in the DWMP cashflows due to factors other than inflation where it considers that such allowance is appropriate and material to the Assessment of the Likelihood of Funding Outcomes; and
 - 1.2.4 future investment returns based on: (i) the Investment Strategy in place at the time of the Assessment of the Likelihood of Funding Outcomes; and (ii) any alternative Investment Strategies under consideration, in each case making appropriate allowance for any expected outperformance or underperformance of such Investment Strategies above the Growth Rate and Long Term Discount Rate assumptions in place as at the date of the Assessment of the Likelihood of Funding Outcomes; and
 - 1.2.5 the option of using a more or less conservative value for the Growth Rate and / or Long Term Discount Rate assumptions than those which would automatically be derived.
- 1.3 The Funding Outcomes Report shall contain the following information:
 - 1.3.1 in respect of each Investment Strategy and set of DWMP cashflows considered as part of the Assessment of the Likelihood of Funding Outcomes, an estimate of the Probability Distribution of the excess or shortfall in projected Fund Assets at the SF Transfer Date once all DWMP cashflows have been discharged as they fall due. Any excess or shortfall in Fund Assets shall be expressed in monetary terms as at the date of the Assessment of the Likelihood of Funding Outcomes; and
 - 1.3.2 a description of the data, method and assumptions underlying the calculation of the Probability Distribution, which shall include details of any unmodelled risks

that the Independent Financial Verifier considers are material including (but not limited to) climate risk and geopolitical risk.

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:

- 1.1 a summary setting out the Fund Assets Value as at the end of the relevant Financial Period;
- 1.2 the following statements:
 - 1.2.1 confirmation that the person who produced the Annual Fund Assets Report is not an affiliate of the Operator or the FDP Implementation Company;
 - 1.2.2 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
 - 1.2.3 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;
- 1.3 a confirmation that the method followed by the person who produced the Annual Fund Assets Report to give the Fund Assets Value was:
 - 1.3.1 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
 - 1.3.2 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;
- 1.4 a statement that the Annual Fund Assets Report has been prepared to a reasonable standard with due care and attention;
- 1.5 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;
- 1.6 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; and

- 1.7 the following in respect of the Investment Strategy:
- 1.7.1 a report on the extent to which the FDP Implementation Company's current Investment Strategy continues to remain in compliance with the Investment Rules (and any identified events or circumstances of non-compliance with the Investment Rules);
 - 1.7.2 a report on the performance of the Fund Assets by reference to: (i) the risks considered in the risk register and any other applicable risks; and (ii) the FDP Implementation Company's current Investment Strategy; and
 - 1.7.3 a summary of the current Investment Strategy, including but not limited to details and concentration of main asset classes and how the Investment Strategy is being implemented from an operational perspective.

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:

- 1.1 a summary of the contents of the Modification Verification Report;
- 1.2 the following statements:
 - 1.2.1 confirmation that the person who produced the Modification Verification Report is not an affiliate of the Operator or the FDP Implementation Company;
 - 1.2.2 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
 - 1.2.3 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;
- 1.3 a statement of the Fund Assets Value as at the date of the Modification Verification Report;
- 1.4 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;
- 1.5 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 1.7 of the Annual Review Process or paragraph 1.21 of the Quinquennial Review Process (as the case may be);
- 1.6 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;
- 1.7 a statement that the Modification Verification Report has been prepared to a reasonable standard with due care and attention;
- 1.8 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
- 1.9 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 DIRECTORS' CERTIFICATES

PART A

REQUIREMENTS FOR ANNUAL OPERATOR DIRECTORS' CERTIFICATES

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 35 (*Programme for Disbursements Period and Decommissioning Period Annual Review*) and 36 (*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 24 (*Maintenance of material damage insurance policy*).

2. REVIEW OF OPERATOR BUSINESS 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).

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 Monthly Contributions due in the current Annual Contribution Period when each Monthly Contribution 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 Monthly Contributions falling due twelve (12) months from the start of the next Annual Contribution Period.

PART B REQUIREMENTS FOR ANNUAL FDP IMPLEMENTATION COMPANY DIRECTORS' CERTIFICATES

The Annual FDP Implementation Company Directors' Certificate is a document signed by two (2) directors of the FDP Implementation Company which includes (subject to Clauses 35 (*Programme for Disbursements Period and Decommissioning Period Annual Review*) and 36 (*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 FDP Implementation Company 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.

SCHEDULE 15

PAYMENTS AND DISBURSEMENTS REQUIREMENTS

SECTION 1: Requirements for Annual Work Plan and Budget

Each Annual Work Plan and Budget shall contain:

- 1.1 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;
- 1.2 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);
- 1.3 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;
- 1.4 a reconciliation of the planned works and activities and the estimated Allowable Costs for the forthcoming Financial Period to the Detailed DWMP;
- 1.5 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
- 1.6 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:

- 1.7 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;
- 1.8 a summary of the Allowable Costs which have been incurred by the Operator for works and activities undertaken up to the Half Year End;
- 1.9 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;
- 1.10 if the works and activities are over budget by twenty per cent. (20%) or more compared to the schedule and estimates set out in the Annual Work Plan and Budget:
 - 1.10.1 a summary of how the cost overruns have arisen; and

- 1.10.2 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;
- 1.11 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
- 1.12 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:

- 1.13 a description of the Long Term Contract or Material Affiliate Contract to which it relates;
- 1.14 in the case of a Material Affiliate Contract, whether, in the Independent Technical Verifier's reasonable opinion, the Material Affiliate Contract is on arm's length terms;
- 1.15 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
- 1.16 if the Independent Technical Verifier considers, acting reasonably, that more than £250,000, 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

- 1.1 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.
- 1.2 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

- 1.3 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:
 - 1.3.1 a statement that all Operator Expenditure during the Reconciliation Period was solely in respect of Allowable Costs; or
 - 1.3.2 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

1.4 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.

1.5 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:

- 1.5.1 undertake the Agreed Reconciliation Verification Procedures; and
- 1.5.2 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.

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.

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:

- 1.6 a description of the Designated Technical Matters undertaken by the Operator during the Reconciliation Period;
- 1.7 a statement of the opening balance of the Operator DTM Control Account as at the start of the Reconciliation Period;
- 1.8 a statement of the aggregate amount of the DTM Payments received by the Operator during the Reconciliation Period;
- 1.9 a statement of the aggregate amount of drawings made by the Operator from the Operator DTM Control Account during the Reconciliation Period;
- 1.10 a statement of the closing balance of the Operator DTM Control Account as at the end of the Reconciliation Period;
- 1.11 a statement of the amount of any other Operator Expenditure during the Reconciliation Period that constitutes an Unclaimed Allowable Cost;
- 1.12 on the basis of paragraphs 1.9 and 1.11 above, a statement of the aggregate amount of all Operator Expenditure made by the Operator during the Reconciliation Period;
- 1.13 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

- 1.14 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 41 (*DTM costs overruns may be claimed*)).

SECTION 3: Agreed Reconciliation Verification Procedures

1.15 Within scope of verification

- 1.15.1 **The FDP Implementation** Company may, if it considers it appropriate, instruct the Independent Technical Verifier to perform a review in accordance with paragraph 1.15.3 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.
- 1.15.2 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.
- 1.15.3 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 per cent. (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 per cent. (5%) by value of the Allowable Costs Contracts and Allowable Costs Invoices which are referred to in the Operator Reconciliation Report.
- 1.15.4 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 1.15.3 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.

1.16 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:

- 1.16.1 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
- 1.16.2 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:

- 1.17 a statement of whether the Operator Reconciliation Report complies with the requirements of Section 2 (*Requirements for Operator Reconciliation Report*) of this Schedule 16;
- 1.18 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
- 1.19 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:

- 1.20 the Operator Reconciliation Report;
- 1.21 the Reconciliation Verification Report (if any); and
- 1.22 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

2. PARTIES WILL ATTEMPT TO RESOLVE DISPUTES

2.1 If, at any stage during an Annual Reconciliation Review:

- 2.1.1 a dispute arises between the Operator and the Independent Technical Verifier in respect of the Operator Reconciliation Report or the Reconciliation Verification Report; or
- 2.1.2 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.

2.2 For the avoidance of doubt, a dispute will arise for the purposes of paragraph 1.15.1 if:

2.2.1 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

2.2.2 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.

3. 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 2 (*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.

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

4.1 Any dispute referred to Independent Expert Referral Procedure under paragraph 3 (*Referral to independent dispute resolution can be made*) shall be discontinued immediately if:

4.1.1 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

4.1.2 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

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 61.4 (*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

2. BOARD MEETINGS

2.1 Quorum for a Board meeting

Subject to Clause 61.4 (*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.

2.2 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:

2.2.1 a decision to appoint further Directors; or

2.2.2 if there are no Independent Directors, a decision to call a general meeting so as to enable the FDP Company Administrator to appoint a chair of the Board on the basis of the Independence Criteria set out in the Articles.

2.3 Voting at a Board meeting

Subject to Clause 61.4 (*Operator may vote only where necessary to protect the FDP*):

2.3.1 each Independent Director (or his delegate) shall be entitled to one (1) vote; and

2.3.2 the chair 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.

3. MANDATORY CONFLICTS OF INTEREST REQUIREMENTS

- 3.1.1 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.
- 3.1.2 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

4. RESERVED MATTERS

- 4.1 The following shall be Reserved Matters requiring the unanimous approval of the Shareholders eligible to vote on the matter:
- 4.1.1 the amendment, alteration, variation or replacement in any way of all or any of the provisions of the Articles;
 - 4.1.2 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;

- 4.1.3 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;
- 4.1.4 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;
- 4.1.5 the passing of a resolution for a members' voluntary winding-up of the FDP Implementation Company;
- 4.1.6 the declaration, making or payment of any dividend (interim or final) or other distribution of capital or otherwise (deemed or otherwise);
- 4.1.7 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;
- 4.1.8 the issue of any debenture; and
- 4.1.9 any change to the FDP Implementation Company's accounting reference date.

5. **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:

- 5.1.1 give effect to a modification to the FDP approved by the Secretary of State;
- 5.1.2 give effect to a direction given by the Secretary of State under section 58 of the Energy Act 2008;
- 5.1.3 give effect to an adjudication under this Agreement (without prejudice to any subsequent arbitration under the terms of this Agreement);
- 5.1.4 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); and/or
- 5.1.5 give effect to any court order (without prejudice to any subsequent appeal).

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 33 – The Non-Voting Operator Share
Article 34 – Operator Shareholder's Reserved Matters
Article 35 – The Independent Director Shares
Article 40 – Quorum for General Meetings
Article 53 – Registered Office and COMI

SCHEDULE 18

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 18 (*Independent Expert Referral Procedure*).
- 1.2 Each Party shall act reasonably and cooperate to give effect to the provisions of this Schedule 18 (*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 18 (*Independent Expert Referral Procedure*) (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 18 (*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. To the extent that an Independent Expert is being deployed to determine an Investment Strategy, Funding Path, Key Assumptions or Contribution Notice, the Independent Expert shall have all of the skills and qualifications required of an Independent Financial Verifier.

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 chair. 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 chair, the relevant Independent Experts and/or chair 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 chair (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 chair (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 chair 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 18A (*Independent Investment Expert Referral Procedure*) or Schedule 18B (*Annual Work Plan and Budget Independent Expert Referral Procedure*) shall not apply and Schedule 19 (*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 chair;
- 1.14.14 once made and published to the Parties pursuant to paragraph 1.14.10 of this Schedule 18, 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 18 (*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 19 (*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 them. 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 18 (*Independent Expert Referral Procedure*).
- 1.15 Where the matter referred to the Independent Expert Referral Procedure pursuant to this Schedule 18 (*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 18 (*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 18.
- 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 19 (*Claims, Disputes and Arbitration*) (and for the avoidance of doubt the provisions of paragraphs 1-4 inclusive of Schedule 19 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 18 (*Independent Expert Referral Procedure*), in which case the following procedure will also apply in addition to the other provisions of this Schedule 18 (*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 18A

INDEPENDENT INVESTMENT EXPERT REFERRAL PROCEDURE

- 1.1 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*) or as part of a Quinquennial Review in respect of an Investment Strategy, the Independent Investment Expert shall finally settle and determine any such matter in accordance with the provisions of this Schedule 18A (*Independent Investment Expert Referral Procedure*).
- 1.2 Each Party shall act reasonably and cooperate to give effect to the provisions of this Schedule 18A (*Independent Investment Expert Referral Procedure*).
- 1.3 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 18A (an "**Independent Investment 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 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.
- 1.5 Any Independent Investment Expert(s) appointed under this Schedule 18A (*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

- 1.6 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.
- 1.7 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

- 1.8 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 1.4), 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 chair. 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 chair, the relevant Independent Investment Experts and/or the chair 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 Investment Expert or chair (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 chair (as appropriate), with simultaneous copy of the application being sent to the other Party.
- 1.10 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.
- 1.11 The LCIA shall endeavour to appoint the Independent Investment Expert or chair 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 Investment Expert, acting pursuant to this Schedule 18A (*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)

- 1.14 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 18A (*Independent Investment Expert Referral Procedure*):
- 1.14.1 Schedule 18 (*Independent Expert Referral Procedure*) or Schedule 18B (*Annual Work Plan and Budget Independent Expert Referral Procedure*) shall not apply. Schedule 19 (*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 Investment Expert appointed under this Schedule 18A (*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;
 - 1.14.3 within two (2) Business Days of the appointment of the Panel in accordance with paragraphs 1.6 to 1.13 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;
 - 1.14.4 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;
 - 1.14.5 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;
 - 1.14.6 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);
- 1.14.7 the Panel shall be entitled to take the initiative to ascertain the facts and the law relating to the matters referred to them, and (save as set out at paragraph 1.15 below) to settle them as shall seem best in the Panel's absolute discretion;
 - 1.14.8 the procedure shall be conducted, and the determination of the Panel shall be written, in the English language;
 - 1.14.9 the determination of the Panel shall include reasons for the Panel's decision;
 - 1.14.10 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 chair;
 - 1.14.11 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);
 - 1.14.12 in the event that one Party wishes to challenge a determination of the Panel as permissible by law and this Schedule 18A (*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 19 (*Claims, Disputes and Arbitration*);
 - 1.14.13 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;
 - 1.14.14 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 them. 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;

1.14.15 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

1.14.16 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 them in pursuance of the Panel's appointment under this Schedule 18A (*Independent Investment Expert Referral Procedure*).

1.15 Where the matter referred to the Independent Investment Expert Referral Procedure pursuant to this Schedule 18A (*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.

1.16 Nothing in this Schedule 18A (*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 18B
ANNUAL WORK PLAN AND BUDGET INDEPENDENT EXPERT REFERRAL
PROCEDURE

- 1.17 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 18B (*Annual Work Plan and Budget Independent Expert Referral Procedure*).
- 1.18 Each Party shall act reasonably and cooperate to give effect to the provisions of this Schedule 18B (*Annual Work Plan and Budget Independent Expert Referral Procedure*).
- 1.19 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 18B (the "**AWPB Independent Expert Referral Notice**").
- 1.20 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.
- 1.21 Any AWPB Independent Expert(s) appointed under this Schedule 18B (*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

- 1.22 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.
- 1.23 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

- 1.24 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 1.20 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 chair. 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 chair, the relevant AWPB Independent Experts and/or chair 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

- 1.25 If a Party wishes to apply to the LCIA to appoint an AWPB Independent Expert or chair (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 chair (as appropriate), with simultaneous copy of the application being sent to the other Party.
- 1.26 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.
- 1.27 The LCIA shall endeavour to appoint the AWPB Independent Expert or chair within five (5) Business Days of service of the reply, or as soon as reasonably practicable thereafter.
- 1.28 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.
- 1.29 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 18B (*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 above mentioned 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)

- 1.30 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 18B (*Annual Work Plan and Budget Independent Expert Referral Procedure*):
- 1.30.1 Schedule 18 (*Independent Expert Referral Procedure*) or Schedule 18A (*Independent Investment Expert Referral Procedure*) shall not apply. Schedule 19 (*Claims, Disputes and Arbitration*) shall apply in relation to the enforcement of or challenge to any determination made by the Panel;
 - 1.30.2 any AWPB Independent Expert appointed under this Schedule 18B (*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;
 - 1.30.3 within two (2) Business Days of the appointment of the Panel in accordance with paragraphs 1.22 to 1.29 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;
 - 1.30.4 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;
 - 1.30.5 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;
 - 1.30.6 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);
- 1.30.7 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 1.31 below) to settle them as shall seem best in the Panel's absolute discretion;
 - 1.30.8 the procedure shall be conducted, and the determination of the Panel shall be written, in the English language;
 - 1.30.9 the determination of the Panel shall include reasons for the Panel's decision;
 - 1.30.10 in the event AWPB Independent Expert or panel of three AWPB Independent Experts (in either case, the "**Panel**") pursuant to this Schedule be made by a majority decision. If there is no majority, the decision shall be made by the chair;
 - 1.30.11 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 44 (*Annual Reconciliation Review*);
 - 1.30.12 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);
 - 1.30.13 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;
 - 1.30.14 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 such person. 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;

- 1.30.15 in the event that one Party wishes to challenge a determination of the Panel as permissible by law and this Schedule 18B (*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 19 (*Claims, Disputes and Arbitration*), subject always to the provisions of paragraph 1.30.11 above;
- 1.30.16 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
- 1.30.17 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 them in pursuance of the Panel's appointment under this Schedule 18B (*Annual Work Plan and Budget Independent Expert Referral Procedure*).
- 1.31 Where the matter referred to the Annual Work Plan and Budget Independent Expert Referral Procedure pursuant to this Schedule 18B (*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.
- 1.32 Nothing in this Schedule 18B (*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 18B (*Annual Work Plan and Budget Independent Expert Referral Procedure*) (subject always to the provisions of paragraph 1.30.11 above).

SCHEDULE 19
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 19; 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 19.
- 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 19 (*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 chair of the Tribunal. Notwithstanding anything to the contrary in the LCIA Rules, in agreeing upon the chair, the two (2) arbitrators may communicate directly with each other and with their respective appointing Parties. If no agreement is reached upon the chair 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 chair 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 19 (*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 20
FIRST CONTRIBUTIONS NOTICE

To: **Secretary of State**

[insert address]

Attention: [Permanent Secretary]

[SZC Nuclear Decommissioning Fund Company Limited]

[insert address]

Attention: [●]

1. We refer to the Funding Arrangements Plan dated [insert date] between Sizewell C Limited and [SZC Nuclear Decommissioning Fund Company Limited] (the "**FAP**"). Terms used but not otherwise defined herein shall have the meanings given to them in the FAP.
2. This is the First Contributions Notice.
3. We hereby confirm that:
 - a. the Annual Contributions and the Annual Milestones in respect of the First Annual Contribution Period and the Financial Period following the First Annual Contribution Period (the "**Second Annual Contribution Period**") are as follows:

First Annual Contribution Period		
Annual Contribution	£33.9m	
Monthly Contributions	First month of the First Annual Contribution Period	£2.825m
	Each subsequent month for the remainder of the First Annual Contribution Period.	£2.825m
Annual Milestone	£35.2m	
Second Annual Contribution Period		

Annual Contribution	£34.6m	
Monthly Contributions	April	£2.883m
	May	£2.883m
	June	£2.883m
	July	£2.883m
	August	£2.883m
	September	£2.883m
	October	£2.883m
	November	£2.883m
	December	£2.883m
	January	£2.883m
	February	£2.883m
	March	£2.883m
Annual Milestone	£74.0m	

- b. appended at Appendix 1 are details of the calculations run in accordance with the Minimum Contribution Calculation Rules, in a spread sheet format; and
 - c. *[insert details of Indexation applied in accordance with Clause 4.2.]*
4. This Contributions Notice shall be governed by and construed in accordance with English law.

SCHEDULE 21
FUNDING OUTCOMES REPORT PROCESS

1. PREPARATION OF THE ASSESSMENT OF THE LIKELIHOOD OF FUNDING SUCCESS REPORT

- 1.1 No later than eighty (80) Business Days after the end of each Funding Outcomes Report Period, the FDP Implementation Company shall instruct the Independent Financial Verifier to carry out the Assessment of the Likelihood of Funding Outcomes and prepare the Funding Outcomes Report.
- 1.2 The FDP Implementation Company shall deliver the Funding Outcomes Report to the Operator no later than fifty (50) Business Days following the date on which the Independent Financial Verifier was instructed to carry out the Assessment of the Likelihood of Funding Outcomes in accordance with paragraph 1.1 above.
- 1.3 No later than five (5) Business Days following delivery of the Funding Outcomes Report in accordance with paragraph 1.2 above, the FDP Implementation Company shall instruct the Funding Outcomes Report Reviewer to carry out an assessment as to whether or not the methods and assumptions used by the Independent Financial Verifier for the purposes of the Assessment of the Likelihood of Funding Outcomes are reasonable.

2. REVIEW OF THE ASSESSMENT OF THE LIKELIHOOD OF FUNDING SUCCESS REPORT

Explanatory Note: It is expected that all parties will provide the Funding Outcomes Report Reviewer with all information required in order for it to carry out its review promptly upon request.

- 2.1 If the Funding Outcomes Report Reviewer determines that the data, methods and assumptions used by the Independent Financial Verifier for the purposes of the Assessment of the Likelihood of Funding Outcomes are reasonable, it shall, within twenty (20) Business Days of receipt of the Funding Outcomes Report, give notice to the FDP Implementation Company confirming the same and, promptly (and in any event within two (2) Business Days of the Funding Outcomes Report Reviewer giving such notice) the FDP Implementation Company shall deliver the Funding Outcomes Report to the Secretary of State.
- 2.2 If the Funding Outcomes Report Reviewer considers that the data, methods and assumptions used by the Independent Financial Verifier for the purposes of the Assessment of the Likelihood of Funding Outcomes are not reasonable it shall, within twenty (20) Business Days of receipt of the Funding Outcomes Report, give notice to the FDP Implementation Company stating its reasons and, promptly (and in any event within twenty (20) Business Days of the Funding Outcomes Report Reviewer giving such notice) the parties shall refer the matter of whether the data, methods and assumptions used by the Independent Financial Verifier for the purposes of the Assessment of the Likelihood of Funding Outcomes are reasonable for determination in accordance with the Independent Expert Referral Procedure.

- 2.3 If the Independent Expert determines that the data, methods and assumptions used by the Independent Financial Verifier for the purposes of the Assessment of the Likelihood of Funding Outcomes are reasonable, then the FDP Implementation Company shall deliver the Funding Outcomes Report to the Secretary of State within two (2) Business Days of receipt of such determination.
- 2.4 If the Independent Expert determines that the data, methods and assumptions used by the Independent Financial Verifier for the purposes of the Assessment of the Likelihood of Funding Outcomes are not reasonable, then the FDP Implementation Company shall, within ten (10) Business Days of receipt of such determination, appoint a second Independent Financial Verifier to carry out the Assessment of the Likelihood of Funding Outcomes and prepare the Funding Outcomes Report.

SCHEDULE 22 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 22 (*Definitions and Interpretation*) (or as otherwise specified in this Agreement):

"**2006 Act**" means the Companies Act 2006;

"**Accelerated Decommissioning Contributions Amount**" means, as applicable:

- (a) if the Security Trigger Event Action is taken on or before the end of the Primary Funding Period, an amount equal to the End of Primary Funding Period Decommissioning Target (based on the most recent Annual Report or Quinquennial Report, as applicable), discounted on an annual compound basis at rates which are equal to those applied during the period between FYE End of Primary Funding Period and FYE End of Secondary Funding Period as set out in Schedule 2, paragraph 1.4.1 as determined in accordance with the most recent Quinquennial Review (less the Projected Inflation 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 rates which are equal to those applied during the period between FYE End of Primary Funding Period and FYE End of Secondary Funding Period as set out in Schedule 2, paragraph 1.4.1 as determined in accordance with the most recent Quinquennial Review (less the Projected Inflation Rate) from FYE End of Generation until the last day of the Financial Period in which the Security Trigger Event Action is taken,

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 28 (*Funded SF Transfer Fee and Funded ILW Transfer Fee will be released if Security Trigger Event Action is taken*) or Clause 30 (*Repayment of Unspent DTM Payments if Security Trigger Event Action is taken*);

"**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 Fund Assets**" means, on a given date, the value of the Fund Assets;

"Additional Storage Amount" means the amount calculated in accordance with paragraph 4.4 (*Additional Storage Amount*) of Section 4 (*Formulae sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*);

"Affected Party" has the meaning given in Clause 49.1 (*Suspension of Obligations for a Force Majeure Event*);

"Affiliate" means in relation to any person:

- (a) any person holding twelve and a half per cent. (12.5%) or more of the shares or able to exercise twelve and a half per cent. (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,

provided that, for the purpose of applying the Independence Criteria in accordance with Clause 62 (*Appointment of Independent Directors*), Clause 63 (*Removal of Independent Directors*), Clause 66 (*the FDP Budget and Services Agreement*), Schedule 17 (*Governance Arrangements*) the FDP Implementation Company shall be deemed not to be an Affiliate of the Operator;

"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 an Unplanned Permanent Shutdown or a Single Reactor Early 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);
- (e) any other costs of Designated Technical Matters which have been agreed in writing with the FDP Implementation Company as comprising Allowable Costs;
- (f) without any double recovery, any Taxes payable by the Operator; and
- (g) any Emergency DTM Payments payable in accordance with Clause 38.3 (*Requirement for funds following a Shutdown Notice*);

"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;

"Allowed Revenue" has the meaning given to it in Recital (B) (b);

"Alternative Currency" has the meaning given in Clause 75.1 (*Adoption of Alternative Currency*);

"Alternative Currency Effective Date" has the meaning given in Clause 75.1 (*Adoption of Alternative Currency*);

"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 aggregate of the contributions made or to be made by the Operator (or which are voluntarily made by another person) to the FDP Implementation Company on or prior to the end of an Annual Contribution Period in accordance with Clause 2 and calculated in accordance with the methodology set out in Schedule 3 (*Minimum Contribution Calculation Rules*);

"Annual Contribution Period" means:

- (a) the period which commences on the First Criticality Payment Date and ending on the last Business Day of the Financial Period in which the First Criticality Payment Date occurs (the **"First Annual Contribution Period"**); and
- (b) following the First Annual Contribution Period, the period which commences on the first Business Day of the Financial Period to occur after the end of such First Annual Contribution Period or Annual Contribution Period (as the case may be) and ending on the last Business Day of such Financial Period;

"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 last Financial Period in the Secondary Funding Period, the target value for the Fund Assets on the last day of that Financial Period, taken from the Funding Path in effect which has been determined in accordance with Schedule 2 (*Funding Path*);

"Annual FDP Implementation Company Directors' Certificate" means the certificate described in Schedule 14 (*Requirements for Annual Operator Directors' Certificate*);

"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 44 (*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 18B (*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 per cent. (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;
- (b) activities relating to the development of energy technologies that could be powered by low-carbon electricity or heat from nuclear generation facilities; and
- (c) 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 per cent. (5%) of all installed 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 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;

"Assessment of the Likelihood of Funding Outcomes" means the modelling review process carried out in order to produce a Probability Distribution, as set out in Part C of Schedule 11 (*Financial Verification*);

"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;

"Authorised Representative" means any person that the FDP Implementation Company authorises from time to time to issue Investment Orders by giving notice to the Operator and the Secretary of State;

"Authority" means the Gas and Electricity Markets Authority established pursuant to section 1 of the Utilities Act 2000;

"Authority Contribution Submission Date" has the meaning given to that term in sub-clause 4.4.4;

"Available Cash" has the meaning given to that term in Clause 12 (*Investments may be made with Available Cash*);

"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 1.19 of Schedule 18B (*Annual Work Plan and Budget Independent Expert Referral Procedure*);

"AWPB Referral" has the meaning given to that term in paragraph 1.30.3 (*Role and duties of the Independent Investment Expert(s)*) of Schedule 18B (*Annual Work Plan and Budget Independent Referral Procedure*);

"AWPB Reply" has the meaning given to that term in paragraph 1.30.5 (*Role and duties of the Independent Investment Expert(s)*) of Schedule 18B (*Annual Work Plan and Budget Independent Referral Procedure*);

"AWPB Response to Referral" has the meaning given to that term in paragraph 1.30.4 (*Role and duties of the Independent Investment Expert(s)*) of Schedule 18B (*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 1.3 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; and
- (d) 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 Criteria (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 Criteria (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 Criteria (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.

"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 74.3 (*Commercially Sensitive Information*);

"Common Security Document" means any document (in a form approved by the Secretary of State and the FDP Implementation Company) granting Security that incorporates the Security referred to in Clause 26.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*) 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 26.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*)));

"Common Security Package" has the meaning given to that term in sub-clause 26.5.1(a) (*Prohibition on Granting a fixed charge*)

"Competent Authority" means:

- (a) any international, national, federal, regional, state, local, 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 47.2 (*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:

- (a) the First Criticality Payment;
 - (b) any Monthly Contribution;
 - (c) an Overpayment;
 - (d) any FDP Final Amount Contribution; and / or
 - (e) any delayed payments which are then payable in accordance with Clause 2.4,
- as the context requires;

"Contributions Notice" means a notice setting out the Annual Contribution and each Monthly Contribution to be made in the relevant Annual Contribution Period (including a Provisional Contributions Notice);

"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;

"Cooperation Agreement" means an agreement between the Operator and (i) any such entity referred to in Clause 23.3.1; or (ii) any such entity referred to in Clause 23.3.2 (each a **"Decommissioning Responsible Party"**), documenting the obligations of the parties thereto to cooperate in relation to all material matters concerning the DWMP with the purpose of reaching a consensus as between the Operator and the Decommissioning Responsible Party on the decommissioning strategy, processes and procedures, procurement and people management, so as to facilitate a smooth transition from operation to decommissioning in relation to the Site, whilst recognising the need for the Operator to have control of the Site and responsibility for complying with the Nuclear Site Licence.

"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.*

"CPI" means:

- (a) subject to (b) below, the United Kingdom Consumer Price Index published by the Office for National Statistics 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 76 (CPI), read together with the Specified Adjustments;

"CPI Index Change Event" has the meaning given to that term in Clause 76 (CPI);

"Credit Rating Change Event" has the meaning given to that term in Clause 78.1 (*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 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 Strategy**" means the strategy for Decommissioning as set out in the latest version of the DWMP;

"**Default Amount**" means the amount that was due on the First Criticality Payment Date or a Monthly Contribution Date, as applicable, and remains unpaid, together with all interest accruing on it pursuant to Clause 79 (*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;

"**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);

"**Detailed Tax Assessment**" means the detailed assessment to be carried out by Tax Adviser in accordance with paragraph 1.10.3 of Section 1 (*Quinquennial Review Process*) of Schedule 9 (*Quinquennial Review Programme*);

"**De-Risking Period**" has the meaning given to that term in paragraph 1.3.2(c) of Schedule 7 (*Investment Rules*);

"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;
- (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 Taxation 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 18 (*Independent Expert Referral Procedure*), Schedule 18A (*Independent Investment Expert Referral Procedure*) or Schedule 18B (*Annual Work Plan and Budget Independent Expert Referral 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 19 (*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 19 (*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, 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 Revenue Collection Contract 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) each FDP Security Document;
- (g) the SF Transfer Contract;
- (h) the ILW Transfer Contract; and
- (i) the Intercreditor 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, as applicable:

- (a) the First Draft Contributions Notice;
- (b) the draft Contributions Notice most recently calculated by the FDP Implementation Company as part of an Annual Review or a Quinquennial Review (as the case may be); and / or
- (c) a draft Contributions Notice prepared by the Operator in accordance with Clause 4.3;

"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 42.1 (*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 41.1 (*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 40.5, 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 37.3 (*DTM Purpose Trust*);

"DWMP" means the decommissioning and waste management plan that forms part of the FDP for Sizewell 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 Permanent Shutdown Decision" means a decision taken by the board of the Operator to resolve that both Reactors will Permanently Cease to Generate Electricity prior to FYE End of Secondary Funding Period or, to the extent it occurs prior to such decision, a Permanent Early Closure (as defined in the SZC Economic Licence);

"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 38.3 (*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 3.1 (*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 5.2 (*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 4.2 (*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 6.2 (*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 2.1 (*End of Generation Target*) of Section 4 (*Formulae sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*);

"End of Primary Funding Period Decommissioning Target" means the amount calculated in accordance with Paragraph 3.2 (*End of Primary Funding Period Decommissioning Target*) of Section 4 (*Formulae sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*);

"End of Primary Funding Period ILW Disposal Target" means the amount calculated in accordance with Paragraph 5.3 (*End of Primary Funding Period ILW Disposal Target*) of Section 4 (*Formulae sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*);

"End of Primary Funding Period Management Target" means the amount calculated in accordance with Paragraph 4.3 (*End of Primary Funding Period Management Target*) of Section 4 (*Formulae sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*);

"End of Primary Funding Period Spent Fuel Disposal Target" means the amount calculated in accordance with Paragraph 6.3 (*End of Primary Funding Period Spent Fuel Target*) of Section 4 (*Formulae sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*);

"End of Primary Funding Period Target" means the amount calculated in accordance with Paragraph 2.2 (*End of Primary Funding Period Target*) of Section 4 (*Formulae sheet*) of Schedule 3 (*Minimum Contribution Calculation Rules*);

"End of Spreading Period Funding Target" means the target Fund Assets Value for the last day of the Spreading Period as set out in the Funding Path in effect as at the relevant date;

"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;

"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);

"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 and Sweden;

"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 Intercreditor Agreement or any Common Security Document;

"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);

"Expected Decommissioning Start Date" means, in relation to the first Reactor to begin Decommissioning after FYE End of Primary Funding Period, the anticipated date of the commencement of Decommissioning, or the Actual Decommissioning Start Date, of such Reactor;

"Expert Verification Report" means a report that is produced by the Independent Expert in accordance with Schedule 10 (*Technical Verification*);

"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 Additional Security Document" means any document (in a form approved by the Secretary of State and the FDP Implementation Company) granting Security in respect of:

(a) shares held by the Operator in the FDP Implementation Company; and

(b) the FDP Account,

(as contemplated by Clause 26.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*));

"FDP Account" means the account maintained by the Operator with [●] bearing no. [●] and titled "FDP Account".

"FDP Allowance" has the meaning given to that term in the SZC Economic Licence;

"FDP Allowance Building Block" has the meaning given to that term in the SZC Economic Licence;

"FDP Building Block Term Event" has the meaning given to that term in sub-clause 4.6.2;

"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 Final Amount" has the meaning given to that term in the SZC Economic Licence;

"FDP Final Amount Contribution" means following the occurrence of a Partial Revocation, any amounts received by the Operator under the Revenue Collection Agreement in respect of payment of amounts constituting the FDP Final Amount;

"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 Mitigation Notice" means a notice delivered by the FDP Implementation Company under sub-clause 46.1.3 or sub-clause 46.2.2, as applicable;

"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);

"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 61.4 (*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 5 (*FDP Protection Triggers*) of Section 3 (*Reserved Matters and FDP Protection Triggers*) of Schedule 17 (*Governance Arrangements*);

"FDP Regulations" means the Nuclear Waste and Decommissioning (Finance and Fees) Regulations 2013;

"FDP Secured Liabilities" has the meaning given to it in Clause 26.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*);

"FDP Security Documents" means, initially, the form of FDP Additional Security Documents and the Common Security Documents 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 Common 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 26.2 (*Security for the benefit of the Secretary of State and the FDP Implementation Company*)));

"FDP Shortfall" has the meaning given to that term in the SZC Economic Licence;

"Final Long Term Portfolio" has the meaning given to that term in Schedule 7 (*Investment Rules*);

"Finance Documents" has the meaning given to that term in the Financing MDA or following a refinancing, any finance documents governing the terms of the Operator's debt finance arrangements and nominated as "finance documents" in accordance with such arrangements;

"Financial Indebtedness" means, excluding any transaction under or entered into pursuant to the Revenue Collection Contract 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 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 MDA" has the meaning given to that term in the Nuclear Administration and Statutory Transfers Agreement;

"First Annual Contribution Period" has the meaning given to such term in limb (a) of the definition of "Annual Contribution Period";

"First Contributions Notice" means the Contributions Notice which enters into effect in accordance with sub-clause 4.2.4;

"First Criticality" means the date on which a self-sustaining nuclear chain reaction first occurs at a Reactor on the Site;

"First Criticality Payment" means the amount determined to be payable on the First Criticality Payment Date, which shall be the amount standing to the credit of the FDP Account on the First Criticality Payment Date.

"First Criticality Payment Date" means the date that is five (5) Business Days before the expected date of First Criticality;

"First Decommissioning Period" means the Financial Period beginning immediately after FYE End of Generation;

"First Draft Contributions Notice" means the notice given by the Operator in respect of the first two (2) Annual Contributions in accordance with Clause 4.1 (*First Contributions Notice will be produced before First Criticality*);

"Fitch" means Fitch Ratings Limited, or any successor rating agency thereto;

"Fixed Assumptions" mean the assumptions in paragraph 5 (*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" means the fund held by the FDP Implementation Company comprising the Fund Assets;

"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 Payment Procedures" means the procedures set out in Section 2 (*Fund Payment Procedures*) of Schedule 4 (*Payment Procedures*);

"Funded ILW Transfer Fee" has the meaning given to that term in the ILW Transfer Contract;

"Funded SF Transfer Fee" has the meaning given to that term in the SF Transfer Contract;

"Funding Outcomes Report" means the report prepared pursuant to an Assessment of the Likelihood of Funding Outcomes and delivered in accordance with Schedule 21 (*Funding Outcomes Report Process*).

"Funding Outcomes Report Period" means each of:

- (a) FYE EPFP – 10;
- (b) FYE EPFP – 2; and
- (c) FYE EPFP.

"Funding Outcomes Report Reviewer" means a third party independent adviser instructed by the FDP Implementation Company in accordance with paragraph 1.3 of Schedule 21 (*Funding Outcomes Report Process*).

"Funding Path" means the projected value of the Fund Assets for each Financial Period during the Primary Funding Period and Secondary Funding Period, as determined in accordance with Schedule 2 (*Funding Path*) and expressed in monetary terms as at the last day of the Quinquennial Reporting Period;

"Funding Path Starting Asset Value" means, in respect of the Funding Path, the end asset value from the most recently calculated Funding Path expressed in monetary terms as at the date of which the revised Funding Path comes into effect as determined in accordance with Schedule 2 (*Funding Path*).

"FYE End of Generation" means either:

- (a) FYE End of Secondary Funding Period; or
- (b) where:
 - (i) Early Permanent Shutdown Decision has occurred; 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 date on which the FDP Allowance Building Block ceases to be in effect in accordance with the SZC Economic Licence.

"FYE End of Primary Funding Period" means the last day of the Primary Funding Period;

"FYE End of Secondary Funding Period" means the last day of the Secondary Funding Period;

"FYE EPFP +/- *n*" means the *n*th Financial Year End occurring prior to or following (as the case may be) FYE End of Primary Funding Period, for example FYE EPFP + 2 means the 2nd Financial Year End following FYE End of Primary Funding Period and FYE EPFP – 2 means the Financial Year End occurring 2 Financial Periods prior to FYE End of Primary Funding Period;

"FYE Year *n*" means the *n*th Financial Year End occurring after the commencement of the Primary Funding Period, for example FYE Year 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;

"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 and any ministry, department or political subdivision thereof, and any person, including without limitation anybody 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;

"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;

"Growth Portfolio" has the meaning given to that term in Schedule 7 (*Investment Rules*);

"Growth Rate" means the expected annual rate of return of the Growth Portfolio as determined and updated from time to time in accordance with paragraph 1.3.4 of Part B of Schedule 11 (*Financial Verification*), before allowance for Tax, inclusive of future inflation and net of Investment Management Fees;

"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 FAP" means the fund arrangements plan for Hinkley Point C dated 29 September 2016;

"HPC FundCo" means the "FDP Implementation Company", as defined under the HPC FAP;

"HPC Independent Directors" means the "Independent Directors" (as defined under the HPC FAP) of the HPC FundCo;

"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 Transfer 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 5.1 (*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 Operator specifying the Investment Order to which it relates and setting out reasonable details regarding why the Operator considers that the sale or purchase proposed in such Investment Order would constitute a breach of the Investment Rules;

"Inconsistent Portfolio" means that the Fund Assets (taken as a whole) are not consistent with the Investment Rules;

"Inconsistent Portfolio Event" has the meaning given to that term in sub-clause 15.1.1;

"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; and
- (c) has been approved as independent by the Board in accordance with Clause 62.2 (*Independent Directors must satisfy the Independence Criteria*),

provided that, it is acknowledged and agreed that the Interim Services Arrangements shall not give rise to a failure to satisfy the Independence Criteria;

"Independent Chair" means the independent chair 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 18 (*Independent Expert Referral Procedure*);

"Independent Expert Referral Procedure" means the procedure set out in Schedule 18 (*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 18A (*Independent Investment Expert Referral Procedure*);

"Independent Investment Expert Referral Procedure" means the procedure set out in Schedule 18A (*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 sub-clause 77.1.1 (*Withdrawal of Reference Index*);

"Indexed" means escalated at the annual rate of CPI 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;

"Initial Funding Path" means the initial funding path determined by the Government Actuary's Department as at the date of this Agreement;

"Initial Investment Strategy" means the Investment Strategy determined in accordance with Clause 4.1.2 or Clause 4.1.3, as applicable;

"Initial Key Assumptions" means, in respect of:

- (a) the Projected Inflation Rate, 2.2%;

- (b) the LTDR, 4.8%;
- (c) the Growth Rate, 8%; and
- (d) the Nuclear Inflation Premium, 1%.

"Initial Long Term Portfolio" has the meaning given to that term in Schedule 7 (*Investment Rules*);

"Initial Regulatory Period" has the meaning given to that term in the SZC Economic Licence;

"Insolvency Regulation" means the Insolvency (Amendment) (EU Exit) Regulations 2019 (2019 no. 146) (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;

"Intercreditor Agreement" means 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 and 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 Intercreditor Agreement) makes prudent provision for the DTM Costs;

"Interim Services Arrangements" has the meaning given to that term in Clause 62.2.2;

"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 16.1 (*FDP Implementation Company may appoint Investment Execution Managers*) in order to carry out the functions set out therein;

"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 per cent. (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 Management Fees" means the fees of any Investment Execution Manager;

"Investment Order" means a notice given by or on behalf of the FDP Implementation Company setting out any instructions in relation to the purchase and/or sale of any Fund Assets;

"Investment Rules" means:

- (a) the requirements set out in Schedule 7 (*Investment Rules*); and
- (b) any Investment Strategy which is in effect from time to time in accordance with Schedule 7 (*Investment Rules*);

"Investment Strategy" means the investment strategy prepared in accordance with Schedule 7 (*Investment Rules*) setting out:

- (a) the strategic asset allocation for the Growth Portfolio and the Long Term Portfolio in terms of target proportionate allocations to broad asset classes, with suitable tolerance bands;
- (b) the de-risking strategy to facilitate transition between the Growth Portfolio and the Long Term Portfolio
- (c) an appropriately determined estimate of the expected return, volatility and any other risk statistics or metrics which the FDP Implementation Company considers appropriate; and
- (d) details as to how the chosen Investment Strategy is consistent with the requirements of in Schedule 7 (*Investment Rules*);

"K-factor" has the meaning given to that term in the SZC Economic Licence;

"Key Assumptions" means each of the Projected Inflation Rate, the Nuclear Inflation Premium, the Growth Rate and the LTDR;

"Key Assumptions Verification" means the financial verification as to whether the Key Assumptions remain valid or fit for purpose as set out in Part B of Schedule 11 (*Financial Verification*);

"Key Generation Asset" means any asset without which the Operator would not be able to operate Sizewell 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;

"Long Term Portfolio" has the meaning given to that term in Schedule 7 (*Investment Rules*);

"LTDR" or "Long Term Discount Rate" means, the expected annual rate of return over the period from FYE End of Secondary Funding Period to the SF Transfer Date as determined and updated from time to time in accordance with paragraph 1.3.3 of Part B of Schedule 11 (*Financial Verification*), before allowance for Tax, inclusive of future inflation and net of Investment Management Fees;

"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 17 (*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 £2 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 Contributions due in an Annual Contribution Period by the last day of such period;

"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*);

"Monthly Contribution" means the amount determined to be payable on a Monthly Contribution Date in accordance with a Quinquennial Review or Annual Review, as applicable;

"Monthly Contribution Date" has the meaning given to that term in Clause 2.3;

"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;

"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;

"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 6 (*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,

provided that, (A) the relevant Independent Director or prospective Independent Director's role as a HPC Independent Director (including where such person has previously acted in a role as a HPC Independent Director) shall not constitute a Notifiable Circumstance for the purpose of this Agreement or the Articles; and (B) the Interim Services Arrangements shall not give rise to a Notifiable Circumstance;

"Nuclear Administration and Statutory Transfers Agreement" means the nuclear administration and statutory transfers agreement entered into between, among others, the Secretary of State and the Operator on or about the date of Revenue Commencement;

"Nuclear Inflation Premium" means the forecast value determined in accordance with paragraph 1.3.2 of Part B of Schedule 11 (*Financial Verification*);

"Nuclear Site Licence" means a nuclear site licence granted in relation to the Site pursuant to section 1 of the Nuclear Installations Act 1965;

"Nuclear Transfer Scheme" means a statutory transfer scheme pursuant to section 38 of, and Schedule 5 to, the Energy Act 2004;

"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;

"Operator Distribution Account" means any account nominated by the Operator from time to time specifically for the purpose of holding cash available for distributions;

"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 Expected 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*);

"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;
- (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); or
- (e) an RLNC administration order has been issued in respect of the Operator in accordance with section 31 of the Nuclear Energy (Financing) Act 2022;

"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;

"Overpayment" means any payment made to the FDP Implementation Company (other than an Annual Contribution or Monthly Contribution) 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 41.4 (*Independent Technical Verifier must review works and activities included in the Annual Work Plan and Budget if overruns exceed 25 per cent. contingency*);

"P50" means the value which represents a fifty per cent. (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 per cent. (80%) probability that the final cost will be at or below the estimate calculated on the basis set out in paragraph 1.5 (*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);

"Partial Revocation" has the meaning given to that term in the SZC Economic Licence;

"Partial Revocation Period" has the meaning given to that term in the SZC Economic Licence;

"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;

"Perfecting Action" has the meaning given to it in sub-clause 31.2.2 (*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 Investments" means the investments specified in paragraph 2 of Schedule 7 (*Investment Rules*);

"Permitted Debt Transaction" means any investment in bonds or other debt securities that is consistent with the Investment Rules and the Investment Strategy;

"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), provided that the funding of any such loan is made from proceeds standing to the credit of the Operator's Distribution Account or otherwise available for distribution in accordance with this Agreement and Finance Documents (to the extent applicable);
- (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 his 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 (6) 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 Revenue Collection Contract; and
- (k) any transaction under or entered into pursuant to the Operator's electricity trading arrangements.

"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 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 Expected Decommissioning Start Date (or, for the purposes of Clause 38.2, before the Actual Decommissioning Start Date);

"Previous Contributions Notice" has the meaning given to that term in sub-clause 4.4.3(a);

"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 Funding Period" means, either:

- (a) the period from First Criticality until FYE 55; or
- (b) following the occurrence of an FDP Building Block Term Event, the period determined pursuant to sub-clause 4.6.2;

"Probability Distribution" means a statistical model defining the range of possible outcomes and their corresponding likelihood;

"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 3 (*Permitted Investments*) of Schedule 7 (*Investment Rules*);

"Prohibited Practice" means any practice prohibited under paragraph 1 (*Prohibited Practices*) of Schedule 7 (*Investment Rules*);

"Projected Inflation Rate" means the forecast value of future CPI as determined and updated from time to time in accordance with paragraph 1.3.1 of Part B of Schedule 11 (*Financial Verification*);

"Proposed Modification" means a modification to the FDP which is proposed in accordance with the terms of the Section 46 Agreement;

"Provisional Contributions Notice" means a Contribution Notice determined in accordance with sub-clause 4.4.3(d), and which may be reduced or increased by Clause 2.5;

"Purpose" has the meaning given to that term in Clause 56.1 (*Sole purpose of the FDP Implementation Company to be the implementation and enforcement of this Agreement*);

"QQR Reference Date" means the first day in a Quinquennial Review Year;

"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;
- (b) after the first Quinquennial Review:
 - (i) until FYE EPFP – 5, 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;
 - (ii) the period from FYE EPFP – 5 until FYE EPFP – 2;
 - (iii) the period from FYE EPFP – 2 until FYE End of Primary Funding Period;
 - (iv) the period from FYE End of Primary Funding Period until FYE EPFP + 3; or
 - (v) the period from FYE EPFP + 3 until FYE End of Secondary Funding Period; and
- (c) from FYE End of Secondary Funding Period until the end of the Decommissioning Period, 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;

"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 18A (*Independent Investment Expert Referral Procedure*);

"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;

"Relevant Guarantee" means any guarantee, indemnity, bond, standby or documentary letter of credit or other instrument issued any bank or financial institution in respect of a liability of the Operator which is itself a Borrowing;

"Relevant Regulators" means the ONR and the Environment Agency;

"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 sub-clause 78.1 (*Withdrawal of Credit Rating Criteria*);

"Replacement Index" has the meaning given to that term in sub-clause 77.1.1 (*Withdrawal of Reference Index*);

"Replacement Inflation Index" has the meaning given to that term in Clause 76 (*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 18A (*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 69 (*Required Value*);

"Reserved Matter" has the meaning given to that term in paragraph 4 (*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 4.1 (*Role and duties of the Independent Investment Expert(s)*) of Schedule 18A (*Independent Investment Expert Referral Procedure*);

"Revenue Collection Contract" means the revenue agreement in respect of the electricity generation facility at Sizewell C between the Operator and Low Carbon Contracts Company Limited (registered number 08818711);

"Revenue Collection Counterparty" means the Low Carbon Contracts Company Ltd or such other entity as is designated by the Secretary of State as the revenue collection counterparty for the purposes of the Revenue Collection Contract in accordance with section 16 of the Nuclear Energy (Financing) Act 2022;

"Revenue Commencement" means the date on which the Revenue Collection Contract becomes effective in accordance with its terms;

"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;

"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;

"NWS 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;

"Sanctioned Entity" means a legal or natural person or other entity that is (a) listed under any sanctions, (b) directly or indirectly majority owned and/or controlled by a Sanctioned Entity (to the extent such ownership or control is applicable under the relevant sanctions), or (c) located or a resident in, or incorporated or organised under the laws of, a country or territory that is the target of country wide or territory wide sanctions;

"Second Decommissioning Period" means the Financial Period beginning immediately after the First Decommissioning Period;

"Secondary Funding Period" means the period beginning on the day immediately after FYE End of Primary Funding Period and ending on FYE EPFP + 5 (subject to the assumption set out in sub-clause 4.6.3 (*Initial Regulatory Period and Primary Funding Period*));

"Secretary of State" means the Secretary of State for Energy Security and Net Zero 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 Security and Net Zero 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 Security and Net Zero 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 Common Security Document or any replacement of that Common Security Document granted in accordance with sub-clause 26.5.1(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
- (c) any Financial Indebtedness of a creditor of the Operator is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described);

"Security Trigger Event Action" means:

- (a) the taking of any steps to enforce or require the enforcement of any FDP Additional Security Document (including the crystallisation of any floating charge forming part of the FDP Additional Security Document or the appointment of an insolvency official);
- (b) the taking of any steps to enforce or require the enforcement of any Common Security Package (including the crystallisation of any floating charge forming part of the Common Security Package or the appointment of an insolvency official);

- (c) 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
- (d) 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 Intercreditor Agreement as trustee to hold the Security granted by the Operator pursuant to the Common 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 19 (*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 19 (*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 Sizewell 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 6.1 (*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 Interest 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;

"Shutdown Notice" has the meaning given to that term in Clause 38.1 (*Delivery of a Shutdown Notice*);

"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 per cent. (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;

"Single Reactor Early Shutdown" means, in the Operator's view, one Reactor will Permanently Cease to Generate Electricity, or one Reactor has 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;

"Site" has the meaning given to it in the Nuclear Administration and Statutory Transfers Agreement;

"Site End State" means the site end state specified in the DWMP;

"Sizewell C" means the land, plant and building known as Sizewell C Power Station;

"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 76 (*CPI*);

"Specified Credit Rating Criteria Adjustments" has the meaning given to that term in Clause 78.1 (*Withdrawal of Credit Rating Criteria*);

"Specified Index Change Adjustments" has the meaning given to that term in sub-clause 77.1.2 (*Withdrawal of Reference Index*);

"Specified Security" means the aggregate of:

- (a) any Monthly Contributions 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 in the next Annual Contribution Period as set out in the Draft Contributions Notice or Contributions Notice (as applicable);

"Spent Fuel" has the meaning given to that term in the SFTC;

"Spreading Period" has the meaning given to that term in Recital (A);

"Standstill Period" has the meaning given to that term in the Common Security Documents or an Intercreditor 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);

"Surplus" means that the Fund Assets Value is more than the Annual Milestone for a given Financial Period;

"SZC Economic Licence" means the electricity generation licence granted by the Authority pursuant to the Electricity Act 1989 to the Operator (as an electricity generator) in respect of Sizewell C, as modified pursuant to the Nuclear Energy Financing Act 2022 to introduce special conditions to implement a regulated asset base model in respect of Sizewell C;

"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;

"Tax Adviser" means an independent, appropriately qualified Tax adviser appointed by the FDP Implementation Company to carry out the Tax Assessment and/or the Detailed Tax Assessment, as applicable;

"Tax Assessment" means the high-level assessment to be carried out by a suitably qualified Tax Adviser in accordance with paragraphs 1.10.1 and/or 1.10.2 of Section 1 (*Quinquennial Review Process*) of Schedule 9 (*Quinquennial Review Programme*) (as applicable);

"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*);

"Third Party" means any person or persons other than the Operator, its shareholders, its Affiliates and the FDP Implementation Company;

"Transfer Date Management Target" means the amount calculated in accordance with Paragraph 4.1 (*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;

"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;

"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 DTM Control 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 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;

"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, the updated Key Assumptions 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;

"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;

"Worldwide Insurance Market" means the insurance market open to all companies on normal commercial terms through the nuclear insurance pool; and

"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.

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 Intercreditor 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 references to "**real**" values shall mean costs calculated in money values as at the date of the relevant calculation and without applying future inflation;

- 2.1.22 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 Criteria";
- 2.1.23 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;
- 2.1.24 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.