

CIVIL NUCLEAR

CREDIT AWARD AND REDEMPTION AGREEMENT

dated as of [_____]

between

[_____]¹,

and

U.S. DEPARTMENT OF ENERGY,

for

[_____]²

¹ Insert name of Owner, Operator, or Authorized Representative.

² Insert name of Nuclear Reactor.

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS	3
ARTICLE 2 OPERATION OF THE NUCLEAR REACTOR; CREDITS	3
SECTION 2.1. Operation of the Nuclear Reactor.....	3
SECTION 2.2. Award of Credits.....	4
SECTION 2.3. Credit Modifications.....	4
SECTION 2.4. Payment of Credits.....	4
2.4.1. Presentation of Payment Certificate.....	4
2.4.2. Review of Payment Certificate; Audit.....	4
2.4.3. Credit Adjustment Requests.....	5
2.4.4. Annual Adjustment of Credits.....	5
2.4.5. Payment of Credits.....	5
SECTION 2.5. Uprates	6
SECTION 2.6. Recapture.....	6
ARTICLE 3 ANNUAL REPORT	7
ARTICLE 4 REPRESENTATIONS AND WARRANTIES	8
SECTION 4.1. Organization.....	8
SECTION 4.2. Authorization; No Conflict.....	9
SECTION 4.3. Legality; Validity; Enforceability.....	9
SECTION 4.4. Applicable Law.....	9
SECTION 4.5. Insurance.....	9
SECTION 4.6. Tax.....	9
SECTION 4.7. Defects.....	10
SECTION 4.8. Commercially Reasonable Efforts.....	10
SECTION 4.9. Uranium Best Efforts.....	10
SECTION 4.10. U.S. Manufacturing Best Efforts.....	10
SECTION 4.11. Award Period Financial Projections.....	10
SECTION 4.12. U.S. Government Requirements.....	11
SECTION 4.13. Fundamental Changes.....	11
ARTICLE 5 TERM; EVENTS OF DEFAULT; REMEDIES	12
SECTION 5.1. Term	12
SECTION 5.2. Events of Default.....	12
SECTION 5.3. Remedies for Event of Default.....	12
ARTICLE 6 MISCELLANEOUS	13
SECTION 6.1. Indemnity.....	13
SECTION 6.2. Confidential Business Information.....	13
SECTION 6.3. Record Retention.....	13
SECTION 6.4. Amendment or Termination.....	14
SECTION 6.5. Waiver.....	14
SECTION 6.6. Entire Agreement.....	14
SECTION 6.7. Governing Law.....	14
SECTION 6.8. Severability.....	14
SECTION 6.9. Waiver of Jury Trial.....	14

APPENDIX C

Draft Form of Civil Nuclear Credit Redemption Agreement

DRAFT FOR PUBLIC COMMENT

SECTION 6.10. Consent to Jurisdiction..... 15
SECTION 6.11. Successors and Assigns..... 15
SECTION 6.12. No Third-Party Beneficiaries. 15
SECTION 6.13. Disputes..... 16
SECTION 6.14. Counterparts. 16

Exhibits to the Civil Nuclear Credit Award and Redemption Agreement

Exhibit A Definitions (Article 1)
Exhibit B Form of Payment Certificate (Section 2.4.1)
Exhibit C DOE Instructions for Delivery of Payment Certificate and Notices (Section 2.4.5)
Exhibit D Owner/Operator Instructions for Payment of Credits and Notices (Section 2.4.5)

Attachment 1 Credit Modifications

CIVIL NUCLEAR CREDIT AWARD AND REDEMPTION AGREEMENT

This CIVIL NUCLEAR CREDIT AWARD AND REDEMPTION AGREEMENT (the “Agreement”), dated as of [____], but effective as of January 1, 2024 (the “Effective Date”), is by and among (i) [____], a [____] organized and existing under the laws of the State of [____] (the “Owner/Operator”), acting on behalf of [____] (the “Nuclear Reactor”) and (ii) the U.S. DEPARTMENT OF ENERGY, acting by and through the Secretary of Energy (or appropriate authorized representative thereof) (“DOE”).

WHEREAS, the Infrastructure Investment and Jobs Act (Public Law 117-58; 42 U.S.C. § 18753) (“IJA”) directs the DOE to establish a civil nuclear credit program (the “CNC Program”) to evaluate and certify nuclear reactors that are projected to cease operations due to economic factors and to allocate civil nuclear credits (“Credits”) to selected certified nuclear reactors via a sealed bid process;

WHEREAS, DOE has certified the Nuclear Reactor to be eligible for the allocation of Credits under the CNC Program, and DOE hereby allocates Credits to the Nuclear Reactor pursuant to the process set forth in the U.S. Department of Energy Guidance for the Civil Nuclear Credit Program dated [DATE], (“DOE Guidance”), and subject to the execution and delivery of this Agreement and the performance of the terms hereof;

NOW, THEREFORE, in consideration of the foregoing and other good and valid consideration, the receipt and adequacy of which are hereby expressly acknowledged, the parties hereby agree as follows:

ARTICLE 1 **DEFINITIONS**

Except as otherwise expressly provided herein, capitalized terms used in this Agreement and its exhibits and schedules have the meanings given in Exhibit A.

ARTICLE 2 **OPERATION OF THE NUCLEAR REACTOR; CREDITS**

SECTION 2.1. Operation of the Nuclear Reactor.

The Owner/Operator agrees to operate the Nuclear Reactor in accordance with Prudent Industry Practice for Award Years 2024–2027. During the term of this Agreement, the Owner/Operator shall not terminate operations for economic reasons and shall use commercially reasonable best efforts to produce the MWh commitment identified in Section 2.2. The Owner/Operator shall provide written notice to DOE (a) not later than five business days prior to the commencement of a planned outage and (b) not later than five business days following the occurrence of an unplanned outage. The Owner/Operator shall promptly notify DOE following the completion of the outage and the resumption of electricity generation.

SECTION 2.2. Award of Credits.

DOE hereby awards Credits to the Nuclear Reactor for Award Year 2024 (“AY 2024 Credits”); for Award Year 2025 (“AY 2025 Credits”); for Award Year 2026 (“AY 2026 Credits”); and for Award Year 2027 (“AY 2027 Credits”) in the amounts set forth below.

(a) The AY 2024 Credits are in the amount of \$ _____, calculated as follows: \$_____ per Megawatt-hour (“MWh”) multiplied by the Nuclear Reactor’s commitment for Award Year 2024 of _____ MWh.

(b) The AY 2025 Credits are in the amount of \$ _____, calculated as follows: \$_____ per MWh multiplied by the Nuclear Reactor’s commitment for Award Year 2025 of _____ MWh.

(c) The AY 2026 Credits are in the amount of \$ _____, calculated as follows: \$_____ per MWh multiplied by the Nuclear Reactor’s commitment for Award Year 2026 of _____ MWh.

(d) The AY 2027 Credits are in the amount of \$ _____, calculated as follows: \$_____ per MWh multiplied by the Nuclear Reactor’s commitment for Award Year 2027 of _____ MWh.

SECTION 2.3. Credit Modifications.

Modifications of Credits set forth in Section 2.2 above will occur from time to time in accordance with the terms of this Agreement, and such modifications shall be set forth in Attachment 1 hereto.

SECTION 2.4. Payment of Credits.

2.4.1. Presentation of Payment Certificate.

Not later than ninety (90) days following the completion of the applicable Award Year set forth in Section 2.2 above, the Owner/Operator shall present to DOE a payment certificate (the “Payment Certificate”) in the form of Exhibit B requesting payment for Credits up to the amount (subject to Section 2.3 above) set forth for the applicable Award Year, completed and signed by the Owner/Operator and accompanied by the information required therein. The Payment Certificate shall include a comparison of the Award Period Financial Projections for that Award Year (including Projected Enhancement Capital Cost, Projected Sustaining Capital Cost, and Projected Revenue) with the actual results of operation of the Nuclear Reactor for the Award Year (including Actual Enhancement Capital Cost, Actual Sustaining Capital Cost, and Actual Revenue).

2.4.2. Review of Payment Certificate; Audit.

DOE shall review the Payment Certificate, including the information required to be provided with the Payment Certificate, in order to audit the Nuclear Reactor’s performance of its obligations under this Agreement. DOE may require that the Owner/Operator provide additional

information, as DOE may request, to undertake its audit of the Nuclear Reactor's performance of its obligations under this Agreement. Any document delivered or evidence given to DOE in satisfaction of DOE's audit and payment of any Credit shall be in form and substance satisfactory to DOE and shall be marked by the Owner/Operator as protected trade/commercial/financial information as appropriate.

2.4.3. Credit Adjustment Requests.

Owner/Operator may request an adjustment of current or future Award Year Credits. This adjustment shall not increase the maximum redeemable value of Credits available to the Owner/Operator. Credit Adjustment Requests must be submitted in writing to DOE no later than thirty (30) days prior to completion of an Award Year. This request will include: (i) the reasons for the adjustment request; (ii) the amount of the requested adjustment for the current Award Year; and (iii) the amount to be adjusted for future affected Award Years. DOE shall review and notify the Owner/Operator in writing of the decision DOE makes in its sole discretion regarding the Credit Adjustment Request promptly following receipt of such request. The Credit Adjustment Request cannot be used by the Owner/Operator to redistribute credits that have been reduced in prior Award Years as explained in Section 2.4.4 below.

2.4.4. Annual Adjustment of Credits.

(a) If based upon its audit of the Payment Certificate and such other information as DOE may deem relevant, DOE determines in its sole discretion that the Nuclear Reactor's Actual Revenue exceeds the Projected Revenue for such Award Year, such excess amount shall be the "Revenue Adjustment."

(b) If based upon its audit of the Payment Certificate and such other information as DOE may deem relevant, DOE determines in its sole discretion that the sum of the Nuclear Reactor's Actual Enhancement Capital Cost and Actual Sustaining Capital Cost exceeds the sum of the Projected Enhancement Capital Cost and Projected Sustaining Capital Cost, such excess amount shall be the "Capital Adjustment."

(c) The Credits herein awarded for the applicable Award Year of the Payment Certificate shall be reduced by the sum of the Revenue Adjustment and Capital Adjustment, except that the reduction amount may not be less than zero. Such reduction amount shall be the "Credit Adjustment." DOE will record the Credits as modified by any Credit Adjustment for an Award Year in Attachment 1 hereto and send a copy of such updated Attachment 1 to Owner/Operator.

(d) A Credit Adjustment will not be made with respect to a change in operating costs, operational and market risk, or other costs from the corresponding amounts reflected in the calculation of the Estimated Average Operating Loss in the Owner/Operator's Bid.

2.4.5. Payment of Credits.

(a) DOE shall pay to the Owner/Operator the amount of the Credits requested in the Payment Certificate net of any reduction of Credits by the amount of the Credit Adjustment. Exhibit C sets forth the address and other specifications for the submission by the

Owner/Operator of the Payment Certificate. Exhibit D sets forth the Nuclear Reactor's instructions for payment of Credits payable by DOE. Notwithstanding anything to the contrary herein, DOE shall have no obligation to pay any Credits if the Nuclear Reactor is in an outage at the time that payment would otherwise be made. DOE shall pay any Credit amount due following completion of the outage and resumption of electricity generation.

(b) Acceptance by Owner/Operator of any payment of Credits shall be deemed a representation and warranty that no event or condition that would constitute a Default or Event of Default under Section 5.2 has occurred and is continuing.

SECTION 2.5. Uprates

If the Owner/Operator determines to undertake a project to increase the output of the Nuclear Reactor after the Effective Date, the Owner/Operator may propose to DOE a revision to the calculation of the annual adjustment described in Section 2.4.4 such that the revenues attributable to the incremental output resulting from the project are not included in the Nuclear Reactor's Actual Revenues for the calculation period, and the Owner/Operator shall provide a detailed description of the project and supporting information and respond to any DOE request for additional information. In no event shall any such revision increase the maximum redeemable value of Credits available to the Owner/Operator. The decision whether to negotiate a revision to the calculation of the annual adjustment as described in this Section 2.5 shall be at the sole discretion of DOE.

SECTION 2.6. Recapture.

All or part of Credits paid to the Owner/Operator pursuant to this Agreement may be subject to recapture by DOE (a) if the Nuclear Reactor has terminated operations during the Award Period, or (b) at the conclusion of the Award Period, if the Nuclear Reactor would not have operated at an annual loss in the absence of the Credits.

2.6.1 Recapture Following Termination of Operations.

If DOE determines that the Nuclear Reactor has terminated operations during the Award Period, then DOE shall rescind the award of Credits for the Award Year in which the termination of operations occurred and for any remaining Award Years in the Award Period, and the Owner/Operator shall have no further rights to any Credits under this Agreement. Credits that have been paid to the Owner/Operator with respect to a prior Award Year during which the Nuclear Reactor has not terminated operations shall not be subject to recapture. DOE shall provide the Owner/Operator with written notice of its determination that the Nuclear Reactor has terminated operations and shall include the calculation of Credits determined in DOE's sole discretion that are being recaptured.

2.6.2 Recapture at the End of the Award Period.

At the conclusion of the Award Period, DOE shall conduct a review as part of its annual review process and using the same methodology as employed in the annual review process described in Section 2.4 to determine in its sole discretion whether in any year during the Award Period the Nuclear Reactor would not have operated at an annual loss in the absence of the Credits.

DOE shall provide the Owner/Operator with written notice of the results of its recapture analysis, including the value of Credits previously paid to the Owner/Operator that are required to be remitted by the Owner/Operator, if any. The Owner/Operator shall pay to DOE any amounts required to be repaid within thirty (30) days of receipt of such notice.

ARTICLE 3 **ANNUAL REPORT**

Not later than thirty days following the completion of each Award Year set forth in Section 2.2 above, the Owner/Operator shall provide to DOE a report containing the following information for the Award Year:

- (a) An estimate of emission of air pollutants avoided by the continued operation of the Nuclear Reactor compared to the emission of air pollutants reasonably expected had the Nuclear Reactor terminated operation prior to the commencement of the Award Year;
- (b) A description of the Nuclear Reactor's contribution to the reliability of the electric transmission and distribution grid to which it is connected during the Award Year;
- (c) An estimate of the change in the wholesale cost of capacity, energy, and ancillary services in the applicable market attributable to the continued operation of the Nuclear Reactor compared to the costs reasonably expected had the Nuclear Reactor terminated operation prior to the commencement of the Award Year, and the resulting impact on retail rates;
- (d) A description of capital projects undertaken during the Award Year including the percentage of raw materials acquired from domestic sources and manufacturers and a comparison between actual U.S. supply chain content by fuel component for the Award Year and such information submitted by Owner/Operator in its Certification Application on U.S. supply chain content of uranium loaded or under contract for the Nuclear Reactor;
- (e) A summary of staffing, including the number of individuals employed by the Nuclear Reactor and information on those employees' job classifications, wages, benefits, demographics, veteran status, union representation, residence, and training opportunities, for those direct hires and contractor employees, working at the Nuclear Reactor during the Award Year and any changes from the baseline data contained in the Workforce Narrative submitted in the Owner/Operator's Certification Application;
- (f) An assessment of the Nuclear Reactor's implementation of its Diversity, Equity, Inclusion, and Accessibility ("DEIA") Plan that describes the actions the Owner/Operator is currently taking or will take to foster a welcoming and inclusive environment, support people from underrepresented groups, advance equity, and encourage the inclusion of individuals from these groups, and describes the extent the DEIA Plan activities will benefit underserved communities; and accounts for whether the Nuclear Reactor is

meeting the milestones established in its DEIA Plan submitted as part of its Certification Application;

(g) A measurable description of how the continued operation of the Nuclear Reactor benefits Disadvantaged Communities as described in the Justice40 Initiative Plan submitted in the Owner/Operator's Certification Application and any changes from the baseline data contained in the Justice40 Initiative Plan [Specific measures to be added based on those identified in plan that stem from the eight policy priorities]

(i) The number of stakeholder or community engagement events and their attendance, number of attendees or organizations participating from or who represent Community Based Organizations (CBO), Disadvantaged Communities, federally recognized Indian Tribes, state and local governments, economic development organizations, and labor representatives (report separately), any community benefits agreements created, feedback received from stakeholders and federally recognized Indian Tribes and steps to address feedback where necessary;

(h) A description of the outages experienced by the Nuclear Reactor and a comparison of the actual output of the Nuclear Reactor compared to the MWh commitment for that year. The methodology and data sources used to calculate each of these pieces of information shall also be provided; and

(j) A description of any payment from a State zero-emission credit, a State clean energy contract, or any other State program that the Nuclear Reactor did not utilize as a result of receiving Credits through this CNC Program, including the value of each state credit.

(k) DOE will make the Annual Report pursuant to this Article 3 available to the public, subject to the limitations specified in Section 6.2, Confidential Business Information.

ARTICLE 4 **REPRESENTATIONS AND WARRANTIES**

The Owner/Operator makes the following representations and warranties as of the date of this Agreement and as of the date of each Payment Certificate and is deemed to have made them as of the Effective Date and upon acceptance of payment of any Credit:

SECTION 4.1. Organization.

The Owner/Operator (a) is a [_____] organized, validly existing and in good standing under the laws of the State of [_____] , (b) is duly qualified to do business in the State of [_____] and in each other jurisdiction where the failure to so qualify could reasonably be expected to have a material adverse effect and (c) has all requisite [corporate] [limited liability company] [partnership] power and authority to execute, deliver, perform and observe the terms

and conditions of this Agreement on its own behalf and on behalf of any Person holding an interest in the Nuclear Reactor.

SECTION 4.2. Authorization; No Conflict.

The Owner/Operator has duly authorized, executed, and delivered this Agreement, and neither its execution and delivery nor its consummation of the transactions contemplated hereby nor its compliance with the terms of this Agreement does or will (a) contravene its Organizational Documents or any Applicable Laws, (b) contravene or result in any breach or constitute any default under any Governmental Judgment, (c) require the consent or approval of any Person other than the consents or approvals that have been obtained and are in full force and effect.

SECTION 4.3. Legality; Validity; Enforceability.

This Agreement is a legal, valid, and binding obligation of the Owner/Operator, enforceable in accordance with its terms, subject to Bankruptcy Laws and general principles of equity regardless of whether enforcement is considered in a proceeding at law or in equity.

SECTION 4.4. Applicable Law.

The Owner/Operator is in compliance with all Applicable Laws, including all Environmental Laws, in all material respects. Further, that no citations, fines, or penalties have been asserted against the Nuclear Reactor under any Environmental Law or by the regulatory authority or jurisdiction in which the Nuclear Reactor operates. The Nuclear Reactor has not received notice (verbal or written) of, nor is it aware of, any person making allegations that all or any part of the Nuclear Reactor as a whole, or the use, operation or ownership thereof, are in violation of any applicable Environmental Law.

SECTION 4.5. Insurance.

The Nuclear Reactor has, and shall continue to, keep in force all existing policies of insurance, or comparable replacement policies of insurance at existing levels of coverage related to the Nuclear Reactor, including the ownership and operation thereof, throughout the Term of this Agreement.

SECTION 4.6. Tax.

(a) The Owner/Operator has filed all tax returns required by Applicable Laws to be filed by it and has paid (i) all income Taxes payable by it that have become due pursuant to such tax returns and (ii) all other material Taxes and assessments payable by it that have become due (other than those Taxes that it is contesting in good faith and by appropriate proceedings, for which reserves have been established to the extent required by generally accepted accounting principles).

(b) The Owner/Operator does not owe any delinquent indebtedness to any Governmental Authority of the United States, including any Tax liabilities, unless the delinquency has been resolved with the appropriate Governmental Authority in accordance with

Applicable Law and, to the Knowledge of the Owner/Operator, the standards of the Debt Collection Improvement Act of 1996, as amended from time to time.

SECTION 4.7. Defects.

The Owner/Operator warrants that there are no known issues, defects, problems, or other issues involving or related to ownership and/or operation of the Nuclear Reactor that would preclude or prevent it from fully performing its duties and obligations in accordance with this Agreement.

SECTION 4.8. Commercially Reasonable Efforts.

The Owner/Operator has used from and after the date of this Agreement, and shall use, commercially reasonable efforts, consistent with Prudent Industry Practice, to maximize Actual Revenue.

SECTION 4.9. Uranium Best Efforts.

In any procurement of reactor fuel undertaken during Award Years 2024–2027, Owner/Operator shall use best efforts to maximize the procurement of uranium that is produced in the United States and the procurement of conversion services, enrichment services, and fabrication into fuel assemblies in the United States; provided, however, that Owner/Operator will be deemed to have performed under this subsection in the event that: (i) DOE determines, in writing, that under the circumstances such procurement is not in the public interest; (ii) Owner/Operator establishes through reasonable diligence that no U.S.-produced uranium, U.S. conversion services, U.S. enrichment services, and/or U.S. fabrication services, as applicable, is available in sufficient quantity and satisfactory quality to meet Owner/Operator’s need; or (iii) the selection of a U.S. product or service would increase the overall cost of the fuel assembly by more than twenty-five (25) percent.

SECTION 4.10. U.S. Manufacturing Best Efforts.

The Owner/Operator has used from and after the date of this Agreement, and shall use, best efforts to maximize U.S.-manufactured content acquired or used in Nuclear Reactor facilities and components, taking into account availability, cost, technical performance, reliability, efficiency, warranty coverage and related commercial terms during the Award Period.

SECTION 4.11. Award Period Financial Projections.

(a) The Owner/Operator has provided the Award Period Financial Projections for the Nuclear Reactor setting forth the projected operating results and the underlying models and assumptions (which assumptions are believed by the Owner/Operator to be reasonable) and explanations thereto for the Nuclear Reactor for Award Years 2024–2027.

(b) The Award Period Financial Projections:

(i) are complete and based on reasonable assumptions;

- (ii) are the same as those submitted in the Nuclear Reactor's Certification Application, consistent with the requirements set forth in the DOE Guidance;
- (iii) have been prepared in good faith and with due care; and
- (iv) fairly represent the Owner/Operator's expectation as to the matters covered thereby as of any date on which this representation is made.

SECTION 4.12. U.S. Government Requirements.

(a) System for Award Management. The Owner/Operator is registered in the System for Award Management database.

(b) Foreign Asset Control Regulations. Neither the payment of Credits nor the use of the proceeds thereof by the Owner/Operator or at the direction of the Owner/Operator will violate the Foreign Asset Control Regulations.

(c) Prohibited Persons. Neither the Owner/Operator nor any of their respective Principal Persons is a Prohibited Person. No event has occurred and no condition exists that is likely to result in the Owner/Operator nor any of its respective Principal Persons becoming a Prohibited Person.

(d) Anti-Terrorism Order. Each of the Owner/Operator and its respective Principal Persons is in compliance with the Anti-Terrorism Order and has not previously violated the Anti-Terrorism Order.

(e) Lobbying and Political Activity Costs. No proceeds of the Credits have been or will be expended by the Owner/Operator or any of its Affiliates to pay any Person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, or other political activity costs. The Owner/Operator shall provide DOE a Standard Form LLL "Disclosure of Lobbying Activities" on the date of signature of this Agreement.³

SECTION 4.13. Fundamental Changes.

The Owner/Operator has not entered, nor will, directly or indirectly, enter into any transaction or series of transactions that (i) would violate the terms of this Agreement or any Payment Certificate, or (ii) may reasonably be expected to have a material adverse effect upon the rights, interests, remedies or privileges of DOE or its ability to enforce the same.

SECTION 4.14. Defaults; Events of Default.

No event or condition that would constitute a Default or Event of Default under Section 5.2 has occurred and is continuing.

³ In accordance with 31 U.S.C. § 1352.

ARTICLE 5
TERM; EVENTS OF DEFAULT; REMEDIES

SECTION 5.1. Term

The term of this Agreement shall commence on the date of this Agreement and shall remain in effect until DOE has made a determination whether to recapture any Credits, as provided in Section 2.6, following completion of Award Year 2027 (“Term”).

SECTION 5.2. Events of Default.

The occurrence of any of the following events shall constitute an Event of Default:

(a) Termination of Operation of the Nuclear Reactor. The Nuclear Reactor terminates operation with the intent to permanently cease operation by filing a notice of intent to permanently cease operations with the Nuclear Regulatory Commission (NRC) consistent with the requirements of 10 C.F.R. § 50.4(b)(8) or 10 C.F.R. § 52.3(b)(8) and beginning cessation of operations. No Credits may be redeemed during the Award Year when a notice is filed with NRC and all prior awarded Credits will be subject to recapture. A scheduled outage for maintenance, refueling, or other activity in the normal course of operation shall not be considered to be termination of operation provided that the Owner/Operator acts diligently and in good faith to recommence operation in accordance with the outage schedule. An unscheduled outage shall not be considered to be termination of operation, provided that the Owner/Operator acts diligently and in good faith to recommence operation as promptly as reasonably possible.

(b) Misstatements; Omissions. Any representation or warranty made by or on behalf of the Owner/Operator or the Nuclear Reactor in this Agreement, any Payment Certificate, or any financial statement or other certificate or information made or prepared by Owner/Operator on behalf of the Nuclear Reactor or such Person and furnished to the DOE pursuant to this Agreement that contains any information that is false, untrue or misleading in any material respect, or any omission of fact necessary to make the statement contained herein or therein not misleading, in each case, when made or deemed to have been made, and such false, untrue or misleading representation, warranty, or statement, or omission is not cured within ten (10) days after Owner/Operator discovers the error.

(c) Failure to Perform. The Owner/Operator fails to perform or observe any term, covenant, or agreement contained in this Agreement, where such default has not been remedied within thirty (30) days if such default is remediable after the Owner/Operator receives notice or should reasonably have known of such failure.

SECTION 5.3. Remedies for Event of Default.

Upon the occurrence and during the continuance of an Event of Default, DOE may, without further notice of default, exercise any or all rights and remedies at law or in equity (in any combination or order that DOE may elect), including without prejudice to DOE’s other rights and remedies, the following:

- (a) DOE may withhold payment of any Credits otherwise due or becoming due to the Owner/Operator;
- (b) DOE may undertake recapture of any Credits as provided in Section 2.6;
- (c) DOE may terminate this Agreement;
- (d) DOE may seek disgorgement of redeemed credits if DOE determines that the Owner/Operator made material misrepresentation of the status of operations or economic condition of the Nuclear Reactor; and
- (e) DOE may proceed to protect and enforce its rights and remedies by appropriate proceedings, whether for damages or the specific performance of any provision of this Agreement, or proceed to enforce the payment of any amount due and payable.

ARTICLE 6

MISCELLANEOUS

SECTION 6.1. Indemnity.

(a) **General Indemnity.** Except as relates to indemnification for a nuclear incident or precautionary evacuation pursuant to the Price-Anderson Act, the Owner/Operator shall indemnify the United States and its officers, agents, and employees for any and all liability, including litigation expenses and fees, arising from suits, actions, or claims of any character for death, bodily injury, or loss of or damage to property or to the environment, resulting from the performance of this Agreement or the ownership and operation of the Nuclear Reactor.

(b) **Price-Anderson Act.** This Agreement does not constitute a contract or agreement of indemnification between the Owner/Operator and the DOE, as defined under 42 U.S.C. § 2210(d), the Price-Anderson Act (PAA), nor does this Agreement alter or change the indemnification requirements of NRC licensees as defined in the PAA and related regulations.

SECTION 6.2. Confidential Business Information.

DOE acknowledges that the Owner/Operator may provide to DOE confidential or proprietary business, technical, or financial information. DOE will manage this information consistent with the Trade Secrets Act, 18 U.S.C. § 1905. DOE will process any request for release of this information to the public consistent with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 and DOE’s FOIA regulations, 10 C.F.R. Part 1004. Owner/Operator shall clearly mark all such information prior to submittal to DOE. DOE is responsible for the final determination with regard to disclosure or nondisclosure of the information.

SECTION 6.3. Record Retention

Owner/Operator shall retain all books and records necessary to substantiate its performance under this Agreement for up to three years following the conclusion of the last Award Year. Owner/Operator shall make such books and records available to DOE promptly upon request at any time during the Term of this Agreement and for up to three years following

the conclusion of the last Award Year. If any litigation, claim, or audit is started before the expiration of the three-year retention period, the books and records must be retained until all litigation, claims, or audit findings have been resolved and final action is taken.

SECTION 6.4. Amendment or Termination.

Except for termination by DOE for an Event of Default as set forth in Section 5.3(c) or modification pursuant to Section 2.3, this Agreement may not be amended or terminated unless such amendment or termination is in writing and signed by the DOE and the Owner/Operator.

SECTION 6.5. Waiver.

The failure to exercise any remedy or to enforce any right provided in this Agreement or Applicable Law shall not constitute a waiver by DOE of such remedy or right or of any other remedy or right. A party shall be considered to have waived any remedies or rights only if the waiver is in writing and signed by the party against whom such waiver is to be enforced.

SECTION 6.6. Entire Agreement.

This Agreement, including any agreement, document, or instrument attached to this Agreement or referred to herein, integrates all the terms and conditions mentioned herein or incidental to this Agreement and supersedes all oral negotiations and prior agreements and understandings of the parties to this Agreement in respect to the subject matter of this Agreement.

SECTION 6.7. Governing Law.

This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed and interpreted in accordance with, the Federal law of the United States of America.

SECTION 6.8. Severability.

In case any one or more of the provisions contained in this Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the parties thereto shall enter into good faith negotiations to replace the invalid, illegal, or unenforceable provision.

SECTION 6.9. Waiver of Jury Trial.

Each of the parties to this Agreement hereby knowingly, voluntarily, and intentionally waives any rights it may have to a trial by jury in respect of any litigation based hereon, or arising out of, under, or in connection with, this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written), or actions of the Owner/Operator. This provision is a material inducement for each party to enter into this Agreement.

SECTION 6.10. Consent to Jurisdiction.

By execution and delivery of this Agreement, the Owner/Operator irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding against it arising out of or in connection with this Agreement, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of (i) the courts of the United States of America for the District of Columbia; (ii) any other federal court of competent jurisdiction in any other jurisdiction where it or any of its property may be found; and (iii) appellate courts from any of the foregoing;

(b) consents that any such action or proceeding may be brought in or removed to such courts, and waives any objection, or right to stay or dismiss any action or proceeding, that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be affected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the Owner/Operator at its address set forth in Exhibit E; and

(d) agrees that judgment against it in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction within or without the U.S. by suit on the judgment or otherwise as provided by law, a certified or exemplified copy of which judgment shall be conclusive evidence of the fact and amount of the Owner/Operator's obligation.

SECTION 6.11. Successors and Assigns.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and permitted assigns.

(b) The Owner/Operator may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of DOE. DOE will determine if it is in the best interest of the Government to recognize a named third party as successor at interest to this Agreement. DOE reserves the right to request all requisite information to make this determination, including eligibility information as defined in the DOE Guidance. Consent to assign this Agreement is at DOE's sole discretion.

(c) In the event that DOE does not consent to the assignment of this Agreement, DOE will adjust or recapture credits as DOE deems appropriate.

SECTION 6.12. No Third-Party Beneficiaries.

Nothing in this Agreement, whether express or implied, nor any action taken hereunder shall be construed to create any duty, liability, or standard of care to any Person not a signatory to this Agreement and their respective successors and assigns, nor is anything in this Agreement

intended to relieve or discharge obligations or liability of any third-party, nor give any third-person any rights of subrogation or action against any signatory to this Agreement.

SECTION 6.13. Disputes.

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement, which is not disposed of by mutual agreement shall be decided by [Title of DOE Person Responsible].

SECTION 6.14. Counterparts.

This Agreement may be executed in one or more duplicate counterparts and when signed by all of the parties shall constitute a single binding agreement.

IN WITNESS WHEREOF, the parties to this Agreement have caused this Agreement to be executed and delivered by their respective officers or representatives hereunto duly authorized as of the date first written above.

[NAME OF OWNER/OPERATOR]

Name:
Title:

U.S. DEPARTMENT OF ENERGY

Name:
Title:

DEFINITIONS

“Actual Enhancement Capital Cost” means the total actual enhancement capital cost of the Nuclear Reactor for the same Award Year as set forth in the Payment Certificate, calculated consistent with the methods used to determine Projected Enhancement Capital Cost.

“Actual Revenue” means the total actual revenue (including, without limitation, revenue from State Support Payments and Production Tax Credit (PTC)) of the Nuclear Reactor for the same Award Year as set forth in the Payment Certificate, calculated consistent with the methods used to determine Projected Revenue.

“Actual Sustaining Capital Cost” means the total actual sustaining capital cost of the Nuclear Reactor for the same Award Year as set forth in the Payment Certificate, calculated consistent with the methods used to determine Projected Sustaining Capital Cost.

“Affiliate” means with respect to any Person, any other Person that directly or indirectly Controls, or is under common Control with, or is Controlled by, such Person.

“Agreement” is defined in the recitals.

“Anti-Terrorism Order” means Executive Order No. 13224, 66 Fed. Reg. 49079 (2001), issued by the President of the United States of America (Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism).

“Applicable Law” means, with respect to any Person, any constitution, statute, law, rule, regulation, code, ordinance, treaty, judgment, order or any published directive, guideline, requirement or other governmental rule or restriction which has the force of law, by or from a court, arbitrator or other Governmental Authority having jurisdiction over such Person or any of its Properties, whether in effect as of the date of this Agreement or as of any date hereafter.

“Award Period” means the period beginning January 1, 2024, up to and including December 31, 2027.

“Award Period Financial Projections” are defined in Section 4.11.

“Award Year” means a calendar year within the Award Period. For example, Award Year 2024 will be January 1, 2024, up to and including December 31, 2024.

“AY 2024 Credits” has the meaning set forth in Section 2.2.

“AY 2025 Credits” has the meaning set forth in Section 2.2.

“AY 2026 Credits” has the meaning set forth in Section 2.2.

“AY 2027 Credits” has the meaning set forth in Section 2.2.

“Capital Adjustment” is defined in Section 2.4.4.

“Credit Adjustment” is defined in Section 2.4.4.

“Bankruptcy Code” means Title 11 of the United States Code entitled “Bankruptcy.”

“Bankruptcy Law” means the Bankruptcy Code and any similar federal, state or foreign law for the relief of debtors, conservatorship, bankruptcy, general assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect and any similar federal, state or foreign law for the relief of debtors affecting the rights of creditors generally.

“Bid” means the information Applicant provides in the bid sheet, as outlined in Appendix D of the DOE Guidance.

“Certification Application” means the application and all supporting documentation submitted to DOE in accordance with the Guidance for the Civil Nuclear Credit Program and 42 U.S.C. § 18753(c)(1).

“CNC Program” is defined in the recitals.

“Control” means the power, directly or indirectly, to direct or cause the direction of the management or business or policies of a Person (whether through the ownership of voting securities or partnership or other ownership interests, by contract, or otherwise); provided that “controlling”, “controlled”, and similar constructions shall have corresponding meanings.

“Corrupt Practices Laws” means (i) the Foreign Corrupt Practices Act of 1977 (Pub. L. No. 95-213, §§101-104), as amended, and (ii) any equivalent U.S. or foreign Applicable Law.

“Credits” is defined in the recitals.

“Disadvantaged Communities” as defined in DOE’s General Guidance for Justice40 Implementation. *See* Department of Energy, *General Guidance for Justice40 Implementation* (Jul. 25, 2022).⁴

“Debarment Regulations” means all of the following:

4 The Justice40 initiative, created by Executive Order 14008, establishes a goal that 40% of the overall benefits of certain federal investments flow to disadvantaged communities. DOE’s General Guidance for Justice40 Implementation provides a working definition of disadvantaged communities and how they can be identified. *See* Department^{2†} of Energy, *General Guidance for Justice40 Implementation* (Jul. 25, 2022), <https://www.energy.gov/sites/default/files/2022-07/Final%20DOE%20Justice40%20General%20Guidance%20072522.pdf>.

the Government-wide Debarment and Suspension (Non-procurement) regulations (Common Rule), 53 Fed. Reg. 19204 (May 26, 1988),

Subpart 9.4 (Debarment, Suspension, and Ineligibility) of the Federal Acquisition Regulations, 48 C.F.R. 9.400 - 9.409, and

the revised Government-wide Debarment and Suspension (Non-procurement) regulations (Common Rule), 60 Fed. Reg. 33037 (June 26, 1995).

“Default” means an event that, with the giving of notice or passage of time or both, would become an Event of Default.

“DEIA” is defined in Article 3(f).

“DOE” is defined in the recitals.

“DOE Guidance” is defined in the recitals.

“Effective Date” is defined in the recitals.

“Environmental Laws” means any Applicable Law in effect as of the date of this Agreement or thereafter, and in each case as amended, regulating, relating to or imposing obligations, liability or standards of conduct concerning or otherwise relating to (a) environmental impacts (including but not limited to impacts on cultural resources) resulting from the use of the Project Site or environmental conditions present on, in or under the Project Site, (b) pollution, protection of human or animal health or safety or the environment, including flora and fauna, or Releases or threatened Releases of pollutants, contaminants, chemicals, radiation or industrial, toxic or hazardous substances or wastes, including without limitation Hazardous Substances, or (c) the generation, manufacture, processing, distribution, use, treatment, storage, recycling, disposal, transport, or handling of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or wastes, including without limitation Hazardous Substances.

“Event of Default” means any of the events described in Section 5.2.

“FOIA” means the Freedom of Information Act, 5 U.S.C. § 552.

“Foreign Asset Control Regulations” means the United States Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 C.F.R. Subtitle B, Chapter V, as amended), or any ruling issued thereunder or any enabling legislation or Presidential Executive Order granting authority therefor.

“Governmental Approval” means any approval, consent, authorization, license, permit, order, certificate, qualification, waiver, exemption, or variance, or any other action of a similar nature, of or by a Governmental Authority, including any of the foregoing that are or may be deemed given or withheld by failure to act within a specified time period.

“Governmental Authority” means any federal, state, county, municipal, or regional authority, or any other entity of a similar nature, exercising any executive, legislative, judicial, regulatory, or administrative function of government.

“Governmental Judgment” means with respect to any Person, any judgment, order, decision, or decree, or any action of a similar nature, of or by a Governmental Authority having jurisdiction over such Person or any of its properties.

“Hazardous Substance” means any hazardous or toxic substances, chemicals, materials, pollutants or wastes defined, listed, classified or regulated as such in or under any Environmental Laws, including (i) any petroleum or petroleum products (including gasoline, crude oil or any fraction thereof), flammable explosives, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and polychlorinated biphenyls, (ii) any chemicals, materials or substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “contaminants” or “pollutants,” or words of similar import, under any applicable Environmental Law and (iii) any other chemical, material or substance, import, storage, transport, use or disposal of, or exposure to or Release of which is prohibited, limited or otherwise regulated under, or for which liability is imposed pursuant to, any Environmental Law.

“IJA” is defined in the Recitals.

“Internal Revenue Code” means the United States Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated and rulings issued thereunder. Section references to the Internal Revenue Code are to the Internal Revenue Code as in effect at the date of this Agreement and any subsequent provisions of the Internal Revenue Code, amendatory thereof, supplemental thereto or substituted therefor.

“Knowledge” means the actual knowledge of any Principal Persons of the Owner/Operator or any knowledge that should have been obtained by any Principal Person of the Owner/Operator upon reasonable investigation and inquiry.

“MWh” means Megawatt-hours.

“Nuclear Reactor” means the nuclear power reactor unit(s) that have received a notice that it is considered a Certified Nuclear Reactor by the Secretary of Energy in accordance with 42 U.S.C. § 18753(c)(2)(B).

“OFAC” means the Office of Foreign Assets Control, agency of the U.S. Department of the Treasury under the auspices of the Under Secretary of the Treasury for Terrorism and Financial Intelligence.

“Organizational Documents” means with respect to any Person, (a) to the extent such Person is a corporation, the certificate or articles of incorporation and the by-laws of such Person, (b) to the extent such Person is a limited liability company, the certificate of formation or articles of formation or organization and operating or limited liability company agreement of such Person and (c) to the extent such Person is a partnership, joint venture, trust or other form of business, the partnership, joint venture or other applicable agreement of formation or organization and any

agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization or formation of such Person.

“Owner/Operator” is defined in the recitals.

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, and all regulations promulgated thereunder.

“Payment Certificate” is defined in Section 2.4.1.

“Person” means any individual, firm, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization, Governmental Authority, committee, department, authority, or any other body, incorporated or unincorporated, whether having distinct legal personality or not.

“Principal Persons” means any officer, director, beneficial owner of 10% or more of equity interests that are not publicly traded securities, other natural person (whether or not an employee) with primary management or supervisory responsibilities over the Owner/Operator or the Nuclear Reactor or who has critical influence on or substantive control over the Nuclear Reactor, and each of their respective successors or assigns.

“Prohibited Jurisdiction” means any jurisdiction that:

is subject to U.S. or multilateral economic or trade sanctions in which the U.S. participates, including the trade sanctions and economic embargoes administered by OFAC;

has been designated by the Secretary of the Treasury under Section 311 or 312 of the Patriot Act, as warranting special measures due to money laundering concerns; or

has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the U.S. is a member, such as the Financial Action Task Force on Money Laundering, and with which designation the U.S. representative to the group or organization continues to concur.

“Prohibited Person” means any person or entity that is:

named, identified, or described on the list of “Specially Designated Nationals and Blocked Persons” (Appendix A to 31 CFR chapter V) as published by OFAC at its official website, <http://www.treas.gov/offices/enforcement/ofac/sdn/>, or at any replacement website or other replacement official publication of such list;

named, identified or described on any other blocked persons list, designated nationals list, denied persons list, entity list, debarred party list, unverified list, sanctions list or other list of individuals or entities with whom U.S. persons may not conduct business, including lists published or

maintained by OFAC, lists published or maintained by the U.S. Department of Commerce, and lists published or maintained by the U.S. Department of State;

debarred or suspended from contracting with the U.S. government or any agency or instrumentality thereof;

debarred, suspended, proposed for debarment with a final determination still pending, declared ineligible or voluntarily excluded (as such terms are defined in any of the Debarment Regulations) from contracting with any U.S. federal government department or any agency or instrumentality thereof or otherwise participating in procurement or non-procurement transactions with any U.S. federal government department or agency pursuant to any of the Debarment Regulations;

indicted, convicted or had a Governmental Judgment rendered against it for any of the offenses listed in any of the Debarment Regulations;

subject to U.S. or multilateral economic or trade sanctions in which the U.S. participates;

owned or controlled by, or acting on behalf of, any governments, corporations, entities or individuals that are subject to U.S. or multilateral economic or trade sanctions in which the U.S. participates; or

an Affiliate of a Person listed above.

“Projected Enhancement Capital Cost” shall be equal to the amount of the projected enhancement capital costs submitted by the Owner/Operator for the Certification Application and Bid of the Nuclear Reactor for the same Award Year as set forth in the Payment Certificate.

“Projected Revenue” shall be equal to the amount of the projected revenue (including, without limitation, revenue from State Support Payments and PTC) submitted by the Owner/Operator for the Certification Application and Bid of the Nuclear Reactor for the same Award Year as set forth in the Payment Certificate.

“Projected Sustaining Capital Cost” shall be equal to the amount of the projected sustaining capital costs submitted by the Owner/Operator for the Certification Application and Bid of the Nuclear Reactor for the same Award Year as set forth in the Payment Certificate.

“Prudent Industry Practice” shall mean those practices, methods, equipment, specifications and standards of safety and performance, as are commonly accepted in the nuclear power generation industry as good, safe and prudent practices in connection with the design, construction, operation, maintenance, repair and use of the Project. “Prudent Industry Practice” as defined herein does not necessarily mean one particular practice, method, equipment specification or standard in all cases, but is, instead, intended to encompass a broad range of acceptable practices, methods, equipment specifications and standards. “Prudent Industry Practice” shall include the applicable operating policies, standards, criteria, practices and/or guidelines of the Federal Energy Regulatory Commission, North American Electric Reliability Corporation, NRC, the Nuclear Reactor’s relevant regional transmission organization or independent system operator, and any other Governmental Authority.

“PTC” means the federal zero-emission nuclear power production tax credit located in 26 U.S.C. § 45U.

“Release” means disposing, discharging, injecting, spilling, leaking, leaching, dumping, pumping, pouring, emitting, escaping, emptying, seeping, placing and the like, into or upon any land or water or air, or otherwise entering into the environment.

“Revenue Adjustment” is defined in Section 2.4.4.

“State Support Payments” means any payment from a State zero-emission credit, a State clean energy contract, or any other State program with respect to that Nuclear Reactor.

“Taxes” means all taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority, including any interest, penalties or additions thereto imposed in respect thereof.

“Term” is defined in Section 5.1.

“Uprate” means any investment to increase the generating capacity of the Nuclear Reactor.