

## Discontinuation and Compensation Agreement

Dated \_\_\_\_\_

**THE SECRETARY OF STATE FOR ENERGY SECURITY AND  
NET ZERO**

as the DCA Provider and the GSP Provider

and

**SIZEWELL C LIMITED**

as GenCo

and

**SIZEWELL C (PLEDGECO) LIMITED**

as PledgeCo

and

**SIZEWELL C (HOLDING) LIMITED**

as HoldCo

and

**[REDACTED]**

as Security Trustee

*Disclaimer*

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- Neither HMG, GenCo nor any of their representatives; officials; advisers; shareholders; subsidiaries; or affiliates (as the case may be) makes any express or implied representation or warranty with respect to the accuracy or completeness or status of this Document or shall have any liability or responsibility for any error or omission in this Document or for any loss which may arise from reliance on this Document.
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## Table of Contents

Contents	Page
1 Definitions and Interpretation .....	1
2 Commencement and Duration .....	31
3 Discontinuation .....	32
4 Consequences of Discontinuation .....	36
5 Approved Discontinuation Plan, Make Safe Activities and Make Safe Account .....	38
6 Calculation Procedures .....	43
7 Payment of Compensation .....	48
8 Tax Gross up.....	55
9 Full Payment .....	56
10 Reimbursement .....	56
11 Covenants .....	57
12 Electricity market liquidity commitment .....	58
13 VAT .....	64
14 Confidentiality and Freedom of Information .....	64
15 No Partnership or Agency .....	67
16 Notices .....	67
17 Partial Invalidity .....	69
18 Remedies and Waivers .....	69
19 Consequential Loss .....	69
20 Amendments.....	69
21 Counterparts.....	69
22 Entire Agreement .....	69
23 Restrictions on Assignment.....	70
24 No Third Party Enforcement Rights .....	71
25 Waiver of Sovereign Immunity.....	71
26 Governing Law .....	72
27 Expert Determination .....	72

<b>28</b>	<b>Referral to Courts.....</b>	<b>73</b>
<b>29</b>	<b>Jurisdiction of English Courts.....</b>	<b>73</b>
	<b>Schedule 1 Remedy Event, Failure Event and Remediation Plan .....</b>	<b>74</b>
	<b>Schedule 2 Financing Principles .....</b>	<b>80</b>
	<b>Schedule 3 DCA Approved Hedging Policy .....</b>	<b>82</b>
	<b>Schedule 4 Form of Power of Attorney .....</b>	<b>88</b>
	<b>Schedule 5 Form of GSP Call Option Exercise Notice .....</b>	<b>90</b>

**This Agreement** is made as a deed on \_\_\_\_\_ **between:**

- (1) **THE SECRETARY OF STATE FOR ENERGY SECURITY AND NET ZERO** whose office is at 55 Whitehall, London, SW1A 2HP, in their capacity as provider of termination compensation following Discontinuation in accordance with the terms of this Agreement (the **"DCA Provider"**) and in their capacity as provider of the Government Support Package (the **"GSP Provider"**);
- (2) **SIZEWELL C LIMITED**, a limited liability company incorporated in England and Wales with registration number 09284825 and whose registered address is at 25 Copthall Avenue, London, England, EC2R 7BP (**"GenCo"**);
- (3) **SIZEWELL C (PLEDGECO) LIMITED**, a limited liability company incorporated in England and Wales with registration number 16480404 and whose registered address is at 25 Copthall Avenue, London, England, EC2R 7BP (**"PledgeCo"**);
- (4) **SIZEWELL C (HOLDING) LIMITED**, a limited liability company incorporated in England and Wales with registration number 09284751 and whose registered address is at 25 Copthall Avenue, London, England, EC2R 7BP (**"HoldCo"**); and
- (5) [REDACTED], acting in its capacity as the security trustee under and as such term is defined in the Finance Documents (the **"Security Trustee"**),

each a **"Party"** and together the **"Parties"**.

**Recitals:**

- (A) The Secretary of State has designated GenCo as a designated nuclear company pursuant to section 2 of the NEFA and has modified GenCo's electricity generation licence in accordance with section 6 of the NEFA.
- (B) GenCo, as a relevant licensee nuclear company, has been established to undertake the Project in accordance with all applicable laws and the Transaction Documents.
- (C) The Secretary of State, in their capacity as DCA Provider, has agreed to provide financial assistance to the Group Companies for, and in connection with, providing infrastructure at places in the United Kingdom (including infrastructure in connection with electricity and other services (potentially including the provision of heat)) pursuant to section 50 of the United Kingdom Internal Market Act 2020.
- (D) The DCA Provider has the right to Discontinue, and GenCo has the right to request that the DCA Provider Discontinue, the carrying out of the Project in certain circumstances. The DCA Provider has entered into this discontinuation and compensation agreement (this **"Agreement"**) in order to set out those circumstances and the compensation which would become payable by the DCA Provider following the exercise of such right.
- (E) It is intended that this document takes effect as a deed notwithstanding the fact that a party may only execute this document under hand.

**The Parties agree** as follows:

## **1 Definitions and Interpretation**

### **1.1 Definitions**

**“Accelerated Liquidity Support Amounts”** has the meaning given to that term in the Financing MDA;

**“Account Bank”** has the meaning given to that term in the Financing MDA;

**“Actual Additional Allowable Spend”** has the meaning given to that term in the Economic Licence;

**“Actual Allowable Capital Spend”** has the meaning given to that term in the Economic Licence;

**“Additional Allowable Spend”** has the meaning given to that term in the Economic Licence;

**“Additional Financial Indebtedness”** has the meaning given to that term in the Financing MDA;

**“Affiliate”** means, in relation to any company, a holding company or subsidiary of that company or any subsidiary of such holding company, and **“holding company”** and **“subsidiary”** shall have the meanings given to them in section 1159 of the Companies Act 2006;

**“AHRT Amount”** has the meaning given to that term in the Contingent Financing Agreement;

**“Allowable Capital Spend”** has the meaning given to that term in the Economic Licence;

**“Allowable Project Spend”** has the meaning given to that term in the Economic Licence;

**“Allowed Revenue”** has the meaning given to that term in the Economic Licence;

**“Alternative HMG Term Lender”** has the meaning given to it in the HMG Term Facility Agreement;

**“Alternative Secretary of State Transfer”** has the meaning given to it in Clause 23.5.3;

**“Approved Discontinuation Plan”** has the meaning given to it in Clause 5.8;

**“Approved Handover Plan”** has the meaning given to it in Clause 5.8;

**“Approved Hedging Agreement”** means a Hedging Agreement that relates to DCA Approved Hedging;

**“Associate”** has the meaning given to that term in the Economic Licence;

**“Associated Wind Down Costs”** has the meaning given to it in Clause 6.6.3(ii);

**“Assurance Services Agreement”** means the contract of that name entered into between GenCo and [REDACTED] on 12 February 2025 in relation to certain assurance services with respect to a number of Project implementation areas;

**“Authorised Credit Facility”** has the meaning given to that term in the Financing MDA;

**“Authorised Credit Facility Lump Sum Amount”** means, in respect of any Authorised Credit Facility, the aggregate amount of Senior Debt Compensation attributable to such Authorised Credit Facility (as calculated in accordance with Clause 6.2 (*Calculation of Senior Debt Liabilities*));

**“Authority Stated RAB”** has the meaning given to that term in the Economic Licence;

**“Available Equity Commitment”** has the meaning given to that term in the Shareholder Support and Subordination Deed;

**“Base Currency”** means pounds sterling;

**“Bond”** has the meaning given to that term in the Financing MDA, and **“Bonds”** shall be construed accordingly;

**“Breakage Costs”** means, subject to Clause 6.2.5, the costs of early termination of any Approved Hedging Agreement that is ‘out of the money’ which are payable by GenCo to the Secured Creditors, calculated in accordance with Clause 6.2.2;

**“Breakage Gains”** means any amounts receivable by GenCo under any Hedging Agreement on or after the Discontinuation Date as a result of the early termination of such Hedging Agreement, including ‘in the money’ hedging;

**“Business Day”** means any day (other than a Saturday or a Sunday) on which banks in London are open for business;

**“Calculation Confirmation Date”** means the date on which the Parties agree the Total Compensation Amount, the Senior Debt Liabilities, the Senior Debt Compensation and the Gross Equity Compensation under Clause 6.1.5 or the date on which these amounts are otherwise determined pursuant to Clause 27 (*Expert Determination*), as applicable;

**“Capex Incentive”** has the meaning given to that term in the Economic Licence;

**“CFA Provider”** means the Secretary of State in their capacity as the provider of contingent financing pursuant to the Contingent Financing Agreement;

**“Change in Law”** has the meaning given to the term “Change in Law or Regulation” in the Economic Licence;

**“Change in [REDACTED] Standing”** means a Change in Law that means that [REDACTED] ceases by virtue of its constitution to be permitted to provide debt finance to borrowers;

**“Change in Policy”** means a change in any policy or the application thereof which is implemented by a Government Authority and which changes the way in which existing policy, legislative or regulatory provisions (including regulatory standards, policies, guidance and required authorisations) would have been applied or been implemented prior to the change occurring;

**“Change in Revenue Support Arrangements”** means a Change in Law in relation to Part 2 of the NEFA which removes the statutory basis for support of the revenue stream through the Revenue Collection Counterparty unless either:

- (a) the Initial Regulatory Period has expired; or
- (b) an alternative arrangement for payment of the Allowed Revenue has been put in place which keeps GenCo in a ‘no better, no worse’ position than it was at Revenue Commencement;

**“Charging Year”** has the meaning given to that term in the Economic Licence;

**“Civil Works Alliance Agreement”** means the contractual alliancing agreement entered into on 24 June 2025 between GenCo, [REDACTED]

██████████ in relation to the civil works and related works in connection with the design, construction and completion of the Project;

**“Codes”** means the Department for Constitutional Affairs’ Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA and the Code of Practice on the discharge of obligations of public authorities under the Environmental Information Regulations;

**“Collaboration Agreement”** means the collaboration agreement to be entered into between GenCo and ██████████;

**“Commercially Sensitive Information”** has the meaning given to that term in the Liaison Agreement;

**“Commercial Manager Partner Contract”** means the contract of that name entered into between GenCo and ██████████ on 27 January 2025 in relation to project management, contract management and other services for the Project;

**“Commercial Operations Date”** or **“COD”** has the meaning given to that term in the Economic Licence;

**“Commissioning Phase”** means the period from and including the date on which the first delivery of nuclear material enters the Site, concluding on the Commercial Operations Date;

**“Commitment Notice”** has the meaning given to that term in the Contingent Financing Agreement;

**“Common Terms Agreement”** has the meaning given to that term in the Financing MDA;

**“Competent Authority”** has the meaning given to that term in the Economic Licence;

**“Conditions Precedent and Escrow Agreement”** means the conditions precedent and escrow agreement entered into on \_\_\_\_\_ July 2025 between, among others, the Secretary of State, GenCo, HoldCo, the Secured Creditors, the Security Trustee and each Original HoldCo Shareholder;

**“Confidential Information”** means all data and information either indicated or marked as such or being of a nature which it would be reasonable to assume is of a confidential nature, regardless of form or characteristic, and shall include drawings, files, tapes, specifications or related performance or design type documents, or commercial or price information or data of any kind, whether or not patentable, disclosed orally (if confirmed in writing by the originating party no later than 30 Business Days after disclosure as being confidential), in writing or howsoever by one party to another party or parties in connection with the Project or otherwise being acquired by or coming into the knowledge of such party or parties but does not include information that at the date of disclosure is publicly known or at any time after that date becomes publicly known not as a result of a breach of any duty of confidentiality;

**“Consequential Loss”** means:

- (a) any indirect or consequential loss;
- (b) any cost of interest or other financing charges; and
- (c) any loss of production, loss of profit, loss of revenue, loss of contract or liability under other agreements,



in each case whether or not the Party knew, or ought to have known, that such loss would be likely to be suffered, but not including costs, losses or liabilities due to third party losses and/or damages (including for injury or death) and/or fines imposed on any party;

**“Construction Phase”** means the period commencing on the date of Revenue Commencement and concluding on the date on which the Commissioning Phase begins;

**“Contingent Financing”** means the provision of equity and/or debt financing by the CFA Provider to GenCo and/or HoldCo (as the case may be) in accordance with the terms of the Contingent Financing Agreement;

**“Contingent Financing Agreement”** means the agreement of that name entered into between the CFA Provider, PledgeCo, GenCo and HoldCo on or about the date of Revenue Commencement;

**“Contingent Financing Request”** has the meaning given to that term in the Contingent Financing Agreement;

**“Contingent Funding Liabilities”** means the contingent or future obligations or liabilities of any shareholder to subscribe for equity and/or subordinated debt (if any) of:

- (a) the holders of Shares or Shareholder Loans; and/or
- (b) any other parties providing equity or shareholder loans,

owed at the relevant time under any of the Finance Documents to GenCo, HoldCo and/or the Secured Creditors, together with, without double counting, any security (by way of letter of credit, guarantee or otherwise) for those liabilities;

**“Control Period”** has the meaning given to that term in the Economic Licence;

**“CPIH”** means the consumer prices index including owner occupiers’ housing costs published by the Office for National Statistics (the **“Index”**) or, failing such publication or in the event of a fundamental change to the Index, such other index as the DCA Provider and GenCo may agree in writing, or such adjustments to the Index as those parties may agree in writing (in each case with the intention of putting the DCA Provider and GenCo in a “no better, no worse” position than they would have been in had the Index not ceased to be published or the relevant fundamental change not been made);

**“Cross-Regulatory Information Sharing Platform”** means the working group of that name comprising representatives from, among others, GenCo, the Secretary of State, the Economic Regulator, the Environment Agency and the ONR;

**“DCA Approved Hedging”** has the meaning given to it in paragraph 3.2 of Part 1 (*DCA Approved Hedging and Exposure Limits*) of Schedule 3 (*DCA Approved Hedging Policy*);

**“DCA Approved Hedging Policy”** means the hedging policy set out in Schedule 3 (*DCA Approved Hedging Policy*) (as such policy may be amended from time to time pursuant to a written agreement between the DCA Provider (in its absolute discretion) and GenCo, including following receipt of a request from GenCo to amend such policy);

**“DCA Provider Notice”** has the meaning given to it in Clause 6.1.4;

**“DCA Utilisation Condition Precedent”** means the Secretary of State (in their capacity as GSP Provider) receiving from GenCo:

- (a) a copy of each Direct Agreement duly executed by each party to it; and

- (b) payment of the fees payable by GenCo to the CFA Provider on Revenue Commencement pursuant to clause 14 (*Contingent Financing Arrangement Fee*) of the Contingent Financing Agreement;

**“DCO”** means the development consent order obtained by GenCo in respect of the Project in accordance with the Planning Act 2008 on 20 July 2022;

**“Debt Assumption Documentation”** has the meaning given to that term in the Financing MDA;

**“Debt Termination Agreement”** means a deed cancelling in full (without compensation payable by GenCo) Financial Indebtedness due, owing, incurred or payable by the Group Companies and releasing and discharging any associated Security Interest in respect of the assets of, or shares in, each of the Group Companies (as applicable), each such deed to be in form and content satisfactory to the Security Trustee, acting reasonably;

**“Decommissioning and Waste Management Plan”** means GenCo’s decommissioning and waste management plan for the purposes of section 45 of the Energy Act 2008, as updated from time to time in accordance with the Funding Arrangements Plan, the Energy Act 2008 and any other applicable law;

**“Deed of Adherence”** has the meaning given to that term in the Shareholders’ Agreement;

**“Delivery Partner Contract”** means the contract of that name entered into between GenCo and [REDACTED] on 16 January 2025 in relation to project management, contract management and other services for the Project;

**“Direct Agreement”** means each direct agreement that is required to be in full force and effect as at the date of Revenue Commencement pursuant to the terms of clause 10.1 of the Nuclear Administration and Statutory Transfers Agreement;

**“Directive”** means, in relation to any Party, any ordinance, code, decision, directive, order, decree, regulation, determination, award, standard or rule of any Competent Authority that is legally binding upon that Party or, if not legally binding upon that Party, with which that Party would ordinarily comply, acting (in the case of GenCo) in accordance with Good Industry Practice;

**“Disclosure of Tax Avoidance Scheme”** means the “Disclosure of Tax Avoidance Schemes” rules which require a promoter of tax schemes to inform HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868, made under section 132A of the Social Security Administration Act 1992;

**“Discontinuation and Compensation Creditor”** has the meaning given to it in the Financing MDA;

**“Discontinuation Call Option”** has the meaning given to it in Clause 7.5.1(i);

**“Discontinuation Committee”** has the meaning given to it in Clause 5.3.2;

**“Discontinuation Date”** means:

- (a) if a Discontinuation Notice is issued pursuant to Clause 4.1.1, the date falling five Business Days after the DCA Provider delivers the Discontinuation Notice in accordance with Clause 4.1.1;
- (b) if the DCA Provider approves a GenCo Discontinuation Request in accordance with Clause 3.2.5(i), the date falling five Business Days after the DCA Provider delivers the Discontinuation Notice in accordance with Clause 4.1.2; or
- (c) if it is fully and finally determined that a GenCo Discontinuation Event has occurred in accordance with Clause 3.2.6 and Clause 28 (*Referral to Courts*), the date falling five Business Days after the DCA Provider delivers the Discontinuation Notice in accordance with Clause 4.1.3;

**“Discontinuation Meeting”** has the meaning given to it in Clause 5.3;

**“Discontinuation Notice”** means the written notice delivered by the DCA Provider to GenCo, the Security Trustee and the Economic Regulator in accordance with:

- (a) Clause 4.1.1 if the DCA Provider elects to discontinue the Project upon the occurrence of one or more of the events specified in Clause 3.1 (*Secretary of State’s Right to Discontinue*);
- (b) Clause 4.1.2 if it is agreed that a GenCo Discontinuation Event has occurred in accordance with Clause 3.2.5(i); or
- (c) Clause 4.1.3 if it is fully and finally determined that a GenCo Discontinuation Event has occurred in accordance with Clause 3.2.6 and Clause 28 (*Referral to Courts*);

**“Discontinuation Termination Date”** means, subject to Clause 4.2.2, the date on which:

- (a) in the event that a Discontinuation Notice has been issued in respect of the Project prior to First Criticality, the date on which:
  - (i) either:
    - (A) the DCA Provider has paid all Senior Debt Compensation and (if applicable) Gross Equity Compensation in accordance with the terms of this Agreement; or
    - (B) the DCA Provider and the Secured Creditors have entered into Debt Assumption Documentation, the Senior Debt Compensation Lump Sum Amount has been paid and (if applicable) the Gross Equity Compensation has been paid in accordance with the terms of this Agreement; and
  - (ii) all of the activities and obligations set out in the Approved Discontinuation Plan have been completed or discharged (as applicable); or
- (b) in the event that a Discontinuation Notice has been issued after First Criticality, the date on which each of the events in paragraphs (a)(i) and (ii) above have occurred and the Nuclear Assets and Nuclear Liabilities have transferred to an entity nominated by the Secretary of State in accordance with the terms of the Nuclear Administration and Statutory Transfers Agreement and this Agreement;

**“Discontinuation Transfer Exit”** has the meaning given to that term in the Nuclear Administration and Statutory Transfers Agreement;

**“Discontinuation Trigger Threshold”** means [REDACTED] or such higher amount as arises from adjustment in accordance with Clause 3.1.4;

**“Discontinue”** means:

- (a) the exercise by the DCA Provider of their right to issue a Discontinuation Notice in accordance with Clause 4.1 (*Notice to Discontinue*); or
- (b) the exercise by the DCA Provider of their right to approve a GenCo Discontinuation Request in accordance with Clause 3.2.5(i); or
- (c) the full and final determination that a GenCo Discontinuation Event has occurred in accordance with Clause 3.2.6 and Clause 28 (*Referral to Courts*),

and **“Discontinues”**, **“Discontinued”** and **“Discontinuation”** shall be construed accordingly;

**“Disposal”** has the meaning given to it in the Economic Licence;

**“Dispute”** means a Technical Dispute or a Non-Technical Dispute, as the case may be;

**“Distribution”** means any payments to any Investor or Associate, including:

- (a) any payment of distributions, dividends, bonus issues, return of capital, fees, interest, principal or other amounts whatsoever (whether by way of loan or repayment of any loan or otherwise), in cash or in kind, to any Investor or Associate; and
- (b) payments to any Investor or Associate referred to in paragraphs (b) or (d) of the definition of Restricted Payment,

but excludes:

- (c) a payment under a Notified Associate Contract (other than any Notified Associate Contract that is an equity, shareholder or quasi-shareholder arrangement);
- (d) a payment that is required to be made by GenCo under the Finance Documents, the GSP Documents or the FDP Documents; and
- (e) all payments to His Majesty’s Government (or any entity under the control of His Majesty’s Government) other than payments made to such entity in its role as a shareholder of HoldCo or a provider of shareholder loans (or other equity-like instruments) in PledgeCo and/or HoldCo;

**“Draft Discontinuation Plan”** has the meaning given to it in Clause 5.2;

**“Draft Handover Plan”** has the meaning given to it in Clause 5.2.5;

**“Economic Guidance”** means the guidance issued by the Economic Regulator from time to time in respect of its approach to the economic regulation of GenCo;

**“Economic Licence”** means the electricity generation licence issued by the Economic Regulator to GenCo in accordance with section 6(1) of the Electricity Act 1989, as such generation licence has been modified by the Secretary of State (in their statutory capacity) in accordance with section 6 of the NEFA;

**“Economic Regulator”** means the Gas and Electricity Markets Authority or the Office of Gas and Electricity Markets, as the case may be;

**“Eligible MSP Affiliate”** has the meaning given to that term in the Shareholders’ Agreement;

**“Eligible MSP Shareholder”** has the meaning given to that term in the Shareholders’ Agreement;

**“Environment Agency”** or **“EA”** means the Environment Agency established pursuant to section 1 of the Environment Act 1995 or any successor thereof;

**“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 government department in relation to such regulations;

**“Equity Documents”** means the:

- (a) Shareholders’ Agreement;
- (b) Investment Agreement;
- (c) Shareholder Loan Agreements; and
- (d) Sell Down Option Agreement;

**“Equity Investor”** has the meaning given to it in the Financing MDA;

**“Equivalent Holding Company”** has the meaning given to it in Clause 2.5.2(i);

**“Expert”** has the meaning given to it in Clause 27.1;

**“Expiry Date”** means the earlier of:

- (a) the expiry of the Initial Regulatory Period;
- (b) expiry or revocation of the Special Conditions in the Economic Licence;
- (c) expiry or revocation of the Economic Licence in its entirety;
- (d) the Discontinuation Termination Date; and
- (e) the Transfer Termination Date;

**“Failure Event”** means that:

- (a) the Secretary of State has issued a Remedy Event Notice in accordance with paragraph 2.1.2 of Schedule 1 (*Remedy Event, Failure Event and Remediation Plan*) and:
  - (i) if GenCo has not proposed a Remediation Plan pursuant to paragraph 2.3.1(ii) of Schedule 1 (*Remedy Event, Failure Event and Remediation Plan*), the Remedy Event is not Remedied by the date falling 30 Business Days after the date on which the Secretary of State issues the Remedy Event Notice to GenCo (or such longer period as may be agreed between GenCo and the Secretary of State in writing pursuant to paragraph 2.3.1(i) of Schedule 1 (*Remedy Event, Failure Event and Remediation Plan*));

- (ii) GenCo fails to put forward a Remediation Plan by the date falling 30 Business Days after the date on which the Secretary of State issued the Remedy Event Notice to GenCo;
  - (iii) GenCo fails to comply with paragraph 2.3.1, paragraph 2.3.2 or paragraph 2.3.3 of Schedule 1 (*Remedy Event, Failure Event and Remediation Plan*); or
  - (iv) GenCo fails to comply with any Remediation Plan agreed by the Parties in accordance with paragraph 2.3 of Schedule 1 (*Remedy Event, Failure Event and Remediation Plan*) or determined or agreed in accordance with Clause 27(*Expert Determination*) in any material respect within the time period(s) specified in the Remediation Plan;
- (b) the relevant Remedy Event has not otherwise been Remedied; and
- (c) the Secretary of State has served a notice on GenCo stating that the circumstances referred to in paragraphs (a) and (b) apply,

unless otherwise agreed in writing between the Secretary of State and GenCo;

**“FDP Documents”** means the following documents in relation to the Funded Decommissioning Programme, as approved by the Secretary of State:

- (a) the Funding Arrangements Plan;
- (b) the Decommissioning and Waste Management Plan;
- (c) the Waste Agreements;
- (d) the Section 46 Agreement;
- (e) the FundCo Budget and Services Agreement;
- (f) the FundCo Shareholders’ Agreement;
- (g) the FundCo Articles of Association;
- (h) any other document defined as a “Document” in and for the purposes of the Funding Arrangements Plan; and
- (i) any other document designated as an “FDP Document” by agreement between the Secretary of State and GenCo;

**“Fees Regulations”** means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004;

**“Finance Documents”** has the meaning given to that term in the Financing MDA;

**“Finance Party”** has the meaning given to that term in the Financing MDA;

**“Financial Indebtedness”** has the meaning given to that term in the Financing MDA;

**“Financing MDA”** means the master definitions agreement entered into between, among others, FundCo, GenCo, HoldCo, PledgeCo, the Secretary of State and the Security Trustee on or around the date of Revenue Commencement;

**“Financing Principles”** means the principles set out in Schedule 2 (*Financing Principles*);

**“FinCo”** has the meaning given to that term in the Financing MDA;

**“First Criticality”** has the meaning given to that term in the Economic Licence;

**“First Power Date”** has the meaning given to that term in the Shareholder MSP Agreement;

**“Fitch”** means Fitch Ratings Ltd;

**“FOIA”** means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;

**“Forecast Allowable Capital Spend”** has the meaning given to that term in the Economic Licence;

**“Forecast Allowable Operational Spend”** has the meaning given to that term in the Economic Licence;

**“FundCo”** means SZC Nuclear Decommissioning Fund Company, a company to be incorporated in England prior to Revenue Commencement, being the company incorporated for the purposes of managing and investing GenCo’s FDP fund and holding the account into which Funded Decommissioning Programme contributions are made by GenCo;

**“FundCo Articles of Association”** means the articles of association (or other constitutional documents) of FundCo in force from time to time;

**“FundCo Budget and Services Agreement”** means the agreement between FundCo and GenCo governing how FundCo is administered and funded, dated on or about the date of Revenue Commencement;

**“FundCo Shareholders’ Agreement”** means the shareholders’ agreement between GenCo, each of the Independent Director Shareholders and FundCo dated on or around the date of Revenue Commencement;

**“Funded Decommissioning Programme”** or **“FDP”** has the meaning given to that term in the Economic Licence;

**“Funding Arrangements Plan”** means the funding arrangements plan entered into by GenCo and FundCo which will form part of the Funded Decommissioning Programme;

**“GenCo Discontinuation Event”** has the meaning given to it in Clause 3.2.1;

**“GenCo Discontinuation Request”** has the meaning given to it in Clause 3.2.1;

**“GenCo Report”** has the meaning given to it in Clause 6.1.1;

**“GenCo Shares”** has the meaning given to it in Clause 7.5.1;

**“General Anti-Abuse Rule”** means:

- (a) part 5 of the Finance Act 2013; and
- (b) any future legislation introduced to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions or other tax charges;

**“GLF Provider”** means the Secretary of State in their capacity as lender under the Government Liquidity Facility Agreement;

**“Good Industry Practice”** has the meaning given to that term in the Economic Licence;

**“Government”** means His Majesty’s government of the United Kingdom of Great Britain and Northern Ireland;

**“Government Authority”** means His Majesty’s Government of the United Kingdom or the Secretary of State or any other Minister of the Crown or any department of His Majesty’s Government of the United Kingdom;

**“Government Debt Facility”** means the HMG Term Facility, the Government Liquidity Facility and any Authorised Credit Facility to the extent that it is funded by the Secretary of State, [REDACTED] or any other government entity;

**“Government Liquidity Facility”** has the meaning given to that term in the Financing MDA;

**“Government Liquidity Facility Agreement”** means the agreement of that name entered into between, among others, the GLF Provider and GenCo dated on or about the date of Revenue Commencement;

**“Government Support Package”** or **“GSP”** means:

- (a) the Supplemental Compensation Agreement;
- (b) the Government Liquidity Facility Agreement;
- (c) the Contingent Financing Agreement;
- (d) this Agreement; and
- (e) the Nuclear Administration and Statutory Transfers Agreement;

**“Gross Equity Compensation”** means:

- (a) subject to Clause 6.4 (*Calculation of Gross Equity Compensation if there is an Insolvency Event*), if either:
  - (i) a Secretary of State Discontinuation Event has occurred; or
  - (ii) GenCo has issued a GenCo Discontinuation Request and either the DCA Provider has approved such GenCo Discontinuation Request in accordance with Clause 3.2 (*GenCo’s Right to Request Discontinuation*) or it has been fully and finally determined that a GenCo Discontinuation Event has occurred in accordance with Clause 3.2.6 and Clause 28 (*Referral to Courts*) (as applicable),

the amount of the Total Compensation Amount less the Senior Debt Liabilities; or

- (b) an amount calculated in accordance with Clause 6.4 (*Calculation of Equity Compensation if there is an Insolvency Event*),

as applicable;

**“Group Company”** means each of GenCo, HoldCo and PledgeCo, together the **“Group Companies”**;

**“GSP Call Option”** means either a Discontinuation Call Option or a Licence Exit Call Option (as the case may be);

**“GSP Call Option Agreement”** means the call option agreement entered into between the GSP Provider, PledgeCo, GenCo, HoldCo and the Security Trustee on or around the date of this Agreement;



**“GSP Call Option Completion”** means the completion of the transfer of the GenCo Shares pursuant to Clause 7.5 (*GSP Provider’s Call Option*) and the GSP Call Option Agreement;

**“GSP Call Option Completion Date”** means the date on which GSP Call Option Completion occurs;

**“GSP Call Option Exercise Notice”** means a notice in writing substantially in the form set out in Schedule 5 (*Form of GSP Call Option Exercise Notice*) in relation to the exercise of the GSP Call Option and given in accordance with Clause 7.5 (*GSP Provider’s Call Option*);

**“GSP Leverage Cap”** means, at any given time, 65 per cent of the value of the RAB as at the Discontinuation Date, as calculated by the Economic Regulator in accordance with the Economic Licence;

**“Halifax Abuse Principle”** means the principle explained in the Court of Justice of the European Union Case C-255/02, *Halifax and others*;

**“Hedging Agreements”** has the meaning given in Schedule 3 (*DCA Approved Hedging Policy*) provided that, for the purposes of calculating the Senior Debt Liabilities, Hedging Agreements means only those agreements that relate to DCA Approved Hedging;

**“HMG Term Facility”** has the meaning given to that term in the Financing MDA;

**“HMG Term Facility Agreement”** has the meaning given to that term in the Financing MDA;

**“HoldCo Shareholders”** means:

- (a) an Original HoldCo Shareholder; or
- (b) any legal person who has become a direct shareholder in HoldCo,

who in each case has not ceased to be a direct shareholder in HoldCo, and **“HoldCo Shareholder”** shall be construed accordingly;

**“HRT Predicted Overrun”** has the meaning given to the term “Predicted Overrun” in the Economic Licence;

**“IAR Application”** has the meaning given to that term in the Contingent Financing Agreement;

**“ICC”** has the meaning given to it in Clause 27.2;

**“ICC Expert Rules”** means the Expert Rules published by the ICC International Centre for ADR;

**“Independent Director Shareholders”** has the meaning given to that term in the FundCo Shareholders’ Agreement;

**“Independent Expert”** has the meaning given to it in Clause 5.1.2(ii);

**“Independent Technical Adviser”** means the company appointed by GenCo under the ITA Deed of Appointment;

**“Indexation Base Month”** means the month preceding the month in which Revenue Commencement occurred;

**“Indexed”** means, in relation to an amount, such amount multiplied by:

$$\frac{CPIHt}{CPIHbase}$$

(or if less than one, one), calculated on each anniversary of Revenue Commencement, where:

(a)  $CPIH_t$  is the value of CPIH most recently published in the equivalent month to the Indexation Base Month for the relevant year; and

(b)  $CPIH_{base}$  is the value of CPIH published in the Indexation Base Month;

**“Industry Documents”** has the meaning given to that term in the Nuclear Administration and Statutory Transfers Agreement;

**“Information”**, for the purposes of Clause 12 (*Confidentiality and Freedom of Information*), has the meaning given under section 84 of the FOIA;

**“Initial Regulatory Period”** has the meaning given to that term in the Economic Licence;

**“Insolvency Event”** means, in relation to GenCo, that GenCo:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts (in either case, other than in the circumstances described in section 123(2) of the Insolvency Act 1986) or fails or admits in writing its inability generally to pay its debts as they become due (other than in the circumstances already excluded from this definition under paragraph (c) below);
- (c) makes a general assignment, arrangement or composition, or enters into a restructuring plan, with or for the benefit of its creditors other than a general assignment, arrangement, composition or restructuring plan agreed and being implemented by or for the benefit of any Finance Party (in its capacity as such) or with respect to any Subordinated Intragroup Liabilities or Subordinated Equity Investor Liabilities;
- (d) save as provided for in the Security Trust and Intercreditor Deed, becomes subject to a moratorium;
- (e) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or other official;
- (f) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in paragraph (e) above and:
  - (i) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
  - (ii) is not dismissed, discharged, stayed, restrained or otherwise ceases to apply, in each case, within 30 days of the institution or presentation thereof;

- (g) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (h) seeks or becomes subject to the appointment of a Nuclear Administrator or a RLNC Administration Order or in any way enters into Nuclear Administration;
- (i) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian, monitor or other similar official for it or for all or substantially all its assets (other than, for so long as it is required by law or regulation not to be publicly disclosed, any such appointment which is to be made, or is made, by a person or entity described in paragraph (e) above);
- (j) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed, restrained or otherwise ceases to apply, in each case, within 30 days thereafter;
- (k) causes or is subject to any event with respect to it which, under the applicable laws and regulations of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (j) above; or
- (l) takes any action in furtherance of, or indicating its consent to, approval of or acquiescence in, any of the foregoing acts;

**“Instrumentation and Controls Contract”** means the contract of that name between GenCo and [REDACTED] in relation to the design, manufacture, procurement, integration, assembly, storage, packing, transport and delivery of the operational instrumentation and controls equipment, entered into on 29 September 2023;

**“Instrumentation and Controls LTSA”** means the long-term services agreement in relation to the design, manufacture, procurement, integration, assembly, storage, packing, transport and delivery of the operational instrumentation and controls equipment entered into on 4 December 2024 by GenCo and [REDACTED];

**“Insurance Shutdown Event”** means the occurrence of a Permanent Shutdown that is caused by a Government Authority taking action which renders it impossible for GenCo to put in place NTPL Insurance in satisfaction of its statutory obligations and:

- (a) the SCA Provider has not issued an Unavailability Confirmation Notice to GenCo pursuant to clause 8.3 of the Supplemental Compensation Agreement; and
- (b) the Unavailability of the NTPL Insurance is not a result of, or connected with, GenCo having an adverse insurance claims record in respect of the NTPL Insurance and/or a breach or default by GenCo under any term of any related insurance policy;

**“Investment Agreement”** means the investment agreement entered into between HoldCo, GenCo, PledgeCo, the Secretary of State, EDF Energy Holdings Limited and each Investor Shareholder (as such term is defined therein) on or around the date of Revenue Commencement;

**“Investor”** means shareholders in either GenCo or HoldCo whether directly or indirectly through any holding company;

**“ITA Deed of Appointment”** means the deed of appointment entered into between the Independent Technical Adviser, the Secretary of State, the Economic Regulator, the Security Trustee and GenCo on or around the date of Revenue Commencement;

**“Law”** means any enactment or subordinate legislation, rule, regulation, order, directive or other provision including those of the European Union, which has, in each case, the force of law in the United Kingdom;

**“Liaison Agreement”** means the agreement of that name entered into between the Secretary of State, GenCo, the Independent Technical Adviser and the Economic Regulator on or about the date of Revenue Commencement;

**“Liaison Committee”** means the liaison committee established pursuant to clause 5.1 (*Establishing the Liaison Committee*) of the Liaison Agreement;

**“Licence Exit Call Option”** has the meaning given to it in Clause 7.5.1(ii);

**“Liquidity Support Amount”** has the meaning given to that term in the Economic Licence, and **“Liquidity Support Amounts”** shall be construed accordingly;

**“Lump Sum Date”** has the meaning given to it in Clause 7.2.5;

**“Main Works Contracts”** means the:

- (a) Nuclear Services Agreement;
- (b) Nuclear Services Agreement LTSA;
- (c) Turbine Hall Contract;
- (d) Turbine Hall LTSA;
- (e) N4S Contract;
- (f) N4S LTSA;
- (g) Nuclear Fuel Supply Contract;
- (h) Instrumentation and Controls Contract;
- (i) Instrumentation and Controls LTSA;
- (j) Civil Works Alliance Agreement;
- (k) MEH Alliance Agreement;
- (l) Delivery Partner Contract;
- (m) Commercial Manager Partner Contract; and
- (n) Assurance Services Agreement;

**“Maintained Authorised Credit Facility”** has the meaning given to it in Clause 7.2.1;

**“Maintained DCA Approved Hedging Agreement”** has the meaning given to it in Clause 7.2.1;

**“Make Safe Activities”** has the meaning given to it in Clause 5.2;

**“Make Safe Reserve Account”** has the meaning given to that term in the Financing MDA;

**“Market Consultant”** has the meaning given to it in Clause 12.4;

**"Market Liquidity Commitment"** has the meaning given to it in Clause 12.2.2;

**"Market MSP"** has the meaning given to it in Clause 12.6;

**"Market MSP Agreement"** has the meaning given to it in Clause 12.6;

**"Market Start Date"** has the meaning given to it in Clause 12.1;

**"Material Contracts"** has the meaning given to that term in the Nuclear Administration and Statutory Transfers Agreement;

**"Material Market Change"** has the meaning given to it in Clause 12.10;

**"Maturing Debt"** has the meaning given to it in Clause 11.3.2;

**"MEH Alliance Agreement"** means the agreement of that name to be entered into between GenCo, [REDACTED];

**"Minister of the Crown"** has the meaning given to that term in the Ministers of the Crown Act 1975;

**"MLC Period"** has the meaning given to it in Clause 12.2.2;

**"Moody's"** means Moody's Investors Service Limited;

**"N4S Contract"** means the contract for the design, manufacture, installation and commissioning of the nuclear steam supply system for the two Units at the Site entered into between GenCo and [REDACTED] on 9 April 2024;

**"N4S LTSA"** means the contract for the provision of certain long-term services (including any call-off contracts thereunder) in relation to the nuclear steam supply system entered into between GenCo and [REDACTED] on 9 April 2024;

**"Nationalisation Event"** means the nationalisation or expropriation of all or substantially all of the shares in GenCo or GenCo's Regulated Assets by any Minister of the Crown or any entity that is directly wholly owned or controlled by a Minister of the Crown providing that the following events shall not be considered to be a nationalisation or expropriation:

- (a) the application or implementation of any of the Secretary of State's rights under any of the agreements which form the Government Support Package;
- (b) the application or implementation of any of the Secretary of State's rights under any of the agreements which form the Regulatory Documents;
- (c) the enforcement of any rights which the Secretary of State may have under the Finance Documents;
- (d) the implementation of a Nuclear Transfer Scheme and/or of a Pre-Consented Nuclear Transfer Scheme;
- (e) the implementation of any rights which the Secretary of State may have under the Shareholders' Agreement or the articles of association of the Group Companies, including the rights associated with the Special Share;
- (f) the implementation of any rights which the Secretary of State has under the NEFA including in respect of a Nuclear Administration; and/or

- (g) without limitation to paragraph (a) above, the exercise of any call option under any of the agreements which form part of the Government Support Package;

**“National Security Shutdown Event”** means the occurrence of the Secretary of State (in their statutory capacity) exercising their rights pursuant to the Nuclear Security Regulations to direct a Permanent Shutdown of the Plant and/or the Units on the basis that the Plant and/or the Units create a relevant security threat (as such term is defined in the Nuclear Security Regulations);

**“NEFA”** means the Nuclear Energy (Financing) Act 2022;

**“Net Equity Compensation”** has the meaning given to it in Clause 6.3;

**“Non-Base Currency”** means a currency other than pounds sterling;

**“Non-HMG Term Lender”** has the meaning given to it in the HMG Term Facility Agreement;

**“Non-Technical Dispute”** means any dispute arising out of or in connection with this Agreement (including, without limitation, a dispute regarding the existence, validity or termination of this Agreement and a dispute relating to any non-contractual obligations arising out of or in connection with this Agreement) that is not a Technical Dispute;

**“Notified Associate Contracts”** has the meaning given to that term in the Economic Licence and **“Notified Associate Contract”** shall be construed accordingly;

**“Notional Senior Debt”** means all present liabilities and obligations at the Discontinuation Date owed by GenCo and FinCo to any Secured Creditor (excluding the Revenue Collection Counterparty and FundCo) under the Finance Documents, whether incurred solely or jointly or as principal or surety or in any other capacity, including any outstanding principal (including any capitalised interest and/or accretion on index-linked debt if any), interest, costs, expenses and liabilities, but excluding:

- (a) any liabilities or obligations which are above the GSP Leverage Cap;
- (b) any break costs associated with any Hedging Agreements and any make whole in respect of bank facilities and/or modified spends in respect of Bonds;

**“NSCo”** means [REDACTED] incorporated and registered in England and Wales with company number [REDACTED] whose registered office is at [REDACTED];

**“NSCo Agreements”** means:

- (a) the NSCo Share Purchase Agreement;
- (b) the NSCo Shareholders’ Agreement;
- (c) the NSCo Master Secondment Agreement;
- (d) the NSCo Corporate Services Agreement;
- (e) the disclosure letter between the [REDACTED] and GenCo dated 20 December 2024;
- (f) the asset transfer agreement between NSCo and [REDACTED] dated 15 October 2024;

- (g) the technical services agreement between GenCo and NSCo dated 30 January 2025 as amended from time to time; and
- (h) the intellectual property licence agreement to be entered into between GenCo and [REDACTED] dated 29 January 2025;

**“NSCo Corporate Services Agreement”** means the support services agreement entered into between [REDACTED] and NSCo on 24 January 2025;

**“NSCo Master Secondment Agreement”** means the master secondment agreement originally dated 16 October 2024 and novated on 17 October 2024 between NSCo, [REDACTED];

**“NSCo Shareholders’ Agreement”** means the shareholders’ agreement entered into between NSCo, [REDACTED] and GenCo on 30 January 2025;

**“NSCo Share Purchase Agreement”** means the share purchase agreement entered into between [REDACTED] and GenCo on 20 December 2024;

**“NTPL Insurance”** means any insurance policy or analogous arrangement that GenCo is required to procure and maintain pursuant to the Nuclear Installations Act and/or any relevant international agreement (as such term is defined in the Nuclear Installations Act) in respect of claims against GenCo by third parties in relation to Nuclear Incidents;

**“NTPL Loss”** has the meaning given to that term in the Supplemental Compensation Agreement;

**“Nuclear Administration”** means a relevant licensee nuclear company administration for the purposes of part 3 of the NEFA;

**“Nuclear Administration and Statutory Transfers Agreement”** means the nuclear administration and statutory transfers agreement entered into between the Secretary of State, GenCo, PledgeCo, HoldCo, the HoldCo Shareholders and the Security Trustee on or about the date of Revenue Commencement;

**“Nuclear Administrator”** has the meaning given to that term in section 31(2) of the NEFA;

**“Nuclear Assets”** has the meaning given to that term in the Nuclear Administration and Statutory Transfers Agreement;

**“Nuclear Decommissioning Authority”** means the Nuclear Decommissioning Authority as defined in section 1 of the Energy Act 2004;

**“Nuclear Fuel Supply Contract”** means the fuel supply contract for the purposes of the Project entered into between GenCo and [REDACTED] on 9 April 2024;

**“Nuclear Incident”** has the meaning given to that term in the Supplemental Compensation Agreement;

**“Nuclear Installations Act”** means the Nuclear Installations Act 1965;

**“Nuclear Liabilities”** has the meaning given to that term in the Nuclear Administration and Statutory Transfers Agreement;

**“Nuclear Security Regulations”** means the Nuclear Security (Secretary of State Security Directions) Regulations 2018;

**“Nuclear Services Agreement”** means the nuclear services agreement entered into between GenCo, [REDACTED] on 3 July 2024;

**“Nuclear Services Agreement LTSA”** means the long-term services agreement in respect of certain design and engineering services to be entered into by GenCo, [REDACTED];

**“Nuclear Site Licence”** means the nuclear site licence granted to GenCo by the Office of Nuclear Regulation in accordance with the Nuclear Installations Act 1965;

**“Nuclear Transfer Scheme”** has the meaning given to that term in the Nuclear Administration and Statutory Transfers Agreement;

[REDACTED]

**“ONR”** means the Office for Nuclear Regulation or any successor thereof;

**“Operations Phase”** has the meaning given to that term in the Economic Licence;

**“Original HoldCo Shareholder”** has the meaning given to that term in the Nuclear Administration and Statutory Transfers Agreement;

**“Other Recoveries”** has the meaning given to it in Clause 7.3 (*Reduction of the amount of Senior Debt Compensation*);

**“Payee”** has the meaning given to it in Clause 13 (VAT);

**“PCR Determination”** has the meaning given to that term in the Economic Licence;

**“Periodic Review”** has the meaning given to that term in the Economic Licence;

**“Permanent Shutdown”** has the meaning given to it in Clause 3.2.3;

**“Permitted Financial Indebtedness”** has the meaning given to that term in the Financing MDA;

**“Permitted Hedge Termination”** has the meaning given to that term in the Financing MDA;

**“Permitted Transaction”** has the meaning given to that term in the Financing MDA;

**“Plant”** has the meaning given to that term in the Economic Licence;

**“Political Shutdown Event”** means the occurrence of a Permanent Shutdown that is caused by:

- (a) a Change in [REDACTED] Standing other than where all the rights and obligations under the HMG Term Facility have been transferred to an Alternative HMG Term Lender that is not affected by the Change in [REDACTED] Standing or commercial lenders in accordance with the terms of the Finance Documents;
- (b) a Change in Revenue Support Arrangements;
- (c) a Change in Law arising after Revenue Commencement;
- (d) a Change in Policy arising after Revenue Commencement; or
- (e) the Secretary of State:
  - (i) directing, procuring or instructing a UK Competent Authority to exercise its statutory or regulatory powers in a manner which is not in accordance with its statutory or regulatory powers; or



- (ii) acting in a manner that results in a UK Competent Authority not acting independently or not in accordance with its statutory or regulatory powers,

provided that there shall not be a Political Shutdown Event if the Permanent Shutdown is caused by:

- (f) a material breach by GenCo of any laws or regulations (including regulatory standards, policies, guidance and required authorisations) in existence (and as applied) on Revenue Commencement;
- (g) a material breach by GenCo of any laws or regulations (including regulatory standards, policies, guidance and required authorisations) that come into force and/or are applied differently after Revenue Commencement, provided that GenCo is technically capable of complying with the same laws or regulations and the cost of such compliance is or will be met under the Economic Licence;
- (h) the actions of a Competent Authority acting independently in accordance with its powers in existence (and as applied) on Revenue Commencement;
- (i) the actions of a Competent Authority acting independently in accordance with any powers which come into force after Revenue Commencement where GenCo is technically capable of continuing to operate and the cost of such operation is or will be met under the Economic Licence;
- (j) a technical failure of the Plant or any of the Units, where the Plant is Technically Non-Remediable; or
- (k) objectively justifiable reasons of health and safety resulting from GenCo's failure to act in accordance with Good Industry Practice (other than where such failure results from a Qualifying Change in Law with which GenCo is not technically capable of complying or where the costs of such compliance will not be met under the Economic Licence); or
- (l) a breach of GenCo's safety case or a technical failure of the Plant which renders the Plant no longer in compliance with GenCo's safety case (other than where such breach or failure results from a Qualifying Change in Law with which GenCo is not technically capable of complying or where the costs of such compliance will not be met under the Economic Licence);

**"Pre-Consented Nuclear Transfer Scheme"** has the meaning given to that term in the Nuclear Administration and Statutory Transfers Agreement;

**"Pre-GSP Call Option Period"** means the period from (and including) the Discontinuation Date until the earlier of:

- (a) the final payment of the Net Equity Compensation; and
- (b) the GSP Call Option Completion Date;

**"Pre-PCR Phase"** has the meaning given to that term in the Economic Licence;

**"Price Control Financial Model"** has the meaning given to that term in the Economic Licence;

**"Project"** has the meaning given to that term in the Economic Licence;

**“Project Documents”** means:

- (a) the Main Works Contracts;
- (b) the NSCo Agreements;
- (c) the Collaboration Agreement;
- (d) the Material Contracts; and
- (e) any other contract relating to the Project entered into or to be entered into (as applicable) between GenCo and any works contractor or supplier through which any payment is to be made by GenCo and for which GenCo intends to apply for such cost to be logged to the RAB;

**“Qualifying Change in Law”** has the meaning given to that term in the Economic Licence;

**“RAB”** or **“Regulated Asset Base”** has the meaning given to that term in the Economic Licence;

**“Recovery Shortfall Amount(s)”** has the meaning given to it in Clause 7.3 (*Reduction of the amount of Senior Debt Compensation*);

**“Reference Body”** has the meaning given to it in Clause 27.2;

**“Reference Price”** has the meaning given to that term in the Economic Licence;

**“Regulated Assets”** has the meaning given to that term in the Economic Licence and, to the extent not included in that definition, any assets that may be required for the purposes of decommissioning the Regulated Assets (as defined in the Economic Licence) and the Site;

**“Regulatory Documents”** means:

- (a) the Economic Licence;
- (b) the Price Control Financial Model;
- (c) the Economic Guidance;
- (d) the Revenue Collection Contract;
- (e) the Liaison Agreement; and
- (f) the ITA Deed of Appointment;

**“Relevant Authority”** means any court with the relevant jurisdiction and any local, national or supra-national agency, authority, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or European Union;

**“Relevant Shutdown Event”** has the meaning given to it in Clause 3.2.3;

**“Remaining Unapproved Amount”** has the meaning given to that term in the Contingent Financing Agreement;

**“Remedied”** has the meaning given to that term in Schedule 1 (*Remedy Event, Failure Event and Remediation Plan*);

**“Request for Information”**, for the purposes of Clause 12 (*Confidentiality and Freedom of information*), has the meaning set out in the FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply);

**“Required Insurance”** has the meaning given to that term in the Supplemental Compensation Agreement;

**“Required Make Safe Reserve Amount”** means the amount approved as part of the Approved Discontinuation Plan, expressed in Sterling and calculated as at the date of the Discontinuation Notice, that GenCo would require to:

- (a) carry out and complete the Make Safe Activities;
- (b) pay any outstanding costs to any contractors incurred prior to the Discontinuation Date; and
- (c) discharge any costs incurred associated with any activities approved as part of any Approved Discontinuation Plan, provided always that the costs of carrying out the decommissioning of the Regulated Assets under the FDP shall be excluded;

**“Required Make Safe Reserve Amount Balance”** has the meaning given to it in Clause 6.6.1;

**“Restricted Payment”** has the meaning given to that term in the Financing MDA;

**“Revenue Collection Contract”** means the revenue collection contract in respect of the Project entered into between GenCo and the Revenue Collection Counterparty on or about the date of Revenue Commencement;

**“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 NEFA;

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

**“Revised Discontinuation Plan”** has the meaning given to it in Clause 5.5.1;

**“Rfi Recipient”** means a Party that is subject to the FOIA and/or the Environmental Information Regulations who receives a Request for Information;

**“RLNC Administration Order”** has the meaning given to the term “relevant licensee nuclear company administration order” in section 31(1) of the NEFA;

**“SCA Provider”** means the Secretary of State in their capacity as the provider of supplemental compensation pursuant to the Supplemental Compensation Agreement;

**“Seasonal Index Transaction”** has the meaning given to that term in the Shareholder MSP Agreement;

**“Secretary of State”** means the Secretary of State for Energy Security and Net Zero;

**“Secretary of State Discontinuation Event”** has the meaning given to it in Clause 3.1.1;

**“Secretary of State Replacement”** means:

- (a) any Minister of the Crown or any entity directly wholly-owned or controlled by a Minister of the Crown to which the Secretary of State transfers or novates its rights and obligations under this Agreement; or

- (b) any other UK public body (being a single entity):
- (i) with the legal capacity, power and authority to become a party to and to perform the obligations of the Secretary of State under this Agreement; and
  - (ii) whose obligations under this Agreement are unconditionally and irrevocably guaranteed, sponsored and/or funded by the Secretary of State, a Minister of the Crown or other Government department with the legal capacity, power and authority to perform the obligations under the guarantee, sponsorship and/or funding arrangement (as applicable) and the obligations of the Secretary of State under this Agreement,

to which the Secretary of State transfers or novates its rights and obligations under this Agreement;

**“Section 46 Agreement”** means the agreement entered into between, *inter alia*, GenCo, FundCo and the Secretary of State under section 46(3A) of the Energy Act 2008 on or about the date of Revenue Commencement;

**“Secured Bank Account”** means any GenCo bank account over which the Secured Creditors have security;

**“Secured Creditors”** has the meaning given to that term in the Financing MDA (and, for the purposes of and in accordance with Clause 10.3 (*Secured Creditor*), includes the DCA Provider), and **“Secured Creditor”** shall be construed accordingly;

**“Secured Debt”** has the meaning given to that term in the Financing MDA;

**“Security Interest”** has the meaning given to that term in the Financing MDA;

**“Security Trust and Intercreditor Deed”** has the meaning given to that term in the Financing MDA;

**“Sell Down Option Agreement”** has the meaning given to that term in the Shareholders’ Agreement;

**“Senior Creditor”** means any creditor under the Finance Documents and, for the purposes of and in accordance with Clause 10.3 (*Secured Creditor*), the DCA Provider;

**“Senior Debt Compensation”** means an amount equal to the lower of the Senior Debt Liabilities and the Total Compensation Amount;

**“Senior Debt Compensation Account”** means the account of that name held by GenCo with the Account Bank, the details of which shall be notified by GenCo to the DCA Provider in writing within five Business Days of Revenue Commencement, or such other account as GenCo may notify the DCA Provider from time to time by not less than five Business Days’ written notice;

**“Senior Debt Compensation Lump Sum Amount”** means the Senior Debt Compensation less any amounts included in the calculation of the Senior Debt Compensation in respect of any Maintained Authorised Credit Facility or Maintained DCA Approved Hedging Agreement;

**“Senior Debt Liabilities”** means an amount calculated in accordance with Clause 6.2 (*Calculation of Senior Debt Liabilities*) or, where applicable, Clause 7 (*Payment of Compensation*), as may be adjusted pursuant to Clause 6.5.1;

**“Shareholder Loans”** has the meaning given to that term in the Shareholders’ Agreement;

**“Shareholder Loan Agreements”** has the meaning given to that term in the Shareholders’ Agreement;

**“Shareholder MSP Agreement”** has the meaning given to that term in the Shareholders’ Agreement;

**“Shareholder Support and Subordination Deed”** has the meaning given to that term in the Financing MDA;

**“Shareholders’ Agreement”** means the shareholders’ agreement originally entered into between, amongst others, HoldCo, GenCo, the Secretary of State, EDF Energy Holdings Limited and each Investor Shareholder (as defined therein) on or around the date of Revenue Commencement;

**“Shares”** has the meaning given to that term in the Shareholders’ Agreement;

**“Site”** has the meaning given to that term in the Nuclear Administration and Statutory Transfers Agreement;

**“SoS Failure Event”** means the occurrence of:

- (a) following an approval of an IAR Application in whole or in part and GenCo having made a Contingent Financing Request in accordance with the terms of the Contingent Financing Agreement in respect of the sum approved:
  - (i) subject to GenCo having provided an Election Reminder Notice and a Final Demand For Election to the CFA Provider in accordance with and as defined under clause 8.9 of the Contingent Financing Agreement, the CFA Provider failing to make an election to provide Contingent Financing in accordance with clause 8.1.1(i) of the Contingent Financing Agreement or failing to elect to Discontinue in accordance with clause 8.1.1(ii) of the Contingent Financing Agreement (as applicable); or
  - (ii) subject to clause 11.6 of the Contingent Financing Agreement, if the CFA Provider has elected to invest Contingent Financing in accordance with clause 8.1.1 of the Contingent Financing Agreement, the CFA Provider failing to make payment in respect of such Contingent Financing in accordance with the Contingent Financing Agreement; or
  - (iii) if the CFA Provider has elected to Discontinue in accordance with clause 8.1.1(ii) of the Contingent Financing Agreement, the DCA Provider failing to issue a Discontinuation Notice in accordance with Clause 4.1;
- (b) following a rejection of an IAR Application in whole for reasons other than there being insufficient evidence of the need for the Additional Allowable Spend requested:
  - (i) subject to GenCo having provided an Election Reminder Notice and a Final Demand For Election to the CFA Provider in accordance with and as defined under clause 8.9 of the Contingent Financing Agreement, the CFA Provider failing to make an election to provide Contingent Financing in accordance with clause 6.2.1 of the Contingent Financing Agreement or failing to elect to Discontinue in accordance with clause 6.2.2 of the Contingent Financing Agreement; or
  - (ii) subject to clause 11.6 of the Contingent Financing Agreement, if the CFA Provider has elected to invest Contingent Financing in accordance with

- clause 6.2.1 of the Contingent Financing Agreement, the CFA Provider failing to make payment in respect of such Contingent Financing in accordance with the Contingent Financing Agreement; or
- (iii) if the CFA Provider has elected to Discontinue in accordance with clause 6.2.2 of the Contingent Financing Agreement, the DCA Provider failing to issue a Discontinuation Notice in accordance with Clause 4.1;
- (c) following a rejection of an IAR Application in part for reasons other than there being insufficient evidence of the need for the Additional Allowable Spend requested and a further request for the Unapproved Amount or the Remaining Unapproved Amount (as applicable) being also rejected for reasons other than there being insufficient evidence of the need for the Additional Allowable Spend requested:
- (i) the CFA Provider failing to make an election to provide contingent financing in accordance with clause 6.2.1 of the Contingent Financing Agreement or failing to elect to Discontinue in accordance with clause 6.2.2 of the Contingent Financing Agreement; or
  - (ii) subject to clause 11.6 of the Contingent Financing Agreement, if the CFA Provider has elected to invest Contingent Financing in accordance with clause 6.2.1 of the Contingent Financing Agreement, the CFA Provider failing to make payment in respect of such Contingent Financing in accordance with the Contingent Financing Agreement; or
  - (iii) if the CFA Provider has elected to Discontinue in accordance with clause 6.2.2 of the Contingent Financing Agreement, the DCA Provider failing to issue a Discontinuation Notice in accordance with Clause 4.1;
- (d) following receipt by the GLF Provider of a utilisation request in accordance with the terms of the Government Liquidity Facility Agreement in circumstances where the conditions precedent to utilisation set out in clause 5.2 (*Further Conditions Precedent to each Utilisation Request/Loan*) of the Government Liquidity Facility Agreement have been satisfied, the GLF Provider failing to provide liquidity financing in accordance with the terms of the Government Liquidity Facility Agreement;
- (e) following a valid Claim by GenCo under the Supplemental Compensation Agreement, the SCA Provider failing to satisfy GenCo's Claim in accordance with the terms of the Supplemental Compensation Agreement; or
- (f) following a valid drawdown request in accordance with the terms of the HMG Term Facility Agreement, the Secretary of State, [REDACTED] or an Alternative HMG Term Lender (excluding any Non-HMG Term Lender) failing to allow a drawdown of the funding and such failure does not occur as a result of GenCo's failure to comply with the terms of the HMG Term Facility Agreement,

provided that in each case (i) the Secretary of State has not Discontinued and (ii) the Secretary of State has failed to rectify the SoS Failure Event following a period of not less than 30 Business Days from the date on which GenCo notified the Secretary of State of the SoS Failure Event;

**"Special Conditions"** means the special conditions of the Economic Licence which are implemented by virtue of section 7 of the NEFA;

**"Special Share"** has the meaning given to that term in the Shareholders' Agreement;

**“Spot Exchange Rate”** means the spot rate for the conversion of the Non-Base Currency into the Base Currency as quoted on the Reuters “FXFIX” foreign exchange page at 11.00 a.m. as of the date on which the calculation is required (or failing such quotation or in the event of a fundamental change to the relevant page, such other foreign exchange fixing page as the DCA Provider, the Security Trustee and GenCo may agree (each acting reasonably), with the intention of putting the DCA Provider, the Secured Creditors and GenCo in no better nor worse position than they would have been in had the foreign exchange fixing page not ceased to be quoted or the relevant fundamental change not been made);

**“STID Proposal”** has the meaning given to that term in the Financing MDA;

**“Subordinated Intragroup Liabilities”** has the meaning given to that term in the Financing MDA;

**“Subordinated Equity Investor Liabilities”** has the meaning given to that term in the Financing MDA;

**“Supplemental Compensation Agreement”** means the supplemental compensation agreement entered into between, among others, the SCA Provider, GenCo and the Security Trustee on or about the date of Revenue Commencement;

**“S&P”** means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc.;

**“Tax”** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any related penalty or interest);

**“Technical Dispute”** has the meaning given to it in Clause 27.1;

**“Technically Non-Remediable”** means that the Regulated Assets:

- (a) cannot be constructed, commissioned and completed; or
- (b) cannot be operated and have been subject to an Unplanned Outage for a period of six months,

and in each case the DCA Provider has determined (taking into account advice from the ONR and GenCo), or it has been determined in accordance with Clause 27 (*Expert Determination*), that the Regulated Assets will not be technically fixed so as to be or become operational, irrespective of whether additional time and/or funding is made available or where it would be materially uneconomic to do so given the amount of capital available to fix the Regulated Assets relative to their expected operational life;

**“Test Date”** means, in each Charging Year:

- (a) 31 March; and
- (b) 30 September,

or if such date is not a Business Day, the Business Day immediately thereafter;

**“Total Compensation Amount”** means an amount equal to the sum of:

- (a) subject to Clause 6.7 (*Reduction in case of Failure Event*), the value of the RAB as at the Discontinuation Date, as calculated by the Economic Regulator in accordance with:

- (i) if the Discontinuation Date occurs in the Pre-PCR Phase, Special Condition 27.27 of the Economic Licence; or
  - (ii) if the Discontinuation Date occurs in the Operations Phase, Special Condition 46.18 of the Economic Licence; plus or minus (as applicable);
- (b) any Breakage Costs in respect of any DCA Approved Hedging which relates to the Notional Senior Debt and arising as a result of the early termination of any DCA Approved Hedging and any applicable modified spends payments in respect of any Bonds, provided that:
  - (i) GenCo shall mitigate such costs (and shall procure that any other relevant party shall mitigate such costs) to the extent reasonably possible; and
  - (ii) any Breakage Gains shall be deducted from the Total Compensation Amount; plus
- (c) market standard make whole in respect of fixed rate debt (depending on the market expectation for the applicable class of Bonds or fixed rate debt, but which shall include the Make-Whole Amount (as defined in the HMG Term Facility Agreement) in respect of the HMG Term Facility);

**“Total Loss”** has the meaning given to that term in the Supplemental Compensation Agreement;

**“Transaction Documents”** means the:

- (a) Regulatory Documents;
- (b) Project Documents;
- (c) Finance Documents;
- (d) GSP;
- (e) Equity Documents; and
- (f) FDP Documents;

**“Transfer Termination Date”** means the date on which this Agreement is terminated in accordance with Clause 2.3 or Clause 2.5;

**“Turbine Hall Contract”** means the contract in respect of the Project to be entered into between GenCo, [REDACTED] for the design, manufacture, installation, commissioning and testing of a turbine hall for both Units;

**“Turbine Hall LTSA”** means the contract for the provision of certain long-term services in respect of the turbine hall to be entered into by GenCo and [REDACTED];

**“Unapproved Amount”** has the meaning given to that term in the Contingent Financing Agreement;

**“Unavailability”** has the meaning given to that term in the Supplemental Compensation Agreement;

**“Unavailability Confirmation Notice”** has the meaning given to that term in the Supplemental Compensation Agreement;



**“Unavailability Loss”** has the meaning given to that term in the Supplemental Compensation Agreement;

**“Units”** has the meaning given to that term in the Economic Licence, and **“Units”** shall be construed accordingly;

**“Unplanned Outage”** has the meaning given to that term in the Economic Licence;

**“Unsuitable Party”** means:

- (a) any person whose activities, in the reasonable opinion of the Secretary of State, pose or could pose a threat to national security relating to the Project; or
- (b) any person whose tax returns submitted on or after 1 October 2012 have been found to be incorrect as a result of:
  - (i) HM Revenue and Customs successfully challenging it under the General Anti-Abuse Rule or the Halifax Abuse Principle (and such challenge has not been subsequently successfully overturned);
  - (ii) a tax authority in a jurisdiction in which the person is obliged to submit a tax return successfully challenging it under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle (and such challenge has not been subsequently successfully overturned); and/or
  - (iii) the failure of an avoidance scheme which the person was involved in and which was, or should have been, notified under the Disclosure of Tax Avoidance Scheme or any equivalent or similar regime in a jurisdiction in which the person is established;

**“Updated Market Consultant Report”** has the meaning given to it in Clause 12.11;

**“VAT”** means value added tax as provided for in the Value Added Tax Act 1994 and any other tax of a similar nature;

**“Waste Agreements”** means the:

- (a) Waste Contract for Spent Fuel; and
- (b) Waste Contract for Intermediate Level Waste;

**“Waste Contract for Intermediate Level Waste”** means the waste transfer agreement relating to the transfer of intermediate level waste arising from the Project entered into between the Secretary of State and GenCo dated on or about the date of Revenue Commencement;

**“Waste Contract for Spent Fuel”** means the waste transfer agreement relating to the transfer of spent fuel arising from the Project entered into between the Secretary of State and GenCo dated on or about the date of Revenue Commencement; and

**“Works”** means the design, development, construction, commissioning, operation and maintenance of the Project (including all necessary permanent and temporary works) and any other work carried out in accordance with the Project Documents.

## 1.2 Interpretation

- 1.2.1 In this Agreement, unless the context otherwise requires, the headings are inserted for convenience only and shall not affect the construction of this Agreement.
- 1.2.2 All representations, warranties, indemnities, covenants, agreements, undertakings and obligations made or given or entered into by more than one person in this Agreement are made or given or entered into severally and not jointly.
- 1.2.3 Expressions in this Agreement that are appropriate to companies shall be construed, in relation to an undertaking that is not a company, as references to the corresponding persons, officers, documents or organs, as the case may be, appropriate to undertakings of that nature.
- 1.2.4 Unless a contrary indication appears, any reference in this Agreement to:
- (i) any agreement, deed, instrument, licence, code or other document (including this Agreement and any Transaction Document) or to a provision contained in any of these, shall be construed, at the particular time, as a reference to it as it may then have been amended, restated, varied, supplemented, modified, suspended, replaced, assigned or novated;
  - (ii) a **“person”** includes any person, firm, company, corporation, government, state or agency of a state, or any unincorporated body, association, foundation, trust or partnership (whether or not having separate legal personality) or two or more of the foregoing and words denoting natural persons include any other persons;
  - (iii) the Secretary of State (in their capacity as the Secretary of State and in their capacity as the DCA Provider), HoldCo, GenCo, the Security Trustee, the Secured Creditors or any other person includes its respective successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under this Agreement;
  - (iv) a **“company”** includes any body corporate, wherever incorporated;
  - (v) a **“Clause”** or **“Schedule”** is a reference to a Clause of or a Schedule to this Agreement;
  - (vi) a provision of law or a technical standard is a reference to that provision as amended, updated, extended or re-enacted and includes all laws and official requirements made under or deriving validity from it or enacting such modification;
  - (vii) a time of day is a reference to London time;
  - (viii) words indicating one gender include all genders;
  - (ix) words indicating the singular also include the plural and vice versa;
  - (x) provisions including the word **“agree”**, **“agreed”** or **“agreement”** require the agreement to be recorded in writing;
  - (xi) an agreement, deed, instrument, licence, code or other document (including this Agreement and the Economic Licence), or to a provision contained in any of these, shall be construed, at the particular time, as a reference to it as

it may then have been amended, varied, supplemented, modified, suspended, assigned or novated;

- (xii) unless provided otherwise, “**written**” or “**in writing**” means handwritten, typewritten, printed or electronically made, in each case resulting in a permanent record; and
- (xiii) “**includes**”, “**including**”, “**other**” and “**otherwise**” are to be construed without limitation and the *eiusdem generis* rule shall not apply to this Agreement.

## **2 Commencement and Duration**

**2.1** Subject to satisfaction of the conditions precedent set out in the Conditions Precedent and Escrow Agreement, this Agreement shall come into force on Revenue Commencement and, subject to Clause 2.2 and Clause 4.2 (*Continuing obligations*), shall continue in full force and effect until the Expiry Date.

**2.2** Clause 3.2 (*GenCo’s Right to request Discontinuation*) shall only have effect on or after the date on which the Secretary of State (in its capacity as GSP Provider) has confirmed in writing that the DCA Utilisation Condition Precedent is satisfied and/or waived in its entirety, such confirmation to be provided by the Secretary of State (in its capacity as GSP Provider) as soon as reasonably practicable upon satisfaction or waiver of the same.

**2.3** If a transfer of the Regulated Assets (whether partially or wholly constructed), whether by share sale or asset transfer, is directed or agreed pursuant to the Economic Licence, this Agreement, the Nuclear Administration and Statutory Transfers Agreement, the NEFA, any Nuclear Transfer Scheme or otherwise in accordance with law which, subject to Clause 2.4:

**2.3.1** excludes the ITA Deed of Appointment, the Liaison Agreement, this Agreement or any other document forming part of the Government Support Package;

**2.3.2** excludes the Economic Licence and the relevant transferee has not been granted a modification to its electricity generation licence pursuant to section 6 of the NEFA; or

**2.3.3** where there is more than one transferee for the transfer, excludes the ITA Deed of Appointment, the Liaison Agreement, this Agreement or any other document forming part of the Government Support Package in a transfer to a single transferee,

and the Secretary of State has not given their express consent to such transfer, the Secretary of State may, by notice to the other Parties, terminate this Agreement with effect from the date of such transfer. Such termination shall be without prejudice to any accrued rights or obligations under this Agreement and no Party shall have any claim against any other Party in respect of such termination.

**2.4** For the purposes of Clauses 2.3.1 and 2.3.3 only, the references to “**the Liaison Agreement**”, “**the ITA Deed of Appointment**”, “**this Agreement**” and “**any document forming part of the Government Support Package**” shall each be construed to exclude:

**2.4.1** any documents which are not capable of being transferred at law; and

**2.4.2** any documents which have already expired or terminated by operation of their terms.

## 2.5 If:

### 2.5.1 a transfer of:

- (i) the Regulated Assets (whether partially or wholly constructed), whether by share sale or asset transfer; or
- (ii) the shares of any of the Group Companies which results in:
  - (a) GenCo ceasing to maintain tax residency status in the United Kingdom;
  - (b) HoldCo ceasing to retain ownership of 100 per cent of the issued share capital of PledgeCo; or
  - (c) PledgeCo ceasing to retain ownership of 100 per cent of the issued share capital of GenCo,

in each case occurs as a result of, or arising from the process of, the enforcement of any security under the Finance Documents; and

### 2.5.2 either:

- (i) the ITA Deed of Appointment, the Liaison Agreement, this Agreement and/or any other document forming part of the Government Support Package has a counterparty that ceases to be a holding company of GenCo and has not been transferred to an equivalent holding company of GenCo (an **"Equivalent Holding Company"**);
- (ii) the transferee, any Equivalent Holding Company or any shareholder of any Equivalent Holding Company has not entered a Deed of Adherence or a replacement shareholders' agreement in form and substance satisfactory to the Secretary of State (in their capacity as GSP Provider);
- (iii) the transferee, any Equivalent Holding Company or any shareholder of any Equivalent Holding Company is an Unsuitable Party; and/or
- (iv) the transferee, any Equivalent Holding Company or any direct shareholder of any Equivalent Holding Company is not resident in the United Kingdom for tax purposes; and

### 2.5.3 the Secretary of State (in their capacity as GSP Provider) has not given their express consent to such transfer,

the DCA Provider may, by notice to the other Parties, terminate this Agreement with effect from the date of such transfer. Such termination shall be without prejudice to any accrued rights or obligations under this Agreement and no Party shall have any claim against any other Party in respect of such termination.

## 3 Discontinuation

### 3.1 Secretary of State's Right to Discontinue

#### 3.1.1 Subject to Clause 3.1.2, the Secretary of State shall, in their sole discretion, have the right (but not the obligation) to elect to Discontinue upon:

- (i) GenCo making a Claim pursuant to the terms of the Supplemental Compensation Agreement for recovery of any Total Loss, NTPL Loss or

Unavailability Loss where such Claim (individually or in aggregate with all previous Claims) is in excess of the Discontinuation Trigger Threshold;

- (ii) the Secretary of State delivering an Unavailability Confirmation Notice to GenCo pursuant to clause 8.3 of the Supplemental Compensation Agreement;
- (iii) the occurrence of an HRT Predicted Overrun (as verified by the Independent Technical Adviser or, if the HRT Predicted Overrun is disputed pursuant to clause 19 (*Disputes*) of the ITA Deed of Appointment, as determined in accordance with clause 19 (*Disputes*) of the ITA Deed of Appointment), and:
  - (a) the CFA Provider has received a Contingent Financing Request from GenCo and/or HoldCo (as the case may be) pursuant to clause 7 (*Contingent Financing Request*) of the Contingent Financing Agreement, provided that:
    - (I) such Contingent Financing Request has not been subsequently withdrawn pursuant to clause 11.5 of the Contingent Financing Agreement prior to the DCA Provider issuing a Discontinuation Notice; and
    - (II) the CFA Provider has not issued a Commitment Notice pursuant to clause 8.1.1 or clause 8.1.2 (as applicable) of the Contingent Financing Agreement in relation to such Contingent Financing Request; or
  - (b) at the point in time when the Secretary of State (acting in their statutory capacity) is assessing any IAR Application, taking into consideration their obligations under section 6(4) of the NEFA, the Secretary of State (acting in their statutory capacity) no longer assesses that the support provided by consumers under the Economic Licence and the Revenue Collection Contract provides value for money and (following consultation with the Economic Regulator and the ONR) concludes that to Discontinue is the most appropriate course of action in the circumstances; or
- (iv) the occurrence of an HRT Predicted Overrun (as verified by the Independent Technical Adviser or, if the HRT Predicted Overrun is disputed pursuant to clause 19 (*Disputes*) of the ITA Deed of Appointment, as determined in accordance with clause 19 (*Disputes*) of the ITA Deed of Appointment), irrespective of whether GenCo has submitted:
  - (a) an IAR Application to the Secretary of State; and/or
  - (b) a Contingent Financing Request to the CFA Provider,

each of the events specified in Clauses 3.1.1(i) to (iv) being a “**Secretary of State Discontinuation Event**”.

- 3.1.2** If the Secretary of State’s right to Discontinue arises pursuant to Clause 3.1.1(i), Clause 3.1.1(ii) or Clause 3.1.1(iii)(a), the Secretary of State shall exercise such right by no later than the date falling 120 Business Days after the date on which such right arose (or such longer period as the Parties may agree in writing), otherwise the

Secretary of State shall be deemed to have waived such right to Discontinue in respect of the specific circumstances giving rise to such right on such occasion.

**3.1.3** If the Secretary of State's right to Discontinue arises pursuant to Clause 3.1.1(iii)(b) or 3.1.1(iv), the Secretary of State may exercise such right at any time while the HRT Predicted Overrun is continuing, unless and until GenCo has made an IAR Application and:

- (i) GenCo has secured equity and/or debt financing in respect of all of the AHRT Amount from non-HMG sources in accordance with clause 5 (*Requirement to Seek Financing for an HRT Predicted Overrun*) of the Contingent Financing Agreement; and/or
- (ii) the Secretary of State has made an election pursuant to clauses 8 (*Commitment*) and 6 (*Election to fund following election not to approve all or part of an IAR Application*) of the Contingent Financing Agreement.

**3.1.4** If at any time any Claim (individually or in aggregate with all previous Claims) exceeds the then current Discontinuation Trigger Threshold and the Secretary of State has not exercised their right to Discontinue in respect of that Claim pursuant to Clause 3.1.1(i) within the time period specified in Clause 3.1.2, the then current Discontinuation Trigger Threshold shall be increased to the next multiple of [REDACTED] that exceeds the aggregate of all previous Claims.

**3.1.5** If GenCo disputes that a Secretary of State Discontinuation Event has occurred, GenCo will have the right to refer the matter for resolution in accordance with Clause 28 (*Referral to Courts*).

## **3.2 GenCo's Right to request Discontinuation**

**3.2.1** Subject to Clause 3.2.2 and Clause 3.2.8, GenCo shall have the right (but not the obligation) to request that the DCA Provider Discontinue (a "**GenCo Discontinuation Request**") after the occurrence of:

- (i) a Political Shutdown Event;
  - (ii) a National Security Shutdown Event;
  - (iii) an Insurance Shutdown Event;
  - (iv) a Nationalisation Event; or
  - (v) a SoS Failure Event,
- (each, a "**GenCo Discontinuation Event**").

**3.2.2** Subject to Clause 3.2.3, if a GenCo Discontinuation Event has occurred GenCo shall have the right to issue a GenCo Discontinuation Request. A GenCo Discontinuation Request must be issued within 120 Business Days of the occurrence of a GenCo Discontinuation Event, otherwise GenCo shall be deemed to have waived such right to Discontinue in respect of the specific circumstances giving rise to such right on such occasion. Any GenCo Discontinuation Request shall include, as a minimum:

- (i) details of the GenCo Discontinuation Event;
- (ii) in GenCo's opinion, the impact of the GenCo Discontinuation Event on the company and its ability to complete the Project or to operate the Units; and

- (iii) if applicable, how such GenCo Discontinuation Event has given rise to a Permanent Shutdown, the nature of that Permanent Shutdown and evidence that the Units have been shut down in accordance with licence condition 30 (Periodic Shutdown) or licence condition 31 (Shutdown of Specific Operations) of the Nuclear Site Licence and the ONR has refused to give its consent to restart the operations,

and any relevant supporting evidence to substantiate such statements.

**3.2.3** If GenCo issues a GenCo Discontinuation Request to the DCA Provider in respect of a purported Political Shutdown Event, National Security Shutdown Event and/or Insurance Shutdown Event (each, for the purposes of this Clause 3.2, being a “**Relevant Shutdown Event**”) GenCo shall (acting honestly and diligently) include a statement in such GenCo Discontinuation Request, signed by the Chief Executive Officer or the Chief Financial Officer of GenCo, stating that:

- (i) GenCo is permanently prevented from:
  - (a) commencing, continuing or resuming construction of the Plant or the Units (or any one of them) or commencing, continuing or resuming nuclear generation from the Plant or the Units (or any one of them); or
  - (b) following First Criticality, restarting the Plant or the Units (or any one of them), including through the refusal or withholding of consent by the ONR to the Plant or Units (or any one of them) being restarted in circumstances where the Plant or Units (or any one of them) would otherwise be capable of lawfully being constructed or generating electricity; and
- (ii) in respect of any Relevant Shutdown Event which occurs following First Criticality, GenCo has sought (and not withdrawn its application for) consent from any regulator with jurisdiction over GenCo and/or with respect to the Economic Licence to start a decommissioning project in respect of the Units (or the relevant one of them),

and any occurrence of these circumstances shall constitute a “**Permanent Shutdown**”.

**3.2.4** Within 10 Business Days of the GenCo Discontinuation Request being received, the DCA Provider may request such further information as is reasonably required to determine whether to accept or reject such GenCo Discontinuation Request (including, if applicable, any statement made pursuant to Clause 3.2.3), in which case GenCo shall promptly (and in any event within 30 Business Days of request) provide such information to the DCA Provider.

**3.2.5** Within 20 Business Days of receipt of the GenCo Discontinuation Request or within 20 Business Days of receipt of such further information as has been requested (whichever is later), the DCA Provider shall deliver to GenCo a notice either:

- (i) approving the relevant GenCo Discontinuation Request and exercising their right to Discontinue; or
- (ii) rejecting the relevant GenCo Discontinuation Request on the basis that GenCo has not provided sufficient evidence or support that a GenCo

Discontinuation Event (including, if applicable, a Relevant Shutdown Event) has occurred.

**3.2.6** If the DCA Provider rejects a GenCo Discontinuation Request in accordance with this Clause 3.2 or fails to respond to a GenCo Discontinuation Request within the relevant time period specified pursuant to this Clause 3.2 (which shall be treated as though the DCA Provider has rejected the request), GenCo shall have the right to refer the matter for resolution in accordance with Clause 28 (*Referral to Courts*).

**3.2.7** If it is agreed or determined that a Secretary of State Discontinuation Event or a GenCo Discontinuation Event has occurred (and in the case of a GenCo Discontinuation Event, such event has been notified to the Secretary of State by GenCo in accordance with this Agreement) and an Insolvency Event occurs after the date on which the Secretary of State Discontinuation Event or GenCo Discontinuation Event has occurred and either:

- (i) an Insolvency Event occurs as a direct result of such Secretary of State Discontinuation Event or GenCo Discontinuation Event; and/or
- (ii) an Insolvency Event occurs that is not as a direct result of such Secretary of State Discontinuation Event or GenCo Discontinuation Event,

provided that such Insolvency Event was not reasonably likely to occur before the date on which the Secretary of State Discontinuation Event or the GenCo Discontinuation Event occurred (as applicable), then the Secretary of State shall be liable to pay any applicable compensation to the Secured Creditors and the HoldCo Shareholders in accordance with this Agreement.

**3.2.8** The Secretary of State shall not be required to pay compensation under this Agreement if an Insolvency Event was reasonably likely to occur before the date on which the Secretary of State Discontinuation Event or the GenCo Discontinuation Event occurred (as applicable), and the provisions of the Nuclear Administration and Statutory Transfers Agreement shall apply in accordance with its terms.

**3.2.9** If an Insolvency Event arose prior to and was continuing on the date on which the Secretary of State Discontinuation Event or the GenCo Discontinuation Event occurred (as applicable), then the Secretary of State shall not be liable to pay any compensation to the Secured Creditors and the HoldCo Shareholders in accordance with this Agreement and the provisions of the Nuclear Administration and Statutory Transfers Agreement shall apply in accordance with its terms.

## **4 Consequences of Discontinuation**

### **4.1 Notice to Discontinue**

**4.1.1** If the Secretary of State elects to Discontinue upon the occurrence of any Secretary of State Discontinuation Event, the DCA Provider shall, within the timeframe specified in Clause 3.1.2 or 3.1.3 (as applicable), deliver a Discontinuation Notice to GenCo copied to the Security Trustee and the Economic Regulator. The Discontinuation Notice must identify:

- (i) which of the events specified in Clause 3.1.1 has given rise to the Secretary of State exercising their right to elect to Discontinue; and
- (ii) the Discontinuation Date.



**4.1.2** If it has been agreed that a GenCo Discontinuation Event has occurred, the DCA Provider shall, within the timeframe specified in Clause 3.2.4, deliver a Discontinuation Notice to GenCo copied to the Security Trustee and the Economic Regulator. The Discontinuation Notice must identify:

- (i) which of the events specified in Clause 3.2.1 has given rise to the DCA Provider agreeing that a GenCo Discontinuation Event has occurred; and
- (ii) the Discontinuation Date.

**4.1.3** If it is fully and finally determined that a GenCo Discontinuation Event has occurred in accordance with Clause 3.1.5 or Clause 3.2.6 (as applicable) and Clause 28 (*Referral to Courts*), the DCA Provider shall issue a Discontinuation Notice within 15 Business Days of the date of issuance of such determination. The Discontinuation Notice must identify:

- (i) which of the events specified in Clause 3.2.1 has given rise to the Discontinuation; and
- (ii) the Discontinuation Date.

## **4.2 Continuing obligations**

Save as otherwise expressly provided in this Agreement or under any other document forming part of the GSP (or as already taken into account in the calculation of the Total Compensation Amount):

**4.2.1** the DCA Provider's right to issue, or the actual issuance of, a Discontinuation Notice or the occurrence of the Discontinuation Date shall be without prejudice to any accrued rights under any of the Transaction Documents; and

**4.2.2** subject to Clause 3.2.7 and Clause 3.2.8, following the Expiry Date, each Party shall cease to have any rights or obligations under this Agreement, except that the rights and obligations under this Clause 4.2, Clause 4.3 (*Restriction on Distributions*), Clause 6 (*Calculation Procedures*), Clause 7 (*Payment of Compensation*), Clause 8 (*Tax Gross up*), Clause 9 (*Full Payment*), Clause 10 (*Reimbursement*) and Clauses 12 (*Confidentiality and Freedom of Information*) to 29 (*Jurisdiction of English Courts*) shall continue in full force and effect.

## **4.3 Restriction on Distributions**

GenCo shall not declare, make, pay or permit a Distribution at any time after the DCA Provider has issued a Discontinuation Notice, except in relation to any Distribution:

**4.3.1** made to the holders of Shares or Shareholder Loans in relation to the payment of the Net Equity Compensation; or

**4.3.2** which was declared before the date of such Discontinuation Notice, provided that such Distribution is in compliance with:

- (i) the Economic Licence;
- (ii) the terms of the Shareholders' Agreement;
- (iii) the terms of the GSP; and
- (iv) paragraph 20 (*Restricted Payments*) of part C (*General Covenants*) of schedule 3 (*Group Covenants*) of the Common Terms Agreement.

#### 4.4 Termination of GSP

If the Secretary of State Discontinues in accordance with the terms of this Agreement, each document forming part of the GSP shall terminate in accordance with its terms (save for any provisions that are expressed to survive termination).

### 5 Approved Discontinuation Plan, Make Safe Activities and Make Safe Account

#### 5.1 Immediately following the DCA Provider issuing a Discontinuation Notice:

5.1.1 during the Construction Phase, GenCo shall suspend all Works, temporarily secure and make safe the Works and/or the Site (as applicable) in accordance with Law until such time as GenCo commences the implementation of the Approved Discontinuation Plan in accordance with Clause 5.9; or

5.1.2 at any time following COD:

- (i) GenCo shall temporarily secure and make safe the Plant and the Site in accordance with Law until such time as GenCo commences the implementation of the Approved Discontinuation Plan in accordance with Clause 5.9, unless the Secretary of State and GenCo agree (taking into account all relevant legal safety requirements and any recommendations or requirements issued by the Environment Agency, the ONR, the Nuclear Decommissioning Authority (if applicable) or any other relevant regulator) that it is safe to continue with operation; and
- (ii) GenCo shall appoint a suitably qualified and experienced independent expert (the “**Independent Expert**”) to perform the obligations required of the Independent Expert pursuant to this Agreement, provided that GenCo shall consult with and obtain the prior written consent of the Secretary of State and the Economic Regulator prior to appointing the Independent Expert (such consent not to be unreasonably withheld or delayed).

5.2 Within 30 Business Days of the DCA Provider issuing a Discontinuation Notice, GenCo shall present a written plan to the Secretary of State, the Economic Regulator and the Independent Technical Adviser (or the Independent Expert, as the case may be), which shall set out:

5.2.1 details as to how the Works or the Plant and the Site (as applicable):

- (i) have been secured and made safe in accordance with Clause 5.1 since the issuance of the Discontinuation Notice (which, if Discontinuation occurs prior to First Criticality, shall include any obligations to demolish the Works and/or restore the Site in accordance with the requirements set out in the DCO); and
- (ii) will continue to be secured and made safe until the date of transfer of the applicable portions of the Works or the Plant and the Site (as applicable) from GenCo to a party nominated under (a) any Pre-Consented Nuclear Transfer Scheme and/or (b) the exercise of a GSP Call Option pursuant to Clause 7.5 (*GSP Provider’s Call Option*) and the terms of the GSP Call Option Agreement,

(together, the “**Make Safe Activities**”);

- 5.2.2 a proposed timetable for the Make Safe Activities, including a schedule of key milestones for the Make Safe Activities;
- 5.2.3 a cost estimate for the Make Safe Activities;
- 5.2.4 confirmation that the Required Make Safe Reserve Amount will be met by the amounts standing to the credit of the Make Safe Reserve Account, provided that:
- (i) if there is any shortfall in the amounts standing to the credit of the Make Safe Reserve Account as against the Required Make Safe Reserve Amount, an amount equal to the shortfall in the amounts standing to the credit of the Make Safe Reserve Account will be deducted from the Gross Equity Compensation in accordance with schedule 5 (*Post-Discontinuation Priority of Payments*) of the Security Trust and Intercreditor Deed and paid into the Make Safe Reserve Account; and
  - (ii) the Required Make Safe Reserve Amount shall only be used to fund the Make Safe Activities and any Associated Wind Down Costs, and shall not be applied to fund any outstanding FDP liabilities or activities to be funded by (and performed in accordance with) the Funded Decommissioning Plan;
- 5.2.5 a handover plan which shall include, as a minimum, a list of all information, assets and liabilities which the Secretary of State may propose to be included in or excluded from (as the case may be) any transfer of the Works (if Discontinuation occurs prior to First Criticality) or the Plant and the Site (if Discontinuation occurs after First Criticality) depending on whether a Discontinuation Call Option, a Licence Exit Call Option or a Pre-Consented Nuclear Transfer Scheme is to be implemented, including any:
- (i) strategic spares;
  - (ii) unspent fuel;
  - (iii) clearances, consents, permissions, documents, codes, agreements, licences and authorisations;
  - (iv) employees (and any associated redundancy costs, if applicable);
  - (v) pension scheme arrangements, assets and/or liabilities;
  - (vi) insurance policies or other analogous arrangements;
  - (vii) real estate (including any land adjoining the Site, if applicable);
  - (viii) intellectual property rights;
  - (ix) Project Documents or other relevant contracts of any kind; and
  - (x) information, records, data and manuals,
- (a **"Draft Handover Plan"**);
- 5.2.6 if applicable, after First Criticality, a proposal for how any outstanding FDP liabilities will continue to be discharged or performed until the date of the transfer of the Works or the Plant and the Site (as applicable) provided that there shall be no obligation to fully discharge such FDP liabilities prior to such transfer;

- 5.2.7 a proposal for how any outstanding liabilities or future obligations owed as between GenCo and any third parties will be discharged or performed prior to the date of the transfer of the Works or the Plant and the Site (as applicable) and the costs associated with discharging such outstanding liabilities or future obligations; and
- 5.2.8 a proposal for how the rights and obligations of the Parties in respect of the Project should be amended to enable the implementation of the Approved Discontinuation Plan in accordance with Clause 5.9, including whether any such amendments should apply from the date of the issuance of the Discontinuation Notice,

(in each case, the “**Draft Discontinuation Plan**”).

**5.3** Within 60 Business Days (or such later date as the Parties may agree) of the DCA Provider issuing a Discontinuation Notice:

- 5.3.1 if the Discontinuation Notice is issued prior to the expiry of the Liaison Agreement, GenCo shall hold a meeting with the Liaison Committee to discuss the Draft Discontinuation Plan, including (if applicable) the Draft Handover Plan (taking into account all relevant legal safety requirements and any recommendations or requirements issued by the Environment Agency, the ONR, the Nuclear Decommissioning Authority (if applicable) or any other relevant regulator); or
- 5.3.2 if the Discontinuation Notice is issued following the expiry of the Liaison Agreement, GenCo shall hold a meeting with the Secretary of State, the Economic Regulator and the Independent Expert (together, the “**Discontinuation Committee**”), to discuss the Draft Discontinuation Plan, including (if applicable) the Draft Handover Plan (taking into account all relevant legal safety requirements and any recommendations or requirements issued by the Environment Agency, the ONR, the Nuclear Decommissioning Authority (if applicable) or any other relevant regulator),

each a “**Discontinuation Meeting**”.

**5.4** The Liaison Committee or the Discontinuation Committee (as applicable) shall:

- 5.4.1 consider the Draft Discontinuation Plan, including (if applicable) the Draft Handover Plan;
- 5.4.2 attend the Discontinuation Meeting;
- 5.4.3 provide initial comments on the Draft Discontinuation Plan, including (if applicable) the Draft Handover Plan, either before or during the Discontinuation Meeting; and
- 5.4.4 provide any further comments on the Draft Discontinuation Plan, including (if applicable) the Draft Handover Plan, to GenCo by no later than the date falling 10 Business Days after the date of the Discontinuation Meeting (or such other date as the parties may agree),

and any such comments may include a list of any assets or liabilities that should or should not (as the case may be) be included in any transfer of the Works or the Nuclear Assets and Nuclear Liabilities (as applicable) and a list of any strategic spares or other such equipment which GenCo shall repair and/or replace in connection with any such transfer.

**5.5** GenCo shall, within 30 Business Days of the Discontinuation Meeting (or such other date as the Parties may agree):

**5.5.1** incorporate into and/or reflect in the Draft Discontinuation Plan, including (if applicable) the Draft Handover Plan, any comments provided by the members of the Liaison Committee or the Discontinuation Committee (as applicable, and in each case such parties acting reasonably) pursuant to Clause 5.4 (the “**Revised Discontinuation Plan**”); and

**5.5.2** submit the Revised Discontinuation Plan, including (if applicable) the Draft Handover Plan, to the Liaison Committee or the Discontinuation Committee (as applicable) for additional further comments and, should the Liaison Committee or the Discontinuation Committee (as applicable) provide such additional further comments (acting reasonably), this Clause 5.5 shall reapply, provided that the Liaison Committee or the Discontinuation Committee (as applicable) where this Clause 5.5 has reapplied, shall (acting reasonably) provide any additional further comments, or confirm to GenCo that it has no additional further comments, on the Revised Discontinuation Plan, including (if applicable) the Draft Handover Plan, within 40 Business Days (or such other date as the Parties may agree) of GenCo’s submission to it of the Revised Discontinuation Plan, including (if applicable) the Draft Handover Plan.

**5.6** As soon as reasonably possible and in any event within 60 Business Days (or such other date as the Parties may agree) of, pursuant to Clause 5.5.2:

**5.6.1** the Liaison Committee or the Discontinuation Committee (as applicable) providing further comments to GenCo on the Revised Discontinuation Plan; or

**5.6.2** the expiry of 40 Business Days (or such other period as the Parties may agree pursuant to Clause 5.5.2) for the date of GenCo’s submission of the Revised Discontinuation Plan,

GenCo shall update the Revised Discontinuation Plan (taking into consideration any recommendations received from the Independent Technical Adviser (or the Independent Expert, as the case may be), the ONR, the EA, the Nuclear Decommissioning Authority (if applicable) and any other relevant regulator) and submit it to each of the Economic Regulator and the Secretary of State for approval through the Liaison Committee or the Discontinuation Committee (as applicable).

**5.7** If the Parties are unable to agree upon an Approved Discontinuation Plan (and/or an Approved Handover Plan) within 12 months of the date set out in the Discontinuation Notice in accordance with this Agreement, either Party may refer the dispute to the Expert for determination in accordance with Clause 27 (*Expert Determination*), in order to determine the content of the Draft Discontinuation Plan.

**5.8** Any Draft Discontinuation Plan that has been approved in accordance with Clause 5.6 or determined in accordance with Clause 5.7 and Clause 27 (*Expert Determination*) shall become the “**Approved Discontinuation Plan**” and, if applicable, the Draft Handover Plan contained within such Draft Discontinuation Plan shall become the “**Approved Handover Plan**”.

**5.9** GenCo shall implement the Approved Discontinuation Plan, including (if applicable) the Approved Handover Plan, in accordance with the timetable and funding arrangements set out in the Approved Discontinuation Plan.

- 5.10** No amendment or variation of the Approved Discontinuation Plan (and/or, if applicable, the Approved Handover Plan) shall be effective unless it is agreed in writing and signed by or on behalf of the Secretary of State, GenCo and the Economic Regulator as participants in the Liaison Committee or the Discontinuation Committee (as applicable), such parties acting reasonably and taking into consideration any recommendations received from the Independent Technical Adviser (or the Independent Expert, as the case may be), the ONR, the Nuclear Decommissioning Authority (if applicable), the EA and any other relevant regulator.
- 5.11** GenCo shall inform the Liaison Committee or the Discontinuation Committee (as applicable) as to GenCo's progress against the Approved Discontinuation Plan (and, if applicable, the Approved Handover Plan) at each subsequent meeting of the Liaison Committee or the Discontinuation Committee (as applicable) or at such intervals as may be agreed in writing by the Secretary of State, GenCo and the Economic Regulator (such parties acting reasonably and taking into consideration any recommendations received from the Independent Technical Adviser (or the Independent Expert, as the case may be), the ONR, the Nuclear Decommissioning Authority (if applicable), the EA and any other relevant regulator).
- 5.12** By no later than five Business Days after the date on which GenCo has calculated the Required Make Safe Reserve Amount, GenCo shall deposit into the Make Safe Reserve Account the Required Make Safe Reserve Amount.
- 5.13** GenCo shall:
- 5.13.1** procure that the balance standing to the credit of the Make Safe Reserve Account is maintained in accordance with the timetable and funding arrangements set out in the Approved Discontinuation Plan; and
  - 5.13.2** subject to Clause 6.6 (*Completion of Approved Discontinuation Plan*), only apply amounts standing to the credit of the Make Safe Reserve Account towards funding the Make Safe Activities and any Associated Wind Down Costs; and
  - 5.13.3** following the completion of the Make Safe Activities and payment of the Associated Wind Down Costs in accordance with the Approved Discontinuation Plan, either:
    - (i) if the Security Trustee has paid in full all sums due under paragraphs (i) to (xvii) of schedule 5 (*Post-Discontinuation Priority of Payments*) of the Security Trust and Intercreditor Deed, pay the balance standing to the credit of the Make Safe Reserve Account (if any) to HoldCo for application in accordance with schedule 7 (*Discontinuation and Winding up Waterfall*) of the Investment Agreement to the extent that such amount has been withheld or deducted from the amount of Equity Compensation in accordance with Clause 5.2.4(i) or Clause 6.3 that would otherwise have been paid to the HoldCo Shareholders; or
    - (ii) if the Security Trustee has not paid in full all sums due under schedule 5 (*Post-Discontinuation Priority of Payments*) of the Security Trust and Intercreditor Deed, pay the balance standing to the credit of the Make Safe Reserve Account (if any) to the Security Trustee for application in accordance with schedule 5 (*Post-Discontinuation Priority of Payments*) of the Security Trust and Intercreditor Deed.

## 6 Calculation Procedures

### 6.1 Process for compensation calculation

6.1.1 GenCo shall within 30 Business Days of the Discontinuation Date provide a written report to the DCA Provider and the Independent Technical Adviser (or the Independent Expert, as the case may be), setting out:

- (i) the Total Compensation Amount, including details of and the methodology used to calculate the Allowable Capital Spend and any Additional Allowable Spend incurred between the end of the preceding Charging Year and the Discontinuation Date;
- (ii) the Senior Debt Liabilities and the Senior Debt Compensation as certified on behalf of the Secured Creditors pursuant to clause 10.5.1 of the Security Trust and Intercreditor Deed;
- (iii) the amount of any Accelerated Liquidity Support Amounts as calculated by the Economic Regulator and notified to GenCo in accordance with Special Condition 58.32 of the Economic Licence;
- (iv) the Gross Equity Compensation, which shall be used to calculate the Net Equity Compensation payable pursuant to Clause 6.3 (*Calculation of Net Equity Compensation if there is no Insolvency Event*); and
- (v) the Forecast Allowable Capital Spend or Forecast Allowable Operational Spend (as applicable) that is current as at the Discontinuation Date, taking into account the relevant event referred to in Clause 3.1.1 or 3.2.1 which gave rise to the election to Discontinue,

(the “**GenCo Report**”).

6.1.2 The Independent Technical Adviser (or the Independent Expert, as the case may be) shall, within 40 Business Days of the receipt of the GenCo Report, review and provide a written report to the DCA Provider and GenCo as to its verification of the Allowable Capital Spend and any Additional Allowable Spend incurred between the end of the preceding Charging Year and the Discontinuation Date (the “**Independent Expert Report**”).

6.1.3 The DCA Provider shall within 40 Business Days of receipt of the GenCo Report, review and provide any comments on GenCo’s estimation of the Senior Debt Liabilities, the Senior Debt Compensation and the Gross Equity Compensation.

6.1.4 Within 40 Business Days of receipt of the Independent Expert Report, the DCA Provider shall deliver to GenCo and the Independent Technical Adviser (or the Independent Expert, as the case may be) a written notice confirming whether or not they agree with the Total Compensation Amount, the Senior Debt Liabilities, the Senior Debt Compensation and the Gross Equity Compensation set out in the GenCo Report (the “**DCA Provider Notice**”). If the DCA Provider does not agree with the calculations set out in the Independent Expert Report and the GenCo Report, the DCA Provider Notice shall also set out the reasons for such disagreement and what the DCA Provider believes that the Total Compensation Amount, the Senior Debt Liabilities, the Senior Debt Compensation and the Gross Equity Compensation should be.

- 6.1.5** Within 20 Business Days of receipt of the DCA Provider Notice, GenCo shall confirm whether or not it agrees with the amounts notified by the DCA Provider in the DCA Provider Notice and, if GenCo does not agree, either Party may refer the dispute to the Expert for determination in accordance with Clause 27 (*Expert Determination*).
- 6.1.6** If the Secretary of State issues a Discontinuation Notice while GenCo is in Nuclear Administration, Clause 6.4 (*Calculation of Gross Equity Compensation if there is an Insolvency Event*) shall apply to determine the Gross Equity Compensation.

## **6.2 Calculation of Senior Debt Liabilities**

**6.2.1** Subject to Clause 3.2.8, Clause 6.2.3, Clause 6.2.4 and Clause 6.5 (*Calculation Adjustments*), the Senior Debt Liabilities shall be an amount equal to (without double counting):

- (i) the Notional Senior Debt as at the Discontinuation Date; plus
- (ii) subject to Clause 6.2.5, any Breakage Costs in respect of any DCA Approved Hedging which relates to the Notional Senior Debt; plus
- (iii) any modified spens in respect of the Bonds or make whole payment in respect of any fixed rate bank debt; minus
- (iv) the aggregate of (without double counting):
  - (a) any Breakage Gains in respect of any Hedging Agreement which is secured under the terms of the Security Trust and Intercreditor Deed;
  - (b) any amounts claimable by GenCo and/or the Secured Creditors in accordance with the Shareholders' Agreement, the Contingent Financing Agreement and/or the Finance Documents (as applicable) (including the full amount of any HoldCo Shareholder's Available Equity Commitment accelerated pursuant to the Shareholder Support and Subordination Deed) on or before the Discontinuation Date in respect of any Contingent Funding Liabilities;
  - (c) the aggregate of any sums in any Secured Bank Account at the Discontinuation Date; and
  - (d) all other amounts which would be received by the Secured Creditors with respect to the Finance Documents on or after the Discontinuation Date and before the date on which any Senior Debt Compensation is payable by the DCA Provider to GenCo as a result of enforcing any other rights they may have under or in connection with the Finance Documents.

**6.2.2** For the purposes of calculating any Senior Debt Liabilities pursuant to this Clause 6.2 or as otherwise required under this Agreement:

- (i) any amounts in a Non-Base Currency shall be converted into the Base Currency in accordance with the relevant DCA Approved Hedging or if no such hedging arrangement is in place the Spot Exchange Rate; and
- (ii) Breakage Costs and Breakage Gains will be calculated as if the relevant Hedging Agreement had terminated on the Discontinuation Date notwithstanding that the Secretary of State may request that it will pay Senior



Debt Liabilities in instalments and it has been agreed not to break any DCA Approved Hedging.

- 6.2.3** Subject to Clause 6.2.4, if any amounts in respect of the Notional Senior Debt become due and payable during the period between the date of a Discontinuation Notice and the date on which the DCA Provider makes the final payment in respect of the Senior Debt Compensation, such sums shall be included in the calculation of the Senior Debt Liabilities.
- 6.2.4** The DCA Provider shall not be required to pay Senior Debt Compensation in aggregate if and to the extent that such compensation would compensate Senior Creditors for any debt principal (including any capitalised interest) above the GSP Leverage Cap or for any Hedging Agreements which are not compliant with the DCA Approved Hedging Policy and have not otherwise been expressly approved by the Secretary of State.
- 6.2.5** GenCo shall, and the Security Trustee shall procure that the Secured Creditors shall, mitigate all Breakage Costs to the extent possible by, to the extent reasonably possible and consistent with the terms of the Finance Documents, terminating each Approved Hedging Agreement on a date which prevents such costs being incurred or reduces the amounts payable in relation to such costs.

### **6.3 Calculation of Net Equity Compensation if there is no Insolvency Event**

Subject to Clause 6.4 (*Calculation of Gross Equity Compensation if there is an Insolvency Event*), if either (i) a Secretary of State Discontinuation Event has occurred or (ii) GenCo has issued a GenCo Discontinuation Request and either the DCA Provider has approved such GenCo Discontinuation Request in accordance with Clause 3.2 or it has been fully and finally determined that a GenCo Discontinuation Event has occurred in accordance with Clause 3.2.6 and Clause 25 (*Referral to Courts*) (as applicable), the compensation payable to the HoldCo Shareholders shall be the amount of the Gross Equity Compensation less any sums deducted from such amount in accordance with paragraphs (i) to (xvii) of the waterfall set out in schedule 5 (*Post-Discontinuation Priority of Payments*) of the Security Trust and Intercreditor Deed (such amount being the “**Net Equity Compensation**”).

### **6.4 Calculation of Gross Equity Compensation if there is an Insolvency Event**

If either:

- 6.4.1** a Secretary of State Discontinuation Event has occurred and been notified to GenCo; or
- 6.4.2** a GenCo Discontinuation Event has occurred and been notified to the Secretary of State and it has been agreed or determined that a GenCo Discontinuation Event has occurred (as applicable),

and an Insolvency Event (i) arose prior to and is continuing on the date on which the Secretary of State Discontinuation Event or the GenCo Discontinuation Event occurred or (ii) was reasonably likely to occur before the date on which the Secretary of State Discontinuation Event or the GenCo Discontinuation Event occurred (as applicable), the Gross Equity Compensation shall be zero.

## 6.5 Calculation Adjustments

**6.5.1** If any amendment, consent, waiver, increase or exercise of any right under any Finance Document or any transaction in relation to DCA Approved Hedging would (but for the operation of this Clause 6.5.1) have had the effect of materially increasing the Senior Debt Liabilities and such amendment, consent, waiver, increase or transaction:

- (i) did not constitute Permitted Financial Indebtedness;
- (ii) was not in accordance with clause 3.5 (*Entry into, termination of and changes to Material Project Documents or Finance Documents or replacement of Project Documents*) of the Liaison Agreement;
- (iii) was not in accordance with the Security Trust and Intercreditor Deed; or
- (iv) was not in accordance with the DCA Approved Hedging Policy,

then such increase shall be deducted from the Gross Equity Compensation.

**6.5.2** If any amendment, waiver or exercise of any right under any Project Document has the effect of materially increasing the amount of the Allowable Capital Spend and/or the Additional Allowable Spend and it is not in accordance with clause 3.5 (*Entry into, termination of and changes to Project Documents or Government Support Package*) of the Liaison Agreement or the Economic Licence, then such increase shall, for the purposes of calculating what amount is payable as Net Equity Compensation after payment of the Senior Debt Compensation and any sums deducted from the Total Compensation Amount in accordance with schedule 5 (*Post-Discontinuation Priority of Payments*) of the Security Trust and Intercreditor Deed, be deducted from the Allowable Capital Spend and/or the Additional Allowable Spend (as applicable) used to calculate the Total Compensation Amount.

**6.5.3** For the purposes of the RAB valuation used to calculate the Total Compensation Amount:

- (i) any payments to any counterparty under any Project Document in respect of loss of profit for the termination of any Project Document shall not be included in the RAB value as either Actual Allowable Capital Spend or Actual Additional Allowable Spend, as adjusted for the Capex Incentive adjustments to the extent applicable to that spend; and
- (ii) the value of any Disposal which has been made or realised and which has not been taken into account in the RAB as stated by the Economic Regulator shall be deducted from the RAB valuation,

in each case, to the extent not already taken into account pursuant to the terms of Special Condition 27.27 or Special Condition 46.18 of the Economic Licence (as applicable).

**6.5.4** If the Economic Regulator elects to accelerate any Liquidity Support Amount in accordance with Part E (*Liquidity Support Repayments*) of Special Condition 58.31(a) of the Economic Licence, the amount of any Accelerated Liquidity Support Amounts shall be subtracted from any Gross Equity Compensation in accordance with schedule 5 (*Post-Discontinuation Priority of Payments*) of the Security Trust and Intercreditor Deed.

## 6.6 Completion of Approved Discontinuation Plan

- 6.6.1 Upon calculation of the Required Make Safe Reserve Amount in accordance with an Approved Discontinuation Plan, GenCo shall reserve in the Make Safe Reserve Account a sum equivalent to the Required Make Safe Reserve Amount, and unless and until a sum equivalent to the Required Make Safe Reserve Amount in the Approved Discontinuation Plan is paid into the Make Safe Reserve Account, the DCA Provider shall be entitled to withhold from the Gross Equity Compensation in accordance with schedule 5 (*Post-Discontinuation Priority of Payments*) of the Security Trust and Intercreditor Deed an amount equal to the amount by which all amounts standing to the credit of the Make Safe Reserve Account are lower than the Required Make Safe Reserve Amount (the “**Required Make Safe Reserve Amount Balance**”).
- 6.6.2 If the DCA Provider elects to exercise a Discontinuation Call Option, the DCA Provider shall release the portion of the Required Make Safe Reserve Amount Balance retained under Clause 6.6.1 in accordance with Clause 5.13.3.
- 6.6.3 Every three months from the date on which the Approved Discontinuation Plan is approved in accordance with Clause 5.6 until the completion of the Approved Discontinuation Plan, GenCo shall provide a report to the DCA Provider setting out the expected costs to be incurred in the following three months in relation to:
- (i) the Make Safe Activities; and
  - (ii) any other costs that are due to be incurred pursuant to limbs (b) and (c) of the definition of Required Make Safe Reserve Amount (such costs being “**Associated Wind Down Costs**”).
- 6.6.4 In relation to any Make Safe Activities that are undertaken and/or Associated Wind Down Costs that are due and payable during the period commencing on the Discontinuation Date and expiring on the completion of the Approved Discontinuation Plan:
- (i) within 20 Business Days of incurring a cost and receiving an invoice from a sub-contractor in relation to such Make Safe Activities and/or Associated Wind Down Costs that are due and payable, GenCo shall provide details of the cost incurred or a copy of that invoice (as applicable) to the DCA Provider, together with any supporting information and details to substantiate the costs incurred or invoiced (as applicable) to the satisfaction of the DCA Provider (acting reasonably); and
  - (ii) if the Secretary of State is holding any retention of the Required Make Safe Reserve Amount Balance pursuant to Clause 6.6.1, on receipt by the DCA Provider of an invoice pursuant to Clause 6.6.4(i), the DCA Provider shall, subject to Clause 6.6.5, make a payment in settlement of the relevant invoice directly to the relevant sub-contractor within the timeframe such invoice is payable by GenCo,

provided that the DCA Provider shall have no liability pursuant to this Clause 6.6.4 to the extent that such sums have already been or will be recovered pursuant to clause 2.3 of the Supplemental Compensation Agreement.

**6.6.5** GenCo shall:

- (i) not be entitled to include any margin or profit on the invoices received from the sub-contractor in relation to the Make Safe Activities and/or the Associated Wind Down Costs; and
- (ii) procure the carrying out of the Make Safe Activities and/or any activities required to be undertaken which would incur Associated Wind Down Costs on terms and conditions and at rates consistent with the terms, conditions and rates set out in the Discontinuation Plan.

**6.6.6** Any amounts paid by the DCA Provider in accordance with Clause 6.6.4(ii) in respect of the Make Safe Activities and/or Associated Wind Down Costs which have not been funded from the Make Safe Reserve Account shall be deducted from the Gross Equity Compensation in accordance with schedule 5 (*Post-Discontinuation Priority of Payments*) of the Security Trust and Intercreditor Deed.

**6.7 Reduction in case of Failure Event**

If the Secretary of State's right to Discontinue arises during any period when a Failure Event has occurred and has not been Remedied or reduced to a Remedy Event, then an amount equal to any Allowable Capital Spend and Additional Allowable Spend (except for costs reasonably incurred by GenCo in carrying out the Make Safe Activities in accordance with the Approved Discontinuation Plan) which GenCo incurs during the period when such Failure Event has occurred and has not been Remedied or reduced to a Remedy Event until the Discontinuation Notice is issued shall be deducted from the Allowable Capital Spend and/or Additional Allowable Spend (as applicable) for the purposes of the calculation of the Total Compensation Amount. Once the Failure Event is Remedied or reduced to a Remedy Event, no further deduction shall apply.

**6.8 Double recovery**

No provision of this Agreement shall be construed to provide compensation or other recovery for any costs, damages or other amounts for which GenCo has been fully compensated under another provision of this Agreement or under any provision of the Contingent Financing Agreement, any other document forming part of the GSP or any other agreement, insurance or action at law or equity.

**7 Payment of Compensation**

**7.1 Terms of Payment**

- 7.1.1 Without prejudice to any provision of this Clause 7 and Clause 8 (*Tax Gross up*), after the DCA Provider has issued a Discontinuation Notice, the Secretary of State shall pay to the Security Trustee compensation in accordance with this Clause 7, provided that the aggregate of such compensation shall not exceed the Total Compensation Amount.
- 7.1.2 The payment of the Senior Debt Compensation Lump Sum Amount shall be made in accordance with schedule 5 (*Post-Discontinuation Priority of Payments*) of the Security Trust and Intercreditor Deed.
- 7.1.3 The payment of any amounts owed under a Maintained Authorised Credit Facility or Maintained DCA Approved Hedging Agreement shall be made in accordance with the terms of the Debt Assumption Documentation (in the case of a Maintained

Authorised Credit Facility) or the terms of the relevant Maintained DCA Approved Hedging Agreement (in the case of a Maintained DCA Approved Hedging Agreement).

7.1.4 The Net Equity Compensation shall be paid to HoldCo in accordance with paragraph xviii of schedule 5 (*Post-Discontinuation Priority of Payments*) of the Security Trust and Intercreditor Deed, following which the terms of schedule 7 (*Discontinuation and Winding up Waterfall*) of the Investment Agreement shall apply.

7.1.5 The payment of the Senior Debt Compensation, Gross Equity Compensation and Net Equity Compensation shall be made by the DCA Provider as follows:

- (i) in relation to the Senior Debt Compensation:
  - (a) other than in respect of amounts owed to the provider(s) of a Maintained Authorised Credit Facility or of DCA Approved Hedging under a Maintained DCA Approved Hedging Agreement which the DCA Provider has elected to pay by instalments in accordance with Clause 7.2 (*Payment of Senior Debt Compensation in Instalments*), the DCA Provider shall pay an amount equal to the Senior Debt Compensation Lump Sum Amount into the Senior Debt Compensation Account on or before the date falling 60 Business Days after the Calculation Confirmation Date; and/or
  - (b) in respect of amounts owed to the provider(s) of a Maintained Authorised Credit Facility or of DCA Approved Hedging under a Maintained DCA Approved Hedging Agreement which the DCA Provider has elected to pay by instalments in accordance with Clause 7.2 (*Payment of Senior Debt Compensation in Instalments*) in accordance with the Debt Assumption Documentation; and
- (ii) in relation to the Gross Equity Compensation amount and subject to Clause 6.4 (*Calculation of Gross Equity Compensation if there is an Insolvency Event*) and Clause 6.6 (*Completion of Approved Discontinuation Plan*), the DCA Provider shall pay an amount equal to the Gross Equity Compensation into the Senior Debt Compensation Account and to the extent that there is any residual amount left over after:
  - (a) applying the Gross Equity Compensation Amount in accordance with the waterfall set out in schedule 5 (*Post-Discontinuation Priority of Payments*) of the Security Trust and Intercreditor Deed;
  - (b) paying any Accelerated Liquidity Support Amounts;
  - (c) completion of the Make Safe Activities in accordance with the Approved Discontinuation Plan; and
  - (d) the DCA Provider withholds sums in accordance with Clause 6.6 (*Completion of Approved Discontinuation Plan*),

the Security Trustee shall pay the Net Equity Compensation to the HoldCo Shareholders in accordance with paragraph xviii of schedule 5 (*Post-Discontinuation Priority of Payments*) of the Security Trust and Intercreditor Deed.

- 7.1.6 Save to the extent reflected in the calculations of the Total Compensation Amount, Senior Debt Compensation, Gross Equity Compensation or Net Equity Compensation, the Security Trustee shall be entitled to set off against any amount of Net Equity Compensation owed to GenCo any outstanding claims by the Secretary of State against GenCo under any of the Project Documents, Finance Documents or the Government Support Package (whether payable as a lump sum or in instalments), except to the extent that such sums are owed to the Secretary of State as a holder of Shares and/or Shareholder Loans and/or pursuant to Clause 10.1 (*Reimbursement and Indemnity*).
- 7.1.7 The DCA Provider shall be entitled to net off, in accordance with the waterfall included in the Security Trust and Intercreditor Deed, of any Senior Debt Compensation any sums which the Secretary of State may be owed in respect of the Senior Debt Liabilities which are owed to the Secretary of State as senior debt provider under any Government Debt Facility.
- 7.1.8 If sums withheld from Gross Equity Compensation in accordance with Clause 6.6 are not set off in full against any outstanding claims by the Secretary of State against GenCo in accordance with Clause 7.1.6, the Security Trustee shall return such outstanding withheld sums to the DCA Provider within 10 Business Days of the DCA Provider requesting such return.

## 7.2 Payment of Senior Debt Compensation in Instalments

- 7.2.1 The DCA Provider may, in their sole discretion, elect to:
- (a) in respect of any Authorised Credit Facility, assume the rights and obligations of GenCo and FinCo (as applicable) under any such Authorised Credit Facility (any such Authorised Credit Facility being a **"Maintained Authorised Credit Facility"**); and
  - (b) in respect of any DCA Approved Hedging, assume the rights and obligations of GenCo and FinCo (as applicable) under any such Hedging Agreement (any such Hedging Agreement being a **"Maintained DCA Approved Hedging Agreement"**),

in each case, in accordance with this Clause 7.2 by sending written notice to the Security Trustee confirming the same by no later than the date falling 20 Business Days after the Calculation Confirmation Date (in which case the Senior Debt Compensation shall be the amount calculated as at the Calculation Confirmation Date, notwithstanding that it shall be paid in instalments). If the DCA Provider elects to pay Senior Debt Compensation in instalments in accordance with this Clause 7.2.1, the remaining provisions of this Clause 7.2 shall apply.

- 7.2.2 The DCA Provider shall, by no later than the date falling 60 Business Days after the Calculation Confirmation Date, enter into Debt Assumption Documentation in a form satisfactory to the Security Trustee (acting reasonably) with each provider of any Maintained Authorised Credit Facility or of DCA Approved Hedging under a Maintained DCA Approved Hedging Agreement and, subject to the remaining provisions of this Clause 7.2, on the terms set out in clause 10.3 (*Maintained Facilities*) of the Security Trust and Intercreditor Deed.
- 7.2.3 The DCA Provider shall pay amounts owed in respect of any Maintained Authorised Credit Facility or of DCA Approved Hedging under a Maintained DCA Approved

Hedging Agreement on the dates when such amounts fall due for payment under the terms of the Debt Assumption Documentation (in the case of a Maintained Authorised Credit Facility) or the terms of the relevant Maintained DCA Approved Hedging Agreement (in the case of a Maintained DCA Approved Hedging Agreement).

- 7.2.4** If and to the extent that any amounts under Clause 7.2.3 are payable by the DCA Provider prior to the date that is 60 Business Days after the Calculation Confirmation Date, such amounts shall accrue and shall be due and payable by the DCA Provider on the date that is 60 Business Days after the Calculation Confirmation Date.
- 7.2.5** At any time the DCA Provider may, in their sole discretion, by written notice to GenCo and the Security Trustee, elect to cease paying any Maintained Authorised Credit Facility or DCA Approved Hedging under a Maintained DCA Approved Hedging Agreement in instalments with effect from the date specified in such notice (such date being the “**Lump Sum Date**”), in which case:
- (i) the amount payable in respect of such Maintained Authorised Credit Facility shall be an amount equal to the Authorised Credit Facility Lump Sum Amount less all amounts paid by the DCA Provider under the Maintained Authorised Credit Facility as of the Lump Sum Date; and
  - (ii) the DCA Provider shall pay such Senior Debt Compensation in accordance with Clause 7.1 (*Terms of Payment*).
- 7.2.6** Without prejudice to any other term of this Agreement, GenCo shall not amend any DCA Approved Hedging or enter into any transaction in relation to DCA Approved Hedging following the delivery of a notice from the Secretary of State to GenCo pursuant to Clause 7.2.5, other than the early termination of such DCA Approved Hedging in accordance with Clause 6.2.2.

### **7.3 Reduction of the amount of Senior Debt Compensation**

If and to the extent amounts are received by the Secured Creditors with respect to Senior Debt Liabilities from time to time other than by way of payments by the DCA Provider under this Clause 7 and such amounts were not already taken into account under Clause 6.2.3 when calculating the Senior Debt Liabilities (“**Other Recoveries**”), the obligation of the DCA Provider to make payments pursuant to this Clause 7 shall be reduced accordingly, provided that if there is (or would otherwise be) a shortfall between the amount(s) of Senior Debt Compensation payable by the DCA Provider under this Clause 7 and the actual Senior Debt Liabilities (“**Recovery Shortfall Amount(s)**”), the obligation of the DCA Provider to make payments pursuant to this Clause 7 shall only be reduced pursuant to this Clause 7.3 to the extent the Other Recoveries exceed the corresponding Recovery Shortfall Amount(s).

### **7.4 Pre-Consented Nuclear Transfer Scheme**

The Parties agree that if Discontinuation occurs after First Criticality, the provisions in respect of a Discontinuation Transfer Exit in the Nuclear Administration and Statutory Transfers Agreement shall apply.

### **7.5 GSP Provider’s Call Options**

- 7.5.1** The Parties hereby acknowledge and agree that pursuant to the GSP Call Option Agreement the Group Companies and the Security Trustee have granted the GSP

Provider an option to require HoldCo and PledgeCo to transfer the entire issued share capital that they hold (directly or indirectly) in GenCo (the “**GenCo Shares**”):

- (i) to the GSP Provider if Discontinuation occurs after First Criticality, and following either:
  - (a) payment of the Senior Debt Compensation and the Gross Equity Compensation in full; or
  - (b) the GSP Provider and the Secured Creditors entering into Debt Assumption Documentation, the Senior Debt Compensation Lump Sum Amount having been paid and (if applicable) payment of the Gross Equity Compensation in full,(as applicable), in each case upon payment of £1 on the terms and subject to the conditions of this Agreement, as set out in clause 4.1.3 of the Nuclear Administration and Statutory Transfers Agreement (the “**Discontinuation Call Option**”); or
- (ii) if the circumstances set out in clause 3.1.1 or clause 3.2.1 of the Nuclear Administration and Statutory Transfers Agreement occur, upon payment of £1 on the terms and subject to the conditions of this Agreement (the “**Licence Exit Call Option**”).

**7.5.2** If the GSP Provider elects to exercise a GSP Call Option in accordance with the terms of this Agreement and/or the Nuclear Administration and Statutory Transfers Agreement, the GSP Provider shall issue a GSP Call Option Exercise Notice to each of the Group Companies and the Security Trustee, following which:

- (i) each of the Group Companies and the Security Trustee shall obtain any consents and undertake all actions necessary to enable the GenCo Shares to be transferred to the GSP Provider;
- (ii) HoldCo shall procure that the HoldCo Shareholders provide any consents necessary in connection with that GSP Call Option;
- (iii) the Group Companies shall ensure that all of the GenCo Shares are fully paid;
- (iv) the Group Companies and the Security Trustee shall ensure that all of the GenCo Shares are free from encumbrances; and
- (v) GenCo shall duly register a transfer of the GenCo Shares to the GSP Provider,

in each case as soon as reasonably possible and in any event within 15 Business Days of receiving the GSP Call Option Exercise Notice.

**7.5.3** If a GSP Call Option is exercised in accordance with Clause 7.5.1 then, subject to the terms and conditions of this Agreement, HoldCo and PledgeCo shall procure the transfer of the GenCo Shares to the GSP Provider (or the GSP Provider’s nominee) and the GSP Provider (or the GSP Provider’s nominee) shall receive the GenCo Shares with all rights attached or accruing to them at GSP Call Option Completion in accordance with the terms of the GSP Call Option Agreement.



- 7.5.4** On the receipt of a GSP Call Option Exercise Notice given in accordance with the terms of this Agreement, the Nuclear Administration and Statutory Transfers Agreement and the GSP Call Option Agreement, each of the Group Companies and the Security Trustee shall, no later than five Business Days following receipt, sign the acknowledgement set out in the GSP Call Option Exercise Notice and return it to the GSP Provider.
- 7.5.5** Completion of the transfer of the GenCo Shares shall take place at the offices of the GSP Provider or the GSP Provider's legal representatives on the Business Day and at the time which is specified as the date and time of the GSP Call Option Completion by the GSP Provider, being at least 30 Business Days after the delivery of the GSP Call Option Exercise Notice to the Group Companies and the Security Trustee.
- 7.5.6** At GSP Call Option Completion, GenCo shall:
- (i) deliver to the GSP Provider or the GSP Provider's nominee a duly executed instrument of transfer, together with all relevant share certificates and other documents of title, in respect of the GenCo Shares, executed in favour of the GSP Provider or the GSP Provider's nominee;
  - (ii) deliver to the GSP Provider a directors' certificate confirming that:
    - (a) all of the GenCo Shares are fully paid; and
    - (b) there is no ability for the directors of GenCo to refuse to register a transfer of the GenCo Shares;
  - (iii) deliver to the GSP Provider or the GSP Provider's nominee any power of attorney under which any document is executed on behalf of any Group Company;
  - (iv) deliver a waiver of any applicable rights of pre-emption duly signed by or on behalf of all shareholders in, or members of, GenCo;
  - (v) procure, subject only to due stamping at the expense of the GSP Provider, registration of the transfer of the GenCo Shares to the GSP Provider (or the GSP Provider's nominee);
  - (vi) deliver to the GSP Provider all waivers and consents as may be required by law, any regulatory requirement, GenCo's articles of association or any agreement to which GenCo is a party in order to enable the GSP Provider or the GSP Provider's nominee to be registered as legal and beneficial holder of the GenCo Shares;
  - (vii) deliver to the GSP Provider all Debt Termination Agreements in respect of all Financial Indebtedness owed to any Secured Creditor, duly executed by each applicable Group Company (as the case may be) and each of the counterparties thereto and which validly cancel all such Financial Indebtedness to the satisfaction of the GSP Provider, such that there is no outstanding Financial Indebtedness as at the date of the transfer of the GenCo Shares; and
  - (viii) at the expense of GenCo and/or HoldCo, do such things and execute such documents as shall be necessary or as the GSP Provider may reasonably

request to give effect to the sale of the GenCo Shares with full title guarantee and free from any Security Interest.

**7.5.7** If the obligations of GenCo under Clause 7.5.6 are not complied with on the scheduled GSP Call Option Completion Date, the GSP Provider may without prejudice to its or any Party's other rights or remedies under this Agreement:

- (i) defer GSP Call Option Completion so that the provisions of Clauses 7.5.5 to 7.5.8 shall apply to GSP Call Option Completion as so deferred; or
- (ii) proceed to GSP Call Option Completion so far as practicable.

**7.5.8** The GSP Provider shall not be obliged or entitled to complete the sale and purchase of the GenCo Shares, and the Group Companies shall not be obliged to procure the sale of the GenCo shares, unless the sale and purchase of all of the GenCo Shares is completed simultaneously.

## **7.6 Conduct of Business before GSP Call Option Completion**

During the Pre-GSP Call Option Period GenCo shall not (and HoldCo and PledgeCo shall procure that GenCo shall not) without the prior written consent of the GSP Provider (not to be unreasonably withheld or delayed):

**7.6.1** enter into or amend any contracts, commitments or transactions, whether voluntary or involuntary other than in the ordinary course of business;

**7.6.2** enter into any transaction for the sale, lease, transfer or other disposal of any asset other than:

- (i) in the ordinary course of trading and where the asset is no longer required for the purposes of the Project; or
- (ii) where directed by His Majesty's Government of the United Kingdom;

**7.6.3** grant any guarantee or indemnity for the obligations or liabilities of any person other than in the ordinary course of business;

**7.6.4** fail to take any action required to maintain any of its insurances in force or knowingly do anything to make any policy of insurance void or voidable;

**7.6.5** in any way alter the provisions of its memorandum or articles of association or adopt or pass further regulations or resolutions inconsistent therewith;

**7.6.6** make any substantial change to the nature or organisation of its business (other than as a necessary consequence of the event giving rise to the Discontinuation);

**7.6.7** engage (or offer to engage) any new employee or consultant, dismiss any employee or consultant, or amend (including increase in emoluments, salaries, pensions, commissions and other benefits) the terms of employment of any employee or consultant, whether individually or in the aggregate involving a financial cost to GenCo in excess of [REDACTED];

**7.6.8** issue, borrow or grant:

- (i) any shares or other securities (including convertible securities and warrants and options in respect of shares or securities) or other equity, partnership or other ownership interests in GenCo;

- (ii) any loans, loan capital or other debt interests (whether or not subordinated); or
  - (iii) any other economic interest, direct or indirect, in GenCo;
- 7.6.9** create or grant any Security Interest on, over or affecting the whole or any part of the undertaking or assets of GenCo;
- 7.6.10** pass any resolutions in a general meeting or by way of written resolution, including any resolution for winding up or to capitalise any profits or any sum standing to the credit of the accounts set out in paragraph 3 (*Borrower Accounts*) of schedule 10 (*Cash Management*) to the Common Terms Agreement or any other account permitted to be opened by GenCo pursuant to paragraph 1.4 of schedule 10 (*Cash Management*) to the Common Terms Agreement; and
- 7.6.11** enter into any agreement (conditional or otherwise) to do any of the foregoing,
- unless expressly permitted or required pursuant to this Agreement or unless necessary, acting in accordance with Good Industry Practice, to comply with the Nuclear Site Licence or its obligations under law, Directives, Industry Documents or Project Documents.

## **7.7 Other**

- 7.7.1** If any Senior Debt Compensation or other amounts payable by the DCA Provider under this Agreement are denominated or otherwise payable in any Non-Base Currency, the DCA Provider shall convert such sums into the Base Currency in accordance with the relevant Spot Exchange Rate and such sums shall only be payable by the DCA Provider in the Base Currency.
- 7.7.2** At any time after the Net Equity Compensation and the Senior Debt Compensation have been paid in full in accordance with this Clause 7, the DCA Provider shall be entitled to require that the Group Companies transfer to the DCA Provider any or all of the equity and debt instruments issued by one Group Company to another, in which case the Group Companies shall promptly do everything required to comply with such requirement. As security for the performance of HoldCo's obligations under this Clause 7.7.2, HoldCo shall, immediately after it executes this Agreement, execute and deliver to the DCA Provider a power of attorney in the form set out in Schedule 4 (*Form of Power of Attorney*).
- 7.7.3** Without prejudice to the agreement or determination of the amounts payable pursuant to this Clause 7, GenCo shall (and the Security Trustee may) provide at least five Business Days' prior written notice to the DCA Provider of any amount due and payable pursuant to this Clause 7.
- 7.7.4** GenCo and the Security Trustee shall use reasonable endeavours to provide the DCA Provider with as much prior notice as is reasonably practicable of the anticipated upcoming amounts likely to be payable under this Clause 7, including (to the extent practicable) a schedule of the actual and forecast amounts payable on a rolling three month basis.

## **8 Tax Gross up**

- 8.1** Subject to Clause 8.2, if any amount of Senior Debt Compensation or Gross Equity Compensation payable in accordance with Clause 7 (*Payment of Compensation*) is subject to Tax payable to a Relevant Authority in the United Kingdom, then the DCA Provider shall

pay to GenCo such additional amount as will put GenCo in the same after-Tax position as it would have been in had the payment of Senior Debt Compensation or Gross Equity Compensation (as applicable) not been subject to Tax, taking into account any relief, allowances, deduction, setting off or credit in respect of Tax (whether available by choice or not) which is or actually will be available to GenCo to reduce the Tax to which the payment is subject.

- 8.2** If the DCA Provider is liable to pay GenCo an additional amount pursuant to Clause 8.1, the DCA Provider may, in its sole discretion, elect to make such payment directly to the applicable Relevant Authority to discharge the liability for the Tax payable in relation to the Senior Debt Compensation or Gross Equity Compensation (as applicable) and the Parties agree that any such payment by the DCA Provider in discharging such liability shall (to the extent of such payment) absolve the DCA Provider from any obligation to make any such payments to GenCo or its receivers, assignees or successors.

## **9 Full Payment**

- 9.1** Without prejudice to Clause 8 (*Tax Gross up*), payment of Senior Debt Compensation and (if payable) Gross Equity Compensation by the DCA Provider shall be in full satisfaction of any claim which can be made against the Secretary of State by the Security Trustee, the Secured Creditors, the HoldCo Shareholders, GenCo and/or HoldCo (as the case may be) in relation to termination of the Government Support Package following the exercise by the Secretary of State of their right to Discontinue.
- 9.2** The Senior Debt Compensation and the Gross Equity Compensation payable under this Agreement shall be the sole remedy of the Security Trustee, the HoldCo Shareholders, GenCo and HoldCo against the Secretary of State in respect of their right to issue a Discontinuation Notice or the termination of this Agreement and the Government Support Package.

## **10 Reimbursement**

### **10.1 Reimbursement and Indemnity**

- 10.1.1** GenCo shall be liable to reimburse the DCA Provider for any payment made by or on behalf of the DCA Provider under this Agreement, which liability shall arise on the day on which the DCA Provider makes a payment under this Agreement. Such reimbursement shall be made in accordance with the Security Trust and Intercreditor Deed.
- 10.1.2** GenCo hereby indemnifies the DCA Provider for any loss or liability arising out of or in connection with any payment of Senior Debt Compensation, Gross Equity Compensation and/or Net Equity Compensation made by or on behalf of the DCA Provider under this Agreement. Such obligation shall be discharged in accordance with the Security Trust and Intercreditor Deed.
- 10.1.3** Interest shall accrue on any and all amounts which remain outstanding from GenCo to the DCA Provider in accordance with the terms of this Agreement (to the extent permitted by law, if in respect of any unreimbursed amounts representing interest) from the date on which such amounts became due under the terms of this Agreement until the date on which those amounts are paid in full, at a rate of interest equal to three per cent above the Bank of England base rate.

## **10.2 Subrogation**

- 10.2.1** Without prejudice to Clause 10.1 (*Reimbursement and Indemnity*), upon the DCA Provider making any payment in respect of any compensation pursuant to this Agreement and subject to application of such payment in accordance with the Security Trust and Intercreditor Deed, GenCo agrees that the DCA Provider shall, to the extent of any such payment, be fully and automatically subrogated to the fullest extent of applicable law to all of the rights of shareholders or creditors to payment of any amounts payable in respect of such Discontinuation Notice.
- 10.2.2** GenCo agrees that it shall not, by reason of any payment by the DCA Provider under this Agreement, be discharged from its obligations under this Agreement. This Clause 10.2.2 is without prejudice to the terms of the Transaction Documents to which the Secretary of State is party.
- 10.2.3** GenCo must, on request by the DCA Provider, take such actions as are, in the sole judgement of the DCA Provider, necessary to evidence such subrogation and to ensure that, to the extent of any payment made by the DCA Provider under this Agreement, the DCA Provider receives any moneys paid or payable in respect of the rights to which it is or has been subrogated pursuant to Clause 10.2.1.

## **10.3 Secured Creditor**

- 10.3.1** Each of the Parties acknowledges and agrees that the DCA Provider shall be a Secured Creditor in respect of all of their rights under Clause 10.1 (*Reimbursement and Indemnity*) and Clause 10.2 (*Subrogation*).
- 10.3.2** If following payment of both the Senior Debt Compensation and the Gross Equity Compensation there are still any amounts outstanding to the Senior Creditors under the Finance Documents, the provisions of clause 30 (*Post-Enforcement Priority of Payments and Post-Discontinuation Priority of Payments*) of the Security Trust and Intercreditor Deed shall apply.

## **11 Covenants**

### **11.1 Financing Principles**

- 11.1.1** If the Secretary of State ceases to be a HoldCo Shareholder and a Senior Creditor (other than in their capacity as GSP Provider), prior to incurring any Financial Indebtedness or Additional Financial Indebtedness or making any amendment to the Finance Documents, GenCo shall deliver to the Secretary of State a certificate certifying that the incurrence of such Financial Indebtedness or Additional Financial Indebtedness or the making of such amendment would comply with the Financing Principles.
- 11.1.2** If GenCo is not able to certify that the incurrence of Financial Indebtedness or Additional Financial Indebtedness or the making of an amendment to the Finance Documents would comply with the Financing Principles, it shall notify the Secretary of State of the reasons for such non-compliance.
- 11.1.3** GenCo shall not take any action to terminate, and shall (to the extent within its power) procure that the Finance Documents (including any DCA Approved Hedging) are not terminated or accelerated (other than termination in accordance with the Common

Terms Agreement or the Security Trust and Intercreditor Deed in relation to the occurrence of a Permitted Hedge Termination).

## **11.2 DCA Approved Hedging Policy**

GenCo shall comply with the DCA Approved Hedging Policy.

## **11.3 Debt Maturity Management Principles**

**11.3.1** GenCo shall on or about each Test Date that falls:

- (i) during the 12 month period prior to the earliest Test Period in which Maturing Debt is likely to fall due; and
- (ii) during each subsequent Test Period,

consult with the Secretary of State in relation to management by GenCo of the refinancing risk in relation to debt financing of GenCo.

**11.3.2** GenCo shall manage its Financial Indebtedness such that the aggregate principal amount of Financial Indebtedness that would fall due (including any capitalised interest and/or accretions by indexation of the notional amount under any Hedging Agreement and excluding other scheduled payments (other than any mandatory breaks) under any Hedging Agreements which have not crystallised) in any Test Period (as defined below) (the “**Maturing Debt**”) is consistent with prudent treasury management and the Economic Licence, where “prudent treasury management” shall be deemed to include a reasonably prudent view that the amount of any Maturing Debt falling due (i) in any 12-month period and (ii) in the 24 month period prior to the Commercial Operations Date (each a “**Test Period**”) can be and will be refinanced during or prior to such periods where failure to do so would expose GenCo to a material risk of insolvency.

## **11.4 STID Proposals**

**11.4.1** Prior to issuing any STID Proposal to the Security Trustee in accordance with clause 20 (*STID Proposals*) of the Security Trust and Intercreditor Deed and in the event that the Secretary of State is no longer a Secured Creditor or a HoldCo Shareholder, GenCo shall provide a copy of such STID Proposal to the DCA Provider directly in advance of providing such STID Proposal to the Security Trustee.

**11.4.2** If acknowledgement of receipt of the copy of the STID Proposal is not received by GenCo within two Business Days of issuing the relevant STID Proposal to the Secretary of State in accordance with Clause 11.4.1, GenCo shall notify the Secretary of State of the issuance of such STID Proposal and use all reasonable endeavours to:

- (i) ensure the STID Proposal has been received by the Secretary of State; and
- (ii) obtain the Secretary of State’s acknowledgement of receipt of the STID Proposal.

## **12 Electricity market liquidity commitment**

**12.1** This Clause 12 shall apply as between the GSP Provider and GenCo only.

**12.2** GenCo agrees that, subject to the remainder of this Clause 12, from the first 1 April to occur following the PCR Determination (the “**Market Start Date**”) until the earlier of:

**12.2.1** the termination or expiry of each Shareholder MSP Agreement with an Eligible MSP Shareholder or Eligible MSP Affiliate or any other offtake arrangements and/or market services agreements between GenCo and the Eligible MSP Shareholder or Eligible MSP Affiliate; and

**12.2.2** the end of the fourth Control Period (such period being the “**MLC Period**”), no less than 50 per cent. (as may be adjusted from time to time pursuant to Clauses 12.9 or 12.12) of GenCo's total annual power output shall be sold directly into the wholesale UK electricity market (the “**Market Liquidity Commitment**”).

**12.3** The Market Liquidity Commitment will cease to apply at the end of the MLC Period.

**12.4** Within 36 months of the anticipated Market Start Date, GenCo shall procure a report from a reputable and independent electricity market consultant (the “**Market Consultant**”) to review the potential impact of GenCo's proposed or actual offtake agreements and electricity trading and market services arrangements in respect of the electricity output of the Project, on both the baseload electricity generation market and the electricity supplier market and/or on any other relevant market in which GenCo is operating or seeking to operate, in each case then prevailing in Great Britain and/or forecasted by the Market Consultant to be prevailing at the anticipated Market Start Date.

**12.5** If the Market Consultant determines that:

**12.5.1** GenCo's compliance with the Market Liquidity Commitment would, or is reasonably likely to have, an adverse impact on GenCo's ability to:

- (i) achieve the Reference Price; and/or
- (ii) fulfil its obligations in the Economic Licence to optimise its market revenues and/or to do so in a manner that will not result in, or is not reasonably likely to result in, the distortion of any relevant market in which GenCo is operating or seeking to operate; and

**12.5.2** a reduction of the Market Liquidity Commitment, to require such percentage proposed by GenCo of GenCo's total annual power output to be sold directly into the wholesale UK electricity market would not, or is not reasonably likely to:

- (i) result in the distortion of either the baseload electricity market, products that contribute to the calculation of the Reference Price, or the electricity supplier market, in each case then prevailing in Great Britain and/or forecasted by the Market Consultant to be prevailing at the anticipated Market Start Date when compared to the application of the Market Liquidity Commitment; or
- (ii) adversely affect GenCo's ability to achieve the Reference Price when compared to the application of the Market Liquidity Commitment; and/or
- (iii) fulfil its obligations in the Economic Licence to optimise its market revenues and/or to do so in a manner that will not result in, or is not reasonably likely to result in, the distortion of any relevant market in which GenCo is operating or seeking to operate, when compared to the application of the Market Liquidity Commitment,

in each case, taking into account the identity of any power offtakers and market service providers with whom GenCo proposes to enter into and the proposed terms of such offtake, trading and market services agreements (including the right, or proposed right, for any such

offtakers and market service providers to internalise the sale of GenCo's output through power sales and trading within its own energy supply businesses), then GenCo may request the consent of the Secretary of State (as GSP Provider) to reduce its Market Liquidity Commitment to such percentage proposed by GenCo of GenCo's total annual power output to be sold directly into the wholesale UK electricity market.

**12.6** Within 36 months of the anticipated Market Start Date (and thereafter, at least 36 months prior to the end of each Control Period) and having given not less than three months' notice to Eligible MSP Shareholders, GenCo shall engage with third-party electricity trading market service providers (which are not affiliated with GenCo or any of its Shareholders) (a "**Market MSP**") with demonstrable electricity trading capabilities, to ensure (subject to the remainder of this Clause 12) that it retains at all times from the Market Start Date, at least one Market MSP under an agreement to provide electricity trading market services to GenCo (a "**Market MSP Agreement**"). GenCo shall not be required to do so where it already has at least one Market MSP Agreement in place.

**12.7** GenCo shall consider the terms available to it through such market engagement process for a Market MSP Agreement with one or more of the relevant Market MSPs. If GenCo determines that none of the terms available to it through the market engagement process for any Market MSP Agreement(s) are commercially reasonable, taking into account, *inter alia*: (i) the fees being requested for such services; (ii) the terms of any credit support requirements; (iii) the terms of the performance obligations; and (iv) additional requirements of such Market MSPs, including entering into a minimum volume of Seasonal Index Transactions or permitting a minimum volume of internalisation, then GenCo:

**12.7.1** shall provide the Secretary of State (as GSP Provider) with written details of its reasons for considering the available terms with potential Market MSPs to not be commercially reasonable and shall notify the Secretary of State (as GSP Provider) of any decision by GenCo not to enter into at least one Market MSP Agreement (provided that, if GenCo provides such notification, GenCo shall be required, pursuant to Clause 12.6, to seek a Market MSP at least 36 months prior to the end of the next Control Period (and having given not less than three months' notice to Eligible MSP Shareholders in accordance with Clause 12.6) and such obligation shall continue in respect of each subsequent Control Period where GenCo does not have at least one Market MSP Agreement); and/or

**12.7.2** may request the consent of the Secretary of State (as GSP Provider) to reduce the Market Liquidity Commitment by such amount as GenCo considers to be the minimum amount reasonably necessary, in order to offer a Market MSP a right to internalise a proportion of GenCo's total annual power output (and to offer a similar right to any other market service provider, to the extent it is entitled to equivalent or similar internalisation rights where such rights are offered to a Market MSP) such that GenCo is able to enter into a Market MSP Agreement on commercially reasonable terms, provided that, GenCo has received a Market Consultant report with a determination equivalent to that set out in Clause 12.5.2.

**12.8** The Secretary of State (as GSP Provider) shall consider any notification or request made by GenCo under Clause 12.5 and/or 12.7.2, and GenCo shall provide the Secretary of State (as GSP Provider) with (as applicable):

**12.8.1** a copy of the Market Consultant's report referred to in Clause 12.4 and such information and access to the Market Consultant to raise questions and clarifications



as the Secretary of State (as GSP Provider) reasonably requires to make its decision;

**12.8.2** information in relation to GenCo's trading performance and revenues in the previous 12 months (or if the Market Start Date occurred less than 12 months prior to the request, in the period from the Market Start Date), including, where Clause 12.5.1 applies, reasonable details of GenCo's analysis demonstrating the negative impact on its ability to achieve the Reference Price and the resulting effect on the optimisation of its revenues and any other factors which might be relevant; and

**12.8.3** in connection with a request under Clause 12.7, reasonable details of GenCo's market engagement with potential Market MSPs pursuant to Clause 12.6, the terms requested by GenCo and the terms offered by such Market MSPs, or feedback on the terms requested by GenCo and any further information reasonably required to assess whether the available terms with potential Market MSPs pursuant to Clause 12.6 are or are not commercially reasonable.

**12.9** The Secretary of State (as GSP Provider) shall notify GenCo in writing, with its reasons, as to whether it consents (or refuses consent) to a reduction in the Market Liquidity Commitment in accordance with a request under Clauses 12.5 or 12.7.2 as soon as reasonably practicable and in any event, within 30 Business Days (or such longer period as may be agreed between GenCo and the Secretary of State) of receipt of all information required under Clause 12.8. If the Secretary of State (as GSP Provider) fails to notify GenCo whether it consents (or refuses consent) within the relevant period, it shall be deemed to have consented to the reduction. Any changes to the Market Liquidity Commitment in accordance with a request under Clauses 12.5 or 12.7.2, shall become the applicable Market Liquidity Commitment and GenCo shall ensure that the terms of its power offtake, market services and trading agreements, taken together, comply with such revised Market Liquidity Commitment as soon as reasonably practicable thereafter, and in any event within twelve months of the Secretary of State (as GSP Provider) notifying GenCo of its consent or decision to a change to the Market Liquidity Commitment.

**12.10** At any time during the MLC Period, if the Secretary of State (as GSP Provider) or GenCo (as applicable) reasonably considers that a material change in:

**12.10.1** the baseload electricity generation market;

**12.10.2** the electricity supplier market or any other relevant market in which GenCo is operating or seeking to operate;

**12.10.3** the products that contribute to the calculation of the Reference Price; and/or

**12.10.4** GenCo's ability to: (i) achieve the Reference Price; or (ii) fulfil its obligations in the Economic Licence to optimise market revenues and/or to do so in a manner that will not result in, or is not reasonably likely to result in, the distortion of any relevant market in which GenCo is operating or seeking to operate;

**12.10.5** in respect of GenCo only, the terms of available market services agreements with potential Market MSPs; and/or

**12.10.6** in respect of GenCo only, the identity or market profile of the offtakers and/or market service providers of GenCo,

has occurred, such that it considers that the then applicable Market Liquidity Commitment should either be increased or reduced (a "**Material Market Change**"), then:

**12.10.7** GenCo or the Secretary of State (as GSP Provider) shall (as applicable) notify the other with details of its reasons for considering that a Material Market Change has occurred; and

**12.10.8** the Secretary of State (as GSP Provider) shall, either:

- (i) with a notice it issues under Clause 12.10.7; or
- (ii) within 90 Business Days of GenCo's or the Secretary of State's (as GSP Provider) notice of a Material Market Change under Clause 12.10.7,

notify GenCo that it is considering a potential amendment to the Market Liquidity Commitment; and

**12.10.9** GenCo shall provide the Secretary of State (as GSP Provider) information in relation to GenCo's trading performance and revenues in the previous 12 months (or if the Market Start Date occurred less than 12 months prior to the request, in the period from the Market Start Date), including reasonable details of GenCo's analysis of the potential impact of a change to the Market Liquidity Commitment on its ability to achieve the Reference Price and the resulting effect on the optimisation of its revenues and any other factors which might be relevant,

provided that: (i) GenCo shall not be entitled to issue a notice of a Material Market Change under this Clause 12.10 more than once per calendar year; (ii) if the Secretary of State (as GSP Provider) has issued a notice of a Material Market Change under this Clause 12.10 which results in a change in the Market Liquidity Commitment or it has agreed to a reduced Market Liquidity Commitment under Clause 12.9, it may not issue a notice of a Material Market Change under this Clause 12.10 to increase the Market Liquidity Commitment until the commencement of the next Regulatory Period (as defined in the Economic Licence); and (iii) the Secretary of State (as GSP Provider) shall not be entitled to increase the Market Liquidity Commitment to more than 50 per cent. of GenCo's total annual power output.

**12.11** If GenCo receives a notification by the Secretary of State (as GSP Provider) under Clause 12.10.7, it shall, within 120 Business Days of the notification (which may be extended by a further 60 Business Days by written notice by GenCo, provided the notice is submitted within the initial 120 Business Day period and is accompanied by reasonable details of the need for an extension), procure an updated Market Consultant report on the same basis as Clauses 12.4 and 12.5 but in respect of any proposed reduction or increase to the Market Liquidity Commitment (the "**Updated Market Consultant Report**"), and the Secretary of State (as GSP Provider) in consultation with GenCo, and taking into account the Updated Market Consultant's Report, shall, as soon as reasonably practicable and within 30 Business Days of receipt of the Updated Market Consultant Report, determine any adjustments it considers necessary to the Market Liquidity Commitment.

**12.12** If the Secretary of State (as GSP Provider) (in consultation with GenCo) makes any decision to adjust (or not to adjust) the Market Liquidity Commitment pursuant to Clauses 12.9 and 12.10, it shall notify GenCo in writing of such decision (with reasons for its decision) as soon as reasonably practicable and in any event, within 30 Business Days (or such longer period as may be agreed between GenCo and the Secretary of State) of receipt of all information required under Clauses 12.10 and 12.11. In the case of a request by GenCo to adjust the Market Liquidity Commitment in accordance with Clause 12.10, if the Secretary of State (as GSP Provider) fails to notify GenCo of its decision within 30 Business Days (or such longer period as may be agreed between GenCo and the Secretary of State) of receipt of all

information required under Clauses 12.8 and 12.10, it shall be deemed to have accepted the requested adjustment. Any changes to the Market Liquidity Commitment in accordance with Clauses 12.9 and 12.10 and this Clause 12.12, shall become the applicable Market Liquidity Commitment and GenCo shall ensure that the terms of its power offtake, market services and trading agreements, taken together, comply with such revised Market Liquidity Commitment as soon as reasonably practicable thereafter, and in any event within twelve months of the Secretary of State (as GSP Provider) notifying GenCo of its consent or decision to a change to the Market Liquidity Commitment.

**12.13** If GenCo breaches the then applicable Market Liquidity Commitment, it shall write to the Secretary of State (as GSP Provider) at the end of the relevant Contract Year in which such breach occurred (or if the breach is only known to GenCo in the final month of the Contract Year, by the date falling 30 days after the end of the relevant Contract Year) to provide details of its non-compliance and setting out the reasons for its breach of the then applicable Market Liquidity Commitment (which may include, and the Secretary of State (as GSP Provider) shall give due consideration to, the number of market service providers providing services to GenCo).

**12.14** The Secretary of State (as GSP Provider) may publish the correspondence and reasons provided by GenCo under:

**12.14.1** Clause 12.13 in respect of its non-compliance with the Market Liquidity Commitment; and

**12.14.2** Clause 12.7.1 and any further reasons provided under clause 12.8.3 in respect of its failure to enter into a Market MSP Agreement,

in each case, following consultation with GenCo, if it is not satisfied (and the Secretary of State (as GSP Provider) will provide reasons for such view) with the reasons provided by GenCo for its breach of the Market Liquidity Commitment or its decision not to enter into a Market MSP Agreement subject to any redactions as GenCo may reasonably require in respect of any information that is commercially sensitive or is subject to confidentiality restrictions, provided that GenCo has provided the Secretary of State (as GSP Provider) with reasons and/or evidence relating to such commercial sensitivity or restrictions.

**12.15** The Secretary of State (as GSP Provider) and GenCo agree that where GenCo has failed to comply with the Market Liquidity Commitment as a result of a material change in GenCo's forecasted total annual power output during the forward hedging period (being the period between GenCo setting volumes of seasonal index transactions across market service providers and the start of the delivery season) which has arisen due to a material unplanned outage, such failure to comply with the Market Liquidity Commitment shall not constitute a breach of this Clause 12 provided that, GenCo notifies the Secretary of State (as GSP Provider) in writing of the material change as soon as reasonably practicable following its occurrence together with: (i) reasonable details of the reasons for such material change and outage; (ii) the steps taken to mitigate the effects on compliance with the Market Liquidity Commitment for that Contract Year; and (iii) the steps to be taken to mitigate the effects of such event on future compliance with the Market Liquidity Commitment, in each case to the reasonable satisfaction of the Secretary of State (as GSP Provider).

**12.16** Notwithstanding any other provision of this Agreement or of any other agreement comprising part of the Government Support Package, no breach by GenCo under and pursuant to this Clause 12 shall of itself constitute a Remedy Event or a Failure Event under this Agreement nor shall it be considered a breach of the Government Support Package for any purposes

other than for the purposes of this Clause 12, and the provisions of Clause 6.7 (*Reduction in case of Failure Event*) and Schedule 1 (*Remedy Event, Failure Event and Remediation Plan*) shall not apply to any such breach by GenCo under this Clause 12 only.

## **13 VAT**

- 13.1** Where under the terms of this Agreement one party is liable to indemnify or reimburse another party in respect of any costs, charges or expenses, the payment shall include an amount equal to any VAT thereon not otherwise recoverable by the other party or the representative member of any VAT group of which it forms part. If the costs, charges or expenses are incurred by the party being indemnified or reimbursed (the “**Payee**”) in its capacity as agent of the payer and the relevant supply is treated for VAT purposes as made direct to the payer, the Payee shall use reasonable endeavours to procure that the supplier issues to the payer a valid VAT invoice.

## **14 Confidentiality and Freedom of Information**

### **14.1 Confidential Information**

Subject to Clause 14.2 (*Disclosure of Confidential Information*) and Clause 14.5 (*Freedom of Information*), the Parties shall at all times keep all Confidential Information confidential to the Party receiving it and shall not disclose such Confidential Information to any other person, except with the written authority of each Party to whom the information is confidential.

### **14.2 Disclosure of Confidential Information**

**14.2.1** Subject to Clause 14.3 (*Obligations preserved*) and Clause 14.5 (*Freedom of Information*), a Party shall, without the prior consent of the relevant other Party, be entitled to disclose Confidential Information of that other Party:

- (i) that is reasonably required by the Party for the performance of its obligations under the Transaction Documents, including the disclosure of any Confidential Information to any employee, consultant, agent, officer, sub-contractor (of any tier) or professional adviser to the extent necessary to enable that Party to perform its obligations under the Transaction Documents;
- (ii) to any Secured Creditors or their professional advisers (including any rating agencies, if applicable) or insurance advisers 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 GenCo or a Group Company to enable GenCo to carry out its obligations under the Transaction Documents, to that person and their advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;
- (iii) to the extent required by the Nuclear Installations Act, the NEFA or any other applicable law or pursuant to an order of any court of competent jurisdiction, any parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law, including for the purposes of the National Audit Act 1983, the Comptroller and Auditor General (as such terms are defined under the National Audit Act 1983);

- (iv) to register or record any authorisations and to effect property registration that may be required;
- (v) for the purpose of the examination and certification of any Party's accounts;
- (vi) to enable a determination to be made under a dispute resolution process arising out of or in connection with this Agreement;
- (vii) in relation to disclosure by GenCo, in order to fulfil the Economic Licence obligations;
- (viii) in relation to disclosure by GenCo, to any person in connection with that person being (or in anticipation of that person becoming) a shareholder of GenCo or a Group Company, subject to the terms of any non-disclosure agreement between GenCo and any of the Parties;
- (ix) required under the Nuclear Industries Security Regulations 2003 or in accordance with the ONR's Security Assessment Principles;
- (x) to prospective providers of financing to GenCo and/or a Group Company; and
- (xi) to any Group Company,

in each case, provided that any such disclosure is made honestly, reasonably (having regard to the terms of the Transaction Documents) and to the extent required for a legitimate purpose as set out in this Clause 14.2.1.

**14.2.2** Nothing in this Clause 12 shall be deemed to prohibit, prevent or hinder, or render any Party liable for, the disclosure of any information by that Party to the Economic Regulator, the Parliamentary Commissioner for Administration, a Minister of the Crown or any department of the Government of the United Kingdom, Parliament, the Scottish Parliament, the National Assembly of Wales, or any department or officer of any of them for the purpose of facilitating the carrying out of its functions.

**14.2.3** If the Secretary of State, the Economic Regulator and GenCo agree in writing, the Parties shall be permitted to release Confidential Information (including the contents of any Reports (as that term is defined in the Liaison Agreement)) to the Cross-Regulatory Information Sharing Platform, subject to such redactions as the Secretary of State, the Economic Regulator and GenCo agree are required.

### **14.3 Obligations preserved**

Where disclosure is permitted under Clause 14.2 (*Disclosure of Confidential Information*), other than Clauses 14.2.1(iii) and 14.2.1(iv), the Party making such disclosure shall ensure that the recipient of the information is subject to the same obligation of confidentiality as that contained in this Agreement.

### **14.4 Exploitation of information**

Subject to use of the information for the purposes expressly contemplated in Clauses 14.2.1(ii), 14.2.1(iii) and 14.2.1(v), no Party shall make use of any information arising out of the Project issued or provided by or on behalf of any Party in connection with the Transaction Documents otherwise than for the purposes of the Transaction Documents, except with the written consent of the Party by whom or on whose behalf the information was provided.

## **14.5 Freedom of Information**

**14.5.1** The Parties acknowledge that the Secretary of State is, and that GenCo and/or HoldCo may become, subject to the requirements of the FOIA and the Environmental Information Regulations and each Party may, subject to the remaining provisions of this Clause 12, elect to make representations to each other Party (as the case may be) with its Information disclosure requirements pursuant to the same in the manner provided for in Clauses 14.5.3 to 14.5.7 (inclusive).

**14.5.2** Except where a Request for Information is subject to confidentiality restrictions, where an RfI Recipient receives a Request for Information in relation to Information that may in the RfI Recipient's reasonable opinion be confidential to another Party, the RfI Recipient shall provide a copy of such Request for Information to the relevant other Party within three Business Days of receiving the Request for Information.

**14.5.3** The RfI Recipient may within 10 Business Days of delivering a Request for Information to the relevant other Party consult with such other Party in connection with such Request for Information, in which case the relevant other Party may make representations to the RfI Recipient as to whether:

- (i) such Information requested should be disclosed and, if so, on what basis;
- (ii) such Information may be or is Confidential Information or Commercially Sensitive Information; or
- (iii) further Information should reasonably be provided in order to identify and locate the Information requested,

provided always that, without prejudice to the relevant other Party's rights against the RfI Recipient in respect of any disclosure of Information made otherwise than in accordance with the FOIA or the Environmental Information Regulations, the RfI Recipient shall be responsible for determining, subject to Clause 14.5.4:

- (iv) whether Information is exempt from disclosure under the FOIA, the Environmental Information Regulations or any other relevant law (including the Utilities Act 2000); and
- (v) whether Information is to be disclosed in response to a Request for Information,

and in no event shall the relevant other Party respond directly, or allow its sub-contractors to respond directly, to a Request for Information unless expressly authorised to do so by the RfI Recipient. If the relevant other Party elects to make representations pursuant to this Clause 14.5.3, it shall respond to the RfI Recipient within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

**14.5.4** Subject to Clause 14.5.6, in deciding how to respond to a Request for Information which relates, or may relate, to Confidential Information or Commercially Sensitive Information, the RfI Recipient shall take into account any relevant representations by the relevant other Party in that regard that are made before expiry of the time period referred to in Clause 14.5.3, and the RfI Recipient shall not issue a response to the Request for Information before such date.

**14.5.5** If the RfI Recipient decides to respond to a Request for Information which relates, or may relate, to Confidential Information or Commercially Sensitive Information by confirming that it holds Confidential Information or Commercially Sensitive Information and/or by disclosing Confidential Information or Commercially Sensitive Information, it shall notify the relevant other Party of its decision in writing at least three Business Days before issuing such response.

**14.5.6** The Parties acknowledge that (notwithstanding the other provisions of this Clause 12) the RfI Recipient may, acting in accordance with the Codes, be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the other Parties or the Project:

- (i) in certain circumstances without consulting with the relevant other Party; or
- (ii) following consultation with the relevant other Party and having taken their views into account,

provided always that where Clause 14.5.6(i) applies, the RfI Recipient shall, in accordance with the recommendations of the Codes, take reasonable steps, where appropriate, to give the relevant other Party notice, or failing that, to draw the disclosure to the attention of the relevant other Party after any disclosure. Where disclosure is made under this Clause 14.5.6, the RfI Recipient shall provide the relevant other Party with a copy of the information disclosed following the disclosure.

**14.5.7** The RfI Recipient shall not be liable for any loss, damage, harm or other detriment suffered by any other Party arising out of any Information in the RfI recipient's reasonable opinion required to be disclosed under the FOIA or Environmental Information Regulations, provided the RfI Recipient has complied with this Clause 14.5.

## **15 No Partnership or Agency**

**15.1** Nothing in this Agreement shall be construed as creating a partnership.

**15.2** No Party shall be deemed to be an agent of any other Party and no Party shall hold itself out as having authority or power to bind any other Party in any way.

## **16 Notices**

### **16.1 Communications in writing**

Any communication to be made under or in connection with this Agreement shall be made in writing and unless otherwise stated, may be made by hand or recorded delivery or letter.

### **16.2 Addresses**

The address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered is as follows:

#### **16.2.1 DCA Provider**

[REDACTED]  
[REDACTED]

#### **16.2.2 GenCo**

[REDACTED]  
[REDACTED]  
**16.2.3 PledgeCo**

[REDACTED]  
[REDACTED]  
**16.2.4 HoldCo**

[REDACTED]  
**16.2.5 Security Trustee**

Attention: [●]

or any substitute address or department or officer as any Party (as applicable) may notify in writing to each of the other Parties by not less than five Business Days' notice.

**16.3 Delivery**

**16.3.1** Subject to Clause 16.4 (*Electronic communication*), any communication or document made or delivered by one Party to another Party under or in connection with this Agreement shall only be effective:

- (i) if by hand or recorded delivery, when so delivered; and
- (ii) if by post (other than recorded delivery), two Business Days after being deposited in the post (postage prepaid) in an envelope addressed to the relevant Party at the relevant address,

and, if a particular department or officer is specified as part of its address details provided under Clause 16.2 (*Addresses*), if addressed to that department or officer.

**16.3.2** Any notice under this Agreement shall be irrevocable.

**16.4 Electronic communication**

**16.4.1** Any communication to be made under or in connection with this Agreement may be made by electronic mail or other electronic means if the Parties:

- (i) agree that, unless and until notified to the contrary, this is to be an accepted form of communication;
- (ii) notify the other Parties in writing of their electronic mail address and any other information required to enable the sending and receipt of information by that means; and
- (iii) notify the other Parties of any change to their address or any other such information supplied by them by not less than five Business Days' notice.

**16.4.2** Any electronic communication made between the Parties will be effective only when actually received in readable form.



## **17 Partial Invalidity**

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## **18 Remedies and Waivers**

No failure to exercise, nor any delay in exercising, any right or remedy under this Agreement shall operate as a waiver of any such right or remedy or constitute an election to affirm this Agreement. No election to affirm this Agreement by any Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

## **19 Consequential Loss**

Except where expressly stated otherwise, in no event shall the Secretary of State be liable to any other Party in respect of any Consequential Loss (whether on the basis of breach of contract, indemnity, warranty, tort, breach of statutory duty or otherwise) for any matter arising out of or in connection with this Agreement.

## **20 Amendments**

This Agreement may be amended only by an instrument in writing signed by duly authorised representatives of each Party, save that amendments to Clause 12 and any defined terms that are only used in Clause 12 shall require the signed written consent of the GSP Provider and GenCo only.

## **21 Counterparts**

This Agreement may be executed in any number of counterparts and by each Party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this Agreement by email attachment shall be an effective mode of delivery.

## **22 Entire Agreement**

**22.1** This Agreement, in conjunction with the other documents forming part of the Government Support Package, constitutes the entire agreement between the Parties with respect to the Government Support Package and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to the subject matter of the Government Support Package.

**22.2** Subject to Clause 22.3, each Party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement. No Party shall have any claim for innocent or negligent misrepresentation based upon any statement in this Agreement.

**22.3** Nothing in this Agreement shall exclude or limit liability in respect of fraud, fraudulent misstatement or any other matter to the extent not permitted by law to be excluded or limited.

## **23 Restrictions on Assignment**

### **23.1 Binding on Successors**

This Agreement shall benefit and bind the relevant parties, their permitted assignees and their respective successors. Any reference in this Agreement to any party shall be construed accordingly.

### **23.2 Restriction on GenCo, PledgeCo and HoldCo**

Subject to Clause 23.3 (*GenCo, PledgeCo and HoldCo exception*), none of the Group Companies shall assign, novate or otherwise transfer its rights or obligations under this Agreement in whole or in part except with the prior written consent of the DCA Provider (such consent not to be unreasonably withheld or delayed).

### **23.3 GenCo, PledgeCo and HoldCo exception**

GenCo, PledgeCo and/or HoldCo may create a security assignment of this Agreement in favour of any Secured Creditor and the DCA Provider shall:

**23.3.1** assist in facilitating this, provided that all costs and expenses properly incurred by the DCA Provider in giving effect to such assignment are paid by GenCo and/or HoldCo (as applicable); and

**23.3.2** execute such documents as may reasonably and customarily be required to give effect to such assignment.

### **23.4 Restriction on DCA Provider**

Subject to Clause 23.5 (*DCA Provider exception*), the DCA Provider shall not assign, novate or otherwise transfer their rights or obligations under this Agreement in whole or in part except with the prior written consent of each of GenCo and HoldCo.

### **23.5 DCA Provider exception**

Subject to clause 20.2.1 (*Assignments and transfers by the GLF Provider*) of the Government Liquidity Facility Agreement, the DCA Provider may transfer or novate their rights and obligations under the ITA Deed of Appointment, the Liaison Agreement, this Agreement or any other document forming part of the Government Support Package to any Secretary of State Replacement provided that:

**23.5.1** such transfer or novation is in respect of all of the DCA Provider's or, as applicable, the previous Secretary of State Replacement's, rights and obligations under the ITA Deed of Appointment, the Liaison Agreement, this Agreement or any other document forming part of the Government Support Package;

**23.5.2** the Secretary of State Replacement enters into documentation, in the same form or otherwise in a form reasonably acceptable to each of GenCo and HoldCo (such approval not to be unreasonably withheld or delayed), agreeing to be bound by the terms of the ITA Deed of Appointment, the Liaison Agreement, this Agreement or any other document forming part of the Government Support Package, with any consequential amendments which may be appropriate, as fully as if the Secretary of State Replacement had been a party to this Agreement and named in the ITA Deed of Appointment, the Liaison Agreement, this Agreement or any other document forming part of the Government Support Package in place of the DCA Provider or,

as applicable, the previous Secretary of State Replacement (the “**Replacement Documentation**”);

**23.5.3** the Replacement Documentation shall specify that if at any time the Secretary of State Replacement ceases to be a Minister of the Crown, any entity directly wholly-owned or controlled by a Minister of the Crown or a public body of the nature described in paragraph (b) of the definition of Secretary of State Replacement, then prior to such cessation the Replacement Documentation shall be transferred or novated to a Minister of the Crown or a public body of the nature described in paragraph (b) of the definition of Secretary of State Replacement (such transfer or novation being an “**Alternative Secretary of State Transfer**”);

**23.5.4** where the Secretary of State Replacement is an entity directly wholly owned or controlled by a Minister of the Crown or a public body of the nature described in paragraph (b) of the definition of Secretary of State Replacement, the DCA Provider has produced evidence to the satisfaction of GenCo (acting reasonably) that:

- (i) the Secretary of State Replacement has the power and financial capability to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of this Agreement, the ITA Deed of Appointment and the Government Support Package; and
- (ii) all approvals, consents, updates and assurances required for the purposes of Clause 23.5.4(i) are, at the time of such transfer or novation, in full force and effect;

**23.5.5** if at any time the Secretary of State Replacement ceases to be a Minister of the Crown, an entity directly wholly-owned or controlled by a Minister of the Crown or a public body of the nature described in paragraph (b) of the definition of Secretary of State Replacement, the DCA Provider shall procure that an Alternative Secretary of State Transfer (as contemplated by the Replacement Documentation and Clause 23.5.3) is effected and the requirements set out in Clause 23.5.4 shall apply in respect of such Alternative Secretary of State Transfer; and

**23.5.6** all costs and expenses properly incurred by GenCo in effecting such transfer or novation are paid by the Secretary of State Replacement.

## **23.6 Restriction on the Security Trustee**

The Security Trustee shall not assign, novate or otherwise transfer its rights or obligations under this Agreement in whole or in part except to any replacement Security Trustee appointed in accordance with, or as otherwise permitted pursuant to, the Finance Documents or with the prior written consent of the DCA Provider (such consent not to be unreasonably withheld or delayed).

## **24 No Third Party Enforcement Rights**

Subject to Clause 27.12, a person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

## **25 Waiver of Sovereign Immunity**

The Secretary of State irrevocably waives all immunity to which they may be or become entitled in relation to this Agreement, including immunity from enforcement and all legal

proceedings, both in respect of themselves and their assets to the fullest extent permitted by the laws of England and Wales.

## **26 Governing Law**

This Agreement and any non-contractual obligations arising out of or in relation to this Agreement are governed by the law of England and Wales.

## **27 Expert Determination**

### **27.1** Any dispute arising out of or in connection with:

**27.1.1** the DCA Provider determining that the Plant is Technically Non-Remediable in accordance with the terms of this Agreement;

**27.1.2** Clause 5.7 of this Agreement;

**27.1.3** Clause 6 (*Calculation Procedures*) of this Agreement; or

**27.1.4** paragraph 2.3.5 of Schedule 1 (*Remedy Event, Failure Event and Remediation Plan*) to this Agreement,

(a “**Technical Dispute**”) shall be referred for determination by an expert (the “**Expert**”). Any Party may refer such a Technical Dispute at any time by proposing to the other Parties in writing the appointment of an Expert.

**27.2** The Expert shall have experience in the discipline or area of expertise that the Parties agree is appropriate for the Technical Dispute in question and shall be appointed by agreement between the Parties or, failing such agreement, within 14 days of all Parties receiving the written proposal referred to in Clause 27.1, by the International Chamber of Commerce’s (the “**ICC**”) International Centre for ADR (the “**Reference Body**”) on the application of any Party. The Expert shall not be a present or former employee or agent of, or consultant or counsel to, any Party or any Affiliate thereof.

**27.3** The expert determination procedure shall be carried out in accordance with the ICC Expert Rules.

**27.4** The Parties shall request that the Expert determine the referred Technical Dispute within 30 days of receiving the reference.

**27.5** If the Expert has been appointed but is unable or unwilling to complete the reference, another Expert shall be appointed by agreement between the Parties (or, failing agreement, within 14 days of the Parties being notified that the Expert is unable or unwilling to complete the reference) by the Reference Body on the application of either Party.

**27.6** The Expert shall act as an expert and not as an arbitrator.

**27.7** The Parties shall have the right to make representations and submissions to the Expert.

**27.8** The Expert shall have power to request any Party to the Technical Dispute to provide the Expert with such statements (which shall be written unless otherwise specifically required) or documents or information within their control as the Expert may determine and the Parties shall comply with any such request.

- 27.9** If the Expert decides that a sum is due and payable by one Party to another Party, then:
- (i) any such sum shall be due and payable within 14 days of receipt by the Parties of written notice of such decision, unless the Expert decides otherwise; and
  - (ii) interest shall accrue at the rate of three per cent. above the base lending rate of the Bank of England from time to time in respect of late payment.
- 27.10** The fees of the Expert and any other costs of and incidental to the reference to Expert determination shall be payable by such Party to the Technical Dispute as the Expert may determine but, in the absence of any such determination, by the Parties to the Technical Dispute in equal shares.
- 27.11** The Expert shall give written notice of their decision to the Parties to the Technical Dispute and the decision of the Expert shall be finally binding on the Parties, except if either of the Parties exercises the option in Clause 28 (*Referral to Courts*) or in the case of fraud, bad faith or manifest error.
- 27.12** The Parties acknowledge and agree that that, notwithstanding the Economic Regulator not being party to this Agreement, in respect of any dispute arising out of or in connection with Clause 5.7 and for the purposes of clause 19.3.1(ii) of the ITA Deed of Appointment, the Economic Regulator shall be permitted to bring and/or participate in a Technical Dispute pursuant to this Clause 27.

## **28 Referral to Courts**

- 28.1** Subject to Clause 28.2, any of the Parties may by written notice to the others require that a Dispute be heard by a court of law. If the Party gives such notice, the Dispute to which such notice refers shall be determined in accordance with Clause 29 (*Jurisdiction of English Courts*).
- 28.2** In respect of a Technical Dispute that has been referred to an Expert in accordance with Clause 27 (*Expert Determination*), any notice issued pursuant to Clause 28.1 shall be issued within 45 days of receipt of the Expert's decision pursuant to Clause 27.11.

## **29 Jurisdiction of English Courts**

- 29.1** If either of the Parties issues a notice pursuant to Clause 28 (*Referral to Courts*), the provisions of this Clause 29 shall apply.
- 29.2** The courts of England have exclusive jurisdiction to settle any Dispute.
- 29.3** The Parties agree that the courts of England are the most appropriate and convenient courts to settle any Dispute and accordingly no Party will argue to the contrary.

## Schedule 1

### Remedy Event, Failure Event and Remediation Plan

#### 1 Definitions

Terms not defined in this Schedule 1 shall have the meaning given to them in Clause 1 (*Definitions and Interpretation*). In this Schedule 1:

**“Acceptable Credit Rating”** means, in respect of:

- (a) a bank or financial institution, that such entity has been designated with at least two of the following long-term credit ratings (or long-term counterparty credit ratings, if available): (i) A- or higher by S&P; (ii) A- or higher by Fitch; or (iii) A3 or higher by Moody's; and
- (b) any other entity, that such entity has been designated with at least two of the following long-term credit ratings (or long-term counterparty credit ratings, if available): (i) A- or higher by S&P; (ii) A- or higher by Fitch; or (iii) A3 or higher by Moody's,

unless otherwise agreed in writing by the DCA Provider;

**“Acceptable Credit Support”** has the meaning given to that term in the Investment Agreement;

**“Claim”** has the meaning given to that term in the Supplemental Compensation Agreement;

**“Expenditure Plan”** has the meaning given to that term in the Contingent Financing Agreement;

**“Financial Institution Insolvency Event”** means, in respect of an entity, that it:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (d) either:
  - (i) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding up or liquidation by it or such regulator, supervisor or similar official; or
  - (ii) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in paragraph (i) above,

and either: (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding up or liquidation; or (B) is not withdrawn, dismissed, discharged, stayed or restrained in each case within 21 calendar days of the institution or presentation thereof;

- (e) has exercised in respect of it one or more of the stabilisation powers pursuant to Part 1 of the Banking Act 2009 and/or has instituted against it a bank insolvency proceeding pursuant to Part 2 of the Banking Act 2009 or a bank administration proceeding pursuant to Part 3 of the Banking Act 2009 or causes or is subject to any event with respect to it which, under the applicable Laws (including the Bank Resolution and Recovery Directive 2014/59/EU and implementing Laws and regulations) of any jurisdiction, has an analogous effect to the foregoing in respect of that entity;
- (f) has a resolution passed for its winding up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (g) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
- (h) has a secured party take possession of all or substantially all its assets or has a distress, diligence, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 21 calendar days thereafter;
- (i) causes or is subject to any event with respect to it which, under the applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in paragraphs (a) to (h) above; or
- (j) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to in paragraphs (a) to (h) above;

**“GSP Material Adverse Effect”** means:

- (a) a material adverse effect on the rights, obligations or liabilities of the Secretary of State (in their statutory capacity or their capacity as GSP Provider, in each case whether actual, potential or contingent) under any document forming part of the Government Support Package or the FDP Documents; or
- (b) the effect of materially increasing the likelihood of triggering:
  - (i) the right of GenCo, a Secured Creditor, a HoldCo Shareholder and/or the Security Trustee (as the case may be) to:
    - (A) issue an Unavailability Notice under clause 8.1 of the Supplemental Compensation Agreement; or
    - (B) make a Claim under clause 6 (*Claims for Total Loss*), clause 9 (*Claim Notification for an Uninsured Risk and Unavailability Loss*), clause 11 (*Channelled Claims for NTPL Loss*) and/or clause 16 (*Claim Notification for Unchanneled Claim Costs*) of the Supplemental Compensation Agreement,

as applicable; or

- (ii) the right of GenCo to request contingent financing under clause 7 (*Contingent Financing Request*) of the Contingent Financing Agreement; or
- (iii) the right of the DCA Provider to elect to Discontinue under Clause 3.1.1 or the right of GenCo to request Discontinuation under Clause 3.2.1;

**“Higher Regulatory Threshold”** has the meaning given to that term in the Economic Licence;

**“IAR Outcome Notice”** has the meaning given to that term in the Contingent Financing Agreement;

**“Non-HMG CTA Event of Default”** means an event specified as an “Event of Default” in schedule 5 (*Events of Default*) to the Common Terms Agreement other than the following paragraphs of that schedule 5 (*Events of Default*):

- (a) paragraph 5(a)(ii), insofar as the non-complying party is the Secretary of State;
- (b) paragraph 14 (*Change in Law*), insofar as the change in law has been enacted through a change in legislation or is a Political Shutdown Event or is an event listed in paragraphs (a) to (e) of the definition of Political Shutdown Event (unless caused by any of the circumstances described in paragraphs (f) to (l) of such definition);
- (c) paragraph 22(a); and
- (d) paragraph 26 (*Nationalisation Event*);

**“Remediation Plan”** has the meaning given to it in paragraph 2.3.1 of this Schedule 1;

**“Remedied”** means in relation to a Remedy Event if:

- (a) GenCo remedies the Remedy Event (and the associated Failure Event, if applicable);
- (b) GenCo completes the relevant agreed Remediation Plan within the time period(s) specified in that Remediation Plan; or
- (c) the Secretary of State waives the relevant Remedy Event (and the associated Failure Event, if applicable);

**“Remedy Event”** means the occurrence of:

- (a) any of the following events or circumstances:
  - (i) the Senior RAR on any Test Date is more than 0.65:1;
  - (ii) subject to the Higher Regulatory Threshold and to the extent applicable until (A) all equity committed by the HoldCo Shareholders pursuant to the Investment Agreement has been fully invested and (B) the Acceptable Credit Support provided by any HoldCo Shareholder is no longer required in accordance with clause 11.1 of the Investment Agreement, on any Test Date HoldCo or the HoldCo Shareholders fail to maintain or have the benefit of Acceptable Credit Support securing the payment of equity commitments of the HoldCo Shareholders in favour of HoldCo or the Security Trustee equal to the amount of the aggregate equity commitments required to be subscribed by the HoldCo Shareholders during the 24 month period immediately following such Test Date, including (where applicable) based on the equity subscription obligations of the HoldCo Shareholders up to the



- Higher Regulatory Threshold following the issuance of an IAR Outcome Notice;
- (iii) Distributions are made in excess of the Yield Cap as measured at each Test Date; or
  - (iv) GenCo changes its tax residence from the United Kingdom;
  - (b) a breach of paragraph 20 (*Restricted Payments*) of part C of schedule 3 (*Group Covenants*) of the Common Terms Agreement, or a breach of any other lock-up or restriction on Distributions under the GSP or the Finance Documents;
  - (c) a breach by GenCo of any its obligations under the Liaison Agreement which has or is reasonably likely to have a GSP Material Adverse Effect;
  - (d) a breach by GenCo and/or HoldCo of any of their respective obligations under the GSP which has or is reasonably likely to have a GSP Material Adverse Effect, provided that there shall be no Remedy Event if GenCo is unable to procure, maintain or renew a Required Insurance solely because that Required Insurance is or has become unavailable;
  - (e) a breach by GenCo of its reporting obligations pursuant to Special Condition 8.12 of the Economic Licence which has or is reasonably likely to have a GSP Material Adverse Effect;
  - (f) a Non-HMG CTA Event of Default which has or is reasonably likely to have a GSP Material Adverse Effect, provided that this limb (f) shall not apply if the Secretary of State holds more than 50 per cent of the outstanding principal amount under the Security Trust and Intercreditor Deed; or
  - (g) subject to clause 4.1.10 of the Contingent Financing Agreement, a failure by GenCo to implement any costs mitigation measures set out in an Expenditure Plan that has been approved pursuant to clause 4.1.7 of the Contingent Financing Agreement (or updated and approved in accordance with clause 4.1.8 of the Contingent Financing Agreement) or fully and finally determined in accordance with the Dispute Resolution Process set out in the Contingent Financing Agreement in any material respect;

“**Remedy Event Notice**” has the meaning given to it in paragraph 2.1.2 of this Schedule 1;

“**Senior RAR**” has the meaning given to that term in the Financing MDA;

“**Unavailability Notice**” has the meaning given to that term in the Supplemental Compensation Agreement; and

“**Yield Cap**” has the meaning given to that term in the Economic Licence.

## 2 Remedy Event, Failure Event and Remediation Plan

### 2.1 Notification of a Remedy Event

2.1.1 GenCo shall notify the Secretary of State of:

- (i) the occurrence, and details, of any Remedy Event promptly on GenCo becoming aware of its occurrence; and

- (ii) any event or circumstance which is likely, with the passage of time or otherwise, to constitute or give rise to a Remedy Event promptly on GenCo becoming aware of such event or circumstance.

2.1.2 Where a Remedy Event occurs, the Secretary of State may serve a notice of the Remedy Event on GenCo (a “**Remedy Event Notice**”).

## 2.2 Restrictions on Distributions

If the Secretary of State has issued a Remedy Event Notice, GenCo, PledgeCo and HoldCo shall not declare, make, pay or permit a Distribution, if and for so long as the relevant Remedy Event (and associated Failure Event, if applicable) has not been Remedied.

## 2.3 Opportunity to remedy

2.3.1 On receipt of a Remedy Event Notice, GenCo shall either:

- (i) remedy the Remedy Event referred to in the Remedy Event Notice (if the same is capable of remedy) within 30 Business Days of the Remedy Event Notice or, if the Remedy Event is not capable of remedy within 30 Business Days, such longer period as agreed in writing with the Secretary of State (acting reasonably) and, in either case, GenCo shall notify the Secretary of State immediately upon remedying the relevant Remedy Event; or
- (ii) propose a plan within 30 Business Days of the Remedy Event Notice (set out, if appropriate, in stages) for remedying or mitigating (as applicable) the Remedy Event (a “**Remediation Plan**”). The Remediation Plan shall specify in reasonable detail the manner in which, and the latest date by which, such Remedy Event is proposed to be remedied by GenCo or the course of action and timeline to mitigate.

2.3.2 If GenCo proposes a Remediation Plan in accordance with paragraph 2.3.1(ii) or a revised Remediation Plan in accordance with paragraph 2.3.3, the Secretary of State shall within 30 Business Days of receipt of the Remediation Plan or revised Remediation Plan (as applicable) either:

- (i) notify GenCo in writing that it accepts the Remediation Plan or revised Remediation Plan (as applicable) and GenCo shall comply with such Remediation Plan or revised Remediation Plan (as applicable) from the date of such notice; or
- (ii) notify GenCo in writing that it does not (acting reasonably) accept the Remediation Plan or revised Remediation Plan (as applicable) and, if not, provide the reasons for such rejection.

2.3.3 If the Secretary of State notifies GenCo that it does not accept a Remediation Plan in accordance with paragraph 2.3.2(ii), GenCo shall, within 15 Business Days of such notice, provide a revised Remediation Plan to the Secretary of State which addresses any issues raised by the Secretary of State in the notice under paragraph 2.3.2(ii). GenCo may put forward further revised Remediation Plans as necessary in order to agree a Remediation Plan in accordance with paragraph 2.3.2(i).

**2.3.4** For the purposes of agreeing the Remediation Plan or revised Remediation Plan (as applicable) in accordance with paragraph 2.4.2, the Secretary of State and GenCo shall have due regard to the following considerations:

- (i) the extent to which the event or circumstance giving rise to the Remedy Event is reasonably capable of being remedied;
- (ii) the extent to which the event or circumstance giving rise to the Remedy Event is reasonably capable of being mitigated; and
- (iii) any alternative steps which may be appropriate having regard to the risks of the Secretary of State under the Government Support Package in relation to the relevant Remedy Event.

**2.3.5** In case the Parties fail to agree on a Remediation Plan within 60 Business Days of GenCo first proposing a revised Remediation Plan in accordance with paragraph 2.3.3, any of the Parties may refer the dispute to the Expert in accordance with Clause 27 (*Expert Determination*) with the purpose of agreeing a Remediation Plan. Subject to Clause 28 (*Referral to Courts*), any proposed remediation plan determined or agreed in accordance with Clause 27 (*Expert Determination*) shall become the Remediation Plan.

## **2.4 Reduction of Failure Event to Remedy Event**

If a Failure Event has arisen but:

**2.4.1** if a Remediation Plan has not previously been agreed or determined, the Secretary of State and GenCo have subsequently agreed a Remediation Plan and the Secretary of State is satisfied (acting reasonably) that GenCo is making substantial progress in carrying out the Remediation Plan; or

**2.4.2** if a Remediation Plan has previously been agreed or determined but GenCo has failed to comply in any material respect with the agreed Remediation Plan, the Secretary of State is subsequently satisfied (acting reasonably) that GenCo has resumed making substantial progress in carrying out the Remediation Plan,

the Failure Event shall be reduced to a Remedy Event, provided that the provisions of paragraph 2.2 (*Restrictions on Distributions*) shall continue to apply until such Remedy Event has been Remedied.

## **3 Test Date**

The Secretary of State may, at any time between Revenue Commencement and the Commercial Operations Date, upon written notice to GenCo, require GenCo to provide the Secretary of State with all information which the Secretary of State requires (acting reasonably) in order to measure any of the requirements which are expressed to be measured at a Test Date under this Agreement.

## Schedule 2 Financing Principles

### 1 Assumptions

**1.1** The Secretary of State has assumed that there will be two financing phases in connection with the Project:

**1.1.1** first, the financing arrangements prevailing as at the date of Revenue Commencement, which will primarily consist of (i) term debt financing provided by [REDACTED] (ii) term debt financing provided by certain commercial financial institutions whose liabilities will be 95 per cent covered by [REDACTED]; and (iii) the Government Liquidity Facility, ("**Phase One**"); and (iv) a working capital and guarantee facility (structured as a revolving credit facility) provided by certain commercial financial institutions; and

**1.1.2** second, additional debt financing, which may take the form of:

- (i) revolving credit facilities;
- (ii) term loan facilities;
- (iii) liquidity facilities;
- (iv) private placement notes; and/or
- (v) public bonds,

which may be raised directly by GenCo or indirectly through a special purpose vehicle bond issuer that will on-lend the proceeds of the bond financing to GenCo ("**Phase Two**").

**1.2** The proceeds of the term debt financing raised prior to COD will be used to finance Allowable Project Spend and/or to refinance financial indebtedness and will be secured, to the extent permitted by law and subject to the security of the Secretary of State (in its capacity as FDP Secured Creditor), by (i) the whole or substantially the whole of the business and assets of GenCo and PledgeCo, and (ii) certain limited security granted by HoldCo and the Equity Investors, in each case excluding the Protected Assets (other than the shares in GenCo), the Relevant Assets (as defined in the Economic Licence), each Special Share, shares issued by NSCo and certain excluded accounts.

### 2 Financing Principles

**2.1** The financing of GenCo in connection with the Project will be in accordance with the following principles:

**2.1.1** in relation to the Phase One financing and the Phase Two financing, no default is continuing or would result from the implementation of the financing unless such default would be remedied as a result of the incurrence of such Financial Indebtedness or such financing is required for the purpose of repaying maturing principal;

**2.1.2** in relation to the Phase One financing and the Phase Two financing, no Insolvency Event is continuing or would result from the implementation of the financing;

- 2.1.3** the terms of the Phase One financing and the Phase Two financing:
- (i) include an obligation on GenCo to use all reasonable endeavours to refinance all outstanding loan amounts under the Government Liquidity Facility Agreement as soon as practicable in accordance with the terms of the Government Liquidity Facility Agreement; and
  - (ii) require the consent of the Secretary of State in relation to any waiver or amendment of any such prohibition or obligation;
- 2.1.4** all Phase Two financing will be raised (i) on the basis of prudent treasury management, including as to pricing, tenors and management of refinancing risk, (ii) consistent with requirements of the Economic Licence and (iii) on arms' length and prevailing market terms;
- 2.1.5** no Phase Two financing will be inconsistent with, or supersede, the priority of payments set out in the Security Trust and Intercreditor Deed of the Phase One financing and any Phase Two Financial Indebtedness will share in the common representation, covenant, guarantee, security and intercreditor package entered into for the purposes of the Phase One financing (excluding any covenants customarily extended to lenders under facilities or private placement investors which are not extended to all creditors and which do not materially and adversely affect the interests of the Secretary of State in their capacity as the provider of the Government Support Package);
- 2.1.6** any mandatory prepayment terms in the Government Liquidity Facility Agreement will continue to apply to and be enforceable in respect of the Government Liquidity Facility Agreement following implementation of the Phase One financing and the Phase Two financing;
- 2.1.7** the Phase One financing and the Phase Two financing (and any security or guarantee in respect thereof) is incurred in compliance with the Economic Licence conditions and laws and regulations applicable to the Group Companies;
- 2.1.8** all rights and remedies pursuant to the terms of the Government Support Package will continue to be enforceable in accordance with its terms upon implementation of the Phase One financing and the Phase Two financing;
- 2.1.9** the Secretary of State (in their capacity as Discontinuation and Compensation Creditor) will at all times rank in accordance with the priorities of payments set out in the Security Trust and Intercreditor Deed;
- 2.1.10** subject to the terms of the Shareholders' Agreement and the Contingent Financing Agreement, the terms of the Phase One financing and the Phase Two financing are not prejudicial to the Secretary of State as a class of equity investor; and
- 2.1.11** the terms of the Security Trust and Intercreditor Deed include entrenched rights and reserved matters in favour of the Secretary of State (in their capacity as Discontinuation and Compensation Creditor) in relation to their status as a senior secured creditor and the other matters referred to in this Schedule 2 that relate to the financing terms, and voting rights in relation to any outstanding liabilities under the Discontinuation and Compensation Agreement.

## Schedule 3 DCA Approved Hedging Policy

### Part 1 DCA Approved Hedging and Exposure Limits

#### 1 Interpretation

Capitalised terms that are used but not defined in this Schedule 3 shall have the meanings given to them in the Financing MDA.

#### 2 Definitions

In this Schedule 3:

**“Capex Cross-Currency Hedging”** has the meaning given it in paragraph 3.2.3;

**“Company Budget”** has the meaning given to that term in the Shareholders’ Agreement;

**“Contemplated Hedging Transaction”** has the meaning given it in paragraph 4.1;

**“Current Company Budget”** has the meaning given it in paragraph 4.1.7(i);

**“CTA Hedging Policy”** means the hedging policy set out in the Common Terms Agreement on the date of this Agreement;

**“Floating Rate Threshold”** has the meaning given it in paragraph 4.1.4;

**“FX Allowable Capital Spend”** has the meaning given it in paragraph 3.2.3;

**“Hedge Counterparty”** means any counterparty to a Hedging Agreement entered into by GenCo, and **“Hedge Counterparties”** shall be construed accordingly;

**“Hedging Agreements”** has the meaning given to it in paragraph 3.2 and **“Hedging Agreement”** shall be construed accordingly;

**“Hedging Transaction”** has the meaning given to it in paragraph 3.2;

**“Relevant Amendment”** has the meaning given to it in paragraph 5.1;

**“Semi-Annual DCA Hedging Confirmation”** has the meaning given to it in paragraph 4.2.2.

#### 3 General

**3.1** The purpose of this Hedging Policy is to limit the exposure of the Group to fluctuations in interest rates, currencies and inflation by reference to the Finance Documents, and currencies in relation to Allowable Capital Expenditure. It does not cover power price hedging or other trading arrangements, which are not included in the definition of Hedging Agreements or DCA Approved Hedging.

**3.2** GenCo shall only enter into hedging agreements or any other agreement regulating interest rate, currency and inflation exposure (**“Hedging Agreements”**) and hedging transactions (**“Hedging Transactions”**):

**3.2.1** that comply with the CTA Hedging Policy (notwithstanding any amendment after the date of this Agreement);

- 3.2.2 in relation to Hedging Transactions that will have the benefit of coverage of hedging liabilities as Breakage Costs, that have been entered into (or amended in accordance with paragraph 5) in compliance with each of the conditions specified in paragraph 4 (*Input Parameters*) unless otherwise agreed by the Secretary of State;
- 3.2.3 that come into effect on or after the Phase 2 Commencement Date, provided that this restriction shall not apply in respect of any cross-currency hedging entered into respect of non-GBP denominated Allowable Capital Spend ("**FX Allowable Capital Spend**", and such cross-currency hedging being, "**Capex Cross-Currency Hedging**");
- 3.2.4 that reflect the determination by GenCo, acting reasonably and in good faith and taking account of external advice where appropriate, that the specific Hedging Transactions to be entered into reflect the commercial objective of minimising the potential mark-to-market liabilities of (and, if applicable, termination payments payable to or by) GenCo when compared to alternative hedging transactions;
- 3.2.5 in respect of which, GenCo has undertaken a fair, transparent and competitive process with a minimum number of proposed Hedge Counterparties to determine the commercial terms of any proposed Hedging Transaction;
- 3.2.6 that are in compliance with the latest Hedging Strategy (which Hedging Strategy must be approved as a HoldCo Board Reserved Matter on an annual basis); and
- 3.2.7 in respect of which GenCo has obtained all relevant corporate approvals in accordance with the E-SHA,

in each case, such Hedging Agreements and/or Hedging Transactions being "**DCA Approved Hedging**", and for the purpose of paragraphs 3.2.4 to 3.2.5 above, such paragraphs shall be deemed to be complied with if GenCo certifies (together with a reasonably detailed supporting explanation) that GenCo has made such determination, which certification shall be provided by GenCo with each Semi-Annual DCA Hedging Confirmation.

- 3.3 The Parties acknowledge and agree that only GenCo may enter into Hedging Agreements and Hedging Transactions in connection with the Project.

#### 4 Input Parameters

- 4.1 A Hedging Agreement or Hedging Transaction that is intended to constitute DCA Approved Hedging (a "**Contemplated Hedging Transaction**") will only constitute DCA Approved Hedging if:

- 4.1.1 such Contemplated Hedging Transaction is:

- (i) gilt-lock and forward start pre-hedging in respect of the anticipated issuance of debt securities;
- (ii) interest rate hedging;
- (iii) inflation-linked hedging; or
- (iv) cross-currency hedging,

in each case, in respect of Class A Authorised Credit Facilities or in respect of cross-currency hedging, in respect of FX Allowable Capital Spend;

- 4.1.2 such Contemplated Hedging Transaction satisfies and complies with the DCA Approved Hedging Policy conditions as set out in Part 2 (*GSP Hedging Compliance Conditions*) of this Schedule 3;
- 4.1.3 the tenor of that Hedging Transaction would not exceed (and disregarding for these purposes any optional or mandatory breaks):
- (i) in the case of interest rate hedging, 10 years (and subject to paragraph 4.1.3(iv) in relation to pre-hedging of anticipated issuance of debt securities, such period to include any pre-hedging period);
  - (ii) in the case of inflation-linked hedging, 10 years (and subject to paragraph 4.1.3(iv) in relation to pre-hedging of anticipated issuance of debt securities, such period to include any pre-hedging period);
  - (iii) in the case of cross-currency hedging, 20 years (and subject to paragraph 4.1.3(iv) in relation to pre-hedging of anticipated issuance of debt securities, such period to include any pre-hedging period); or
  - (iv) in the case of pre-hedging of anticipated issuance of debt securities, 10 years including the pre-hedge period but provided that such pre-hedging complies with paragraph 4.3 of Part 2 (*GSP Hedging Compliance Conditions*) of this Schedule 3;
- 4.1.4 in relation to interest rate hedging, following entry into that Contemplated Hedging Transaction, the aggregate notional amount of Hedging Transactions which hedge interest rate risk which bear interest at a floating rate:
- (i) is such that the total outstanding amounts under the Class A Authorised Credit Facilities which bear interest at a fixed or effectively fixed rate pursuant to a Hedging Agreement is not less than 70 per cent of the total amounts outstanding under all Class A Authorised Credit Facilities; and
  - (ii) do not exceed 100 per cent of the total amounts outstanding under all Class A Authorised Credit Facilities which bear interest at a floating rate,
- (together, the “**Floating Rate Threshold**”). For the purpose of this paragraph 4.1.4, if entry into a Contemplated Hedging Transaction:
- (a) would result in the Floating Rate Threshold being breached at the time that such Contemplated Hedging Transaction is entered into, then such Contemplated Hedging Transaction shall not constitute DCA Approved Hedging even if the notional amount of such Contemplated Hedging Transaction were to be subsequently reduced or cancelled such that the Floating Rate Threshold would not be breached even when taking into account the reduced or nil notional amount in respect of such Contemplated Hedging Transaction; and
  - (b) would not result in the Floating Rate Threshold being breached at the time that such Contemplated Hedging Transaction is entered into, then such Contemplated Hedging Transaction shall (subject to the other terms of Schedule 3) constitute DCA Approved Hedging even if the notional amount of such Contemplated Hedging Transaction were to be subsequently increased such that the Floating Rate



Threshold would be breached when taking into account the increased notional amount of such Contemplated Hedging Transaction and each other DCA Approved Hedging which remains outstanding at such time;

4.1.5 in relation to inflation-linked hedging, that Contemplated Hedging Transaction does not cause a breach of the exposure limits in respect of such hedging contained in the CTA Hedging Policy, at the time such Contemplated Hedging Transaction is entered into;

4.1.6 in relation to cross-currency hedging, that Contemplated Hedging Transaction:

- (i) is in respect of Sterling and either Euro or US dollar denominated notional amounts or notional amounts in respect of other freely tradeable foreign currencies for which there is a liquid hedging market; and
- (ii) hedges currency risk in respect of the interest payable to expected maturity and the repayment of principal under a foreign currency denominated Authorised Credit Facility (without any overhedging); and

4.1.7 in relation to Capex Cross-Currency Hedging, following entry into such Contemplated Hedging Transaction:

- (i) not more than 100 per cent of the aggregate FX Allowable Capital Spend expected to be incurred in the first year set out in the most recently approved Company Budget (the “**Current Company Budget**”) is subject to Capex Cross-Currency Hedging;
- (ii) not more than 60 per cent of the aggregate FX Allowable Capital Spend expected to be incurred in the second year set out in the Current Company Budget is subject to Capex Cross-Currency Hedging; and
- (iii) not more than 30 per cent of the aggregate FX Allowable Capital Spend expected to be incurred in the third year set out in the Current Company Budget is subject to Capex Cross-Currency Hedging.

4.2 GenCo shall:

4.2.1 promptly notify the Discontinuation and Compensation Creditor of any such Contemplated Hedging Transaction that has been entered into; and

4.2.2 at the same time it delivers a compliance certificate pursuant to the terms of the Finance Documents, provide a reasonably detailed explanation as to how any Contemplated Hedging Transaction entered into since the last compliance certificate was delivered, complies with the conditions set out above (including, in respect of any Contemplated Hedging Transaction that GenCo considers to be DCA Approved Hedging for the purpose of paragraph 4.1.4(ii)(b) above, evidence reasonably satisfactory to the Discontinuation and Compensation Creditor demonstrating that the Floating Rate Threshold has not been breached immediately following the entry into of such Contemplated Hedging Transaction) (the “**Semi-Annual DCA Hedging Confirmation**”).

## **5 Amendments to DCA Approved Hedging**

- 5.1** If GenCo has amended, supplemented, waived or granted a consent in respect of any agreement, document or transaction in respect of a Hedging Transaction that constitutes DCA Approved Hedging (each, a “**Relevant Amendment**”), GenCo shall promptly notify the Discontinuation and Compensation Creditor of such Relevant Amendment and provide a reasonably detailed explanation as to how immediately following such Relevant Amendment becoming effective, the terms of the relevant Hedging Transaction continue to comply with the conditions in Paragraph 4 (*Input Conditions*) to the extent that such conditions apply to that Hedging Transaction.
- 5.2** If after any Relevant Amendment, the applicable DCA Approved Hedging does not comply with any of:
- 5.2.1** paragraph 3; and
  - 5.2.2** the conditions in paragraph 4, to the extent that such conditions apply to that Hedging Transaction,
- the relevant hedging to which the Relevant Amendment relates shall cease to constitute DCA Approved Hedging.

### **Part 2**

#### **GSP Hedging Compliance Conditions**

- 1** The hedging must be implemented and managed in accordance with a prudent treasury management policy and all relevant corporate approvals must be obtained prior to GenCo entering into any hedging transactions.
- 2** Without prejudice to paragraph 1, the entry into, or any Relevant Amendments in respect of, Hedging Transactions shall not result in a downgrade in or otherwise adversely affect any credit rating that GenCo may from time to time obtain or receive (including without limitation from S&P, Fitch or Moody's).
- 3** The CTA Hedging Policy and this DCA Approved Hedging Policy must be in agreed form at Revenue Commencement and GenCo shall not agree to any amendment, consent or waiver unless approved by the Secretary of State.
- 4** GenCo shall:
- 4.1** only enter into inflation-linked Hedging Transactions (other than gilt-lock or forward start swaps or other pre-hedging in respect of the anticipated issuance of debt securities to which paragraph 4.3 shall apply) to manage its inflation exposure if:
    - 4.1.1** GenCo has been unable to issue; or
    - 4.1.2** prudent treasury management policy would be inconsistent with issuing, index-linked debt;
  - 4.2** only enter into cross-currency Hedging Transactions (other than forward start swaps or other pre-hedging in respect of the anticipated issuance of debt securities to which paragraph 4.3 shall apply) to manage foreign exchange exposures on non-sterling denominated debt if:
    - 4.2.1** GenCo has been or would be (in the reasonable view of the treasury team) unable to issue at terms consistent with its financing objectives; or

- 4.2.2 prudent treasury management policy would be inconsistent with issuing, sterling denominated debt; and
- 4.3 only enter into Hedging Transactions which are forward start swaps or other pre-hedging in respect of anticipated issuance of debt securities ("**Pre-Hedging**") if such Pre-Hedging has a mandatory early termination date of no more than 12 months after the date entered into and is or will be cash settled, reset to zero or otherwise terminated in full on the earlier of:
- 4.3.1 a date on or prior to issuance of the relevant debt securities; and
- 4.3.2 the expiry of such 12 month period.
- 5 Inflation-linked hedging will only be transacted in the form of either:
- 5.1 accruing swaps which (subject to pay-as-you-go features) have the commercial effect of substantially replicating an inflation-linked bond in the context of managing inflation exposures; or
- 5.2 revenue style swaps which hedge cash-flow (i.e. without accretions).
- 6 The Breakage Costs in respect of a Hedging Transaction are only payable by the Secretary of State, in accordance with the terms of this Agreement, if the Secretary of State has elected to terminate such Hedging Transaction following Discontinuation.
- 7 In the event of Discontinuation, the Secretary of State has the right to:
- 7.1 prohibit GenCo and the Hedge Counterparty from exercising termination rights in relation to each Hedging Transaction (other than termination in accordance with the Common Terms Agreement or the Security Trust and Intercreditor Deed in relation to the occurrence of a Permitted Hedge Termination) if the Secretary of State has not made an election in respect of that Hedging Transaction under Clause 7.2.5; or
- 7.2 require termination of a Hedging Transaction if the Secretary of State has made an election under Clause 7.2.5 in respect of such Hedging Transaction.
- 8 The Secretary of State must have the right after Discontinuation to appoint a swap manager on behalf of the Secretary of State to manage the winding up of hedging by GenCo and GenCo shall use reasonable endeavours to assist such swap manager.
- 9 GenCo must not terminate any Hedging Transaction in anticipation of Discontinuation without the approval of the Secretary of State. Any amount paid as a Distribution in connection with any such termination prohibited by this paragraph 10 will be deemed to have been paid by the Secretary of State for the purposes of any Gross Equity Compensation and/or Net Equity Compensation payable under this Agreement and to that extent to discharge the Secretary of State's obligations to pay that Gross Equity Compensation and/or Net Equity Compensation.
- 10 GenCo must procure that Hedge Counterparties provide a quarterly valuation statement of their mark to market exposure and shall provide such quarterly valuation statements to the Secretary of State upon request.

## Schedule 4 Form of Power of Attorney

**This Deed** is made on [*insert date*] 2025 by [**SIZEWELL C LIMITED**, a limited liability company incorporated in England and Wales with registration number 09284751 and whose registered address is at 25 Copthall Avenue, London, England, EC2R 7BP] [**SIZEWELL C (HOLDING) LIMITED**, a limited liability company incorporated in England and Wales with registration number 09284825 and whose registered office is at 25 Copthall Avenue, London, England, EC2R 7BP] (the “**Principal**”).

**Whereas:**

The Principal has become a party to a discontinuation and compensation agreement dated [●] 2024 (the “**Agreement**”) in relation to the Government Support Package for the Project and is obliged, pursuant to clause 7.7.2 of the Agreement, to deliver to the Secretary of State for Energy Security and Net Zero (the “**Secretary of State**”) a power of attorney in the form of this Deed. Terms defined in the Agreement shall bear the same meanings in this Power of Attorney.

**Now this Deed witnesses** as follows:

- 1** The Principal irrevocably and unconditionally (and by way of security for the performance of its obligations under the Agreement) appoints any authorised representative of the Secretary of State as its attorney (the “**Attorney**”) to execute and do in its name or otherwise, and on its behalf, all documents, acts and things which the Attorney shall in its absolute discretion consider necessary or desirable in order to implement the Principal’s obligations under clause 7.7.2 of the Agreement.
- 2** The Principal undertakes to ratify whatever any authorised representative of the Secretary of State as its Attorney shall lawfully do or cause to be done in accordance with this Power of Attorney and to indemnify and keep such Attorney indemnified from all claims, costs, expenses, damages and losses which the Attorney may suffer as a result of the lawful exercise by him of the powers conferred upon him by this Deed.
- 3** The appointment contained in paragraph 1 of this Deed shall in all circumstances remain in effect and be irrevocable until such time as the Principal ceases to be a party to the Agreement, but shall be of no further effect after that date.
- 4** This Deed shall be governed by and construed in accordance with the laws of England and Wales.

This Power of Attorney has been executed as a Deed and is delivered on the date shown above.

Executed as a Deed by \_\_\_\_\_

[*insert name of company*] acting by

\_\_\_\_\_  
**Signature of director**

[*insert name of director*]

in the presence of:

\_\_\_\_\_

**(Name of witness)**

\_\_\_\_\_

**(Address of witness)**

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**(Signature of witness)**

**Schedule 5**  
**Form of GSP Call Option Exercise Notice**

To: [GenCo]  
For the attention of: [insert recipient]  
To: [PledgeCo]  
For the attention of: [insert recipient]  
To: [HoldCo]  
For the attention of: [insert recipient]  
To: [Security Trustee]  
For the attention of: [insert recipient]  
Dated: [●]

Dear Sirs and Mesdames

**Discontinuation and Compensation Agreement dated [●] between The Secretary of State for Energy Security and Net Zero, Sizewell C Limited, Sizewell C (PledgeCo) Limited, Sizewell C (Holding) Limited and [REDACTED] (the “Discontinuation and Compensation Agreement”) [and Nuclear Administration and Statutory Transfers Agreement dated [●] between, among others, The Secretary of State for Energy Security and Net Zero, Sizewell C Limited, Sizewell C (PledgeCo) Limited, Sizewell C (Holding) Limited and [REDACTED] (the “Nuclear Administration and Statutory Transfers Agreement”, and together with the Discontinuation and Compensation Agreement, the “Agreements”)]\***

We refer to the [Discontinuation and Compensation] Agreement[s]. Terms defined in the [Discontinuation and Compensation] Agreement[s] shall have the same meaning when used in this letter.

The GSP Provider hereby gives notice in accordance with Clause 7.5 (*GSP Provider’s GSP Call Options*) of the [Discontinuation and Compensation] Agreement [and Clause [3.1.1][3.2.1] of the Nuclear Administration and Statutory Transfers Agreement] that they are exercising the GSP Call Option.

The proposed date of GSP Call Option Completion shall be [insert date] and the proposed time of GSP Call Option Completion shall be [insert time].

Please date, sign and return the Acknowledgement below.

This letter is governed by English law and we hereby irrevocably submit to the exclusive jurisdiction of the Courts of England and Wales.

Yours faithfully

.....

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\* Throughout this notice, delete words in square brackets if the GSP Call Option is being exercised solely pursuant to the terms of the Discontinuation and Compensation Agreement.

Duly authorised for and on behalf of

**The Secretary of State for Energy Security and Net Zero**

## ACKNOWLEDGEMENT

We hereby acknowledge that we have received the GSP Call Option Exercise Notice from the GSP Provider given pursuant to the Discontinuation and Compensation Agreement dated [●] between, among others, the Secretary of State for Energy Security and Net Zero, Sizewell C Limited, Sizewell C (PledgeCo) Limited, Sizewell C (Holding) Limited and the Security Trustee (the “**Discontinuation and Compensation Agreement**”) [and the Nuclear Administration and Statutory Transfers Agreement dated [●] between, among others, The Secretary of State for Energy Security and Net Zero, Sizewell C Limited, Sizewell C (PledgeCo) Limited, Sizewell C (Holding) Limited and [REDACTED] (the “**Nuclear Administration and Statutory Transfers Agreement**”, and together with the Discontinuation and Compensation Agreement, the “**Agreements**”)] and that there subsists a binding contract for the transfer of the GenCo Shares from Sizewell C (Holding) Limited and Sizewell C (PledgeCo) Limited to the Secretary of State for Energy Security and Net Zero in connection with [the payment of the Gross Equity Compensation on such terms and subject to such conditions as set out in the Discontinuation and Compensation Agreement][the occurrence of the circumstances set out in Clause [3.1.1][3.2.1] of the Nuclear Administration and Statutory Transfers Agreement].

Signed by.....

Duly authorised for and on behalf of **Sizewell C Limited**

Date:

Signed by.....

Duly authorised for and on behalf of **Sizewell C (PledgeCo) Limited**

Date:

Signed by.....

Duly authorised for and on behalf of **Sizewell C (Holding) Limited**

Date:

Signed by.....

Duly authorised for and on behalf of [REDACTED]

Date:



## **SIGNATURE PAGES**

**In witness** whereof this Agreement has been duly executed and delivered as a deed on the date first above written.

*[Signature blocks to be inserted before signing.]*