



Herbert Smith

1 April 2008

THE NUCLEAR DECOMMISSIONING AUTHORITY
and
LLW REPOSITORY LIMITED
and
UK NUCLEAR WASTE MANAGEMENT LIMITED

PARENT BODY AGREEMENT

NDA-P1-34-08

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THIS AGREEMENT is made on **1 April 2008**

BETWEEN:

- (1) **THE NUCLEAR DECOMMISSIONING AUTHORITY** a non departmental public body whose registered office is at Herdus House, Westlakes Science and Technology Park, Moor Row, Cumbria, CA24 3HU (the "**Authority**");
- (2) **LLW REPOSITORY LIMITED** a company incorporated in England and Wales with registered number 5608448 whose registered office is at Ingwell Complex, Westlakes Science and Technology Park, Moor Row, Cumbria, CA24 5JZ, the company which holds the nuclear site licence (and other regulatory approvals) to operate the relevant Site (the "**SLC**"); and
- (3) **UK NUCLEAR WASTE MANAGEMENT LIMITED** a company incorporated in England and Wales with registered number 06040606 whose registered office is at Ingwell Complex, Westlakes Science and Technology Park, Moor Row, Cumbria, CA24 5JZ (the "**PBO**"),

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

WHEREAS:

- (A) The Authority requires an organisation to acquire and hold, for the term of this Agreement, the share capital of, and provide Nominated Staff to, the SLC.
- (B) The Authority has held a competition to identify the organisation to acquire and hold such share capital and the PBO is the winner of the competition process.

PARTNERSHIP PRINCIPLES

In working together to achieve the objectives of this Contract, the Authority, the PBO and the SLC will act consistently with, and have regard to, the following principles:

- (1) to work together in an open and honest environment and to act in a co-operative and non-adversarial manner;
- (2) to maintain a sound safety culture and to ensure the primacy of safety over profit;
- (3) to encourage innovation with a view to improving efficiency and reducing costs;
- (4) to monitor performance against targets with the aim of continuous improvements;
- (5) to ensure that pricing arrangements include proper incentives and, where relevant, gainshare principles;
- (6) to optimise competition for subcontracts;
- (7) to have a mechanism for a periodic review of the Agreement;
- (8) to maintain a consistent balance of risk and reward over the term of the Agreement;
- (9) to have due regard to the interests of personnel to the extent that they are engaged in, and to the interests of third parties directly affected by, the PBO's or the SLC's business.

These partnership principles shall not be legally binding on either Party and shall not constitute legally binding rights and obligations for either party. Accordingly, the Parties acknowledge and agree that the partnership principles shall not and are not intended to prevent either Party from exercising any right, or seeking or enforcing performance of any obligation under this Agreement.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement the defined terms used shall have the same meaning as defined terms used in the Energy Act and the Site M&O Contract except to the extent that such defined terms are given a different meaning below. Defined terms used in this Agreement which are not defined in the Energy Act or the Site M&O Contract shall have the meaning specified below.

In this Agreement, (including the Recitals, Schedules and Table of Contents), the following terms shall, unless the context requires otherwise, have the following meanings:

"2005 Site M&O Contract" means the site management and operations contract in respect of Drigg (Authority Contract reference NDA-T1-34-05) dated 1 April 2005 between (1) the Authority and (2) British Nuclear Group Sellafield Limited (now Sellafield Limited);

"Affiliates" means:

- (a) Serco or any company which has shareholdings or other form of economic interest, either directly or indirectly, of more than ten (10) per cent in the PBO;
- (b) wholly owned subsidiaries of the SLC or PBO or Serco;
- (c) a company in which the SLC and/or the PBO and/or Serco, either jointly or separately, has shareholdings or any other form of economic interest totalling more than ten (10) per cent of the shares in issue;
- (d) a company with which the SLC and/or the PBO and/or Serco, either jointly or separately, has a Relevant Partnering Arrangement in force;
- (e) a company in which the SLC and/or the PBO and/or Serco, either jointly or separately, has less than a ten (10) per cent economic interest, but where the economic interest is of such a nature as to create the perception of a conflict of interest;
- (f) a company owned or controlled, directly or indirectly, to the extent of ten (10) per cent or more of the outstanding equities, securities or assets by any of the companies described in (a) or (b) above;

"Agreed Accounting Policies and Procedures" means the SLC's accounting policies and procedures as created and maintained by the SLC pursuant to Clause 6.4.1(C) (*Restrictions on changes to Accounting Policies and Procedures*) of the Site M&O Contract;

"Agreed Directors" means the list of directors of the SLC set out in Schedule 15 (*Agreed Directors*) and as subsequently may be agreed by the Authority in accordance with Clause 4.1.1(D) (*Restrictions on PBO*);

"Agreed Memorandum and Articles of Association" means the memorandum and articles of association of the SLC in the form attached at Schedule 1;

"Allowable Costs" has the meaning given in paragraph 3 (*Allowable Costs*) of Part 5 of the Schedule 6 (*Costs Principles and Procedures*) and **"Allowable"** shall be construed accordingly;

"Authority Assets" means all the assets (whether fixed or movable) on or off the Site which are currently owned by the Authority (whether leased to the Authority or otherwise) including any New Assets acquired by the SLC on behalf of the Authority in performing the LTP pursuant to Clause 7.7 (*Right to Acquire New Assets*) of the Site M&O Contract;

"Authority Default" means any of the events of default by the Authority set out in Clause 12.6 (*Authority Default*) of the Site M&O Contract;

"Authority Field of Use" means use in carrying out the Authority's functions, duties and powers as prescribed in the Energy Act 2004 from time to time (the **"Act"**);

43(2) Commercial

"Authority's Termination Notice" has the meaning given in Clause 12.5.1 (*Termination or Remedy for PBO Default*);

"Background IP" has the meaning given in Clause 14.2.9 (*Licence of Background IP from Subcontractor to Authority*);

"Bank" means a person which has permission under Part IV of the Financial Services and Markets Act 2000 to carry on one or more of the regulated activities provided thereunder and which is reasonably acceptable to the Authority;

"Bid" means the competitive procurement process to appoint a Parent Body Organisation to own the shares in the SLC, in which process the PBO was successful;

"BMHF" means the Bulk Material Handling Facility;

"Business Change Manager" means the named person identified as such in the Agreed Directors;

"Calendar Day" means a period of twenty-four (24) hours ending at twelve (12) midnight;

"Call Option" has the meaning given in Clause 6.3.1 (*Call Option*);

"Call Option Notice" has the meaning given in Clause 6.3.2 (*Call Option*);

"Change in Control" means, in respect of the PBO, the obtaining of Control by any person or group of persons acting in concert who did not previously exercise Control, of:

- (a) the PBO itself or a shareholder holding all or part of the shares of the PBO; or

- (b) any person who (whether directly or by means of holding Control over one or more other persons) has Control of any such shareholder referred to in (i) above;

"Claims Handling and Insurance Agreement" means the agreement entered into between the Authority, the PBO and the Party wishing to be indemnified in the form attached at Schedule 10;

"Commencement Date" means the date of signature of this Agreement;

"Contract Year" means a period of twelve (12) Months starting on 1 April and ending on 31 March first occurring thereafter, except for the last Contract Year of this Agreement which shall commence on 1 April and end at the earlier of the date of termination of the Agreement in accordance with Clause 12 (*Termination*) or the end of the Term in accordance with Clause 2 (*Term*) of this Agreement;

"CWBS" means Contractor Work Breakdown Structure;

"Control" means:

- (a) the power (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise) to appoint and/or remove all or such of the members of the board of directors or other governing body of a person as are able to cast a majority of the votes capable of being cast by the members of that board or body on all, or substantially all, matters, or otherwise to control or have the power to control the policies and affairs of that person (and for the purposes of determining whether the power to appoint or remove directors exists the provisions of section 736A of the Companies Act 1985 or section 1159(3) and Schedule 6 of the Companies Act 2006 (as applicable) shall apply; and/or
- (b) the holding and/or possession of the beneficial interest in and/or the ability to exercise the voting rights applicable to shares or other securities in any person (whether directly or by means of holding such interests in one or more other persons) which confer in aggregate on the holders thereof ten (10) per cent. or more of the total voting rights exercisable at general meetings of that person on all, or substantially all, matters;

"Cross-SLC Initiatives" means those strategies, policies and procedures developed in respect of activities performed by or in relation to, or relevant to, more than one SLC by governance boards established by the Authority for implementation across the relevant SLC;

"Demand" means any written demand for payment served in accordance with Clause 1.13 (*Notices and Communications*) of the Site M&O Contract by the Authority on the PBO pursuant to Clause 6.12.6 (*Payments to Parent*) and Clause 5.10 (*Termination Costs*) of the Site M&O Contract;

"Designated Sites" means sites designated under section 3 of the Energy Act;

"Developed IP" has the meaning given in Clause 14.2 (*Authority's Rights to IP developed by or on behalf of the SLC and subcontractors*);

"Disallowable Costs" means a cost incurred by the SLC which if determined to be Disallowable in accordance with the criteria in Part 5 (*Cost Principles and Procedures*) of

Schedule 6 (*Finance*) of the Site M&O Contract and/or specified as a Disallowable Cost in the Site M&O Contract will be reimbursed to the Authority by the PBO, and "**Disallowable**" shall be construed accordingly;

"**Dispute**" means any dispute or difference arising out of or in connection with the Agreement including, but not limited to, any question regarding its existence, interpretation, validity, construction or termination;

"**Dispute Resolution Procedure**" means the dispute resolution procedure attached at Schedule 2;

"**Energy Act**" means the Energy Act 2004;

"**Escrow Agent**" means NCC Escrow International Limited, a company incorporated in England and Wales with registered number 3081952, whose registered office is at Manchester Technology Centre, Oxford Road, Manchester M1 7EF, or such alternative as the Authority shall designate in writing from time to time;

"**Escrow Terms**" means the form of source code escrow agreement set out in the standard single licensee escrow agreement of the Escrow Agent, or such other escrow terms as the Authority, acting reasonably, shall specify from time to time;

"**Existing Agreements**" means all legally binding agreements entered into by the SLC prior to the Commencement Date;

"**Existing Claims**" has the meaning given in Clause 8.13.1 (*Existing Claims as at the Commencement Date*);

"**Full Time Equivalent**" or "**FTE**" means an individual employed on a permanent basis working an average of thirty-seven (37) hours per week;

"**Full Title Guarantee**" means with the benefit of the implied covenants set out in Part 1 of the Law of Property (Miscellaneous Provisions) Act 1994 when a disposition is expressed to be made with full title guarantee;

"**Future Transfer Scheme**" means a nuclear transfer scheme made under Section 40(2) of the Energy Act made in order to facilitate a Shared Services Project;

"**Gross Negligence**" means negligence which, in the reasonable opinion of experts in the nuclear industry independent of the Authority and the PBO, constitutes exceptional negligence;

"**HM Treasury's Government Reporting Requirements**" means those reporting requirements set out in the Government Financial Reporting Manual (FRM), as amended or replaced from time to time;

"**HSE**" means the Health and Safety Executive;

"**Impartiality Undertaking**" means the Impartiality Undertaking attached to the Site M&O Contract as Part 5 (*Impartiality Undertaking*) of Schedule 4 (*Employee Schedule*);

"**Incoming Parent**" means the organisation which has successfully bid to replace the PBO in relation to the SLC;

"Initial Period" has the meaning given in Clause 2.1 (*Term*);

"Internal Procedure" means all internal SLC company documentation (regardless of the manner in which it is held, stored or collated) which:

- (a) in the reasonable opinion of the Authority, constitutes a mandatory internal guideline, standard, procedure or policy;
- (b) in the reasonable opinion of the Authority, relates directly or indirectly to the SLC's structure, operation and management; and
- (c) relates materially and directly to the duties imposed on the SLC in accordance with Clause 2.1 (*Nature of Contractor's Obligations*) of the Site M&O Contract and/or the manner in which the SLC chooses to fulfil its contractual, legal and regulatory obligations therein;

"IP" means intellectual property including all inventions (whether patentable or not), design rights, database rights, copyright, semiconductor topography rights, unregistered trade and service marks, logos, get up and trade names and, in each case, the goodwill attaching to them, all patents, utility models, registered designs, registered copyrights, registered trade and service marks, domain names and any applications for registration and rights to grant of any of the foregoing, confidential information, know how, and any rights or forms of protection of a similar nature and having equivalent or similar effect to any of them which subsist anywhere in the world;

"IT System" means any communications and/or information technology system including: (i) all hardware, including servers, desktop and laptop PCs and other terminal equipment, printers, scanners and other peripherals; (ii) networks and network equipment; (iii) Software; and (iv) data comprised or used therein;

"Law" means any Act of Parliament or subordinate legislation with the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, any enforceable community right with the meaning of section 2 of the European Communities Act 1972, any other applicable law, common law proclamation, bye-law, directive, decision, regulation, rule, notice or court ruling in each case in the United Kingdom and all applicable laws, regulations, directives, orders, decisions or other rules having the force of law in the jurisdiction (including in relation to international waters) where the SLC's obligations under the Site M&O Contract are carried out;

"Legal Proceedings" means any litigation, arbitration, adjudication, defence, dispute, claim, compromise appeal or investigations before an Ombudsman;

"LIBOR" means the overnight London Inter Bank Offer Rate as calculated by the British Bankers Association;

"Limit on General Indemnity, Defective Performance and Major Incident" means the limit set out (or, following any Renewal, to be set out) in Clause 7.2.6 (*Limit on General Indemnity, Defective Performance and Major Incident*);

"LLW" means low level radioactive waste;

"LLWR" means the Low Level Waste Repository at Old Shore Road, Drigg, Holmrook, Cumbria, CA19 1XH;

"Long Term Force Majeure" has the meaning given in Clause 12.9 (*Termination for Long Term Force Majeure*);

"LTP" means Lifetime Plan;

"Milestone" means a milestone for the achievement of a PBI, Self Funded Cashable Benefit, Non Cashable Benefits or within the terms of an Alternative Remuneration Task set or agreed by the Authority;

"Month" means a calendar month which is a period of time consisting of thirty (30) days if the period commences in April, June, September and November, and thirty one (31) days if it commences in any other month excepting February when it consists of twenty-eight (28) days, or twenty-nine (29) in a leap year;

"N Cubed" means N Cubed Limited, a subsidiary company of the Authority with registered number 03179312, responsible for procurement of IT Contract and IT Systems on behalf of those SLCs which have entered into an M&O Contract with the Authority and/or for which the Authority has financial responsibility under the Energy Act 2004;

"New Assets" means any assets, whether new or second-hand, acquired by the SLC pursuant to Clause 7.7 (*Right to Acquire New Assets*) of the Site M&O Contract on or after the Commencement Date excluding any Subcontracts and Customer Contracts;

"NIA 1965" means the Nuclear Installations Act 1965;

"Nominated Staff" means the individuals listed in Part 1 (*Nominated Staff*) of Schedule 4 (*Employee Schedule*) of the Site M&O Contract (as updated from time to time in accordance with Clause 5.1.4 (*Nominated Staff*) of the Site M&O Contract);

"Notice" has the meaning given in Clause 24.1 (*Notices*);

"Nuclear Incident" means:

- (i) any occurrence on the Site during the period of the PBO's responsibility; or
- (ii) any occurrence elsewhere than on the Site which is not caused by excepted matter (as defined in the NIA 1965) and which at the time of the occurrence:
 - (a) is in the course of carriage on behalf of the SLC as the Nuclear Site Licence holder for the Site; or
 - (b) is in the course of carriage to the Site with the agreement of the SLC from a place outside the relevant territories (as defined in the NIA 1965); and
 - (c) in either case, is not on any other relevant site (as defined in the NIA 1965) in the United Kingdom; or
- (iii) any occurrence elsewhere than on the Site involving nuclear matter which is not excepted matter (as defined in the NIA 1965) and which:
 - (a) having been on the Site at any time during the period of the PBO's responsibility; or
 - (b) having been in the course of carriage on behalf of the SLC as the Nuclear Site Licence holder for the Site,

has not subsequently been on any relevant site (as defined in the NIA 1965), or in the course of any relevant carriage (as defined in the NIA 1965), or (except in the course of relevant carriage (as defined in the NIA 1965)) within the territorial limits of a country which is not a relevant territory (as defined in the NIA 1965); or

- (iv) any emission of ionising radiations during the period of the PBO's responsibility:
 - (a) from anything caused or suffered by the SLC to be on the Site which is not nuclear matter (as defined in the NIA 1965); or
 - (b) from any waste discharged (in whatever form) on or from the Site,

in each case arising out of or resulting from the radioactive properties, or a combination of those and any toxic, explosive or other hazardous properties, of nuclear matter (as defined in the NIA 1965);

"Nuclear Indemnity Threshold" means 43(2) Commercial 43(2) Commercial ;

"OCNS" means the Office for Civil Nuclear Security or any body having responsibility for civil nuclear security in the United Kingdom which substantially replaces the same from time to time;

"Overarching Costs Management Agreements" means each of the agreements of that name entered into by (1) the Authority (2) Sellafield Limited (3) certain Group Companies and (4) Direct Rail Services (Co. no. 3020822) on the 1 April 2005 as such rights and liabilities that relate to the SLC were transferred to the SLC by nuclear transfer scheme on 29 July 2007 and the agreement of that name entered into by Sellafield Limited and the SLC on 31 March 2008 in relation to the nuclear transfer scheme on 29 July 2007;

"PAIS Team" means the Partner/Assess/Innovate/Step Change Team;

"Parent Group Existing Insurance" means the insurances, the premiums for which the Authority is paying a percentage of, pursuant to Clause 10.2.3;

"Parent IP" has the meaning given in Clause 14.1.1(A) (*Licence to Authority and SLC*);

"Parent Required Insurance" means public liability insurance with a limit of 43(2) Commercial 43(2) Commercial in respect of any one occurrence, in respect of its own acts and/or omissions and the acts and/or omissions of the Nominated Staff, and employers liability insurance as required by Law in respect of its own activities;

"PBO Current Account" means the nominal ledger account in the SLC's accounting records that records the transfer of working capital funding between the PBO and the SLC;

"PBO Default" means the occurrence of an event described in Clause 12.2 (*PBO Default*);

"PBO's Termination Notice" has the meaning given in Clause 12.7.1 (*Termination or Remedy for Authority Default*);

"Post Closure Safety Case" or "PCSC" means the compilation of documents prepared by the PBO demonstrating that, after the facility has been closed, the public and the environment will be sufficiently protected from hazards which may arise as a result of the

disposal of radioactive wastes to the facility in accordance with an authorisation under the Radioactive Substances Act 1993;

"Potential Profit" means the maximum profit, other than the Available Incentive Fee which can potentially be earned in any Contract Year by the SLC from its performance of the Site M&O Contract;

"Profit" means the profit other than any Incentive Fee earned by the SLC from its performance of the Site M&O Contract;

"Protected Employees" means employees who are entitled to participate in a UKAEA Scheme (as defined in Schedule 8 to the Energy Act 2004) under Part 3 of Schedule 8 to the Energy Act 2004 or who are entitled to protection under Part 4 of Schedule 8 to the Energy Act 2004;

"Protected Non-SLC Employees" means employees of the PBO or of a subsidiary or Affiliate of the PBO other than the SLC who, in either case, are Protected Employees.

"Put Option" has the meaning given in Clause 6.1.1 (*Put Option*);

"Put Option Notice" has the meaning given in Clause 6.1.2 (*Put Option*);

"Reach Back Services" means those services provided by an Ultimate Parent or a subsidiary of an Ultimate Parent where such services do not require competitive tender under the EU Procurement Rules (or where the Authority has agreed with the Contractor in advance, in writing, that in a particular case it is not necessary to adhere to the EU Procurement Rules);

"Recovered Profit" has the meaning given in Clause 7.3.9(G) (*Conditions of Nuclear Indemnity*);

"Regulators" means the Health and Safety Executive ("**HSE**"), the Environment Agency ("**EA**"), the Scottish Environment Protection Agency ("**SEPA**"), the Office for Civil Nuclear Security ("**OCNS**"), the Scottish Executive, the Financial Services Authority ("**FSA**") and others relevant to the operation of the Site M&O Contract and "**Regulator**" shall mean each or any one of them;

"Regulatory Consents" means any formal permission required by a Regulator including a legal instrument required pursuant to a Nuclear Site Licence, authorisation, plan or equivalent;

"Relevant Affiliate" means an Affiliate that is incorporated in a jurisdiction that is a signatory to the Paris Convention and/or the Brussels Convention from which a member of Nominated Staff is to be or has been seconded;

"Relevant Date" has the meaning given in Clause 16.6 (*Non-Solicitation*);

"Relevant Partnering Arrangement" means any agreement through which any party would, in the reasonable opinion of the Authority, acquire significant influence over the SLC's or over the PBO's performance of its respective obligations under this Agreement and/or the Site M&O Contract excluding any agreements which in the reasonable opinion of the Authority, are entered into in the ordinary course of business;

"Remediation Programme" has the meaning given in Clause 12.5.4(B) (*Termination or Remedy for PBO Default*);

"Renewal" means the extension of the Term of the Agreement in accordance with Clause 2.2 (*Authority Renewal Option*);

"Renewal Conditions" means the conditions set out in Schedule 6 (*Renewal Conditions*);

"Renewal Period" has the meaning given in Clause 2.2.1 (*Authority Renewal Option*);

"Retained Individuals" means those individuals seconded to the SLC from Sellafield Limited who are suitably qualified and experienced people and who HSE require to continue in their roles within the SLC in order for the SLC to comply with Licence Condition 36;

"RPIX" means that where any sum is stated to be **"adjusted for RPIX"** then, at such time, the said sum shall be multiplied by I where I equals:

$$\text{RPIX}_n \text{ divided by } \text{RPIX}_o$$

where RPIX_n means the Index calculated for the relevant Month of the Term; and

where RPIX_o means the Index calculated for the month of the Commencement Date;

"Secondment Agreement" means the agreement of that name to be entered into between the PBO and/or a Relevant Affiliate and Nominated Staff in the form attached at Schedule 14 (*Form of Secondment Agreement*);

"Security Interest" means any mortgage, assignment, charge, lien, hypothecation, pledge, encumbrance, trust arrangement or any other security interest or arrangement for the purpose of providing to any person security or a priority in right of payment except for any lien arising by operation of law;

"Serco" means Serco Group plc (Company Number 02048608) and any wholly owned subsidiary company in which Serco has shareholdings or any other form of economic interest totalling more than thirty per cent (30%) of the shares in issue, and/or a company with which Serco has a Partnering Arrangement in force;

"Shared Services Project" means the implementation of a strategy developed by the Authority to facilitate the provision of services that are performed for more than one SLC in support of the decommissioning, clean-up or commercial operations on the Site or the Authority's other designated sites that in the Authority's reasonable opinion will improve efficiency or effectiveness;

"Shares" means all the share capital in the SLC;

"Share Transfer Date" means the date the Shares are transferred to the PBO from British Nuclear Group Limited;

"Site" has the meaning given in the Site M&O Contract;

"Site IT Systems" means IT Systems on or used by or on behalf of the SLC in respect of the Site;

"Site Licence Company" means a company which holds the nuclear site licence under the NIA 1965 for a site which has been designated as the financial responsibility of the Authority under the Energy Act 2004;

"Site M&O Contract" means the agreement of that name to be entered into between the Authority and the SLC to manage and operate the Site;

"SLC's Fee Account" means the account with details:

Account Name: 41 Confidence
Account Number: -----
Sort Code: -----

"Software" means all computer software, together with any related supporting documentation and materials necessary to enable a user to make full use of the functionality of, or to administer effectively, such software;

"Source Code" means, in respect of any Software, the entirety of such Software in an eye-readable form in which such Software can be interpreted by a programmer of reasonable skill and in such form that it can be compiled or interpreted into equivalent object code, together with all technical information and documentation reasonably necessary for the use, reproduction, modification and enhancement of such Software;

"Strategic Interest" means technologies, processes and systems:

- (a) involving or relating to:
 - (i) fissile materials in strategically significant quantities including any special fissile material within the meaning of Article 197 of the Euratom Treaty but excluding wastes containing trace quantities of fissile material;
 - (ii) reprocessing including any technology, processes or systems and/or IP relating thereto that could enhance or prejudice the operation of the Thermal Oxide Reprocessing Plant;
 - (iii) nuclear fuel including any technology, process or system and/or IP relating thereto that could enhance or prejudice the production of nuclear fuel but excluding trace quantities of spent fuel in fuel element debris or other wastes contaminated with fuel residues;
 - (iv) nuclear reactors for power generation including any technology, process or system and/or the IP therein that could enhance or prejudice the operation of the Authority's operating nuclear reactors;
 - (v) transportation, storage or disposal of nuclear materials and associated containment and packaging including any technology, process or systems and/or any IP therein that could enhance or prejudice the Authority's statutory duties, powers and functions associated with the transportation of nuclear fuel, spent fuel, nuclear waste or waste contaminated with radioactive material; or

- (b) arising from any contract or agreement the purpose of which is to undertake research for the SLC or the Authority (including contracts and agreements with universities or research companies).

"Subcontract" means any agreement entered into by the SLC in connection with the performance of its obligations under the Site M&O Contract, including Asset Purchases;

"Subcontractor" means any person who has entered into a subcontract with the SLC in connection with the performance of the SLC's obligations under the Site M&O Contract;

"Substituted Scope" has the meaning given in paragraph 3 of Schedule 8 (*Change to Bid Commitments*);

"Target Cost" means the cost agreed in writing between the Authority and the SLC to be the target cost of performing the work scope;

"Term" means the Initial Period and any Renewal Period(s);

"Termination for Convenience" has the meaning given in Clause 12.8 (*Termination for Convenience*);

"Termination Notice Period" has the meaning given in Clause 6.3.3(D) (*Call Option*);

"Third Party" means any person other than the Parties or, where any Indemnified Party is the subject of a claim, any other Indemnified Party;

"Threatened Insolvency" means that the Authority, acting reasonably, has good reason (including supporting evidence) to consider that an Insolvency Event is likely to occur within the succeeding thirty (30) Calendar Days in relation to the PBO and/or any shareholder (direct or indirect) in the PBO up to the level of the Ultimate Parents. Where the PBO disputes that such an Insolvency Event is likely, the PBO and the Authority will within two (2) Working Days of the Authority's notice of Threatened Insolvency jointly appoint an independent expert (being a firm of recognised international accountants which is not auditor or adviser to any of the Authority, the PBO or URS Corporation (EIN 94-1381538) (or any party to whom URS Corporation has assigned all or part of its shareholding in the PBO) to determine whether such an Insolvency Event is likely to occur. The determination of the independent expert shall be final and binding on all parties;

"Time Costs" means the cost of any time spent by members of Nominated Staff working on matters arising out of or in connection with the Agreement or the Site M&O Contract;

"Transition Agreement" means the transition agreement entered into between the Authority and the Parent Body Organisation on [19 March 2008];

"Transition Board" means the panel comprising the Authority, the PBO, the SLC, the Incoming Parent and the Regulators responsible for managing the Transition In Plan;

"Transition In Plan" means the plan of the Incoming Parent to enable it, when it is preparing to hold the shares in the SLC or when it is first holding the shares in the SLC, to prepare to manage and hold the shares in the SLC, including in respect of enabling the SLC to continue to comply, and the Incoming Parent to comply, with Law and Regulatory Requirements;

"Transition Period" means the period starting on the Commencement Date and finishing on the date that HSE grants the SLC consent under Licence Condition 36 to remove any Retained Individuals from the employment of the SLC;

"Transition Services" means work undertaken to support the transition from the current PBO to the Incoming Parent as determined in Schedule 6;

"TUPE" means the Transfer of Undertakings (*Protection of Employment*) Regulations 2006;

"Ultimate Parent Company Guarantee" means the parent company guarantee provided by each of the Ultimate Parents pursuant to Clause 22.1 (*Ultimate Parent Guarantee and Indemnity*) in the form set out in Schedule 4 (*Ultimate Parent Guarantee*);

"Ultimate Parents" means URS Corporation (EIN: 94-1381538), Studsvik AB (Registered Company No: 556501-0997), Areva S.A. (Registered in France under number: 712 054 923 RCS Paris), and, except for the purpose of providing an Ultimate Parent Company Guarantee and Indemnity, Serco and any of their subsidiary companies and any of their permitted assignees;

"VLLW" means very low level radioactive waste as further defined in paragraph 5 of the policy document published on 26 March 2007 by the Department for the Environment, Food and Rural Affairs entitled 'Policy for the Long Term Management of Solid Low Level Radioactive Waste in the United Kingdom';

"Working Day" means Monday to Friday except any day which is generally recognised as a public holiday in England.

1.2 Interpretation

1.2.1 Headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;

1.2.2 all references to Clauses and Schedules are references to clauses of and schedules to this Agreement and all references to Parts, Sections, Paragraphs, Annexes or Appendices are references to parts, sections and paragraphs contained in and annexes and appendices to the Schedules;

1.2.3 the Schedules are an integral part of this Agreement and reference to this Agreement includes reference to the Schedules;

1.2.4 all references to agreements, procedures, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time;

1.2.5 all references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision;

1.2.6 words importing the singular include the plural and vice versa;

- 1.2.7 words importing a particular gender include all genders;
- 1.2.8 **"person"** includes an individual, partnership, firm, trust, body corporate, government department, corporation sole, governmental body, authority, agency or unincorporated body of persons or associations;
- 1.2.9 any reference to a public organisation shall be deemed to include a reference to any successor to such public organisation or entity which has taken over the functions or responsibilities of such public organisation;
- 1.2.10 references to **"Party"** and **"Parties"** means a party or the parties to this Agreement as applicable;
- 1.2.11 all monetary amounts are expressed in pounds sterling;
- 1.2.12 a reference to a balance sheet or profit and loss account includes a reference to any note forming part of or attached to it;
- 1.2.13 references to the word **"includes"** or **"including"** are to be construed without limitation;
- 1.2.14 references to a document being **"in the agreed form"** means a copy of such document initialled for the purposes of identification by the Parties;
- 1.2.15 any reference in this Agreement to a Party providing its consent or approval shall be deemed to be a reference to prior written consent or approval; and
- 1.2.16 **"Guidance notes"** to this Agreement are for guidance only and are not contractually binding on any of the Parties.

2. TERM

- 2.1 This Agreement shall take effect on its date of execution and shall remain in full force and effect until 31 March 2013 (the **"Initial Period"**) and for such additional period (if any) for which it may be extended by the exercise by the Authority of any of the options stipulated in Clause 2.2 (*Authority Renewal Option*) below, unless it terminates in accordance with Clause 12 (*Termination*).
- 2.2 The Authority shall be entitled at its sole discretion to exercise an option to extend the term of this Agreement on the same terms and conditions by giving written notice to the PBO no later than six (6) months (or another mutually agreed period) prior to the expiry of the Initial Period (or any extended term) pursuant to this Clause 2.2. Prior to giving such written notice to the PBO, the Authority will consult the PBO about the proposed exercise of the Authority's option.
 - 2.2.1 The Authority shall be entitled to exercise the option to extend this Agreement, for a further period of five (5) years, for a further period of five (5) years and a further period of two (2) years (each a **"Renewal Period"**) after the expiry of the Initial Period.
 - 2.2.2 The Authority may exercise its option to extend the Agreement under this Clause 2.2 in any order.

- 2.2.3 The Authority shall, at its sole discretion, refer to the Renewal Conditions set out in Schedule 6 (*Renewal Conditions*) to assist in determining whether or not to exercise its option to extend the Agreement.
- 2.2.4 At least six (6) months before the expiry of the Initial Period and at least six (6) months before the expiry of any further period of five (5) years or two (2) years (as relevant), the PBO shall provide to the Authority cost reimbursable prices for all of the Tasks set out in the succeeding five (5) or two (2) years of the LTP, as applicable and propose the Project Fee Pool, the Non Cashable Benefit Pool, the amount of money for which the PBO agrees to be liable in each Contract Year under Clause 7.2 (General Indemnity) and any amendments to Schedule 6 (Finance) of the Site M&O Contract for the succeeding five (5) or two (2) years of the LTP as applicable.
- 2.2.5 The Authority shall be entitled to ask for such underlying detail as is necessary to enable it to form a view of the value for money offered by such prices and other proposals.
- 2.2.6 The Authority shall be entitled to ask for an explanation of any increase in such prices in comparison with the prices set out in LTP 2008 in excess of increases equating to Indexation.
- 2.2.7 When exercising its option to extend this Agreement, the Authority shall be entitled to renegotiate the liability regime set out in Clause 7 (Indemnities) of this Agreement to address the balance of risk and reward (including in respect of Earned Profit) of the Parties under this Agreement in the light of the operation of this Agreement during the Initial Period or the prior Renewal Period (as applicable) in particular taking into account the amount of Earned Profit.
- 2.2A If, at the time when any written notice is given to the PBO during the Initial Period pursuant to Clause 2.2 above, the PBO:
- 2.2A.1 has not earned an amount equal to ~~43(2) Commercial~~ in the form of Incentive Fee and other profit in the prior Contract Years; and
- 2.2A.2 acting reasonably believes that it will not be possible for it to have earned a total amount of ~~43(2) Commere~~ in the form of Incentive Fee and other profit by the last day of the Initial Period; and
- 2.2A.3 can demonstrate to the Authority's reasonable satisfaction that a material proportion of any such shortfall in profit and expected profit is not attributable to poor performance on the part of the SLC or PBO;

Guidance Note – It is assumed for the purposes of this Clause 2 that Renewal discussions will take place in Contract Year 3.

then the PBO shall be entitled to propose, in a format and a level of detail acceptable to the Authority, acting reasonably, the amount of Potential Profit and Available Incentive Fee in relation to each Contract Year during the period of the Authority's extension of this Agreement.

- 2.2B The Authority and the PBO shall, using reasonable endeavours, seek to agree such proposals made pursuant to Clause 2.2A above within ninety (90) Calendar Days of the

proposals being made in writing in a level of detail satisfactory to the Authority, acting reasonably.

- 2.2C Provisions equivalent to Clause 2.2A and 2.2B above shall apply mutatis mutandis on any additional extensions of the term of this Agreement pursuant to Clause 2.2 above.
- 2.3 Each of the Clauses listed below shall survive the termination or expiry of this Agreement for the period specified in those Clauses and where no period is specified, for as long as any liabilities arising from or in connection with this Agreement remain relevant: Clause 1 (*Definitions and Interpretation*), this Clause 2.3 (*Survivorship*), Clause 7 (*Indemnities*), Clause 8 (*Claims Handling*), Clause 9 (*Default Interest*), Clause 10 (*PBO Insurance*), Clause 11 (*Pensions*), Clause 13 (*Information Technology*), Clause 14 (*Intellectual Property*), Clause 15 (*Dispute Resolution*), Clause 16 (*Provision of Staff to the SLC*) (insofar as it remains relevant), Clause 17 (*Transition Out*), Clause 18 (*Announcements*), Clause 19 (*Confidentiality*), Clause 22 (*General*), Clause 24 (*Notices*), Clause 26 (*Contracts (Rights of Third Parties) Act 1999*), Clause 27 (*Governing Law & Jurisdiction*), Schedule 2 (*Dispute Resolution Rules*) and any such other provisions as are expressed to survive termination of this Agreement.
- 2.4 In all cases under this Clause, the time of expiry or termination on the relevant date shall be taken as 5pm unless otherwise agreed in writing.

3. WARRANTIES

3.1 PBO Warranties

- 3.1.1 The PBO warrants and undertakes to the Authority and its successors in title that:
- (A) it is duly incorporated under the Laws of England and Wales;
 - (B) it has the legal right and full power and authority to enter into and perform this Parent Body Agreement which when executed will constitute valid and binding obligations on it in accordance with its terms;
 - (C) it has taken all necessary corporate action validly and duly to authorise the execution of and to exercise its rights and perform its obligations under this Parent Body Agreement (including authority for the transfer of the entire issued share capital of the SLC to the PBO).

3.2 Authority Warranties

The Authority warrants and undertakes that as at the Commencement Date:

- 3.2.1 it has the requisite power and authority to enter into and exercise its rights and perform its obligations under this Agreement which, when executed, will constitute valid and binding obligations on it in accordance with its terms; and
- 3.2.2 has taken all necessary action to authorise the execution and the performance of its obligations under this Agreement.

4. GOVERNANCE

4.1 Restrictions on PBO

4.1.1 The PBO hereby undertakes that it will not, without the prior written consent of the Authority:

- (A) make any amendment to the Agreed Memorandum or Articles of Association of the SLC;
- (B) sell or otherwise dispose of all or any of the share capital of the SLC or make any alteration to the share capital of the SLC;
- (C) appoint any directors to the board of the SLC provided that for the purpose of this Clause 4.1.1(C), the Authority's consent may not be unreasonably withheld or delayed;
- (D) remove or cause the removal of any of the Agreed Directors from the board of the SLC except where such removal is for negligence or gross misconduct, failure of a drugs or alcohol test, failure to comply with any Law or Regulatory Requirement, and/or failure to safeguard the health and well being of any employee on the site; in which case the PBO shall notify the Authority of any such removal as soon as is reasonably practicable;
- (E) make any change to the nature of the SLC's business;
- (F) cause or permit the SLC to undertake any activity otherwise than in fulfilment of its obligations under the Site M&O Contract;
- (G) cause or permit the SLC to use the Site (or part thereof) other than in fulfilment of its obligations under the Site M&O Contract;
- (H) cause or permit the SLC to dispose, let or otherwise part with the possession of the whole or any part of the Site or of any business, undertaking or asset including any asset subject to a finance or operating lease, other than where the SLC is permitted to dispose of any Authority's Assets under the Site M&O Contract.
- (I) make any change to the SLC's accounting reference date;
- (J) make any change to the Accounting Policies and Procedures save as required by applicable Law or UK GAAP and FReM;
- (K) save in respect of borrowings under an Approved Working Capital Facility cause or permit the SLC to give any form of guarantee or other security;
- (L) cause or permit the SLC to create or permit to subsist any Security Interest over any Authority Assets or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than as permitted by the Site M&O Contract save that nothing in this Clause 4.1.1(L) is intended to prevent

the creation of any liens in the course of performance of the Site M&O Contract;

- (M) save for borrowings under an Approved Working Capital Facility, cause or permit the SLC to borrow (including intra group) or make any payment under any intra-group borrowings;
- (N) cause or permit the SLC to commence any litigation or arbitration other than:
 - (1) in accordance with clause 7.6 (*Necessary Consents*), clause 8 (*Intellectual Property*) or clause 1.27 (*Claims Handling*) of the Site M&O Contract;
 - (2) in accordance with the Dispute Resolution Procedure;
 - (3) in any attempt to commence judicial review proceedings against the Authority in connection with the Site M&O Contract;
 - (4) to challenge any threatened or actual revocation of the Nuclear Site Licence or any other regulatory permit or consent which is essential to the SLC's ability to operate the Site or carry out the Commercial Operations Tasks in accordance with Law; or
 - (5) to apply for, resist or join in an injunction which the SLC, acting reasonably, considers urgent and necessary to the SLC's performance of its obligations to the Authority;
- (O) cause or permit the SLC to create or acquire any subsidiary or dispose of any shareholding in a subsidiary or make or have any investment in any other entity, except for the deposit of cash with a bank as permitted by the Site M&O Contract;
- (P) save in respect of borrowings under an Approved Working Capital Facility cause or permit the SLC to incur any liability or financial indebtedness except as permitted by the Site M&O Contract;
- (Q) cause or permit the SLC to make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than the deposit of cash with a financial institution or office of the Paymaster General as permitted by the Site M&O Contract);
- (R) cause or permit the SLC to enter into any finance or operating leases;
- (S) notwithstanding the Permitted Activities set out in the Site M&O Contract, cause or permit the SLC to enter into any Customer Contract or Subcontract where a disproportionate element of liability, cost or benefit is likely to crystallise after the expiry of the then current unexpired Term of this Agreement;
- (T) cause or permit the SLC to make any payments to the PBO or to any of its Affiliates;

- (1) in excess of those set out in Subcontracts specifically approved by the Authority pursuant to clause 2.8 (*Subcontracting / Procurement*) of the Site M&O Contract;
 - (2) unless pursuant to clauses 6.12.6 (*Payments to Parent*) and 6.13 (*Funding Limits*) of the Site M&O Contract; or
 - (3) unless as agreed under an Advance Agreement;
- (U) intentionally cause or permit the SLC to take any action or omit to take any action that would increase the premiums on the Authority's Insurances or the insurances or which voids or vitiates such Authority Insurances or insurances;
- (V) undertake hedging activities.
- 4.1.2 For the purposes of Clause 4.1.1 (*Restrictions on PBO*), other than where the Authority has expressly given or withheld its consent in writing, the SLC shall be deemed to have the prior written consent of the Authority to carry out any of the activities in Clauses 4.1.1(A) to 4.1.1(V) (*Restrictions on PBO*) to the extent the relevant activity is expressly:
- (A) set out in the LTP;
 - (B) contained in a Subcontract or Customer Contract which is specifically approved by the Authority. For the avoidance of doubt and notwithstanding any other provision of this Agreement, any Subcontract or Customer Contract which enables the SLC to do any of the matters set out in Clause 6.4 of the Site M&O Contract (*Other Financial Restrictions*) requires the approval of the Authority notwithstanding the Permitted Activities;
 - (C) contained in an Internal Procedure approved by the Authority in accordance with Clause 2.9.4 (*Contractor's Internal Procedures*) of the Site M&O Contract;
 - (D) save in the case of Clause 4.1.1(S), a Permitted Activity; or
 - (E) in the case of Clause 4.1.1(H), permitted by Clause 7.1.1(B) of the Site M&O Contract (*Right to use Authority Assets*);
 - (F) permitted pursuant to Clauses 6.12 (*Invoicing and Payment*) and 6.13 (*Funding Limits*) of the Site M&O Contract;
 - (G) required as a term of an Approved Working Capital Facility.
- 4.1.3 The PBO hereby undertakes that, during the Transition Period, it shall procure that, notwithstanding the provisions of the Agreed Memorandum and Articles of Association, the PBO and SLC will comply with the terms of the Transition Agreement.

4.2 Change in Control

The PBO shall notify the Authority immediately of any proposed Change in Control or of any proposed Relevant Partnering Arrangement. The Authority shall be entitled to terminate this Agreement pursuant to Clause 12 (*Termination*) if the PBO is subject to a Change in Control or enters into a Relevant Partnering Arrangement without first obtaining the prior written consent of the Authority.

4.3 PBO Undertaking

The PBO undertakes:

- 4.3.1 save as otherwise provided in this Agreement, not to transfer, dispose of, charge or otherwise encumber all or any part of the Shares or any interest therein;
- 4.3.2 not to exert or attempt to exert any direct influence over the SLC's activities or obligations arising under or relating to the NIA 1965 or the SLC's nuclear site licence conditions other than by the Nominated Staff acting as officers of the SLC, whose influence is designed to improve the SLC's performance of and compliance with the terms of the Site M&O Contract; and
- 4.3.3 not to do or omit to do anything which may adversely affect the SLC's ability to comply with the obligations of its nuclear site licence or any other licence, authorisation, permit or consent or fulfil any Regulatory Requirement.

4.4 The PBO hereby agrees to comply with any reasonable requests of the Authority to amend or procure the amendment of the articles of association of the SLC, or any of their respective wholly owned subsidiaries so that such articles reflect and are consistent with this Clause 4 (*Governance*) and with any Regulatory Requirements.

4.5 The PBO hereby agrees to use all reasonable endeavours to assist the SLC in complying with its obligations under Clause 6 (*Finance*) of the Site M&O Contract to include, without limitation, the provision of a guarantee of the SLC's obligations under any Approved Working Capital Facility for so long as the PBO holds the Shares.

4.6 The PBO shall comply with the provisions of Schedule 13 (*Reporting Schedule*).

5. RETRANSFER OF SHARES IN SLC

The PBO hereby undertakes that immediately prior to expiry or earlier termination of this Agreement (or if directed pursuant to a nuclear transfer scheme made under Section 41 of the Energy Act (*Recovery of property from private ownership*)), the PBO will transfer all of its Shares in the SLC to the Authority (or the Authority's nominee or the transferee pursuant to the nuclear transfer scheme) for a consideration of £1 with Full Title Guarantee free from any claim, option, charge, lien, equity, encumbrance, rights of pre-emption or other Third Party rights (other than the rights of the Authority).

6. PUT AND CALL OPTION

6.1 Put Option

6.1.1 In the event that either the Authority or the SLC terminates the Site M&O Contract, the PBO shall have an irrevocable and unconditional right to require the

Authority to purchase all (and not only some) of their holding of Shares in accordance with this Clause 6.1 (*Put Option*) for a consideration of £1.

- 6.1.2 The Put Option may be exercised by the PBO by serving a notice in writing ("**Put Option Notice**") on the Authority of its intention to exercise the Put Option pursuant to this Clause 6.1 (*Put Option*), which Put Option Notice must be served no later than seven (7) Working Days prior to the date of termination of the Site M&O Contract (or in circumstances where the Site M&O Contract is terminated on less than eight (8) Working Days' notice, no later than two (2) Working Days following such termination).
- 6.1.3 The PBO and the Authority shall be obliged to complete the transfer of the Shares to the Authority on the date of termination of the Site M&O Contract by executing a share transfer form in favour of the Authority and delivering to the Authority the share certificates for the Shares or a letter fully indemnifying the Authority against the consequences of the PBO's failure to deliver such share certificates to the Authority.
- 6.1.4 The address for the service of the Put Option Notice under this Clause 6.1 (*Put Option*) shall be the address of the Authority set out in the Site M&O Contract or such other addresses as shall from time to time be notified in writing by the Authority to the PBO.
- 6.2 If the PBO seeks to exercise the Put Option under Clause 6.1 (*Put Option*) at the same time as the Authority issues its Call Option under Clause 6.3 (*Call Option*) then, subject to the provisions of Clause 6.3.6 below, the provisions of Clause 6.3 (*Call Option*) shall prevail.

6.3 **Call Option**

- 6.3.1 The Authority shall have an irrevocable and unconditional right to require the PBO to transfer all (and not some only) of its holding of Shares to the Authority (or the Authority's nominee) in accordance with this Clause 6.3 (*Call Option*) for £1 ("**Call Option**").
- 6.3.2 The Call Option may be exercised by the Authority by serving notice in writing ("**Call Option Notice**") on the PBO of its intention to exercise the Call Option pursuant to this Clause 6.3 (*Call Option*).
- 6.3.3 The Call Option may be exercised by the Authority:
- (A) no later than two (2) Working Days prior to the date of termination, for any reason, of the Site M&O Contract under Clause 12 (*Termination*) of the Site M&O Contract;
 - (B) no later than two (2) Working Days prior to the date of termination of this Agreement pursuant to Clause 12.4 (*Insolvency*), Clause 12.5 (*Termination or Remedy for PBO*) or 12.9 (*Termination for Long Term Force Majeure*);
 - (C) within seven (7) Working Days (or such longer period as the Authority, with sole discretion, determines) of the date of Change in Control of the PBO or the PBO's entry into a Relevant Partnering Arrangement unless the Authority has given its prior written consent,

- (D) on giving reasonable notice to the PBO, such notice not being a period of less than twelve (12) Months (the "**Termination Notice Period**") of the Authority's termination of this Agreement for convenience pursuant to Clause 12.8 (*Termination for Convenience*);
- (E) within twelve (12) months (or such longer period as the Authority, with sole discretion, determines) of a PBO Default occurring pursuant to Clause 12.2.1(J) (*PBO Default*); and/or
- (F) no later than two (2) Working Days following an undisputed notice of Threatened Insolvency.

6.3.4 The PBO shall be obliged to complete the transfer of the Shares to the Authority:

- (A) on the date of termination of this Agreement in the case of Clause 6.3.3(A) or 6.3.3(B) (*Timing of exercise of Call Option*); or
- (B) within two (2) Working Days of the date of the Call Option Notice in the case of Clauses 6.3.3(C) and 6.3.3(E) and (F) (*Timing of exercise of Call Option*); or
- (C) within two (2) Working Days of the date of the end of the Termination Notice Period in the case of Clause 6.3.3(D) (*Timing of exercise of Call Option*),

by executing a share transfer form in favour of the Authority and delivering to the Authority the share certificates for the Shares or a letter fully indemnifying the Authority against the consequences of the PBO's failure to deliver such share certificates to the Authority.

6.3.5 The address for the service of the Call Option Notice under this Clause 6 (*Put and Call Option*) shall be the address of the PBO set out in this Agreement or such other addresses as shall from time to time be notified in writing by the PBO to the Authority.

6.3.6 If the PBO is prevented by Law from or the directors would incur a personal liability in relation to the PBO transferring all of its holding of shares to the Authority's nominee pursuant to Clause 6.3.1 (*Call Option*) above, the provisions of Clause 6.1 (*Put Option*) above shall prevail.

6A. REGULARITY, PROPRIETY, VALUE FOR MONEY AND MANAGING PUBLIC MONEY

The Contractor shall procure that the board of directors of the Contractor and Nominated Staff have within a period of twenty (20) Working Days read and confirmed their understanding in writing of the financial environment within which the Authority, as a Non Departmental Public Body, operates, as detailed in the documents attached as Schedule 9 Part 1 (Managing Public Money) and Schedule 9 (Part 2) (Regularity, Propriety and Value for Money).

7. INDEMNITIES

7.1 Not Used

7.2 **General Indemnity**

7.2.1 The PBO hereby indemnifies the Authority against all liabilities, losses, costs and expenses to the extent they arise in relation to the period from the Commencement Date until the date of Termination or expiry of this Agreement (without prejudice to the date such liabilities, losses, costs and expenses crystallise) directly or indirectly as a result of:

- (A) the termination of the employment of any of the Nominated Staff (or their replacements) from the PBO or a Relevant Affiliate;
- (B) the negligence or wilful default of the Nominated Staff;
- (C) the negligence or wilful default of the PAIS Teams;
- (D) the voiding or invalidation of any Authority Insurance pursuant to any negligence, wilful default, or failure to comply with Clause 11 (*Indemnity, Liability and Insurance*) of the Site M&O Contract;
- (E) any negligent action or inaction or wilful default of the SLC, the PBO or Serco including their representatives in relation to the Site M&O Contract and/or this Agreement; or
- (F) the PBO or Serco causing the Authority to infringe the IP of a Third Party.

7.2.2 **Defective Performance**

- (A) Without prejudice to Clause 7.2.2(B), if the SLC has informed the Authority pursuant to clause 2.13.3 of the Site M&O Contract that the Contractor (or any of its Subcontractors) has not carried out a Task or Tasks to the standard required by clause 2 (Contractor's Obligations) of the Site M&O Contract and/or the relevant Performance Agreement Form and it has been agreed pursuant to clause 2.13.4 of the Site M&O Contract that the cost of remedying such defective performance will exceed 43(2) Commercial the PBO hereby indemnifies the Authority in respect of each and every defect for those costs of remedying such defective performance in excess of 43(2) Commercial
43(2) Commercial.
- (B) If the SLC fails to inform the Authority pursuant to clause 2.13.3 of the Site M&O Contract that the Contractor (or any of its Subcontractors) has not carried out a Task or Tasks to the standard required by clause 2 (Contractor's Obligations) of the Site M&O Contract and/or the relevant Performance Agreement Form, the PBO hereby indemnifies the Authority in respect of each and every defect that the SLC has failed to notify to the Authority for all costs of remedying such defective performance.

The SLC shall be responsible for liaising with other site licence companies to ensure co-operation and the performance of obligations under the Inter-SLC Services Contracts. Without prejudice to that obligation, the Authority shall consider, acting reasonably, whether when claiming under Clause 7.2.2 above the defective performance is the fault of the SLC or whether it is attributable in

whole or in part to the acts or omissions of another site licence company for which the Authority has designated responsibility under the Energy Act.

7.2.3 Major Incidents

The PBO hereby indemnifies the Authority against an amount equal to any demand made by the SLC on the PBO pursuant to Clause 6.12.5A (Major Incidents) of the Site M&O Contract.

7.2.4 Not Used

7.2.5 Demand under Clause 7.2.1 (General Indemnity), Clause 7.2.2 (Defective Performance) and Clause 7.2.3 (Major Incidents)

The PBO hereby agrees that within ten (10) Calendar Days of receipt of a Demand from the Authority setting out the amount claimed by the Authority and the basis of such claim pursuant to Clauses 7.2.1, 7.2.2 and 7.2.3 (*General Indemnity, Defective Performance and Major Incidents*) or, if later, within ten (10) Calendar Days of resolution of a dispute directly relating to such Demand pursuant to the Dispute Resolution Procedure, (if the determination arising from the Dispute Resolution Procedure is that such amount or, as applicable, any other amount, is payable), the PBO will pay an amount equal to such Demand (or the other amount determined in accordance with the Dispute Resolution Procedure, if relevant) to the Authority.

7.2.6 Limit on General Indemnity, Defective Performance and Major Incidents

In relation to each Contract Year, on a claims arising basis, the PBO's liability under the indemnities given under Clauses 7.2.1, 7.2.2 and 7.2.3 (*General Indemnity, Defective Performance and Major Incidents*) and Clause 7.2.5 (Demand), taken together with any payment made directly in relation to that Contract Year by the SLC to the Authority pursuant to Clause 6.12.5(A) (*Major Incidents*) of the Site M&O Contract and the amount of any Costs that become Disallowable Costs by operation of Clause 6.2 (*Determination of Funding Limits and Compliance with Funding Limits*) and/or Paragraph 6.5 (*Disallowable Cost*) of Part 3 (Change) of Schedule 2 (Programme Management and Change Procedure) of the Site M&O Contract will not exceed an amount equal to:

- (A) For the first Contract Year ~~43(2) Commercial~~ pounds);
- (B) For each succeeding Contract Year until Renewal in 2013, ~~43(2) Commercial~~);
- (C) Following Renewal in 2013, an amount to be agreed in writing between the Authority and the PBO for each Contract Year pursuant to Clause 2 (*Term*). Where, in any year in which the PBO remains liable pursuant to Clause 7.2.3, claims arise in relation to more than one Contract Year, the limit on the PBO's liability shall be a figure equal to the higher of the two (or more) figures for the Contract Years in relation to which claims have arisen.

7.2.7 The indemnity given under Clauses 7.2.1, 7.2.2 and 7.2.3 above (*General Indemnity, Defective Performance and Major Incidents*) excludes any liabilities,

losses, costs and expenses arising pursuant to any liability of the SLC under the NIA 1965 (as amended).

43(2) Commercial



7.2.8 Disallowable Costs and Year End Sum Indemnity

The PBO hereby indemnifies the Authority against all Disallowable Costs incurred in any Contract Year, against any Costs arising out of reference of a dispute to the Dispute Resolution Procedure pursuant to Clause 13 (*Dispute Management*) of the Site M&O Contract which the Dispute Resolution Process determines to be payable by the PBO, and against any amount which is determined pursuant to Clause 6 (*Finance*) of the Site M&O Contract to be payable by the PBO to the Authority.

7.2.9 Demand for Disallowable Costs

The PBO undertakes to pay to the Authority within thirty (30) Calendar Days of receipt of a Demand setting out the amount claimed by the Authority and the basis of such claim from the Authority pursuant to Clause 7.2.8 above (*Disallowable Costs and Year End Sum Indemnity*) or, if later, within ten (10) Calendar Days of resolution of a dispute directly relating to such Demand pursuant to the Dispute Resolution Procedure (if the determination arising from the Dispute Resolution Procedure is that such amount or, as applicable, any other amount is payable) an amount equal to the amount specified in such Demand (or the other amount determined in accordance with the Dispute Resolution Procedure, if relevant).

7.2.10 No Limit on Indemnity for Disallowable Costs

The indemnity given under Clause 7.2.8 above (*Disallowable Cost and Year End Sum Indemnity*) is not limited. No payments by the PBO made under Clause 7.2.8 above (*Disallowable Costs and Year End Sum Indemnity*) will attrite the limit on the PBO's liability under Clause 7.2.1, 7.2.2 and 7.2.3 (*General Indemnity, Defective Performance and Major Incidents*) set out in Clause 7.2.6 above (*Limit on General Indemnity, Defective Performance and Major Incidents*).

7.2.11 No Double Counting

The Authority hereby agrees to reduce the amount of any Demand made pursuant to Clause 7.2.1, 7.2.2 and 7.2.3 above (*General Indemnity, Defective Performance and Major Incidents*) by the amount of any Incentive Fee specifically withheld or not awarded by the Authority in accordance with Part 5 (*Use of Performance Based Incentives*) of Schedule 6 (*Finance*) of the Site M&O Contract in respect of the same action, inaction or wilful default which gave rise both to such withholding or non award of Incentive Fee and such Demand.

7.2.12 Survival of Clauses 7.2.1, 7.2.2, 7.2.3 and 7.2.8

The indemnities given under Clauses 7.2.1, 7.2.2, 7.2.3 (*General Indemnity, Defective Performance and Major Incidents*) and 7.2.8 (*Disallowable Costs and Year End Sum Indemnity*) shall remain in force until the date six (6) years after the last day of the final Contract Year.

7.2.13 **No Claim for Innovation**

The Authority will not make a claim against the PBO under Clause 7.2.1(B), 7.2.1(C) or 7.2.1(E) (*General Indemnity*) or 7.2.2 (*Defective Performance*), if, acting reasonably, it is satisfied that the liabilities, losses, costs and expenses otherwise the subject of the claim or the Defective Performance have arisen from the PBO's introduction of innovation which it was reasonable to believe would improve the SLC's performance and not as a result of poor performance.

7.3 **Authority Indemnity**

Guidance

If any party otherwise entitled to be an Indemnified Party wishes to be indemnified, the PBO needs to submit to the Authority a Claims Handling and Insurance Agreement (in the form attached), duly executed by it and the prospective Indemnified Party and then procure compliance with its terms.

- 7.3.1 Subject to the PBO's compliance with Clause 8 (*Claims Handling*) and subject to Clause 7.3.2 (*Exception to Authority Indemnity*) and to Clause 7.2 (*General Indemnity*), the Authority hereby indemnifies the PBO for itself and on behalf of and for the benefit of the Indemnified Parties against all liabilities, losses, costs and expenses incurred, howsoever caused, which crystallise following the Commencement Date and which relate to any activity or event in respect of the SLC which occurred prior to the Share Transfer Date.
- 7.3.2 The Authority shall not indemnify the PBO for itself or for the benefit of any Indemnified Parties for any loss of opportunity to earn Incentive Fee.
- 7.3.3 Subject to the PBO's compliance with Clause 8 (*Claims Handling*), the Authority hereby indemnifies the PBO for itself and on behalf of and for the benefit of the Indemnified Parties against any liabilities, losses, costs and expenses (not including the PBO's or the Indemnified Parties' legal costs) to make payment pursuant to a court judgement (including, for the avoidance of doubt, any order for the Claimant's costs) made against the PBO or an Indemnified Party in relation to the actions or inactions of the SLC or British Nuclear Group Limited in the period prior to the Share Transfer Date to the extent that such judgement, in the reasonable opinion of the Authority, does not demonstrate negligence or wilful default of the PBO, the Nominated Staff and/or any of the Indemnified Parties.
- 7.3.4 Subject to the PBO's compliance with Clause 8 (*Claims Handling*), the Authority hereby indemnifies the PBO for itself and on behalf of and for the benefit of the Indemnified Parties against reasonable legal costs incurred in the course of defending claims of the type described in Clause 7.3.3 above.
- 7.3.5 Subject to the PBO's compliance with Clause 8 (*Claims Handling*), where the Authority, acting reasonably, believes that a Third Party Claim has been brought solely because of the PBO's entry into and performance of its obligations under this Agreement, and the PBO successfully defends such Third Party Claim and/or such Third Party Claim does not proceed against the PBO, the Authority shall pay to the PBO such reasonable costs arising out of such Third Party Claim (including, for the avoidance of doubt, reimbursement to the PBO of any reasonable SLC

costs arising out of such Third Party Claim, treated as Disallowable and paid by the PBO to the SLC under the Site M&O Contracts).

7.3.6 Subject to the compliance of the PBO with the provisions of Clause 8 (Claims Handling) and the compliance of each relevant Indemnified Party with the Claims Handling and Insurance Agreement it has executed the Authority hereby indemnifies the PBO for itself and on behalf of and for the benefit of the Indemnified Parties against any liabilities, losses, costs and expenses in excess of the Authority Indemnity Threshold for the relevant Contract Year in which such liabilities, losses, costs and expenses arise (not including the PBO's and the Indemnified Parties' legal costs) arising out of Third Party Claims (including, for the avoidance of doubt, any order for the Claimant's costs) against the PBO and/or any of the Indemnified Parties which Third Party Claims have been made jointly against the SLC and where the Authority, acting reasonably, does not consider that the Third Party Claim has been brought as a result of the negligence or wilful default of the PBO and/or any of the Indemnified Parties.

7.3.6A The Authority will not seek to defend any claim by the PBO for and on behalf of an Indemnified Party under this Clause 7.3 (Authority Indemnity) on the basis that the loss is suffered by an Indemnified Party rather than the PBO.

7.3.7 Subject to the compliance of the PBO with the provisions of Clause 8 (Claims Handling) and the compliance of each relevant Indemnified Party with the Claims Handling and Insurance Agreement the Authority hereby indemnifies the PBO for itself and on behalf of and for the benefit of the Indemnified Parties against their respective reasonable legal costs in excess of the Authority Indemnity Threshold for the relevant Contract Year in which the costs arise incurred in the course of defending claims of the type described in Clause 7.3.6 above.

7.3.8 **Nuclear Indemnity**

Subject to Clause 7.3.9 (*Conditions of Nuclear Indemnity*) below, the Authority hereby indemnifies the PBO for itself and on behalf of and for the benefit of each Indemnified Party against all liabilities, losses, costs and expenses arising out of any claim by a Third Party for:

- (A) loss of life or personal injury;
- (B) loss of or damage to property;

and each of the following to the extent that either (i) a liability is determined by the law of the competent court to exist, or (ii) an amount or other relief is provided for in a settlement, the terms of which have been agreed to by the Authority:

- (C) economic loss arising from the loss or damage referred to in Clause 7.3.8(A) or Clause 7.3.8(B) above insofar as not included in those sub-Clauses;
- (D) the costs of measures of reinstatement of impaired environment if such measures have been taken or are to be taken, and insofar as not included in Clause 7.3.8(B) above;

- (E) loss of income deriving from a direct economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment, and insofar as not included in Clause 7.3.8(B) above;
- (F) the cost of preventive measures, and further loss or damage caused by such measures,

incurred by the PBO or Indemnified Party in any Contract Year in excess of the Nuclear Indemnity Threshold (being an annual aggregate threshold) arising as a direct result of a Nuclear Incident, which liabilities, losses, costs and expenses shall not include:

- (i) loss of opportunity, loss of revenue or loss of profit of the PBO and the Indemnified Parties; or
- (ii) any diminution in the value of any shareholding held by the PBO or the Indemnified Parties

provided that where the Nuclear Incident arises as a result of any act of the PBO or any Indemnified Party, or any employee, secondee or duly authorised agent engaged by the PBO or any of the Indemnified Parties (excluding employees and agents engaged by the SLC) thereof, committed with the intention of causing harm to any person or property or with reckless disregard for the consequences of his act, the Nuclear Indemnity Threshold shall be increased to an amount equal to:

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PLUS

Earned Profit (minus any UK corporation tax liability of the SLC and/or the PBO) for the Contract Year in relation to which the claim arises,

LESS

any amount for which the PBO is liable under Clause 7.2.6 (*Limit on General Indemnity, Defective Performance and Major Incidents*) above for the Contract Year in relation to which the claim arises.

Where a claim arises in relation to more than one Contract Year the largest relevant amounts resulting from the calculation described above shall be used.

- 7.3.8A Where the damage or loss is caused jointly by a Nuclear Incident and by an incident other than a Nuclear Incident, that part of the damage or loss which is caused by such other incident shall, to the extent that it is not reasonably separable from the damage or loss caused by the Nuclear Incident, be considered to be damage caused by the Nuclear Incident.

7.3.9 **Conditions of Nuclear Indemnity**

- (A) The PBO shall comply with the claims handling provisions set out in Clause 8 (*Claims Handling*), but in any event, pursuant to Clause 8.4

(*Authority's Handling*), the Authority shall have conduct of any claim brought by a Third Party against the PBO and/or Indemnified Parties for which the PBO and/or Indemnified Parties are indemnified pursuant to Clause 7.3.8 (*Nuclear Indemnity*), unless otherwise agreed between the Parties.

- (B) The PBO shall procure that any party which wishes to be an Indemnified Party will comply with the Claims Handling and Insurance Agreement.
- (C) The PBO and each relevant Indemnified Party shall use its respective reasonable endeavours to mitigate the losses indemnified under Clause 7.3.8 above (*Nuclear Indemnity*) and will pursue to the extent determined by the Authority all legal remedies against any relevant third parties against whom the PBO or relevant Indemnified Party has any right of recovery (including any such rights which may arise under the Atomic Energy Damages Act (also known as the Price-Anderson Act, a federal law of the United States) and any other legislation in all relevant jurisdictions) in relation to the Nuclear Incident prior to making any claim against the Authority pursuant to Clause 7.3.8 (*Nuclear Indemnity*) above. Where the PBO or a relevant Indemnified Party considers that it has mitigated the indemnified losses to the extent practicable, the PBO or a relevant Indemnified Party shall seek the written consent of the Authority to stop any relevant mitigation and the Authority shall not unreasonably withhold its consent.
- (D) Where any costs to be incurred undertaking mitigation or pursuing legal remedies are approved in advance of being incurred and in writing by the Authority, the Authority shall indemnify the PBO and/or each relevant Indemnified Party for such costs. Where the Authority does not indemnify the PBO or a relevant Indemnified Party for costs of mitigation or pursuing legal remedies the PBO and relevant Indemnified Parties shall not be obliged to comply with Clause 7.3.9(C) above.
- (E) The Authority agrees that it will not defend any claim brought by PBO under the indemnity set out in Clause 7.3.8 (*Nuclear Indemnity*) on the basis that the liabilities, losses, costs and/or expenses forming the subject of the claim were suffered or incurred by an Indemnified Party and not by the PBO.
- (F) Where a judgement is made against or settlement reached with the PBO and/or Indemnified Parties before the PBO and/or Indemnified Parties are able to claim under the nuclear indemnity given in Clause 7.3.8 (*Nuclear Indemnity*) above, the Authority shall reimburse to the PBO and/or Indemnified Parties an amount equal to that judgement or settlement provided that the PBO and the relevant Indemnified Parties shall:
 - (1) continue to observe their obligations pursuant to Clause 7.3.9(C) above and mitigate the losses indemnified,;
 - (2) account to the Authority for all proceeds recovered from Third Parties as a result of mitigating the losses indemnified in accordance with Clause 7.3.9(C) above; and

- (3) indemnify the Authority in respect of all such amounts pursuant to Clause 7.3.9(F)(2) above.
- (G) Where pursuant to Clause 7.3.9(F)(2) above the PBO and/or relevant Indemnified Parties have accounted to the Authority for proceeds which exceed all of the Authority's liabilities, losses, costs and expenses arising out of the Nuclear Incident ("**Recovered Profit**") the Authority shall reimburse to the PBO and/or relevant Indemnified Parties an amount from the Recovered Profit which is equal to the Nuclear Indemnity Threshold suffered by the PBO or relevant Indemnified Parties, other than where the Nuclear Incident arose as a result of any act of the PBO or any Indemnified Party, or any employee, secondee or duly authorised agent engaged by the PBO or any of the Indemnified Parties (excluding employees and agents engaged by the SLC) thereof, committed with the intention of causing harm to any person or property or with reckless disregard for the consequences of his act.

7.3.10 Survival of Nuclear Indemnity

The indemnity set out in Clause 7.3.8 (*Nuclear Indemnity*) shall remain in force until ~~31(2) Commercial~~.

7.3.11 Availability of Nuclear Insurance

If the Authority, acting reasonably, considers that insurance is available which will cover some or all of the potential losses under the indemnity given in Clause 7.3.8 (*Nuclear Indemnity*) above, and that such insurance provides value for money, the PBO and each Indemnified Party will co-operate fully with the Authority's reasonable instructions in relation to the procuring of such insurance, to be procured at the Authority's expense, and will comply with the terms of all such policies as are notified to it. The PBO shall procure that the Indemnified Parties are notified of all such insurance policies and that they comply with their terms.

7.3.12 Survival of Authority Indemnities

The indemnities given in this Clause 7.3 (*Authority Indemnity*) above (with the exception of the Nuclear Indemnity given in Clause 7.3.8 (*Nuclear Indemnity*) above, which will survive in accordance with the terms of Clause 7.3.10 (*Survival of Nuclear Indemnity*)), will remain in force until the date 6 (six) years after the last day of the final Contract Year.

7.3.13 Operation of Limit on General Indemnity, Defective Performance and Major Incident, Authority Indemnity Threshold and Nuclear Indemnity Threshold

Any loss suffered or amounts paid to the Authority by the PBO in any Contract Year under:

- (A) the Limit on General Indemnity, Defective Performance and Major Incident under Clauses 7.2.1, 7.2.2 and/or 7.2.3;
- (B) the Authority Indemnity Threshold; and/or

(C) the Nuclear Indemnity Threshold,

shall attrite (on a claims arising basis) the Limit on General Indemnity, Defective Performance and Major Incident, the Authority Indemnity Threshold and the Nuclear Indemnity Threshold (or any available balance thereof) for the remainder of the relevant Contract Year.

7.4 **Amendment to NIA 1965**

If there is any extension and/or increase of the liability and/or obligation of the SLC to any person pursuant to any amendment made to the provisions of the NIA 1965, the Authority shall ensure that adequate mechanisms are made available to the SLC to ensure that, so far as possible by funding means, the SLC is able to meet any such liabilities or obligations pursuant to the NIA 1965 as amended. If the Authority does not ensure that such adequate mechanisms are available, and the SLC is unable to meet liabilities or obligations arising under an amended NIA 1965, the PBO shall be entitled to serve notice on the Authority of its termination of this Agreement for Authority Default, in accordance with Clause 12 (*Termination*) below.

7.5 **Sole Remedy**

Without prejudice to the Parties' express rights as set out in this Agreement or, in the case of the Authority, as set out in the Site M&O Contract, save in respect of any right to injunctive relief or specific performance and save in respect of and without prejudice to the Authority's rights to withhold Incentive Fee or any other profit in accordance with the terms of the relevant Alternative Remuneration Task, the PBO's indemnities under Clause 7.2 (General Indemnity) of this Agreement shall be the sole remedy of the Authority against the PBO and, save in respect of any right to injunctive relief or specific performance, the sole remedy of the PBO against the Authority is to claim under the indemnity given in Clause 7.3 (Authority Indemnities) or, in the event of termination, under Clause 12.8A (Reasonable Costs on Termination Costs) in accordance with the terms of those Clauses.

8. **CLAIMS HANDLING**

Guidance

Whenever this Clause 8 refers to a party's right to have conduct of a claim, this means that the relevant party or its nominee – for example, its insurers – have conduct.

8.1 **Third Party Claims**

(A) As soon as reasonably practicable after any of the SLC, the Authority or the PBO become aware of a claim by a Third Party (or any matter likely to give rise to any claims by Third Parties) pursuant to which any of the SLC, the Authority or the PBO may become liable to another Party to this Agreement and/or the Site M&O Contract or in relation to a Contractor Historical Cost ("**Third Party Claim**"), the SLC, Authority or PBO as applicable shall notify each other Party.

(B) The PBO shall procure that any party which is otherwise entitled to become an Indemnified Party shall enter into a Claims Handling and Insurance Agreement in the form set out in Schedule 10 (Claims Handling and Insurance Agreement) and shall not become an Indemnified Party until the Authority has received a validly executed and binding Claims Handling and Insurance Agreement from such party.

If an Indemnified Party does not comply with the terms of the Claims Handling and Insurance Agreement, it shall cease to be an Indemnified Party.

8.2 Each Party will provide to the other Parties such information concerning the claim or potential claim as the other Parties may reasonably request, within the time frame reasonably requested by the other Parties. So far as possible, such information shall be provided in such a manner as to maintain any applicable legal privilege in relation to such information.

8.3 The Parties will consult each other about which of them may, potentially, have liability in relation to the claim or potential claim and, subject to Clause 8.4 below (*Authority Handling*) and Clause 8.5 below (*PBO Handling*) will seek to agree which Party shall handle the claim or potential claim.

8.4 **Authority's Handling**

If a Third Party Claim is made against the SLC, the Authority, the PBO or any of the Indemnified Parties in respect of which the Authority reasonably believes that the Authority will have liability under the terms of this Agreement and/or the Site M&O Contract for the entire financial effect of that Third Party Claim:

8.4.1 the Authority shall have the right, upon notice to the SLC, the PBO and the relevant Indemnified Party, to have the conduct (or take over the conduct) of all Legal Proceedings in respect of any such Third Party Claim and the SLC and the PBO shall:

- (A) give or cause to be given to the Authority all such assistance as the Authority may reasonably require in resisting any such Third Party Claim and conducting any Legal Proceedings; and
- (B) instruct such solicitors or other professional advisers as the Authority may nominate to act on behalf of the SLC, PBO or relevant Indemnified Party as applicable, but in accordance with the instructions of the Authority,

provided that the Authority shall, if required by the SLC, PBO or relevant Indemnified Party as applicable, notify the Third Parties engaged in the Legal Proceedings that the Authority has conduct of the Legal Proceedings on behalf of the SLC, PBO or relevant Indemnified Party as applicable; and

8.4.2 the Authority shall use reasonable endeavours to keep the SLC, PBO or relevant Indemnified Party notified of the progress of any Legal Proceedings of which it has conduct in accordance with this Clause 8.4 (*Authority's Handling*) and, subject to any overriding public policy considerations, and any urgent timing requirements, shall take account of all reasonable requests of the PBO or relevant Indemnified Party in relation to any matter which may involve loss of reputation or impact on the business of the PBO or relevant Indemnified Party.

8.4.3 The SLC shall comply with all of the instructions of the Authority in relation to such claim or potential claim, except where the Authority notifies the SLC that the provisions of Clause 8.5 (*PBO Handling*) apply. The SLC will comply with the requirements set out in the insurance policies.

8.5 **PBO Handling**

If a Third Party Claim is made against the SLC, the Authority or the PBO in respect of which the Authority reasonably believes that the PBO will have liability under the terms of this Agreement and/or the Site M&O Contract for the entire financial effect of that Third Party Claim:

8.5.1 the PBO, upon notice from the Authority to the PBO and the SLC, shall have conduct of (or take over the conduct of) all Legal Proceedings in respect of any such Third Party Claim and in that connection, the Authority and the SLC shall:

- (A) give or cause to be given to the PBO all such assistance as the PBO may reasonably require in resisting any such Third Party Claim and conducting Legal Proceedings including providing access to records which the Authority (acting reasonably) considers relevant to the Third Party Claim which records were created on or after 1 April 2005; and
- (B) instruct such solicitors or other professional advisers as the PBO may nominate to act on behalf of the Authority or SLC as applicable, but in accordance with the instructions of the PBO,

provided that the PBO shall, if required by the Authority or SLC as applicable, notify the Third Parties engaged in the Legal Proceedings that the PBO has conduct of the Legal Proceedings on behalf of the Authority or SLC as applicable;

8.5.2 the PBO shall keep the Authority and the SLC fully informed of its conduct of any Legal Proceedings, shall consult the Authority on any matter which is or is likely to be material in relation to any Legal Proceedings and shall take account of all reasonable requirements of the Authority in relation to these; and

8.5.3 the PBO shall not:

- (A) pay or make any admission, settlement or compromise of the Third Party Claim the subject of the Legal Proceedings;
- (B) agree to any matter in the conduct of Legal Proceedings which may affect the amount of the liability in connection with such Third Party Claim; or
- (C) make any representation or statement in relation to such Third Party Claim,

without the prior written approval of the Authority, such approval not to be unreasonably withheld or delayed. The Authority will not withhold its approval unless, in its reasonable opinion, the PBO's proposed action would adversely affect any future Legal Proceedings involving the Authority or the SLC or the proposed action is contrary to the public interest or the proposed action would adversely impact on the reputation of the Authority.

8.5.4 Where the PBO takes over the conduct of any Legal Proceedings pursuant to this Clause 8.5 (*PBO Handling*), the PBO shall, subject to Clause 7.4.4 (*Authority Indemnity*), indemnify and keep the Authority and the SLC as applicable indemnified in respect of all claims and costs arising out of its handling of the Third Party Claim.

8.6 **Shared Liability**

If a Third Party Claim is made against the SLC, the Authority, the PBO and/or an Indemnified Party in respect of which the Authority reasonably believes that the Authority and for the PBO and/or the Authority and an Indemnified Party or all the Authority, PBO and an Indemnified Party but not solely the PBO and the Indemnified Party will share liability under the terms of this Agreement and/or the Site M&O Contract for the entire financial effect of that Third Party Claim:

8.6.1 subject to Clause 8.6.2 (*Shared Liability and co-operation of insurers*) below, the Authority shall have the right, upon notice to the SLC, the PBO and/or the relevant Indemnified Party, to have the conduct (or to take over the conduct) of all Legal Proceedings in respect of the whole of any such Third Party Claim and the SLC, the PBO and the relevant Indemnified Party shall:

- (A) give or cause to be given to the Authority all such assistance as the Authority may reasonably require in disputing any such Third Party Claim and conducting Legal Proceedings; and
- (B) instruct such solicitors or other professional advisers as the Authority may nominate to act on behalf of the SLC, PBO and the relevant Indemnified Party as applicable, but in accordance with the instructions of the Authority;

8.6.2 the Authority shall cooperate and shall use reasonable endeavours to procure that its relevant insurers, (if any) cooperate with the relevant insurers of the PBO and the relevant Indemnified Party in relation to the conduct of the Legal Proceedings in respect of the Third Party Claim. If the Authority and its relevant insurers do not agree a course of action with the relevant insurers of the PBO and the relevant Indemnified Party concerning the conduct of the Legal Proceedings in respect of the Third Party Claim then the Authority, acting reasonably, shall determine the course of action and the PBO, the SLC and the relevant Indemnified Party shall comply with the Authority's reasonable instructions in relation thereto and the PBO and the relevant Indemnified Party shall use reasonable endeavours to procure the compliance of its relevant insurers. The Authority shall, if required by the SLC or PBO and the relevant Indemnified Party as applicable, notify the Third Parties engaged in the Legal Proceedings that the Authority has conduct of the Legal Proceedings on behalf of the SLC or PBO and the relevant Indemnified Party as applicable;

8.6.3 the Authority shall keep the SLC, the PBO and the relevant Indemnified Party fully informed of its conduct of any Legal Proceedings and, additional to its obligations under Clause 8.6.2 (*Shared Liability and co-operation of insurers*) above, shall give the PBO and the relevant Indemnified Party the opportunity to comment on any matter which is or is likely to be material in relation to any Legal Proceedings, including the loss of reputation or potential impact on the business of the PBO and the relevant Indemnified Party, and the Authority shall consider any such comments received from the PBO and the relevant Indemnified Party;

8.6.4 if the Authority determines a course of action with which the PBO's and the relevant Indemnified Party's relevant insurers notify the Authority (in writing) that they disagree, and if such course of action results directly in an offer of

settlement of a Third Party Claim being rejected, and if the Authority, acting reasonably, determines that the PBO's and the relevant Indemnified Party's liability to the Authority pursuant to Clause 7 above (*Indemnities*) is increased as a direct result (the "**Increased Liability**") then the PBO's and the relevant Indemnified Party's liability to the Authority pursuant to Clause 7 (*Indemnities*) above shall be reduced by a sum equal to the Increased Liability.

8.7 PBO's rights to defend Legal Proceedings

8.7.1 Where the PBO has made representations to the Authority pursuant to Clause 8.4.2 (*Authority's Handling*) and the Authority chooses not to defend a Third Party Claim which the PBO wishes to defend for reputational reasons or because it may impact on the PBO's business, the Authority, in its sole discretion, (which shall not be capable of challenge by the PBO or the SLC) may agree that the PBO may have control of the Legal Proceedings and the provisions of Clause 8.5 (*PBO Handling*) shall apply.

8.7.2 Where, following the conclusion of any Legal Proceedings under Clause 8.4 (*Authority's Handling*) or Clause 8.6 (*Shared Liability*), the SLC commences any proceedings against the Authority (in accordance with Clause 4.1.1(N) (*Restrictions on PBO*)) and the same or connected issues are raised in such proceedings between the PBO and the Authority, the Authority shall provide information and documents to the PBO in accordance with Clause 27.3 (*Governing Law and Jurisdiction*) of this Agreement.

8.8 Change in Circumstances

If the Authority, acting reasonably, believes that the circumstances relating to the Third Party Claim have changed or are not what the Authority initially believed the relevant circumstances to be, the Authority shall review the Third Party Claim in the light of the changed circumstances and shall determine, acting reasonably, whether the Authority or PBO should instead handle or continue to handle (as the case may be) such Third Party Claim as appropriate and the provisions of Clauses 8.4 (*Authority's Handling*), 8.5 (*PBO Handling*) or 8.6 (*Shared Liability*) shall apply as appropriate.

8.9 Pursuing Claims

8.9.1 If the PBO wishes to procure that the SLC pursues a claim against a Third Party where the Authority agrees that the proceeds of such claim (if any) will belong wholly to the PBO, the PBO may direct the SLC to pursue such claim with the prior written consent of the Authority.

8.9.2 Where the proceeds of any claim subsisting against a Third Party, in the reasonable opinion of the Authority, belong wholly or partly to the SLC and/or the Authority, the Authority shall be entitled to direct the SLC to pursue the relevant claim against the Third Party in the SLC's name or on the Authority's behalf (as applicable). The SLC shall pursue the relevant claim against the Third Party in the manner directed by the Authority.

8.10 Enforcement of Subcontracts

8.10.1 Where the SLC considers that a valid claim for payment under the terms of a performance bond or parent body guarantee subsists or that it is necessary or

desirable for the SLC to commence, initiate or undertake any Legal Proceedings in order to:

- (A) enforce its rights under a performance bond or parent body guarantee; and/or
- (B) enforce its rights, or defend any proceedings brought against it by a counterparty or interested third party, in accordance with the terms of a Subcontract or Series of Subcontracts,

the SLC shall inform the Authority accordingly, and if the Authority so requires, the SLC shall take such action as is directed by the Authority in accordance with Clause 8.9 (*Pursuing Claims*).

8.10.2 If the SLC believes that:

- (A) not enforcing the Subcontract or Series of Subcontracts; or
- (B) a method of enforcing the Subcontract or Series of Subcontracts other than following directions given by the Authority pursuant to Clause 8.9.2 (*Pursuing Claims*),

would be more advantageous for the Authority, the SLC may submit a Notice to the Authority setting out its belief and proposal for any alternative method. The Authority shall consider such Notice and respond in writing within ten (10) Calendar Days of receipt of the SLC's Notice. If the Authority agrees (in its sole discretion) that the proposed alternative method is more advantageous, it shall direct the SLC to carry out such alternative method.

8.11 Apportionment of Proceeds

Where the Authority, acting reasonably has agreed that part of the proceeds of any Third Party Claim resisted by the Authority in accordance with Clause 8.6 (*Shared Liability*) belong to the PBO, the Authority, acting reasonably, shall determine the amount of the PBO's share of such proceeds. If the PBO does not agree with the Authority's determination, it shall be entitled to refer the dispute to the Dispute Resolution Procedure.

8.12 IP Claims

This Clause 8 (*Claims Handling*) is subject to the provisions of Clause 14 (*Intellectual Property*) of this Agreement and Clause 8 (*Intellectual Property*) of the Site M&O Contract.

8.13 Existing Claims as at the Commencement Date

- 8.13.1 Within such time frame as may be notified to the SLC by the Authority, acting reasonably, the SLC will provide to the Authority all information and documents that the Authority requires relating to claims threatened or made against the SLC as at the Commencement Date ("**Existing Claims**").
- 8.13.2 Within ninety (90) Calendar Days of receipt of information which the Authority considers to be complete, the Authority shall notify the SLC of its claims handling strategy, in particular which claims (if any) it will take over the conduct

of in accordance with the Authority's rights set out above in this Clause 8 (*Claims Handling*).

- 8.13.3 Until receipt of the notification referred to in Clause 8.13.2 (*Existing Claims as at the Commencement Date*), the SLC shall defend or pursue (as the case may be) Existing Claims in the manner that it determines most appropriate in the circumstances.

9. DEFAULT INTEREST

If any Party fails to pay any amount due and payable by it in accordance with this Agreement, such Party shall pay to the Party to whom the same was due, compound interest on such overdue amount, from the due date until the date of actual payment at a rate of three per cent (3%) above the base rate of Lloyds TSB Bank plc. This shall constitute a substantial remedy for the purposes of the Housing Grants, Construction and Regeneration Act 1996.

10. PBO AND INDEMNIFIED PARTIES INSURANCE

10.1 The PBO shall:

- 10.1.1 have or have the benefit of the Parent Required Insurances; and
- 10.1.2 procure that the Indemnified Parties have or have the benefit of the Indemnified Parties Required Insurances,

as directed by the Authority at the Date of Share Transfer and the PBO shall maintain such Parent Required Insurances, and shall procure that the Indemnified Parties maintain the Indemnified Parties Required Insurances, at all times during the Term and until the date on which the Authority's liability to the PBO and the Indemnified Parties pursuant to Clause 7.3 (*Authority Indemnity*) above expires or the PBO's liability to the Authority pursuant to Clause 7 (*Liability*) above expires (whichever is the later date).

10.2 The PBO shall:

- 10.2.1 procure that the Parent Required Insurances and Indemnified Parties Required Insurances:
- (A) include an indemnity to principals clause providing that the Authority is indemnified in respect of any claims against it arising out of any acts or omissions of the PBO and/or of the Nominated Staff; and
 - (B) are arranged with an insurer whose rating is not less than Standard and Poor's BBB+ or equivalent;
- 10.2.2 provide, or procure the provision, to the Authority on request copies of all Parent Required Insurances and Indemnified Parties Required Insurances (and all other relevant information reasonably requested by the Authority) together with such evidence as the Authority may reasonably require that all premiums payable in respect of the Parent Required Insurances have been paid and that the same are in full force and effect as required under this Agreement.

- 10.2.3 Subject to Clauses 10.2.4, 10.2.5 and 10.2.6, the Authority shall reimburse the PBO for the benefit of Washington Group International Inc (Ohio) for that proportion of Washington Group International Inc (Ohio)'s general public liability and professional indemnity insurance premiums that the Authority considers reasonable when allocated on the basis of Washington Group International Inc (Ohio)'s involvement with the SLC compared to its involvement with its other Affiliates.
- 10.2.4 To enable the Authority to determine the proportion of the premium to be reimbursed by the Authority, the PBO shall procure that Washington Group International Inc (Ohio) provides to the Authority evidence of such insurance and sufficient information on premiums to enable the Authority to audit premium allocation.
- 10.2.5 If:
- (A) evidence of such insurance is not provided; and/or
 - (B) in the Authority's opinion (acting reasonably), sufficient information on premiums to enable the Authority to carry out an audit on premiums is not provided,
- the Authority shall be entitled to withhold reimbursement.
- 10.2.6 If, in the Authority's opinion (acting reasonably), Washington Group International Inc (Ohio)'s general public liability and professional indemnity insurance does not provide value for money, the Authority shall be entitled to ask the PBO to procure, and the PBO shall procure, that Washington Group International Inc (Ohio)'s procure public liability and professional indemnity insurance on terms that, in the Authority's opinion (acting reasonably) provide value for money.

10.3 Authority's Right to Insure

- 10.3.1 If the PBO fails to obtain or maintain or procure the obtaining or maintaining of the Parent Required Insurances or to comply or procure compliance with the provisions of any insurance policy, including any provision relating to the payment of premiums, the Authority may provide the PBO with notice in writing advising the PBO of such failure and requiring (where rectification is possible) rectification of such default.
- 10.3.2 If after the expiry of seven (7) Calendar Days following the date of the Authority's notice the PBO has failed to rectify such default (or immediately on providing the notice if rectification is not possible) the Authority shall, without prejudice to any of its other rights under this Agreement, have the right but not the obligation to procure the Parent Required Insurances that are due to be taken out or renewed pursuant to this Clause 10 (*PBO Insurance*), or to rectify the default by paying any premiums required to keep the Parent Required Insurances in force.
- 10.3.3 The Authority shall be entitled to exercise its rights under this Clause 10.3 (*Authority's Right to Insure*) without providing notice where the Authority

considers that unless such rights are exercised any Parent Required Insurance may become void.

10.3.4 Any sum paid and any expense reasonably incurred by the Authority in accordance with this Clause 10.3 (*Authority's Right to Insure*) shall immediately become due and payable to the Authority by the PBO.

10.3.5 **Not used**

10.3.6 Maintenance of Parent Group Existing Insurance

The PBO shall procure that the Parent Group Existing Insurance is maintained, or that insurance in substantially similar terms as it benefits the PBO and each Indemnified Party is procured and maintained, until the expiry of the Authority Indemnities set out in Clause 7.3.

10.3.7 No Subrogation

The PBO shall procure that each insurance policy from which it may benefit contains a term preventing the insurer subrogating against the Authority, the SLC or their insurers, and that the PBO's insurers are aware of and accept the terms of Clause 8 (Claims Handling).

11. PENSIONS

11.1 Energy Act Requirements

11.1.1 The PBO shall not do or omit to do anything that shall cause the Authority to be in breach of its duties and obligations under Part 3 and/or Part 4 of Schedule 8 to the Energy Act in respect of employees of the SLC who are Protected Employees. In the event of any breach of this undertaking, the PBO shall do all things necessary, as directed by the Authority, to restore the rights and benefits of relevant Protected Employees as referred to therein.

11.1.2 The PBO shall ensure that if and to the extent that (i) Protected Employees become employed by a new employer or (ii) there is a sale of the PBO by the Ultimate Parent, the employer of such Protected Employees shall do and shall not omit to do anything which the Authority determines to be necessary to enable the Authority to satisfy itself that its duties and obligations under Part 3 or Part 4 of Schedule 8 of the Energy Act are met. In the event of any breach of this undertaking, the PBO shall do all things necessary, as directed by the Authority, to restore the rights and benefits of such Protected Employees so as to enable the Authority to satisfy itself that its duties and obligations under Part 3 and/or Part 4 of Schedule 8 of the Energy Act are met.

11.2 Non SLC Employees

11.2.1 It is a condition of this Agreement that the PBO shall ensure that on the Commencement Date each of the Protected Non-SLC Employees shall be offered membership of a pension scheme which provides them with sufficient benefits, as certified by the Government Actuary's Department, to enable the Authority to satisfy itself that its duties and obligations under Part 3 and/or Part 4 Schedule 8 of the Energy Act are met. Where the employees referred to in this Clause are

offered membership of a section of a pension scheme, any references in this Clause 11.2 (*Non SLC Employees*) to the pension scheme referred to in this Clause 11.2.1 shall be construed as references to the relevant section of that scheme.

11.2.2 The PBO shall in relation to each of the pension schemes referred to in Clause 11.2.1 (*Non SLC Employees*):

- (A) agree to the substitution of the Authority as principal employer if the Authority so requests where the Authority has reasonable cause to believe that the obligations of the employer under the scheme are not being complied with and if such substitution is permitted under the governing documentation of the pension scheme;
- (B) comply with the trust deed and other requirements of the pension scheme relevant to it as employer;
- (C) pay all sums due to the pension scheme trustees as and when they fall due;
- (D) comply with administration systems and risk management procedures as reasonably required by the Authority or by the trustees of the pension scheme;
- (E) in relation to Protected Non-SLC Employees, comply with all obligations to consult in respect of matters related to pensions and disclose all relevant information in advance of its issuance to the Authority and in connection therewith cooperate and liaise with the Authority as reasonably required by the Authority;
- (F) in relation to Protected Non-SLC Employees where it has power, amend the pension scheme as directed by the Authority and not amend the scheme otherwise;
- (G) in respect of Protected Employees, not make any augmentations to benefits without the consent of the Authority;
- (H) not wind up the scheme or any part or section of it without providing any Protected Non-SLC Employees with a new pension scheme which complies with Clause 11.2.1 (*Non SLC Employees*);
- (I) comply with its obligations as employer arising under the general Law relating to pensions; and
- (J) not make, without the consent of the Authority, any announcements or issue any, material, information or issue any publicity or advertising in any media or form whatsoever affecting or relating to pension arrangements of Protected Non-SLC Employees, the consent of the Authority not to be unreasonably withheld or delayed.

11.3 If the Authority so requires, the PBO shall, to the extent permitted by Law and subject to any procedural requirements, amend the contracts of employment of Protected Non-SLC Employees (or procure that they are amended) so as to give such employees a contractual entitlement to the benefits which the Authority determines to be necessary to enable the

Authority to satisfy itself that its duties and obligations under Part 3 and/or Part 4 of the Schedule 8 to the Energy Act are met.

- 11.4 For the avoidance of doubt, PBO employees who are not Protected Non-SLC Employees under Part 3 or Part 4 of Schedule 8 to the Energy Act shall not be entitled to join the CNPP (*Combined Nuclear Pension Plan*).

12. TERMINATION

12.1 Termination Events

This Agreement shall terminate on the earlier of the expiry of the Term pursuant to Clause 2 (*Term*) or as a result of early termination under this Clause 12.

12.2 PBO Default

12.2.1 The following events shall, save where the PBO is acting in accordance with a direction or instruction from the Authority, give rise to an Authority right to terminate for PBO Default:

- (A) a breach by the PBO of any of its obligations under this Agreement;
- (B) a breach by the SLC of any of its obligations under this Agreement or under the Site M&O Contract;
- (C) a failure by the PBO or the SLC to comply with applicable Law or Regulatory Requirements;
- (D) a failure by the PBO to comply with the provisions of Clause 11 (*Pensions*) or a failure of the SLC to comply with provisions of Clause 5.12 (*Pensions*) of the Site M&O Contract;
- (E) a failure by the PBO to comply with the provisions of Clause 19 (*Confidentiality*) or a failure of the SLC to comply with the provisions of Part 10 (*Confidentiality, Security and Compliance with Law*) of the Site M&O Contract;
- (F) a material or persistent breach by the SLC or the PBO of the Parent Body Agreement or by the SLC of the Site M&O Contract;
- (G) the Parent Body Agreement ceasing to be valid and binding on the PBO;
- (H) the PBO transferring the Shares, other than in accordance with this Agreement;
- (I) which, in each case above, materially and adversely affects the performance of this Agreement, or in the case of a breach by the SLC, materially and adversely affects the performance of this Agreement or the Site M&O Contract;
- (J) a failure by the PBO to comply with the provisions of Clause 22.3 (*Assignment*) or a failure of the SLC to comply with the assignment provisions in the Site M&O Contract;
- (K) the PBO failing to procure that:

- (1) the SLC submits a cashflow forecast to the Authority pursuant to Clause 6.6.2 (*Cashflow Forecasting*) of the Site M&O Contract;
- (2) the actual cost of the working capital facility during the preceding twelve (12) months of the Agreement does not exceed the target interest cost set out in Paragraph 1 of Schedule 7 (Working Capital Arrangements) (other than where such failure is caused by the crystallisation of an Historical Cost); or
- (3) the forecast cost, set out in Paragraph 1 of Schedule 7 (Working Capital Arrangements), of the working capital facility for the next twelve (12) months of the Agreement (or, where there are less than twelve (12) months remaining in the term of the Agreement, for all such remaining months) does not exceed the target cost set out in Paragraph 1 of Schedule 7 (Working Capital Arrangements) (other than where such failure is caused by the crystallisation of an Historical Cost).

12.2.2 It shall be a PBO Default where the PBO undergoes a Change in Control or enters into a Relevant Partnering Arrangement without having obtained the prior written consent of the Authority to such change.

12.3 **Duty to Notify**

12.3.1 The PBO shall notify the Authority forthwith if the PBO receives any information in respect of events that may trigger a PBO Default.

12.4 **Insolvency**

The occurrence of an Insolvency Event or a Threatened Insolvency in respect of the SLC or the PBO or any shareholder in the PBO (direct or indirect) up to the level of the Ultimate Parents except, where in the case of the SLC, such Insolvency Event was:

12.4.1 caused by the Authority failing to reimburse the SLC for Allowable Costs because of the Authority's belief that funds were to be used for a purpose which was fraudulent, otherwise illegal or contrary to public policy, which belief was not proved correct; or

12.4.2 caused by the Authority failing to reimburse the SLC for undisputed Allowable Costs pursuant to the terms of the Site M&O Contract,

shall give rise to an Authority right to terminate.

12.5 **Termination or Remedy for PBO Default**

12.5.1 If a PBO Default has occurred and the Authority wishes to terminate this Agreement, the Authority shall serve a termination notice (the "**Authority's Termination Notice**") on the PBO.

12.5.2 The Authority's Termination Notice shall specify the type and nature of PBO Default that has occurred, giving reasonable details.

12.5.3 Any PBO Default of the type specified in Clauses 12.2.1(G), 12.2.1(H), 12.2.1(J) and 12.2.2 shall be deemed to be incapable of remedy. In the case of any PBO

Default save that of the type specified in Clauses 12.2.1(G), 12.2.1(H), 12.2.1(J) and 12.2.2, the Authority (acting reasonably) may decide whether or not the PBO Default is capable or incapable of appropriate remedy. The Authority shall specify whether a PBO Default is incapable of appropriate remedy in the Authority's Termination Notice and, if the Authority has decided that the PBO Default is incapable of remedy or if the Contractor Default is of the type specified in Clauses 12.2.1(G), 12.2.1(H), 12.2.1(J) and 12.2.2, this Agreement shall terminate on the date falling thirty (30) Calendar Days after the date of receipt by the PBO of the Authority's Termination Notice.

12.5.4 In the case of any PBO Default which the Authority (acting reasonably) considers is capable of appropriate remedy, the Authority's Termination Notice shall require the PBO at the PBO's option either:

(A) to remedy the PBO Default within thirty (30) Calendar Days of the date of the Authority's Termination Notice (or such longer period as may be agreed by the Authority in its absolute discretion);

(B) to propose within thirty (30) Calendar Days of the date of the Authority's Termination Notice and obtain the Authority's approval to a programme to remedy the PBO Default (the "**Remediation Programme**").

12.5.5 If the PBO Default is not remedied in accordance with Clause 12.5.4(A) or Clause 12.5.4(B) (as applicable) (*Termination or Remedy for PBO Default*), the Authority shall be entitled to terminate this Agreement either with immediate effect or on such period of notice not exceeding twelve (12) months as it reasonably determines to be appropriate. If the Authority terminates on notice, it will use all reasonable endeavours, including liaison with the Regulators, to ensure that the period of notice is as short as possible.

12.6 Remediation Programme

12.6.1 The Remediation Programme shall specify in detail how the PBO Default is proposed to be remedied, the steps required to remedy the PBO Default and the latest date by which the PBO anticipates that the PBO Default will be remedied.

12.6.2 Where the PBO proposes a Remediation Programme in accordance with Clause 12.5.4(B) (*Termination or Remedy for PBO Default*), the Authority shall have thirty (30) Calendar Days from the date of receipt of the proposed Remediation Programme within which to notify the PBO whether the Authority accepts the proposed Remediation Programme (such acceptance not to be unreasonably withheld). Failure of the Authority to provide such notification shall constitute deemed acceptance by the Authority.

12.6.3 Where the Authority notifies the PBO that it does not accept the Remediation Programme, the Authority and the PBO shall endeavour within the following thirty (30) Calendar Days to agree any necessary amendments to the Remediation Programme. In the absence of agreement within such thirty (30) Calendar Day period, the question of whether or not the Authority's withholding of acceptance is reasonable may be referred by either Party to be resolved in accordance with Schedule 2 (*Dispute Resolution Procedure*).

12.6.4 Where the PBO has put forward a Remediation Programme that has been accepted by the Authority or determined by the Authority to be reasonable and the PBO fails to achieve any element of the Remediation Programme or fails to remedy the PBO Default within the date specified in the Remediation Programme (as the event may be), or the Remediation Programme is rejected by the Authority as not being reasonable and the Dispute Resolution Procedure does not find against that rejection, then the Authority may terminate this Agreement either with immediate effect or on such period of notice as it reasonably determines to be appropriate. If the Authority terminates on notice, it will use all reasonable endeavours, including liaison with the Regulators, to ensure that the period of notice is as short as possible.

12.7 Termination or Remedy for Authority Default

12.7.1 If an Authority Default has occurred and the PBO wishes to terminate this Agreement, the PBO shall be entitled to serve a termination notice (the "**PBO's Termination Notice**") on the Authority within twenty-eight (28) Calendar Days of becoming aware of the Authority Default.

12.7.2 The PBO's Termination Notice shall specify the type of Authority Default that has occurred entitling the PBO to terminate.

12.7.3 This Agreement will terminate on the day falling thirty (30) Calendar Days after the date on which the Authority received the PBO's Termination Notice, unless the Authority rectifies the Authority Default within twenty-one (21) Calendar Days of receipt of the PBO's Termination Notice.

12.8 Termination for Convenience

The Authority shall be entitled to terminate this Agreement at any time on giving reasonable notice to the PBO such notice not being a period less than twelve (12) Months ("**Termination for Convenience**").

12.8A Reasonable Costs on Termination

In the event of:

12.8.A.1 termination for Authority Default in accordance with Clause 12.7 (*Termination or Remedy for Authority Default*); or

12.8.A.2 termination for convenience pursuant to Clause 12.8 (*Termination for Convenience*);

the Authority shall pay to the PBO the reasonable demobilisation costs of the Nominated Staff incurred by the PBO in connection with the termination of this Agreement together with, in the event that such termination is effective on or before the date twelve (12) months after signature of this Agreement, an amount of 43(2) Commercial

43(2) Commercial

12.9 Termination for Long Term Force Majeure

If the performance by the Authority or the PBO of substantially all of its obligations under this Agreement is materially prevented, hindered or delayed by reason of a Force Majeure

Event for a period of more than ninety (90) consecutive Calendar Days ("**Long Term Force Majeure**"), the other Party may terminate this Agreement with immediate effect by notice to the Affected Party on or at any time after the expiry of such ninety (90) Calendar Day period.

12.10 Accrued Liabilities

Termination of this Agreement pursuant to this Clause 12 (*Termination*) shall be without prejudice to the Parties' liabilities which accrued prior to the date of termination.

12.11 Return of Working Capital

The PBO shall, within ten (10) Working Days of the date of termination, notify the Authority and the SLC in writing of any amount of Working Capital owed by the SLC to the PBO, and the Parties shall seek to agree such amount. Within twenty (20) Working Days of the agreement of such amount, the Authority shall procure that the SLC pays such amount plus any interest accruing thereon at the Agreed Interest Rate to the PBO.

13. INFORMATION TECHNOLOGY

13.1 The PBO shall actively facilitate the SLC in fulfilling its obligations in relation to the provision of shared services by or on behalf of the Authority pursuant to the Shared Services Project or N Cubed and take part in any Cross SLC Initiatives of the Authority, and shall not, and procure that the SLC shall not, materially alter or incorporate into any of the Site IT Systems any hardware or Software which could preclude or prevent the provision of shared services by or on behalf of the Authority pursuant to the Shared Services Project or N Cubed or any Cross SLC Initiatives providing all such information and assistance, including in relation to the migration of data and applications, as is reasonably requested by the Authority or the SLC.

13.2 In the event that any Software the IP in which is proprietary to the PBO is made available to the SLC for the purpose of fulfilling its obligations under the Site M&O Contract, the PBO shall deposit the Source Code of such Software in escrow with the Escrow Agent for the benefit of the SLC and the Authority on the Escrow Terms. The PBOs shall ensure that any such deposit is at all times complete and up to date such that it accurately reflects the relevant Software as the same is installed and used by the SLC from time to time. In the event that any such Source Code is released to the Authority in accordance with the Escrow Terms, the licence referred to in Clause 14.1 (*IP Contributed by PBO*) shall include all IP subsisting in such Source Code.

14. INTELLECTUAL PROPERTY

14.1 IP Contributed by PBO

14.1.1 Licence to Authority and SLC

(A) Any IP made available to the SLC by the PBO for the purpose of fulfilling its obligations under the Site M&O Contract whether such IP is owned by the PBO or licensed to the PBO with appropriate sublicense rights ("**Parent IP**") shall also be, and is hereby, licensed in perpetuity to the Authority on a non-exclusive basis in its current application as of the date of commencement of the Site M&O Contract for utilisation in the Authority Field of Use without payment of royalty fees (except to the

extent otherwise agreed) and then sub-licensed in perpetuity by the Authority to the SLC who in turn shall be entitled to grant sub-licences to its Subcontractors under the Site M&O Contract in each case without payment of royalty fees. Subject to the PBO's consent (such consent not to be unreasonably withheld or delayed), the Authority shall have the right to sub-license the Parent IP to other site licensee companies for use in relation to their activities falling within the Authority Field of Use on any Designated Sites without payment of royalty fees who shall be entitled to grant sublicences to their Subcontractors for use in relation to their activities falling within the Authority Field of Use. The Authority's right to use and sub-license the Parent IP shall remain in force both during the term of the Site M&O Contract and after the Site M&O Contract has expired or has been terminated until the Authority reasonably determines that the Parent IP is no longer needed in relation to any Authority sites for which the Authority has obtained the rights to use the IP.

- (B) Any Parent IP that is directly or indirectly required to enable the Authority or its licensees to use or exploit any Developed IP shall also be licensed in perpetuity to the Authority on a non-exclusive basis for utilisation in the Authority Field of Use without payment of royalty fees (except to the extent otherwise agreed). The Authority shall have the right to sub-license such Parent IP to the SLC who shall in turn be entitled to grant sub-licences to its Subcontractors under the Site M&O Contract in each case without payment of royalty fees. The Authority shall have the right to sub-license such Parent IP to other site licensee companies for use in relation to their activities falling within the Authority Field of Use without payment of royalty fees who shall be entitled to grant sub-licences to their Subcontractors for use in relation to their activities falling within the Authority Field of Use without payment of royalty fees. The Authority's right to use and sub-license the Parent IP shall remain in force both during the term of this Agreement and after this Agreement has expired or has been terminated until the Authority reasonably determines that the Parent IP is no longer needed to enable the use of any Developed IP.

14.1.2 Licence of new or additional Parent IP

If during the term of the Site M&O Contract, the PBO wishes to make available to the SLC, for the SLC's use at the Site to fulfil its activities falling within the Authority's Field of Use, new or additional Parent IP beyond such Parent IP made available to the SLC as of the date of commencement of the Site M&O Contract, such new or additional Parent IP shall be licensed in accordance with this Clause 14.1 (*IP Contributed by PBO*).

14.1.3 Licensing of Parent IP contained in Developed IP

- (A) For the avoidance of doubt, Parent IP that is contained in or forms the basis or background of any IP developed by or on behalf of the SLC (including by Subcontractors) or is otherwise required for the use of such Developed IP, either during the term of the Site M&O Contract or after the Site M&O Contract has expired or terminated shall, with respect to

such Parent IP, be treated for licensing purposes in a manner consistent with this Clause 14.1 (*IP Contributed by PBO*).

- (B) The SLC shall have the further right to sublicense Parent IP licensed to it under Clause 14.1 (*IP Contributed by PBO*) to Subcontractors approved by the Authority for use in the performance of their Subcontracts. Such sublicense of Parent IP to the SLC's Subcontractors shall contain terms that are materially similar to the terms contained in the Authority's licence from the PBO and the SLC's follow-on licence from the Authority and for the avoidance of doubt shall be without payment of royalty fees.

14.1.4 **Sublicensing of Parent IP**

The SLC shall have the further right to sublicense Parent IP licensed to it under this Clause 8.3 (*IP Contributed by Parent Body Organisation*) to Subcontractors approved by the Authority for use in the performance of their Subcontracts. Such sublicense of Parent IP to the SLC's Subcontractors shall contain terms that are materially similar to the terms contained in the Authority's licence from the Parent Body Organisation and the SLC's follow-on licence from the Authority and for the avoidance of doubt shall be without payment of royalty fees.

14.1.5 **Infringement of Parent IP by Third Parties**

In the case of any infringement or suspected infringement by any Third Party of Parent IP which is licensed to the Authority pursuant to this Clause 14.1 (*IP Contributed by PBO*), the SLC, in consultation with the Authority, shall promptly notify the PBO and shall take such reasonable direction as the PBO may provide for purposes of the PBO's response to such infringement or suspected infringement.

14.1.6 **Use of unlicensed Parent IP**

If the SLC uses IP for the purposes of fulfilling its obligations in relation to the Site under the Site M&O Contract where that IP is owned by or is licensed to the PBO (with appropriate sub-licence rights) but has not been licensed to the Authority for the Authority Field of Use, a retrospective licence for such use will be deemed to be granted to the Authority to the extent permitted under the sub-licence rights granted by the PBO under Clause 14.1 (*IP Contributed by PBO*). The Authority will have the same rights as it has in relation to Parent IP under Clause 14.1 (*IP Contributed by PBO*).

14.2 **Authority's Rights to IP developed by or on behalf of the SLC and Subcontractors**

The SLC shall establish procedures (which shall be audited on reasonable notice by the Authority from time to time) under which the identification, protection, exploitation and ownership of Developed IP is evaluated in accordance with the principles set out in the provisions of this Clause 14.2 and under which the SLC shall seek approval from the Authority as required under this Clause 14.2. IP created by or on behalf of the SLC and/or by Subcontractors during the performance of this Contract ("**Developed IP**") shall be owned in accordance with the provisions of this Clause 14.2:

14.2.1 Ownership by Authority of Developed IP created by the SLC

Ownership of any Developed IP created by the SLC shall vest in the Authority, subject to any pre-existing rights of third parties and of the PBO and the SLC hereby assigns to the Authority all its rights, title and interest in any Developed IP created by it on or at any time after the date hereof.

14.2.2 Ownership of Developed IP by the Authority

- (A) Without prejudice to Clause 14.2.1 (*Ownership by Authority of Developed IP created by the SLC*) the Authority shall own any Developed IP which the Authority determines (i) raises or which may raise security issues relating to the use of such Developed IP (including without limitation where the use or disclosure of such Developed IP could compromise the security of any Designated Site, facilities, equipment or materials relating to any Designated Site) and/or (ii) is of Strategic Interest to the Authority and/or to United Kingdom business.
- (B) As between the Authority and the SLC the Authority shall own any and all IP in all documentation, product, information, results, test data, safety cases, records and other reports obtained by and arising from the application and use of any IP including Developed IP.

14.2.3 Ownership of Developed IP by Subcontractors

- (A) Save in the circumstances identified in Clauses 14.2.2 (*Ownership of Developed IP by the Authority*) and 14.2.3 (*Ownership of Developed IP by Subcontractors*) and subject to the provisions of Clauses 14.2.6 (*Identification of IP owned by the Subcontractor and Licence of IP owned by the Subcontractor to Authority*) and 14.2.10 (*SLC's Notification of Developed IP*), Developed IP that is created by or on behalf of any Subcontractor under its Subcontract and which is based on or derived from IP owned by the Subcontractor immediately prior to the commencement of the Subcontract shall be owned by the Subcontractor (subject to any pre-existing rights of third parties).
- (B) Ownership of Developed IP that is created by or on behalf of any Subcontractor under its Subcontract and which is not based on or derived from IP owned by the Subcontractor immediately prior to the commencement of the Subcontract shall be owned by the Authority. The Authority acknowledges that it may be appropriate for such Developed IP that falls outside the provisions of Clauses 14.2.2 (*Ownership of Developed IP by the Authority*) and 14.2.3 (*Ownership of Developed IP by Subcontractors*) to be owned by the Subcontractor. The SLC, on behalf of any Subcontractor, may give written notice to the Authority that the Subcontractor wishes to retain ownership of such Developed IP. Following receipt of such notice, the Authority, in consultation with the SLC on behalf of any Subcontractor, shall determine the ownership of such Developed IP (such determination to be in the sole discretion of the Authority).

14.2.4 Access to and use of information by the Authority

Notwithstanding ownership of any Developed IP by the Subcontractor and without prejudice to the provisions of Clause 4.2 (*Records*) of the Site M&O Contract and Clause 4.5 (*Inspection and Audit*) of the Site M&O Contract, the SLC shall ensure that the Authority shall be entitled to access, use and disclose all and any information created, received or maintained by or on behalf of the Subcontractor whether from use or application of the Developed IP or otherwise that is reasonably required by the Authority for any purpose.

14.2.5 Further Assurance

In respect of any Developed IP owned by the Authority pursuant to Clauses 14.2.1 (*Ownership by Authority of Developed IP created by the SLC*), 14.2.2 (*Ownership of Developed IP by the Authority*), and 14.2.3 (*Ownership of Developed IP by Subcontractors*) the SLC shall (and shall procure that any Subcontractor shall) execute such further documents and do such further acts as the Authority reasonably requires to give full effect to the terms of this Clause 14 (*Intellectual Property*) and perfect the Authority's title to any such Developed IP.

14.2.6 Identification of IP owned by the Subcontractor and Licence of IP owned by the Subcontractor to Authority

The SLC shall procure that any Subcontractor identifies and declares to the SLC prior to entering into its Subcontract any IP which the Subcontractor owns immediately prior to the commencement of the Subcontract which is to be used in the performance of the Subcontract. In respect of any such IP, the SLC shall procure that the Subcontractor shall grant to the Authority a non-exclusive, perpetual, irrevocable, royalty-free licence to use such IP in the Authority Field of Use together with the right to license such IP to the SLC without the consent of the Subcontractor, and permitting the SLC itself to sub-license its rights under any such sub-licence to any of its sub-contractors without the consent of the Subcontractor.

14.2.7 Licence to the Authority of IP licensed to the Subcontractor

In respect of any IP that is licensed to the Subcontractor immediately prior to the commencement of the Subcontract or at any time during the term of the Subcontract and is used by the Subcontractor in the performance of its Subcontract, the SLC shall procure that the Subcontractor shall use all reasonable endeavours to procure a non-exclusive licence for the Authority on reasonable terms which enables the Authority to use such IP in the Authority Field of Use and to license that IP to the SLC without the consent of the licensor, or the Subcontractor and permitting the SLC itself to sub-license its rights under any such sub-licence to any of its sub-contractors without the consent of the licensor.

14.2.8 Licence of Developed IP from Subcontractor to Authority

Subject to clause 14.2.11 (*Use of Developed IP by Subcontractor*) in the event that any Developed IP is owned by a Subcontractor, the SLC shall procure that the Subcontractor shall grant to the Authority a non-exclusive, perpetual, irrevocable, royalty-free licence to use such Developed IP within the Authority Field of Use together with the right to license such Developed IP to any third

party including any other site licensee company without the consent of the Subcontractor, and permitting any other site licensee company itself to sub-license its rights under any such sub-licence to any of its sub-contractors without the consent of the Subcontractor.

14.2.9 Licence of Background IP from Subcontractor to Authority

The SLC shall procure that any Subcontractor shall grant to the Authority a non-exclusive, perpetual, irrevocable, royalty-free licence to use any IP owned by that Subcontractor that is contained in or forms the basis or background of any Developed IP ("**Background IP**") together with the right to license such Background IP to the SLC who in turn shall be entitled to grant sub-licences to its Subcontractors under the Site M&O Contract in each case without payment of royalty fees. The Authority shall have the right to sub-licence such Background IP to other site licensee companies for use in relation to their activities falling within the Authority Field of Use without payment of royalty fees who shall be entitled to grant sub-licences to their subcontractors for use in relation to their activities falling within the Authority Field of Use, without payment of royalty fees.

14.2.10 SLC's Notification of Developed IP

The SLC shall procure that any Subcontractor shall promptly notify the SLC of any IP which is created and/or developed by the Subcontractor during the performance of its Subcontract. The SLC shall promptly notify the Authority of any such Developed IP and any Developed IP created by the SLC itself. To the extent that the ownership of Developed IP created by or on behalf of the Subcontractor has not been determined prior to the commencement of the Subcontract the Authority may determine whether such Developed IP should be owned by the Authority in accordance with the provisions of Clauses 14.2.2 (*Ownership of Developed IP by the Authority*), 14.2.3 (*Ownership of Developed IP by Subcontractors*) and 14.2.5 (*Further Assurance*).

14.2.11 Use of Developed IP by the Subcontractor

- (A) If the Authority so requires, the SLC shall procure that, in the event that the Subcontractor exploits or licenses the use of Developed IP owned by the Subcontractor outside the Authority Field of Use, the Subcontractor shall negotiate in good faith with the Authority appropriate payment (which may include royalties and/or lump sum payments) to the Authority.
- (B) Developed IP that is owned by the Authority and which is created by or on behalf of any Subcontractor under its Subcontract and which is based on or derived from IP owned by the Subcontractor immediately prior to the commencement of the Subcontract may be licensed by the Authority to the Subcontractor in accordance with the following:
 - (1) Subject to Clause 14.2.11(B)(2), the SLC, on behalf of any Subcontractor, may give written notice to the Authority that the Subcontractor wishes to be granted a licence to use any such Developed IP. Following receipt of such notice, the Authority, in consultation with the SLC on behalf of any Subcontractor, shall

determine whether such Developed IP may be licensed to the Subcontractor (such determination to be in the discretion of the Authority but the Authority will not unreasonably refuse such licence);

- (2) The Authority will not grant nor shall the SLC be entitled under Clause 14.2.11(B)(1) to ask the Authority to grant a licence to the Subcontractor where the Authority determines that such Developed IP raises security issues relating to the use of the such Developed IP (including without limitation where the use or disclosure of such Developed IP could compromise the security of any Designed Site, facilities, equipment or materials relating to any Designated Site);
- (3) If the Authority determines that a licence may be granted to the Subcontractor then such licence shall be non-exclusive, perpetual and on terms to be agreed and shall be for use for purposes other than activities falling within the Authority Field of Use.

14.2.12 **Licence to PBO**

Subject to the reasonable terms of the Authority (which may include payment of reasonable royalties or fees), the Authority will grant to the PBO a worldwide licence (which is freely assignable or sub-licensable) to use for purposes other than activities falling within the Authority Field of Use any Developed IP created by or on behalf of the SLC (including Subcontractors) and which vests in the Authority pursuant to Clauses 14.2.1 (*Ownership by Authority of Developed IP created by the SLC*), 14.2.2 (*Ownership of Developed IP by the Authority*), or 14.2.5 (*Further Assurance*) and clauses 8.4.1 (*Ownership by Authority of Developed IP created by the Contractor*), 8.4.2 (*Ownership of Developed IP by the Authority*) or 8.4.5 (*Ownership of Developed IP by Subcontractors*) of the Site M&O Contract provided that the Authority will not grant a licence to the PBO where the Authority determines that such Developed IP raises or may raise security issues relating to the use of such Developed IP (including without limitation where the use or disclosure of such Developed IP could compromise the security of any Designated Site, facilities, equipment or materials relating to any Designated Site) and provided that the basis or background of the Developed IP is Parent IP such licence to the PBO shall be on an exclusive basis. The Authority shall execute such further documents and do such further acts as the PBO reasonably requires to give full effect to the terms of this Clause 14.2.12.

14.2.13 **Exclusion of Parent IP from Developed IP**

For the avoidance of doubt Developed IP created by or on behalf of the SLC (including Subcontractors) and which vests in the Authority pursuant to Clause 14.2.1 (*Ownership by Authority of Developed IP created by the SLC*), 14.2.2 (*Ownership of Developed IP by the Authority*), 14.2.3 (*Ownership of Developed IP by Subcontractors*) or 14.2.5 (*Further Assurance*) and Clauses 8.4.1 (*Ownership by Authority of Developed IP created by the Contractor*), 8.4.2 (*Ownership of Developed IP by the Authority*), 8.4.3 (*Ownership of Developed IP by the Authority*), 8.4.3 (*Ownership of Developed IP by the Authority*), 8.4.3 (*Ownership of Developed IP by the Authority*) or 8.4.5 (*Ownership of Developed IP by Subcontractors*) of the Site M&O Contract above shall exclude any Parent IP under Clause 14.1 (*IP*

Contributed by PBO) or any Third Party IP that may form the basis or background of such Developed IP.

14.2.14 Access to and use of information by the Authority

Without prejudice to the provisions of Clause 4.2 of the Site M&O Contract (*Records*) and Clause 4.5 of the Site M&O Contract (*Inspection and Audit*), and Clause 10 of the M&O Contract (*Confidentiality, Security and Compliance with Law*) the SLC shall ensure that the Authority shall be entitled to access, use and disclose all and any information created, received or maintained by or on behalf of the Subcontractor pursuant to the Subcontract whether from use or application of the Developed IP or otherwise that is reasonably required by the Authority for any purpose.

15. DISPUTE RESOLUTION

15.1 Requirement to Refer Disputes

15.1.1 Save as otherwise expressly provided in this Agreement including in Clause 15.2 (*Reasonableness of the Authority*), any Dispute arising out of or in connection with this Agreement shall be attempted to be resolved between the PBO and the Authority. If any such Dispute cannot be so resolved, it shall be resolved in accordance with the Dispute Resolution Procedure attached at Schedule 2 (*Dispute Resolution Procedure*).

15.1.2 Neither Party shall commence any claim, legal action or proceedings other than in accordance with the Dispute Resolution Procedure, provided that nothing in the Dispute Resolution Procedure shall prevent a Party from seeking interim or interlocutory relief in the English courts.

15.2 Reasonableness of the Authority

15.2.1 In relation to the Clauses and Schedules listed in Clause 15.2.2 (*Reasonableness of the Authority*) below pursuant to which the Authority shall reasonably determine certain matters, the PBO may only Dispute whether a determination made by the Authority is reasonable. Such Dispute shall be attempted to be resolved between the PBO and the Authority and if it cannot be so resolved, only the issue of the reasonableness of the Authority's decision may be referred to the Dispute Resolution Procedure. The Authority's determination pursuant to the relevant Clause shall prevail unless and until it is agreed or found to be unreasonable. In the event that the Authority is found to have acted reasonably, the PBO shall bear its own costs and shall indemnify the Authority for its relevant costs relating to the reference of the Dispute to the Dispute Resolution Procedure. In the event that the Authority is found to have acted unreasonably, the Authority shall bear such costs.

15.2.2 The Clauses and Schedules referred to in Clause 15.2.1 (*Reasonableness of the Authority*) above are:

- (A) Clauses 2.2A and 2.2B (*Term*) in relation to whether the Authority has acted reasonably in not agreeing the PBO's proposals made pursuant to Clause 2.2A;

- (B) Clause 12.5.3 (*Termination or Remedy for PBO Default*) in relation to whether the Authority has acted reasonably in determining that the PBO Default is incapable of remedy;
- (C) Clauses 12.6.2 and 12.6.3 (*Remediation Programme*) in relation to the Authority's reasonable withholding of acceptance to the Remediation Programme.

16. PROVISION OF STAFF TO THE SLC

16.1 Nominated Staff

- 16.1.1 The PBO shall procure that the Nominated Staff hold all relevant security clearances and are available to be seconded to the SLC on the Commencement Date and shall enter into and procure that any Relevant Affiliate and each person who is a member of Nominated Staff enters into a Secondment Agreement with a minimum term of ~~43(2) Commercial~~ (unless terminated earlier in accordance with the terms of the Secondment Agreement) without prejudice to the Authority's rights under this Clause 16 (*Provision of Staff to the SLC*), during the term of the Secondment Agreement, the Authority agrees not to do anything (whether by act or omission) which will cause the Parent Body Organisation and/or the Relevant Affiliate to breach any term of the Secondment Agreement.
- 16.1.2 The Authority may, at its sole discretion, take into account the availability of Nominated Staff for any potential extension to the Initial Period when determining whether or not to exercise its option to extend the Agreement pursuant to Clause 2.2 (*Term*).
- 16.1.3 The PBO must notify the SLC and the Authority, or procure that the Relevant Affiliate shall notify, the SLC and the Authority of any intention to withdraw any individual member of the Nominated Staff from full time secondment on the Site and may not, or shall procure that the Relevant Affiliate does not, withdraw any such person without first obtaining the prior written agreement of the Authority in accordance with Clause 16.1.4 below.
- 16.1.4 Where the Parent Body Organisation and/or any Relevant Affiliate intends to withdraw from full time secondment any member of Nominated Staff, it shall:
- (A) obtain the prior written consent of the Authority (not to be unreasonably withheld) as to the suitability and adequacy of a replacement who must have a level of skills and experience comparable to that of the member of Nominated Staff being withdrawn, or if more appropriate depending on the relevant job position, have the necessary skills and experience required for that job position and who must also be an employee of the Parent Body Organisation or a Relevant Affiliate. The curriculum vitae of each proposed replacement individual shall be submitted to the Authority for its review. The Authority will either approve the replacement within thirty (30) Calendar Days or will notify the PBO or the Relevant Affiliate in writing of reasons for the rejection of the proposed replacement. The PBO or the Relevant Affiliate may not withdraw the relevant individual member of Nominated Staff until the Authority has approved a replacement; and

- (B) where such withdrawal and/or appointment of a replacement member of Nominated Staff in accordance with this Clause 16.1.4 (*Nominated Staff*) requires the approval of the Regulators, procure all such approvals as are necessary before making the withdrawal and/or replacement as applicable. The Authority will provide such reasonable assistance as it is able in procuring such approvals from the Regulators.
- 16.1.4A References in Clauses 16.1.3 and 16.1.4 (*Nominated Staff*) above to "withdrawal" do not include the retirement, long term illness, death, the long-term illness of a close family member (being a spouse, partner, children or other dependents) or voluntary resignation from the employment of the PBO or Relevant Affiliate of the relevant individual.
- 16.1.5 For the avoidance of doubt, nothing in this Agreement shall prevent the PBO or any Relevant Affiliate from immediately dismissing or suspending from their duties any member of the Nominated Staff where, in the reasonable opinion of the SLC, the Parent Body Organisation and/or any Relevant Affiliate, such action is:
- (A) necessary to comply with any applicable Law or Regulatory Requirements; and/or
 - (B) required to safeguard the health and wellbeing of any employee on the Site; and/or
 - (C) justified on the grounds that any member of the Nominated Staff has committed an act of negligence or gross misconduct; and/or
 - (D) justified on the grounds that any member of the Nominated Staff has failed of a drugs and/or alcohol test.
- 16.1.6 If the PBO or a Relevant Affiliate wishes to use the services of any of the Nominated Staff for any period of time for a purpose other than in fulfilment of the SLC's obligations under the Site M&O Contract, it must submit to the Authority a plan which demonstrates to the reasonable satisfaction of the Authority:
- (A) that the relevant period of time is finite;
 - (B) how the PBO or the Relevant Affiliate and the SLC will ensure that there is no diminution in the standard of the SLC's performance of the Site M&O Contract during such relevant period of time;
 - (C) that the Time Costs for the relevant Nominated Staff will be charged to an appropriate corporate cost centre.

The Authority will not unreasonably withhold its consent to the implementation of such a plan provided that it is satisfied that there will be no adverse consequence for the timetable, cost and standard of performance of the SLC. For the avoidance of doubt, subject and without prejudice to Clause 17.5 (*Transition Out*) and Clause 19 (*Confidentiality*), this Clause 16.1.6 shall not and is not intended to prevent the Nominated Staff from communicating with, and reporting performance under the Site M&O Contract to, the PBO.

16.2 **Key Personnel**

The PBO shall procure that the SLC complies with the provisions of Clause 5.2 (*Key Personnel*) of the Site M&O Contract and the PBO shall not take any action with the effect of causing the SLC to breach Clause 5.2 (*Key Personnel*) of the Site M&O Contract.

16.3 **Non-Solicitation**

16.3.1 The PBO covenants with the SLC and the Authority that until the expiration of two (2) years from the earlier of the date of transfer of the shares pursuant to Clause 5 (*Retransfer of Shares in SLC*) or the date of exercise of the Call Option by the Authority in accordance with Clause 6.1 (*Call Option*) (the "**Relevant Date**") it shall not, unless it has obtained the prior written consent, not to be unreasonably withheld, of the Authority, directly or indirectly solicit or entice away or endeavour to solicit or entice away or cause to be solicited or enticed away from the SLC any person (other than a member of Nominated Staff or PAIS Teams) who is, and was at the Relevant Date, employed or directly or indirectly engaged by the SLC in an executive, sales, marketing, research or technical capacity or whose departure from the SLC would have a material adverse effect on the SLC's standard of performance of the Site M&O Contract, with a view to inducing that person to leave such employment or engagement (whether or not such person would commit a breach of his contract of employment or engagement by reason of leaving);

16.3.2 notwithstanding Clause 16.3.1 (*Non-Solicitation*) above, any recruitment of any person by the PBO or a Relevant Affiliate as a result of that person independently responding to any PBO's general recruitment advertisement in general or specialist publications shall not constitute a breach of this Agreement.

16.4 **Removal of Nominated Staff**

The PBO shall procure that all of the Nominated Staff are removed from their secondment to the SLC and undertakes to the Authority to procure that all of the Nominated Staff are offered continuous employment rights and to procure that they are offered a right to return to work for the PBO or the Relevant Affiliate on the later of the date of transfer of the Shares pursuant to Clause 5 (*Retransfer of Shares in SLC*) or the date of the exercise of the Call Option, the Put Option and/or the agreement of the HSE to the replacement of such Nominated Staff pursuant to Licence Condition 36.

17. **TRANSITION OUT**

17.1 The PBO acknowledges that the Authority wishes, before the expiry of the term of this Agreement, to invite persons to tender for the right to own the Shares and to negotiate a replacement parent body agreement to be entered into by the Incoming Parent, the SLC and the Authority upon the effective date of such replacement contract.

17.2 The PBO acknowledges the importance to the Authority of:

17.2.1 a fair and unbiased competitive process; and

17.2.2 the perception by all interested parties that the competitive process is fair and unbiased.

- 17.3 The PBO acknowledges the need for the SLC to comply with the Transition In Plan of the Incoming Parent and undertakes that it will actively facilitate and will not attempt to frustrate the success of the Transition In Plan.
- 17.4 To facilitate compliance with the Transition In Plan, the PBO shall procure that the SLC:
- 17.4.1 ensures that parties bidding to become the Incoming Parent are granted access to:
- (A) the Site;
 - (B) the Employees and Nominated Staff; and
 - (C) subject to the provisions of the Data Protection Act, any relevant records, including information falling within the scope of employee liability information as described in TUPE
- (in each case as and if permitted by, and in accordance with any conditions set by the Authority as part of the competition);
- 17.4.2 complies with the instructions of the Transition Board including in respect of information barrier provisions; and
- 17.4.3 agrees and executes the new parent body agreement with the Authority and the Incoming Parent.
- 17.5 If the PBO wishes to participate in the competitive process then, immediately on receipt of notice from the Authority that a competitive process for the Site is about to commence, the PBO shall:
- 17.5.1 provide the Authority with a list of the Nominated Staff who will participate in the competitive process on behalf of the PBO;
- 17.5.2 procure that all members of Nominated Staff participating in the competitive process on behalf of the PBO enter into an Impartiality Undertaking;
- 17.5.3 procure that the SLC:
- (A) provides equality of information;
 - (B) provides access to all potential bidders; and
 - (C) does not treat the PBO in a preferential way.
- 17.6 The PBO may not allow any Nominated Staff to participate in the competitive process on behalf of the PBO unless the PBO has complied with Clauses 16.1.3, 16.1.4 and 16.1.6 above (*Nominated Staff*) and unless the relevant member of Nominated Staff is included in the list of participating Nominated Staff. The PBO may not involve any of the SLC's staff, other than the participating Nominated Staff on behalf of the PBO.
- 17.7 The PBO may from time to time cause the SLC to update the list of Nominated Staff participating in its bid.
- 17.8 Where the SLC has terminated the Site M&O Contract and/or the PBO has terminated this Agreement for Authority Default, Long Term Force Majeure or Termination for Convenience pursuant to the Site M&O Contract or this Agreement (as applicable) or has

chosen not to exercise an option to extend the Term pursuant to Clause 2 (*Term*) of this Agreement, the Authority shall provide reasonable assistance to the PBO in its discussions with HSE regarding Licence Condition 36 with a view to enabling the SLC to replace the Nominated Staff as soon as is reasonably practicable.

- 17.9 The Authority shall procure that any Site M&O Contract between the Authority and the SLC and any parent body agreement between the Authority, the SLC and the Incoming Parent shall contain a provision which obliges the SLC to pay to the PBO an amount equal to the Year End Sum for the final Contract Year (or the relevant pro rated amount for part of that year in the event of mid-year termination) within sixty (60) Calendar Days of agreement or determination pursuant to the Dispute Resolution Procedure of such Year End Sum always subject to the SLC's compliance with Law. If, in the event of early termination of the Site M&O Contract, there is no Incoming Parent, the Authority shall procure that the SLC pays the PBO an amount equal to the Year End Sum for the final Contract Year (or the relevant pro rated amount for part of that year in the event of mid-year termination) within sixty (60) Calendar Days of agreement or determination pursuant to the Dispute Resolution Procedure of such Year End Sum (always subject to the SLC's compliance with Law).
- 17.10 If, following the early termination of the Site M&O Contract or this Agreement for convenience by the Authority or following Long Term Force Majeure affecting the Authority, or arising directly from an Authority Default under the Site M&O Contract, the PBO fails to recover an amount owed to it at the time of termination by the SLC under an Approved Working Capital Facility, the Authority will pay to the PBO within sixty (60) Calendar Days an amount equal to the amount not recovered from the SLC under the Approved Working Capital Facility, provided always that the PBO will not be entitled to recover from the Authority and the SLC together an amount greater than that owed to it at the time of termination by the SLC under the Approved Working Capital Facility.
- 17.11 The Authority shall use reasonable endeavours to procure that the Incoming Parent fully complies with TUPE.
- 17.12 The Authority shall be entitled to unilaterally vary any provision of this Clause 17 (*Transition Out*), provided that it gives the PBO thirty (30) Calendar Days' written notice of such variation.

18. ANNOUNCEMENTS

- 18.1 Subject to the remaining provisions of this Clause, no Party shall release any announcement or despatch any announcement or circular, relating to this Agreement, the Site M&O Contract or any Subcontract unless the form and content of such announcement or circular have been submitted to the other Parties and the other Parties have given their prior written consent to such announcement or circular being despatched.
- 18.2 Nothing in this Clause 18 shall prohibit any Party from making any announcement or despatching any circular as required by Law or by the rules of the UK Listing Authority or of the London Stock Exchange or any other regulatory body in which case, to the extent not inconsistent with legal obligations or the rules of the UK Listing Authority or of the London Stock Exchange, the announcement shall only be released or the circular despatched after consultation with the other Parties and after taking into account the reasonable requirements of the other Parties as to the content of such announcement or circular.

19. CONFIDENTIALITY

19.1 Confidential Information

19.1.1 Subject to Clauses 19.3 (*Disclosure by the Authority*) to 19.13 (*Freedom of Information Act*), each Party shall hold in confidence all documents, materials and other information, whether technical or commercial, supplied by or on behalf of the other Parties (including all documents and information supplied in the course of proceedings under Clause 13 (*Dispute Management*) of the Site M&O Contract or Clause 15 (*Dispute Resolution*) of this Agreement or the rules of any other dispute resolution procedure to which a dispute is referred in accordance with this Agreement) and to documents, materials and other information of any nature relating to a Third Party to which it may acquire or have access to directly or indirectly and shall not, except with the written authority of the other Party, publish or otherwise disclose the same otherwise than as expressly provided for in this Agreement unless or until the recipient Party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of this Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

19.1.2 The PBO shall not make use of this Agreement or any information issued or provided by or on behalf of the Authority in connection with this Agreement otherwise than for the purpose of complying with its obligations under this Agreement and otherwise than as expressly provided for in this Agreement or under the Site M&O Contract except with the written authority of the Authority.

19.2 PBO Right to Request confidentiality

The PBO may at any time request in writing, stating reasons, that the Authority keeps particular information confidential and does not disclose it to Third Parties. The PBO may further request in writing at any time that, where the Authority discloses Information pursuant to Clause 19.3 below (*Disclosure by the Authority*), the Authority shall make representations to the recipient of such Information as to the desirability of keeping such Information confidential. Any such request by the PBO shall be accompanied by a document setting out in writing the requested representations. The Authority shall consider whether to make such representations.

19.3 Disclosure by the Authority

The Authority, having considered any request made by the PBO under Clause 19.2 (*PBO right to request confidentiality*) may, save for information which relates solely to the business and operation of the PBO or information which is judged by OCNS to be security sensitive (unless the recipient of information pursuant to this Clause 19.3 (*Disclosure by the Authority*) holds all relevant security clearances), disclose any and all information acquired by it under or pursuant to this Agreement (the "**Information**"):

19.3.1 to the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the Government of the United Kingdom, the United Kingdom Parliament, the Scottish Parliament, the National Assembly of Wales or any department, officer, agent, representative, employee, consultant or adviser of any of them;

19.3.2 to the Regulators;

- 19.3.3 to the extent required by applicable Law or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Procedure;
- 19.3.4 to bidders who have pre-qualified to participate in any relevant forthcoming tender process, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 19 (*Confidential Information*);
- 19.3.5 to insurers upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 19 (*Confidential Information*);
- 19.3.6 to professional advisers, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 19 (*Confidential Information*); and/or
- 19.3.7 for the purpose of:
- (A) the examination and certification of the Authority's or the PBO's accounts;
 - (B) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources; and /or
- 19.3.8 to consultees under the Energy Act.
- 19.4 So far as is practicable, the Authority shall give the PBO reasonable notice of any proposed disclosure pursuant to Clause 19.3 (*Disclosure by the Authority*), the Authority will use its reasonable endeavours to obtain an undertaking of confidentiality equivalent to that contained in Clause 10.1 (*Confidential Information*) from the agents, representatives, employees, consultants or advisers listed in Clause 19.3.1 (*Disclosure by the Authority to the Parliamentary Commissioner*).
- 19.5 Notwithstanding the provisions of Clause 19.1 (*Confidential Information*), the Authority may, with the consent of the PBO (not to be unreasonably withheld), further disclose the Information to persons not referred to in Clause 19.3 (*Disclosure by the Authority to the Parliamentary Commissioner*).
- 19.6 Any determination as to whether it is reasonable for the PBO to withhold its consent to disclosure under Clause 19.5 above (*Disclosure by the Authority*) shall have regard to:
- 19.6.1 compliance with the Authority's statutory functions and duties, including in particular the promotion of effective competition and value for money;
 - 19.6.2 relevant Government policy;
 - 19.6.3 the requirement to maintain security;
 - 19.6.4 the public interest; and
 - 19.6.5 the requirement to maintain openness and transparency.
- 19.7 **Publication**
- The Authority, having considered any request made by the PBO pursuant to Clause 19.2 (*PBO Right to Request Confidentiality*) may publish, in such form and at such times as it sees fit, the following:

- 19.7.1 amounts of payments to the SLC and any deductions made from the SLC under the Site M&O Contract;
 - 19.7.2 performance statistics;
 - 19.7.3 monitoring reports; and
 - 19.7.4 such information as the Authority reasonably requires to publish having regard to the list of considerations set out in Clause 19.6 (*Authority withholding consent to disclose*), including information it includes in its annual report.
- 19.8 The Authority shall give the PBO reasonable notice of any proposed publication pursuant to Clause 19.7 (*Publication*).

19.9 Disclosure Indemnity

The Authority shall indemnify the PBO against Third Party Claims arising as a result of any disclosure of Information pursuant to Clause 19.3.4 (*Disclosure by the Authority to pre-qualified bidders*) or any publication by the Authority whether or not in compliance with Clause 19.7 (*Publication*) other than where the Authority, acting reasonably, considered that it was obliged to disclose Information pursuant to the Freedom of Information Act and subject always to the PBO having made all reasonable endeavours to mitigate the amount of the claim and:

- 19.9.1 in the case of an Existing Agreement the SLC having made such reasonable efforts to obtain the agreement of the counterparty to such Existing Agreement to allow the disclosure of Information and publication by the Authority contemplated by this Clause 19 (*Confidentiality*); and
- 19.9.2 in the case of an agreement entered into after the Commencement Date, to the SLC having obtained the Authority's express permission to enter into that agreement to the extent that it does not allow the disclosure of Information and publication by the Authority contemplated by this Clause 19 (*Confidentiality*).

19.10 Disclosure by the PBO

The PBO may disclose without the consent of the Authority, any and all information acquired by it under or pursuant to this Agreement save for information which is judged by OCNS to be security sensitive (unless the recipient of information pursuant to this Clause 19.10 (*Disclosure by the PBO*) holds any relevant security clearances) to:

- 19.10.1 the Regulators;
- 19.10.2 the extent required by any Parliamentary obligation, applicable Law or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Procedure;
- 19.10.3 the extent required by insurers upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 19.1.1 (*Confidential Information*);
- 19.10.4 the extent required by professional advisers including lenders' financial advisors and auditors upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 19.1.1 (*Confidential Information*); and

19.10.5 the extent required by any department, officer, agent, representative, employee, consultant or adviser of any of the entities referred to in Clauses 19.10.1 to 19.10.4 (*Disclosure by the PBO*) above subject, in any case where the entity in question would be required to provide an undertaking of confidentiality equivalent to that contained in Clause 19.1.1 (*Confidential Information*), to obtaining such an undertaking of confidentiality.

19.11 Delivery Up

On expiry or termination of this Agreement, the PBO shall ensure or procure that the Nominated Staff return, within a period of ten (10) Working Days from expiry or termination to the PBO or the Authority (as applicable) all documents, materials or any information which is confidential (in accordance with Clause 19.1.1 (*Confidential Information*)) belonging to the PBO or the Authority.

19.12 Damages not the only remedy

Without prejudice to any other rights or remedies that the Authority may have, the Parties acknowledge and agree that damages alone would not be an adequate remedy for any breach by the PBO of this Clause 19 (*Confidentiality*) and that the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Clause 19 (*Confidentiality*) by the PBO would be more appropriate remedies.

19.13 Freedom of Information Act

19.13.1 This Clause 19 (*Confidentiality*) is subject to the Parties' respective obligations under the FOIA and EIR together with any guidance and/or codes of practice issued by the Ministry of Justice, the Information Commissioner, the Department for Constitutional Affairs and/or the Lord Chancellor's Department.

19.13.2 The PBO shall with respect to this Agreement and the Site M&O Contract only facilitate the Authority's compliance with the FOIA and EIR. If the Authority is required to provide information to a person as a result of a request made to it under the FOIA and/or EIR and such information is in the possession of any of the PBO, the SLC or any of its Subcontractors but not the Authority, the PBO shall itself provide, or use its best endeavours to procure the provision of, such information to the Authority as soon as reasonably practicable.

19.13.3 If the PBO receives any FOIA or EIR requests itself in respect of this Agreement of the Site M&O Contract, the PBO shall not answer such request itself but shall pass on the request to the Authority for the Authority to respond to such request.

19.14 National Audit Office

The Parties acknowledge and agree that the National Audit Office has the right to publish details of this Agreement (including information considered by the Parties to be commercially sensitive) in its relevant reports to Parliament.

20. TUPE

20.1 The PBO will indemnify and keep indemnified the Incoming Parent and the Authority from and against each and every liability of any nature whatsoever that the Incoming Parent and the Authority may incur (in each case whether directly or indirectly) out of or in connection

with any assertion by any person, body or organisation or any finding by any court or tribunal that:

- 20.1.1 the employment contract (and/or any associated liabilities) of any person employed or engaged by the PBO has transferred to or is with the SLC or any subcontractor of the SLC (whether by virtue of the operation of TUPE or otherwise);
- 20.1.2 the employment contract (and/or any associated liabilities) of any person employed or engaged by the PBO has transferred to or is with the Incoming Parent or of any subcontractor of the Incoming Parent (whether by virtue of the operation of TUPE or otherwise);
- 20.1.3 the employment contract (and/or any associated liabilities) of any person employed or engaged by any subcontractor of the PBO has transferred to or is with the SLC or of any Subcontractor of the SLC (whether by virtue of the operation of TUPE or otherwise);
- 20.1.4 the employment contract (and/or any associated liabilities) of any person employed or engaged by any Subcontractor of the SLC has transferred to or is with the SLC or of any Subcontractor of the SLC (whether by virtue of the operation of TUPE or otherwise);
- 20.1.5 the employment contract (and/or any associated liabilities) of any person employed or engaged by any subcontractor of the PBO has transferred to or is with the Incoming Parent or of any subcontractor of the Incoming Parent (whether by virtue of the operation of TUPE or otherwise);
- 20.1.6 the employment contract (and/or any associated liabilities) of any person employed or engaged by any Subcontractor of the SLC has transferred to or is with the Incoming Parent or of any subcontractor of the Incoming Parent (whether by virtue of the operation of TUPE or otherwise),

including, without limitation, any liability for payment of salary, benefits (including, without limitation, bonuses, pensions and pension related benefits), termination costs and any award, compensation or damages imposed by any court or tribunal and any costs (including, without limitation, legal costs on an indemnity basis), expenses and interest.

- 20.2 The PBO agrees to provide an indemnity to the Incoming Parent on the terms set out above from the date on which the Shares are transferred to the Incoming Parent.
- 20.3 Without prejudice to any other information supply provisions of this Agreement, the Parent Body Organisation shall comply with its obligation to provide Employee Liability Information (as defined in TUPE) at such time or times as is required by TUPE (or at such earlier time as reasonably required by the Authority) to the Incoming Parent and shall at the same time provide copies to the Authority. At the time of providing such Employee Liability Information the Parent Body Organisation shall warrant to the Authority and to the Incoming Parent that the Employee Liability Information is complete and accurate at the time it is provided. The Parent Body Organisation will update such Employee Liability Information to take account of any changes to such information, as required by TUPE and shall warrant to the Authority and to the Incoming Parent that the updated Employee Liability Information is complete and accurate at the time it is provided.

21. SHARED SERVICES

- 21.1 The PBO acknowledges that the Authority is developing a Shared Services Project. In order to enable the implementation of the Shared Services Project, the PBO agrees that it will use its reasonable endeavours to assist with the development and implementation of the Shared Services Project.
- 21.2 Section 40(2) of the Energy Act provides that a Future Transfer Scheme, which would operate to transfer property, rights and liabilities to a publicly owned company (as defined in the Energy Act) or the Authority from the SLC, can be carried out only if the SLC consents to that Future Transfer Scheme.
- 21.3 For Future Transfer Schemes that meet the requirements set down in Clause 21.4 (*Shared Services*), the PBO agrees that, whenever during this Agreement, a Future Transfer Scheme or Future Transfer Schemes has or have been proposed by the Secretary of State, under which property, rights or liabilities are proposed to be transferred from the SLC by virtue of Section 40(2) of the Energy Act, the PBO will consent to their transfer in accordance with such Future Transfer Scheme(s) and procure that the SLC consents (and such consent will constitute 'consent in accordance with a nuclear transfer scheme') for the purposes of Section 40 of the Energy Act.
- 21.4 The requirements described in Clause 21.3 (*Shared Services*) are that:
- 21.4.1 the Future Transfer Scheme(s) is/are designed to facilitate the Shared Services Project;
 - 21.4.2 the Future Transfer Scheme(s) does/do not operate to transfer rights or liabilities in relation to any Nominated Staff or employment contracts related to Nominated Staff (including but not limited to Secondment Agreements); and
 - 21.4.3 the Future Transfer Scheme(s) does/do not operate to alter the Parties to this Agreement or the M&O Site Contract.
- 21.5 The provisions of this Clause 21 confer rights and benefits on the Secretary of State, which rights and benefits are intended to be enforceable by the Secretary of State under the Contracts (Rights of Third Parties) Act 1999.

22. GENERAL

22.1 Ultimate Parent Guarantee and Indemnity

The PBO shall procure a guarantee and indemnity substantially in the form of that attached at Schedule 4, to be provided with effect from the Commencement Date from each of the Ultimate Parents.

22.2 Joint and Several Liability

Where in this Agreement any liability is undertaken by two or more persons, the liability of each of them shall be joint and several except that the liability of the PBO and the SLC shall not be joint and several prior to the Commencement Date or following the termination of this Agreement.

22.3 Assignment

22.3.1 Assignment by PBO

The PBO shall not without the Authority's prior written consent, assign (whether absolutely or by way of security and whether in whole or in part), transfer, mortgage, charge or otherwise dispose in any manner whatsoever of the benefit of this Agreement or any part of it and shall not delegate in any manner whatsoever its performance under this Agreement.

22.3.2 Assignment by Authority

The Authority shall not, without the prior written consent of the PBO, assign, transfer or otherwise dispose of the Agreement or any part thereof or any benefit or interest therein or thereunder unless to the Crown or another manifestation or agency of the Crown or unless the obligations of the person to whom and in whose favour any such interest is assigned, transferred or otherwise disposed of are fully and unconditionally guaranteed by the Crown.

22.4 Entire Agreement

Each of the Parties to this Agreement confirms that this Agreement, together with the Site M&O Contract, the Overarching Costs Management Agreements, the Transition Agreement, the Ultimate Parent Company Guarantees and Indemnities and the Records Agreements and any and all of the Claims Handling and Insurance Agreement(s), represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at Law or by custom.

22.5 Each Party confirms that:

22.5.1 in entering into this Agreement it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out in this Agreement or the documents in the agreed form; and

22.5.2 in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the only rights or remedies in relation to any representation, warranty, assurance, covenant, indemnity, undertaking or commitment given or action taken in connection with this Agreement or with any of the documents in the agreed form are those contained or referred to in this Agreement or such agreed form document and for the avoidance of doubt and without limitation, no Party has any other right or remedy (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in, this Agreement).

22.6 Unenforceable provisions

If any provision or part of this Agreement is void or unenforceable due to any applicable Law, it shall be deemed to be deleted and the remaining provisions of this Agreement shall continue in full force and effect.

22.7 Further assurance

Each Party shall, at its own cost after the Commencement Date execute all such deeds and documents and do all such things as the PBO or the Authority may reasonably require for perfecting the transactions intended to be effected under or pursuant to this Agreement and for giving the PBO the full benefit of the provisions of this Agreement, including vesting in the PBO the legal and beneficial title to the Shares.

22.8 Waiver

The rights and remedies of the Parties shall not be affected by the giving of any indulgence by any other Party or by anything whatsoever except a specific waiver or release in writing and any such waiver or release shall not prejudice or affect any other rights or remedies of the Parties.

22.9 No set off or deduction or counterclaim

Every payment payable by the PBO under this Agreement shall be made in full without any set off or counterclaim howsoever arising and shall be free and clear of, and without deduction of, or withholding for or on account of, any amount which is due and payable to the PBO under this Agreement.

22.10 Variation

Except in relation to Clause 8 (*Claims Handling*) which shall be capable of unilateral variation by the Authority, (which will act reasonably in relation to such variation) or where expressly specified otherwise, no variation of this Agreement (or any document referred to in it) shall be effective unless it is in writing (which for this purpose, does not include electronic mail) signed by or on behalf of each of the Parties. The expression "variation" includes supplement, deletion or replacement, however effected.

22.11 Cross-SLC Initiatives

The PBO acknowledges that the Authority is developing Cross-SLC Initiatives through governance boards and other discussion forums. The PBO agrees to procure that the SLC will assist the Authority with the development and implementation of the Cross-SLC Initiatives, including by the SLC providing information to the Authority and relevant governance boards or other discussion forums for the purposes of development and implementation of the Cross-SLC Initiatives.

22.12 Reach Back Services and PAIS Teams

Where the SLC wishes to procure Reach Back Services or the services of a PAIS Team, it shall procure such services from the PBO and the PBO shall procure such services from the relevant provider of such services on terms which, to the extent possible, place liability for the delivery of such services onto the PBO and minimise any potential liability of such provider to Third Parties. The Authority is entitled to sight of such terms within five (5) Working Days of a written demand to see such terms.

22.13 Amendments to Consortium Agreement

The PBO shall not without the prior written consent of the Authority amend the consortium arrangements set out in the Consortium Agreement relating to UK Nuclear Waste Management Limited dated 19 February 2007 between Washington International Holding

Limited, Compagnie Generale de Matieres Nucleaires, Studsvik UK Limited, Serco Limited and UK Nuclear Waste Management Limited.

23. COSTS

The PBO and the Authority shall pay their own costs in connection with the preparation and negotiation of this Agreement.

24. NOTICES

24.1 A notice, approval, consent, electronic mail (in the case of Clause 24.4 (*Notices*) below only) or other communication ("**Notice**") in connection with this Agreement and the documents referred to in it must be in written form in the English language and must be delivered by hand, by first class prepaid post (or airmail if posted to or from a place outside the United Kingdom) or by facsimile transmission to the relevant address or facsimile number specified in Clause 24.3 (*Notices*) below or, for the purposes of Clause 24.4 (*Notices*) below only, by electronic email to an address for the time being notified for that purpose to the Party giving notice.

24.2 All Notices must be marked for the attention of the addressee.

24.3 The relevant details of each Party at the date of this Agreement are:

Authority

Address: Herdus House, Westlakes Science and Technology Park, Moor Row, Cumbria CA24 3HU

Facsimile:

Email:

Attention:

Copied to:

PBO

WIHL

Address: Washington International Holding Limited, Washington House, Birchwood Park Avenue, Birchwood, Warrington, Cheshire, WA3 6GR

Facsimile:

Email:

Attention:

Copied to:

AREVA-NC

Address: 1 rue des Hérons, Montigny le Bretonneux, 78182 St Quentin, Yvelines Cedex, France

Facsimile:

Email:

Attention:

Copied to:

Studsvik

Address: Studsvik UK Limited, Unit 14 Princess Park, 4th Avenue, Team Valley Trading Estate, Gateshead, Tyne & Wear, NE11 0NF

Facsimile:

Email:

Attention:

Serco

Address: Serco Assurance, Thomson House, Birchwood Park, Warrington, Cheshire, WA3 6GA

Facsimile:

Email:

Attention:

SLC

Address: Old Shore Road, Drigg, Holmrook, Cumbria, CA19 1XH

Facsimile:

Email:

Attention:

Copied to:

Any change to the address, facsimile number or to the addressee must be notified by the relevant Party to the other Party as soon as reasonably practicable by notice given in accordance with this Clause 24 (*Notices*).

24.4 If an electronic mail address has been provided pursuant to Clause 24.1 (*Notices*) above, the following Notices may be sent by electronic mail:

24.4.1 electronic transmittal of a scanned image of an original executed Notice;

- 24.4.2 day-to-day communication in connection with this Contract and the documents referred to in it; and
- 24.4.3 Authority approval/consent given in accordance with Schedule 5 (*Subcontracting/Procurement*) to the Site M&O Contract.
- 24.5 In the absence of evidence of earlier receipt, any Notice shall take effect from the time that it is deemed to be received in accordance with Clause 24.6 (*Notices*) below.
- 24.6 Subject to Clause 24.7 (*Notices*) below, a Notice is deemed to be received:
 - 24.6.1 where delivered by hand, upon delivery at the address of the addressee;
 - 24.6.2 where delivered by posted letter, on the third day after posting or, if posted to or from a place outside the United Kingdom, on the seventh day after posting;
 - 24.6.3 where sent by facsimile, on production of a transmission report from the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; and
 - 24.6.4 where sent by electronic mail (where applicable), on the second (2nd) day after such electronic mail was sent. The place of receipt of electronic mail shall be deemed to be the postal address of the addressee given in, or amended in accordance with, Clause 24.3 (*Notices*) above.
- 24.7 A Notice received or deemed to be received in accordance with Clause 24.6 (*Notices*) above on a day which is not a Working Day or after 5p.m. on any Working Day, according to the local time in the place of receipt, shall be deemed to be received on the next following Working Day.
- 24.8 A Notice given or document supplied to the PBO or any of them in accordance with the details specified for the PBO above shall be deemed to have been given or supplied to all the PBO to whom such Notice is addressed.
- 24.9 Each Party undertakes to notify all of the other Parties by notice served in accordance with this Clause if the address specified herein is no longer an appropriate address for the service of Notices.
- 24.10 Notwithstanding Clauses 24.1 and 24.3 (*Notices*) above, if the Authority determines, in its absolute discretion, that any Notice is to be protectively marked and should be delivered in a secure manner, it shall inform the PBO and shall instruct the PBO as to whom to deliver such Notice and how such Notice should be delivered.
- 24.11 Where the SLC and/or PBO receive a Notice from the Authority that is from someone other than the LLWR Contract Manager, the SLC or PBO (as applicable) shall notify the LLWR Contract Manager of such Notice and seek confirmation of whether to act upon it. For the avoidance of doubt, the SLC or PBO shall not act upon such a Notice until such confirmation is received from the LLWR Contract Manager.

25. COUNTERPARTS

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

26. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Agreement, save in respect of Clause 21 (*Shared Services*) which shall be enforceable by the Secretary of State.

27. GOVERNING LAW AND JURISDICTION

27.1 This Agreement shall be governed by, and construed in accordance with, English Law.

27.2 Subject to Clause 15 (*Dispute Resolution*), if any claim, legal action or proceedings arise out of or in connection with a dispute concerning this Agreement and any matter arising therefrom, each Party irrevocably:

27.2.1 agrees to submit to the exclusive jurisdiction of the courts of England and Wales; and

27.2.2 waives any right that it may have to object to an action being brought in the courts of England and Wales on the grounds of inconvenient forum or to claim that those courts do not have jurisdiction.

27.3 Where following the conclusion of any Legal Proceedings the SLC commences any proceedings against the Authority (in accordance with Clause 4.1.1(N) (*Restrictions on PBO*)) and the same or connected issues are raised in such proceedings between the PBO and the Authority, the Authority and the SLC agree to give the PBO access to such relevant information and documents of the SLC that the PBO requests as, in the sole discretion of the Authority (which shall not be capable of challenge by the PBO or the SLC), will not prejudice the Authority's position in any such proceedings.

IN WITNESS whereof _____
_____ in exercise of a power of attorney of UK Nuclear Waste Management
Limited dated 31 March 2008, _____,
_____, in exercise of a power of attorney of LLW Repository Limited dated 1 April
2008 and the Nuclear Decommissioning Authority have duly executed this DEED and it is
intended to be and is hereby delivered on the date first written above.

The COMMON SEAL of the NUCLEAR)
DECOMMISSIONING AUTHORITY was)
hereunto affixed in the presence of)

[Seal 141 Affixed]

Dr Ian Roxburgh, Director)

[Dr Ian Roxburgh]
.....
Director

James Morse, Director/Secretary)

[James Morse]
.....
Director/Secretary

EXECUTED AS A DEED on behalf of)
LLW REPOSITORY LIMITED)
by its attorney named above in the presence of:)

LLW Repository Limited by

.....

EXECUTED AS A DEED on behalf of)
UK NUCLEAR WASTE MANAGEMENT)
LIMITED by its attorney named above)
in the presence of:)
.....)
.....)
.....)

UK Nuclear Waste Management by

.....

SCHEDULE 1

Memorandum and Articles of SLC

SCHEDULE 2

Dispute Resolution Procedure

DISPUTE RESOLUTION RULES

1. INTERPRETATION AND CONSTRUCTION

- 1.1 Defined terms in the Dispute Resolution Rules shall have the meanings given to them in Part 1 of the Site M&O Contract and Clause 1 (Definitions and Interpretation) of the Parent Body Agreement except for the following terms which shall have the meanings given below solely for the purposes of the Dispute Resolution Rules:

"Agreement" means a contract into which the Dispute Resolution Rules have been incorporated and the expression **"Agreements"** shall be construed accordingly;

"Construction Act Dispute" has the meaning given in Rule 4.1;

"Customer" means a counterparty to a Customer Contract;

"Customer Dispute" has the meaning given in Rule 7.1;

"Date of Appointment" has the meaning given in Rule 4.3;

"Date of Referral" has the meaning given in Rule 4.5;

"Dispute" any dispute or difference arising out of or in connection with an Agreement including, but not limited to, any question regarding its existence, interpretation, validity, construction or termination;

"Dispute Notice" has the meaning given in Rule 3.1;

"Dispute Resolution Procedure" means the dispute resolution procedure contained within these Dispute Resolution Rules;

"Mediation Notice" has the meaning given in Rule 5.2;

"Mediation Settlement Agreement" has the meaning given in Rule 5.3;

"Non-Construction Act Dispute" means a Dispute which is not a construction dispute, as defined in the Housing Grants, Construction and Regeneration Act 1996,

"Notice of Intention to seek Adjudication" has the meaning given in Rule 4.1;

"Notice to Terminate the Mediation" has the meaning given in Rule 5.6;

"Party" means a party to an Agreement and the expression **"Parties"** shall be construed accordingly;

"Related Dispute" means any Dispute in which issues of fact or law arise which are substantially the same as or connected with one or more issues of fact or law which arise in another Dispute;

"Rules" means the LCIA Arbitration Rules;

"Senior Representative" means the designated senior representative of a Party who has authority to meet with other Parties' Senior Representatives in accordance with the Dispute Resolution Procedure and the expression **"Senior Representatives"** shall be construed accordingly;

"Senior Representative Settlement Agreement" has the meaning given in Rule 3.3;

"Subcontract Dispute" has the meaning given in Rule 7.1.

2. OUTLINE OF THE DISPUTE RESOLUTION PROCESS

- 2.1 Save as otherwise expressly provided in an Agreement in the event a Dispute arises:
- 2.1.1 the Parties to the Dispute shall seek to resolve the Dispute by convening a meeting of the Senior Representatives of the Parties to the Dispute in accordance with Rule 3;
 - 2.1.2 if the Senior Representatives are unable to resolve the Dispute in accordance with Rule 3, the Parties may agree to refer the Dispute to mediation in accordance with Rule 5 at any time, whether before or after the Dispute is referred to adjudication in accordance with Rule 4 or Rule 8, or to arbitration in accordance with Rule 6, but before the issue of the decision of the Adjudicator or the Tribunal;
 - 2.1.3 if the Senior Representatives are unable to resolve the Dispute in accordance with Rule 3, and if the Dispute is a Non-Construction Act Dispute, either Party may refer the Dispute to adjudication in accordance with Rule 8; and
 - 2.1.4 in the event the Dispute is not otherwise settled, compromised or resolved in accordance with any Dispute Resolution Procedure contained within these Dispute Resolution Rules it shall be finally resolved by reference to arbitration in accordance with Rule 6.
- 2.2 Notwithstanding any other provision of the Dispute Resolution Rules, any Party may at any time:
- 2.2.1 invoke a statutory right to adjudicate pursuant to the Housing Grants, Construction and Regeneration Act 1996, in which case the adjudication procedure set out in Rule 4 shall apply;
 - 2.2.2 apply to the English Courts for:
 - (A) an order restraining a Party from doing any act or compelling a Party to do any act; or
 - (B) Judgment to enforce a Senior Representative Settlement Agreement, the decision of an adjudicator, or an arbitral Award; and/or
 - 2.2.3 serve a Notice of Arbitration so as to prevent the expiry of any applicable limitation period.

3. SENIOR REPRESENTATIVES

- 3.1 Any Party may refer any Dispute to the Dispute Resolution Procedure by notice in writing to all other Parties to the Dispute (a "**Dispute Notice**"). The Dispute Notice shall include the following details:
- 3.1.1 the subject matter of the Dispute and the issues to be resolved;
 - 3.1.2 the position the referring Party believes is correct and the referring Party's reasons for that position;
 - 3.1.3 the identity of the other Parties;
 - 3.1.4 the identity of the referring Party's Senior Representative;
 - 3.1.5 copies of any documents which the referring Party considers to be important and relevant; and
 - 3.1.6 a statement of the determination, remedy or recourse which the referring Party seeks.
- 3.2 Within five (5) working days of service of the Dispute Notice, the Parties to the Dispute shall procure that the Senior Representatives of each Party to the Dispute shall meet during the period within fifteen (15) working days from the Dispute Notice, and if necessary shall meet more than once, to seek to resolve the Dispute by agreement.
- 3.3 Any agreement reached by the Senior Representatives which resolves the Dispute must be in writing and signed by the Senior Representative of each Party to the Dispute (the "**Senior Representative Settlement Agreement**").
- 3.4 If the Senior Representatives of the Parties to the Dispute are unable to resolve the Dispute within fifteen (15) working days of the service of the Dispute Notice (or within such further time as the Senior Representatives to the Dispute may agree in writing) then any Party to the Dispute may refer the Dispute to a Tribunal in accordance with Rule 6.
- 3.5 Unless the Parties to the Dispute otherwise agree in writing, any concessions, waivers or agreements (other than a Senior Representative Settlement Agreement) made by a Party in the course of discussions pursuant to this Rule 3 shall be without prejudice and shall not be raised by the Parties in any subsequent adjudication, arbitration or other legal proceedings.

4. ADJUDICATION

- 4.1 If a Dispute is a construction dispute, as defined in the Housing Grants, Construction and Regeneration Act 1996 (the "**HGCRA**"), (a "**Construction Act Dispute**") a Party to that Dispute may notify the other Parties to the Dispute of its intention to refer the Dispute to an Adjudicator by written notice (a "**Notice of Intention to seek Adjudication**"). The Notice of Intention to Seek Adjudication shall include:
- 4.1.1 the nature and a brief description of the Dispute and the Parties involved (including as appropriate their addresses for service of any notices);
 - 4.1.2 details of where and when the Dispute has arisen;
 - 4.1.3 the nature of the redress sought;

- 4.1.4 the proposed identity and terms of Appointment of any Adjudicator.
- 4.2 The Party or Parties receiving the notice (the "**Respondent(s)**") shall notify in writing the Party giving the notice (the "**Claimant**") within two (2) Calendar days of service of the Notice of Intention to seek Adjudication, whether or not the appointment of the proposed Adjudicator is agreed, and in default of agreement the Respondent(s) shall propose an alternative person to act as Adjudicator. If the identity and terms of appointment of the Adjudicator are not agreed within three (3) Calendar days of service of the Notice of Intention to seek Adjudication, the Claimant shall apply in writing to the Technology and Construction Solicitors Association ("**TeCSA**") to nominate and determine the terms of appointment of an Adjudicator within two (2) Calendar days of the matter being referred to TeCSA and in accordance with these Dispute Resolution Rules.
- 4.3 The Adjudicator shall within twenty four (24) hours of receipt of the proposed appointment or nomination confirm his appointment (the "**Date of Appointment**") in writing to the Parties to the Dispute stating:
- 4.3.1 his willingness and availability to act; and
- 4.3.2 that he has no interest in the Dispute.
- 4.4 Within seven (7) Calendar Days of service of the Notice of Intention to Seek Adjudication, the Claimant shall send a submission to the Adjudicator which shall include the following:
- 4.4.1 the subject matter of the Dispute and the issues to be resolved;
- 4.4.2 the position the Claimant believes is correct and the Claimant's reasons for that position;
- 4.4.3 copies of all the documents which the Claimant considers to be important and relevant; and
- 4.4.4 a statement of the determination, remedy or recourse which the Claimant seeks.
- 4.5 Under these Dispute Resolution Rules the date on which the Adjudicator and the other Parties receive the Claimant's submission shall be the date on which the Dispute is referred to the Adjudicator ("**Date of Referral**").
- 4.6 The Respondent(s) shall be entitled (but not obliged) to submit a written response to the Adjudicator and copies of any documents the Respondent(s) intend(s) to rely on within ten (10) Calendar Days of service of the Notice of Intention to seek Adjudication.
- 4.7 Any communication between a Party and the Adjudicator shall be communicated contemporaneously also to all other Parties to the Dispute.
- 4.8 The Adjudicator shall reach a decision within twenty eight (28) Calendar Days of the Date of Referral. This period of twenty-eight (28) days may be extended by up to fourteen (14) days by the Adjudicator with the consent of the Claimant or longer if agreed by all Parties to the adjudication.
- 4.9 The Adjudicator shall:
- 4.9.1 act fairly and impartially;
- 4.9.2 establish the timetable and procedure for the adjudication;

- 4.9.3 take the initiative in ascertaining the facts and the law;
 - 4.9.4 reach his decision in accordance with the applicable law in relation to the Dispute referred to him;
 - 4.9.5 if requested by one of the Parties to the Dispute, provide reasons for his decision, which shall be communicated to all Parties to the adjudication;
 - 4.9.6 have the power to decide the Parties' liability for costs arising out of or in connection with the adjudication and to make an award of costs in favour of any Party; and
 - 4.9.7 render his decision as an adjudicator for the purposes of the HGCRA and the Arbitration Act 1996 (or any re enactment or amendment thereof) and the law relating to arbitrators and arbitrations shall not apply to the Adjudicator or his decision or the procedure by which he reaches his decision.
- 4.10 In determining any dispute referred to him for a decision the Adjudicator shall at his absolute discretion take the initiative in ascertaining the facts and the law as he considers necessary in respect of the referral which may include:
- 4.10.1 considering any written representations, statements and expert's reports submitted to him by the Parties;
 - 4.10.2 if requested by any Party affording the Parties the opportunity to address him in a meeting or meetings at which all Parties to the Dispute referred to him must be present;
 - 4.10.3 requiring the Parties to produce to him and to all other Parties to the Dispute copies of any documents relevant to the Dispute (save any which would be privileged from production in Court proceedings);
 - 4.10.4 instructing an expert and/or taking counsel's opinion as to any matter raised in the adjudication, but he shall not be entitled to delegate any decision to such expert or counsel; and
 - 4.10.5 open up, review and revise any opinion certificate, instruction, determination or decision of whatsoever nature given or made under an Agreement.
- 4.11 If a Party fails to comply with any request, direction or timetable of the Adjudicator made in accordance with his powers, or fails to produce any document or written statement requested by the Adjudicator, or fails to comply with any other procedural requirement relating to the adjudication, the Adjudicator may continue the adjudication in the absence of that Party and the document or written statement requested.
- 4.12 The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless such act or omission is in bad faith, and any employee, agent or adviser of the Adjudicator is similarly protected from liability.
- 4.13 If the appointed Adjudicator is or becomes unable or unwilling to act or fails to come to a decision within the specified time allowed, any Party may within two (2) working days of receiving notice of the Adjudicator being or becoming unable or unwilling to act, apply to TeCSA to nominate and determine the terms of appointment of the Adjudicator within two

(2) Calendar days of the matter being referred to TeCSA and in accordance with these Dispute Resolution Rules.

4.14 The replacement Adjudicator shall within twenty four (24) hours of receipt of the proposed appointment or nomination confirm in writing to the Parties to the Dispute:

4.14.1 his willingness and availability to act; and

4.14.2 that he has no interest in the Dispute referred to him.

He shall have the power to decide any Dispute that was submitted to his predecessor but had not been decided at the time when his predecessor became unable or unwilling to act.

4.15 The Adjudicator's decision is binding upon the Parties to the Dispute unless and until the Dispute to which it relates is finally determined by the Tribunal appointed in accordance with Rule 6, or by written agreement of the Parties in accordance with Rule 3 or otherwise.

4.16 If any Party does not comply with the decision of the Adjudicator any other Party to the adjudication shall be entitled to take proceedings in the English Courts to secure enforcement of the decision pending any final determination of the Dispute.

4.17 Each Party to the adjudication shall be liable for such proportion of the fees and reasonable expenses of the Adjudicator, and those of any person employed or engaged by the Adjudicator to assist him in the adjudication, as the Adjudicator shall in his absolute discretion direct.

5. MEDIATION

5.1 Subject to Rule 2.1.1, a Party may not refer a Dispute to mediation, unless that Dispute has first been referred to the Parties' Senior Representatives in accordance with Rule 3.

5.2 In the event a Party refers a Dispute to mediation (the "**Mediation Notice**"), it shall be in accordance with the LCIA Mediation Procedure, as amended by Rule 5.3 which procedure is deemed to be incorporated by reference into this Rule.

5.3 If the parties agree any individual or individuals to act as mediator (the "**Mediator**"), that individual or those individuals shall be appointed as the Mediator. If the Parties do not agree that any individual or individuals be appointed as Mediator, the Mediator shall be selected and appointed by the LCIA in accordance with the LCIA Mediation Procedure.

5.4 Any settlement reached by the Parties which resolves the Dispute must be in writing and signed by the Parties to the Dispute (the "**Mediation Settlement Agreement**").

5.5 Unless the Parties to the Dispute otherwise agree in writing, any concessions, waivers or agreements (other than a Mediation Settlement Agreement) made by a Party in the course of discussions pursuant to this Rule 5 shall be without prejudice and shall not be raised by the Parties in any subsequent adjudication, arbitration or other legal proceedings.

5.6 Notwithstanding the provisions of Rules 5.2 and 5.3 any Party to the mediation may serve a "**Notice to Terminate the Mediation**" on the Mediator and the other Party (or Parties), to terminate the mediation at any time after the first meeting has taken place pursuant to Rule 5.2.

6. ARBITRATION

- 6.1 Subject to Rule 2.1.1, a Party may not refer a Dispute to arbitration unless that Dispute has first been referred to the Parties' Senior Representatives in accordance with Rule 3.
- 6.2 Any Dispute shall be referred to and finally resolved by arbitration under the LCIA Rules (the "**Rules**"), which Rules are deemed to be incorporated by reference into this Rule.
- 6.3 There shall be either one or three arbitrators. The number of arbitrators for a Dispute shall be agreed by the Senior Representatives during the period set aside for their meetings or, failing such agreement, shall be determined by the LCIA Court, which shall take account of the value and complexity of the Dispute and any Related Dispute and the number of Parties to the Dispute and any Related Dispute.
- 6.4 The seat, or legal place, of arbitration shall be London.
- 6.5 The language to be used in the arbitral proceedings shall be English.
- 6.6 The Parties shall not be entitled to call any individual who was previously appointed as an Adjudicator or Mediator in connection with any aspect of the Dispute, in accordance with Rule 4, Rule 5 or Rule 8, to act as witness in the arbitration.

7. JOINDER AND CONSOLIDATION

- 7.1 If a Dispute arises between the SLC and a Subcontractor (a "**Subcontract Dispute**") or between the SLC and a Customer (a "**Customer Dispute**") and the SLC serves or receives a Dispute Notice and/or a Mediation Notice and/or a Notice of Intention to seek Adjudication and/or a Request for Arbitration in accordance with this Dispute Resolution Procedure on the Subcontractor or the Customer (as applicable) it shall provide a copy to the Authority and the PBO at the same time;
- 7.2 On receipt of a copy of a Dispute Notice and/or a Mediation Notice and/or a Notice of Intention to seek Adjudication and/or a Request for Arbitration from the SLC in relation to a Subcontract Dispute or Customer Dispute (as applicable) the Authority shall, regardless of whether it has not exercised such right before in relation to the Subcontract Dispute or Customer Dispute (as applicable):
 - 7.2.1 be entitled (but not obliged), at its absolute discretion and upon notice to the SLC to take over and conduct any claim brought by the SLC in the Subcontract Dispute or the Customer Dispute (as applicable) in the name of the SLC;
 - 7.2.2 be entitled (but not obliged), to handle any claim made against the SLC, in respect of which the Authority considers it will have liability under the terms of the Contract and/or the Parent Body Agreement, for the entire or partial financial effect of that claim, in accordance with the claims handling provisions set out in Clause 1.27 (*Claims Handling*) of the Contract and/or Clause 8 (*Claims Handling*) of the Parent Body Agreement;
 - 7.2.3 review any claim made against the SLC, and if, acting reasonably, the Authority considers that the PBO will have liability under the terms of the Parent Body Agreement and/or the Contract for the entire financial effect of the claim, the Authority shall notify the SLC and the PBO, which shall have the right to handle

the claim in accordance with the claims handling provisions in Clause 8 (*Claims Handling*) of the Parent Body Agreement.

- 7.3 A Request for Arbitration by a Party under the Rules may include a Dispute and a Related Dispute.
- 7.4 A Party served with a Request for Arbitration may at any time before the Tribunal is appointed, give a Request for Arbitration in respect of any Related Dispute. In that case the arbitration of the Related Dispute shall be referred to the same Tribunal and consolidated with the arbitration of the Dispute in the original Request for Arbitration.
- 7.5 After a Tribunal has been appointed, any Party to the arbitration may give a further Request for Arbitration in respect of any Related Dispute referring it to the same Tribunal as that appointed for the arbitration of the Dispute in the original Request for Arbitration. In that case the Tribunal shall have discretion as to whether the Related Dispute is consolidated with the arbitration of the Dispute in the original Request for Arbitration. In exercising its discretion the Tribunal shall consider:
- 7.5.1 whether any evidentiary hearing on the merits of the Dispute in the original Request for Arbitration has begun;
 - 7.5.2 whether the Dispute in the original Request for Arbitration has already been finally determined as to liability; and
 - 7.5.3 any written representations made in accordance with Rule 7.6.
- 7.6 Any Party to the Related Dispute or to the Dispute in the original Request for Arbitration, shall be entitled to make a written representation to the Tribunal as to whether any evidentiary hearing on the merits of the Dispute in the original Request for Arbitration has begun and/or as to whether the Dispute in the original Request for Arbitration has already been finally determined as to liability, within seven (7) Calendar Days of the referral of the Related Dispute to the Tribunal.
- 7.7 If following seven (7) Calendar Days of the referral of the Related Dispute to the Tribunal, the Tribunal considers in its absolute discretion that:
- 7.7.1 any evidentiary hearing on the merits of the Dispute in the original Request for Arbitration has not begun; and/or
 - 7.7.2 the Dispute in the original Request for Arbitration has not already been finally determined as to liability,
- it shall order the consolidation of the Related Dispute with the arbitration of the Dispute in the original Request for Arbitration.
- 7.8 A Party that receives more than one Request for Arbitration for Disputes which constitute Related Disputes may give notice requiring that they be referred to the same Tribunal and consolidated in accordance with Rule 7. The SLC shall exercise this right if requested to do so by the Authority following service by the Authority of a Request for Arbitration where the SLC has also received a Request for Arbitration in a Subcontract Dispute or a Customer Dispute (as applicable) in accordance with this Dispute Resolution Procedure.

- 7.9 Notwithstanding the provisions of Rules 7.1 to 7.8 above, if a dispute arises between the SLC and a Customer in relation to a Customer Contract which does not incorporate this Dispute Resolution Procedure the following provisions shall apply:
- 7.9.1 the SLC shall forthwith notify the Authority and the PBO of the dispute and provide the Authority and the PBO with details as to the nature and value of the claim and copies of any relevant documentation;
 - 7.9.2 the SLC shall forthwith thereafter use all reasonable endeavours to obtain the Customer's agreement to vary the relevant Customer Contract to incorporate the Dispute Resolution Rules. If the Customer so agrees, the relevant Customer Contract shall then fall within the definition of "**Agreement**" in Rule 1.1 and the Parties shall comply with the provisions of the Dispute Resolution Procedure to resolve any Dispute or Related Dispute; and
 - 7.9.3 if the SLC fails to obtain the agreement of the Customer referred to in Rule 7.9.1 the Authority shall:
 - (A) be entitled (but not so obliged), to take over and conduct any claim brought by the SLC against a Customer in relation to a Customer Contract in the name of the SLC;
 - (B) be entitled (but not obliged), to handle any claim made against the SLC by a Customer in relation to a Customer Contract, in respect of which the Authority considers it will have liability under the terms of the Contract and/or the Parent Body Agreement, for the entire or partial financial effect of that claim, in accordance with the claims handling provisions in Clause 1.27 (*Claims Handling*) of the Contract and/or Clause 8 (*Claims Handling*) of the Parent Body Agreement; and
 - (C) review any claim made against the SLC and if, acting reasonably, the Authority considers that the PBO will have liability under the terms of the Parent Body Agreement and/or the Contract for the entire financial effect of the claim, the Authority shall notify the SLC and the PBO, which shall have the right to handle the claim in accordance with the claims handling provisions in Clause 8 (*Claims Handling*) of the Parent Body Agreement.
- 7.10 If a Dispute arises between the SLC and the Authority, whether or not commenced by the Authority, and the SLC is of the opinion that a Related Dispute exists between the Authority and another SLC, the SLC shall be entitled to request that the Authority procure (subject to any discretion of the Tribunal and to the right of the Parties to make representations to the Tribunal as to how that discretion should be exercised), that the Related Dispute be referred to the same Tribunal and that the Related Dispute be consolidated with the arbitration of the Dispute in the original Request for Arbitration. If such a request is made, the Authority shall not unreasonably withhold its agreement to make the referral to the Tribunal, upon notice to the SLC.

8. ADJUDICATION FOR NON-CONSTRUCTION ACT DISPUTES

- 8.1 Notwithstanding that a Dispute is not a Construction Act Dispute, a Party may refer the Dispute to adjudication in accordance with Rule 4 as varied by this Rule 8;

- 8.2 Subject to Rule 2.1.1, a Party may not refer a Dispute to adjudication, unless that Dispute has first been referred to the Parties' Senior Representatives in accordance with Rule 3.
- 8.3 Within fourteen (14) Calendar Days of service of the Notice of Intention to Seek Adjudication, the Claimant shall send a submission to the Adjudicator which shall include the following:
- 8.3.1 the subject matter of the Dispute and the issues to be resolved;
 - 8.3.2 the position the Claimant believes is correct and the Claimant's reasons for that position;
 - 8.3.3 copies of all the documents which the Claimant considers to be important and relevant;
 - 8.3.4 and a statement of the determination, remedy or recourse which the Claimant seeks.
- 8.4 The Respondent(s) shall be entitled (but not obliged) to submit a written response to the Adjudicator and copies of any documents the Respondent(s) intend(s) to rely on within twenty (20) Calendar Days of service of the Notice of Intention to seek Adjudication or such further period of up to seven (7) Calendar Days as the Adjudicator may allow.
- 8.5 The Adjudicator shall reach a decision within forty-two (42) Calendar Days of the Date of Referral. This period of forty-two (42) days may be extended by up to fourteen (14) Calendar Days by the Adjudicator with the consent of the Claimant or longer if agreed by all Parties to the adjudication.

43(2) Commercial



43(2) Commercial



SCHEDULE 4
Ultimate Parent Guarantee

DATED

20

[(1) URS CORPORATION

or

(1) STUDSVIK AB

or

(1) AREVA S.A.]

- and -

(2) NUCLEAR DECOMMISSIONING AUTHORITY

ULTIMATE PARENT COMPANY GUARANTEE AND INDEMNITY

relating to

the Parent Body Agreement for the Low Level Waste Repository

at Drigg

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THIS GUARANTEE AND INDEMNITY is made as a deed on 20

BETWEEN

(1) **URS CORPORATION**, (EIN: 94-1381538) whose principal office is at 600 Montgomery Street, 26th Floor, San Francisco, CA 94111-2728, USA (the "**Guarantor**"); and

OR

(1) **STUDSVIK AB**, (Registered Company number: 556501-0997) whose registered office is at PO Box 556, SE-61110, Nyköping, Sweden (the "**Guarantor**"); and

OR

(1) **AREVA S.A.**, (Registered in France under number: 712 054 923 RCS Paris) whose registered office is at 33 Rue La Fayette, 75009 Paris, France (the "**Guarantor**"); and

(2) **NUCLEAR DECOMMISSIONING AUTHORITY**, a non departmental public body whose registered office is at Herdus House, Westlakes Science and Technology Park, Moor Row, Cumbria, CA24 3HU (the "**Authority**").

BACKGROUND

(A) The Authority intends to procure a PBO who will for the duration of the contract own shares in the Site Licence Company and provide appropriate management resource and expertise to the Site Licence Company.

(B) The Authority is about to enter into a parent body agreement in respect of the Low Level Waste Repository at Drigg with the SLC and UK Nuclear Waste Management Limited ("**the PBA**") pursuant to which UK Nuclear Waste Management Limited ("**PBO**") inter alia indemnifies the Authority in respect of (i) various liabilities, losses, costs and expenses and (ii) Disallowable Costs incurred by the SLC all pursuant to the provision of services under the PBA and services by the SLC under a separate Site Management and Operation Contract ("**Site M&O Contract**") in respect of the Low Level Waste Repository at Drigg between the Authority and the Low Level Waste Repository Site Licence Company Limited dated [].

(C) The Guarantor (being the parent company of the PBO) has agreed to guarantee the payment obligations and liabilities of the PBO under the PBA.

NOW THIS DEED WITNESSES as follows:

1. DEFINITIONS, CONSTRUCTION AND INTERPRETATION

1.1 Terms defined in the PBA shall, unless otherwise defined in this Guarantee or unless a contrary intention appears, bear the same meanings when used in this Guarantee and the definitions given in the recitals to this Guarantee and in the Guarantee itself apply to the whole of this Guarantee;

1.2 Unless a contrary intention appears, any reference in this Guarantee to:

1.2.1 the "**Authority**", the "**PBO**" and the "**Guarantor**" are to be construed so as to include their successors, permitted assignees and permitted transferees;

- 1.2.2 the "**Site Licence Company**" or "**SLC**" means the LLW Repository Limited;
 - 1.2.3 "**Disallowable Costs**" has the meaning given to it in the Site M&O Contract;
 - 1.2.4 any legislative provision shall be deemed to include any subordinate legislation made under the relevant statutory provision and is a reference to that legislative provisions as from time to time amended, consolidated, modified, re-enacted or replaced;
 - 1.2.5 any gender includes all genders;
 - 1.2.6 the singular includes the plural (and vice versa);
 - 1.2.7 persons includes bodies corporate, unincorporated associations and partnerships (whether or not any of them have a separate legal personality);
 - 1.2.8 a Clause shall be a reference to a clause of this Guarantee;
 - 1.2.9 "includes" or "including" shall mean "includes without limitation" or "including without limitation";
 - 1.2.10 "otherwise" and words following "other" shall not be limited by any foregoing words where a wider construction is possible;
 - 1.2.11 costs, expenses and losses which are to be indemnified to, or recovered by, the person incurring the same shall be construed as references to an amount equal to the amount of such costs, expenses and losses together with any amount that represents VAT;
 - 1.2.12 this Guarantee includes this Guarantee as amended or supplemented in accordance with its terms; and
 - 1.2.13 any agreement or document is to that agreement or document as amended, varied, supplemented, substituted, novated or assigned from time to time in accordance with the terms of such agreement or document.
- 1.3 The list of contents and clause headings in this Guarantee are included for convenience only and do not affect interpretation of this Guarantee.
- 1.4 The parties to this Guarantee intend it to take effect as a deed.

2. GUARANTEE AND INDEMNITY

- 2.1 The Guarantor irrevocably and unconditionally:
- 2.1.1 guarantees to the Authority, as a continuing guarantee, the due and punctual payment and discharge by the PBO of all sums, liabilities, awards, losses, damages, costs, charges and expenses that may be or become due, owing or payable to the Authority under or arising out of:
 - (A) Clauses 7.2.1, 7.2.2, 7.2.3 and 7.2.8 of the PBA; and
 - (B) any other rights of the Authority against the PBO under the PBA,

in accordance with its terms or otherwise by reason of or in consequence of any breach thereof on the part of the PBO (including legal fees, taxes and any other costs, on a full indemnity basis, incurred by the Authority in connection with the Authority validly and justifiably seeking to enforce any of the above), (and which sums, liabilities, awards, losses, damages, costs, charges and expenses shall for the avoidance of doubt be subject to the limitations (including as to duration) set out in the PBA) (together the "**Guaranteed Obligations**"), and the Guarantor undertakes with the Authority that if and whenever the PBO fails to pay any amount when due under or in connection with the PBA, the Guarantor shall within 7 Calendar Days of the demand pay that amount as if it were the principal obligor under the PBA;

2.1.2 agrees with the Authority, as a separate, independent, primary and additional obligation (and without prejudice to Clause 2.1.1 (*Guarantee and Indemnity*) and Clause 15 (*Indemnity*)), to indemnify and keep indemnified the Authority immediately within seven (7) days of written demand made to the Guarantor and on an after tax basis in respect of all losses, damages, costs, claims, liabilities, demands and expenses arising:

- (A) from the PBO failing to pay and/or discharge and/or being otherwise in default of any of the Guaranteed Obligations;
- (B) from the determination of the employment of the PBO by operation of, or by notice given under Clause 12 (*Termination*) of the PBA; or
- (C) as a result of any of the Guaranteed Obligations being or becoming void, voidable, unenforceable or ineffective as against the PBO for any reason whatsoever whether or not known to the PBO or any other person,

and the amount of such losses, damages, costs, claims, liabilities, demands and expenses is the amount which the Authority would otherwise have been entitled to recover from the PBO on the assumption that the PBA is not void, unenforceable or ineffective against the PBO (and which sums, liabilities, awards, losses, damages, costs, charges and expenses shall for the avoidance of doubt be subject to the limitations (including as to duration) set out in the PBA).

For the avoidance of doubt, the Authority will exercise its rights to claim under the PBA by making a written demand of the PBO before claiming under this Guarantee. The Authority may (but without imposing an obligation or liability on the Authority to do so), at the same time as first making written demand to the PBO, also provide a copy of such written demand to the Guarantor, to enable the Guarantor to have the opportunity to seek to remedy the same in discharge of any obligation which may otherwise be under the Guarantee.

3. **PRINCIPAL OBLIGOR**

Without prejudice to the Authority's rights against the PBO as principal obligor, the Guarantor shall without prejudice to its rights and limitations of liability under this Guarantee, be deemed the principal obligor in respect of its obligations under this Guarantee and not merely as a surety (save that, as envisaged in Clause 10 hereof, the liability of the Guarantor shall not exceed that of the PBO in relation to the Guaranteed Obligations) and accordingly the Guarantor shall not be discharged nor shall its liability

under this Guarantee be affected by any act or thing or means whatsoever by which its said liability would have been discharged or affected if it had not been the principal obligor.

4. WAIVER OF DEFENCES

The obligations of the Guarantor under this Guarantee will not be reduced, discharged, impaired or otherwise affected by (and the intention of the Guarantor is that its obligations shall continue in full force and effect notwithstanding) any act, omission, matter or thing which, but for this Clause 4, would reduce, release or prejudice any of its obligations under this Guarantee (without limitation and whether or not known to it or the Authority) including:

- 4.1 any termination, alteration, amendment, variation, omission, extension or supplement (however fundamental) to the PBA or any variation in the obligations undertaken under or pursuant to the PBA (including, without limitation, the nature, extent, timing and method of performance of the PBA) or novation of the PBA (in whole or in part);
- 4.2 the granting by the Authority of any time, indulgence, concession, consent or waiver granted to, or any concession or arrangement made with, the PBO or any other person (whether expressly or by conduct);
- 4.3 any legal limitation, incapacity or lack of power, authority or legal personality of or any dissolution, merger, amalgamation, reconstitution, reorganisation or change in the members, name, status or constitution of the PBO, the Authority or any other person;
- 4.4 the granting of any other bond, security or guarantee now or hereafter held by the Authority for all or any part of the Guaranteed Obligations;
- 4.5 the enforcement, delay or failure in enforcement, release or waiver of any such bond, security or guarantee referred to in Clause 4.4 (*Waiver of Defences*) or any amendment, addition, omission or extension to or variation thereto;
- 4.6 any claim or enforcement of payment from the PBO or any other person;
- 4.7 any act or omission which would not have discharged or affected the liability of the Guarantor had it been a principal debtor instead of a guarantor or by anything done or omitted which but for this provision might operate to exonerate the Guarantor;
- 4.8 any delay or forbearance by the Authority in exercising its rights or remedies under this Guarantee, or the enforcement or absence of enforcement of this Guarantee;
- 4.9 the illegality, invalidity, unenforceability or frustration of any Guaranteed Obligation(s) for any reason, or any defect in any provision of, the PBA or any other security given in relation to the Guaranteed Obligations;
- 4.10 any present or future law or regulations purporting to reduce or prejudice any of the Guaranteed Obligations;
- 4.11 anything that the Authority may do, or omit or neglect to do which, but for this provision, might exonerate, discharge, reduce or extinguish the liability of the Guarantor under this Guarantee; and
- 4.12 the insolvency, liquidation, winding-up or administration of (or the appointment of an administrator or receiver of) or similar proceedings or compromise or arrangement with

creditors of the PBO or any other person or the amalgamation, reconstruction, reorganisation, change in status, function, control or ownership of the PBO.

5. REPRESENTATIONS AND WARRANTIES

The Guarantor represents and warrants in favour of the Authority that:

- 5.1 it is duly formed and validly existing under the laws of its jurisdiction of formation;
- 5.2 it has the power to enter into, perform and deliver, and has taken all necessary action to authorise the entry into, performance and delivery of, this Guarantee;
- 5.3 this Guarantee constitutes, subject to any general principles of law limiting its obligations, its legal, binding, valid and enforceable obligations;
- 5.4 the entry into and performance by it of, and the transactions contemplated by, this Guarantee do not and will not conflict with:
 - 5.4.1 any law or regulation or judicial or official order applicable to it; or
 - 5.4.2 its constitutional documents; or
 - 5.4.3 any agreement or instrument which is binding upon it or any of its assets or result in the creation of (or a requirement for the creation of) any security or encumbrance of any kind over its assets;
- 5.5 to the best knowledge and belief of the Guarantor there is no litigation, arbitration or administrative proceedings of a material nature, in each case current or pending, of or before any court, arbitral body or agency of any country threatened against the Guarantor which may have the effect of preventing the Guarantor from meeting its obligations under the Guarantee.
- 5.6 the execution by it of this Guarantee constitutes, and the exercise by it of its rights and performance of its obligations under this Guarantee will constitute, private and commercial acts performed for private and commercial purposes and it will not be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in its jurisdiction of incorporation in relation to this Guarantee; and
- 5.7 without prejudice to the generality of Clause 5 (*Representations and Warranties*), its:
 - 5.7.1 irrevocable submission under this Guarantee to the exclusive jurisdiction of the courts of England and Wales;
 - 5.7.2 agreement that this Guarantee is governed by English law; and
 - 5.7.3 agreement not to claim any immunity to which it or its assets may be entitled,are legal, valid and binding under the laws of its jurisdiction of incorporation and any judgment obtained in England and Wales will be recognised and be enforceable by the courts of its jurisdiction of incorporation.

6. CONTINUING SECURITY

- 6.1 Subject to Clause 10, this Guarantee is a continuing security which shall remain in full force and effect regardless of any intermediate discharge, performance or payment of any of the Guaranteed Obligations (in whole or in part) until the complete performance, observance and compliance, by the PBO, of all the terms and conditions of the Contract.
- 6.2 This Guarantee is in addition to, without prejudice to and is not to merge with any other security, right of action, bond, other guarantee or indemnity or other right or remedy which the Authority may at any time hold in respect of the Guaranteed Obligations save that the Authority shall not be entitled to seek recovery more than once in respect of the same loss or liabilities suffered or incurred.
- 6.3 The Guarantor waives any right it may have of requiring the Authority to proceed against or enforce any other rights or security or claim payment from the PBO or any other person before claiming from the Guarantor under this Guarantee.
- 6.4 Subject to Clause 10, no single exercise of any right, power or privilege conferred by this Guarantee shall preclude any other or future exercise thereof or the exercise of any other right, power or privilege, nor shall any failure or delay by the Authority in exercising any right, power or privilege under this Guarantee or the PBA operate as a waiver thereof.
- 6.5 The Authority is entitled to make any number of demands under this Guarantee within the limit on liability of the Guarantor provided for in Clause 10.

7. DEFERRAL OF GUARANTOR'S RIGHTS

- 7.1 Unless the Authority otherwise directs, the Guarantor will not exercise any rights which it may have by reason of performance by it of its obligations under this Guarantee:
 - 7.1.1 to be indemnified by the PBO or to make or enforce any claim or right against the PBO;
 - 7.1.2 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Authority against the PBO under the PBA or of any other guarantee or security taken pursuant to, or in connection with, the PBA by the Authority;
 - 7.1.3 to prove or claim in competition with the Authority in the insolvency or administration of the PBO or otherwise have or exercise any rights of subrogation or as surety in competition with the Authority; or
 - 7.1.4 to call on the Authority to sue or take proceedings against the PBO or raise a defence, set-off or counterclaim of the PBO against the Authority.
- 7.2 The Guarantor warrants that it has not taken or received, and undertakes that until all the Guaranteed Obligations or other amounts due under this Guarantee have been performed, paid or discharged in full, it will not take or receive, the benefit of any security or encumbrance of any kind from the PBO or, save as provided for in Clause 19 (*Cross Indemnification Obligation*) of the Consortium Agreement dated 19 February 2007 disclosed to the Authority, any other person in respect of its obligations under this Guarantee.

- 7.3 The Guarantor will hold on trust for the Authority any monies or other assets received or recovered by the Guarantor and any security taken from the PBO or any other person in pursuance of, and to the extent in breach of, this Clause 7 as security for the Guarantor's liability under this Guarantee and upon request by the Authority the Guarantor will immediately deposit such security with the Authority (or as it may direct) or pay or transfer such monies or assets to the Authority for application in or towards the discharge of the Guaranteed Obligations.

8. REINSTATEMENT

If any payment by the PBO or Guarantor or any discharge given by the Authority (whether in respect of Guaranteed Obligations or the obligations of the Guarantor to make payment in respect of such Guaranteed Obligations or any security for those obligations or otherwise) is avoided or reduced as a result of insolvency or any similar event:

- 8.1 the liability of the PBO and Guarantor shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
- 8.2 the Authority shall be entitled to recover the value or amount of that security or payment from the PBO or Guarantor, as if the payment, discharge, avoidance or reduction had not occurred.

9. ENFORCEMENT

This Guarantee may be enforced without taking any proceedings or demanding upon, enforcing or exhausting any right or remedy against the PBO or any other person, or taking any action to enforce any other security, bond or guarantee held by the Authority or making or filing any claim in a bankruptcy, liquidation, administration or insolvency of the PBO or any person. Subject to the Authority not being able to recover its loss more than once, this Guarantee is in addition to and not in substitution for any present and future guarantee, lien or other security to be held by the Authority and the Authority's rights hereunder are in addition to and not exclusive of those provided by law (in accordance with Clause 21), in the PBA or in any other document, instrument or agreement executed in connection with the PBA.

10. LIMIT OF LIABILITY

The liability of the Guarantor under this Guarantee will not (save to the extent of any costs (including legal fees) reasonably incurred by the Authority in connection with the enforcement or preservation of any of its rights under this Guarantee) exceed that of the PBO under the PBA (and which liability shall for the avoidance of doubt be subject to the limitations (including as to duration) set out in the PBA) determined on the assumption that the PBA is not void, voidable or unenforceable and has full force and effect but without deduction of the amount of any set-off or counterclaim of the PBO against the Authority under the PBA.

11. DISCHARGE

Notwithstanding any composition, release, arrangement or waiver effected by the Authority with the PBO, the Guarantor's liability under this Guarantee shall be discharged only by payment and/or discharge by the Guarantor to the Authority in full of the Guaranteed Obligations from time to time, provided that no claim may be made by the Authority under

this Guarantee in respect of any failure by the PBO to perform the Guaranteed Obligations occurring more than six (6) years after the last day of the final Contract Year (as defined in the PBA).

12. RETENTION OF THIS GUARANTEE

The Authority shall be entitled to retain this Guarantee after as well as before the payment or discharge of all of the Guaranteed Obligations for such period as the Authority may determine.

13. WITHHOLDINGS AND DEDUCTIONS

All payments to be made by the Guarantor under this Guarantee shall be made without any set-off, counterclaim or equity and (subject to the following sentence) free from, clear of and without deduction for any taxes, duties, levies, imposts or charges whatsoever, present or future. If the Guarantor is compelled by the law of any applicable jurisdiction (or by an order of any regulatory authority in such jurisdiction) to withhold or deduct any sums in respect of taxes, duties, levies, imposts or charges from any amount payable to the Authority under this Guarantee or, if any such withholding or deduction is made in respect of any recovery under this Guarantee, the Guarantor shall pay such additional amount so as to ensure that the net amount received by the Authority shall equal the full amount due to it under the provisions of this Guarantee (had no such withholding or deduction been made).

14. INTEREST

14.1 The Guarantor hereby agrees to pay to the Authority, in respect of any amount demanded from it in accordance with this Guarantee, compound interest on such amount demanded by the Authority of the PBO at a rate of three per cent (3%) above the base rate of Lloyds TSB Bank plc.

14.2 Such compound interest shall accrue on a daily basis from the date of demand by the Authority until actual payment by the Guarantor (both before and after any further demand or judgment or the liquidation of the Guarantor or the PBO).

15. INDEMNITY

Subject to Clause 10, as a separate, independent and additional obligation (and without prejudice to Clause 2.1.1 (*Guarantee and Indemnity*)) the Guarantor unconditionally and irrevocably agrees (for the benefit of the Authority) to indemnify and keep indemnified the Authority immediately on demand by the Authority and on an after tax basis in respect of all losses, damages, costs, claims, liabilities, demands and expenses which may be suffered or reasonably incurred by the Authority and arise from any default or breach by the Guarantor of its obligations under this Guarantee.

16. ASSIGNMENT/NOVATION

16.1 The Authority may at any time assign, transfer or novate without the consent of the Guarantor, the benefit of and/or its rights and/or obligations under this Guarantee (whether or not accrued), to any person to whom the benefit of the PBA is assigned, transferred or, as applicable, to whom the PBA is novated in accordance with and subject to the terms thereof and the Guarantor shall at its own cost execute such documents and do such other

things as the Authority may reasonably require in order to facilitate and perfect such assignment, transfer or novation.

- 16.2 The Guarantor may assign, novate or transfer any of its rights or obligations under this Guarantee to any entity which the Authority agrees in advance in writing has the equivalent financial worth as the Guarantor.

17. DISPUTE RESOLUTION

All disputes under this Guarantee will be resolved in accordance with the Dispute Resolution Procedure attached at Schedule 2 of the PBA.

Notwithstanding any other provision of this Guarantee, for the avoidance of doubt, if any amount payable by the PBO to the Authority which is the subject of this Guarantee is disputed by the PBO and has been referred to determination pursuant to the Dispute Resolution Procedure attached at Schedule 2 of the PBA, then the Guarantor shall only be obliged under this Guarantee to make payment thereof once a final determination has been made pursuant to such procedure that the amount is due and payable by the PBO to the Authority.

18. SEVERANCE

If any provision or part of this Guarantee is void or unenforceable due to any applicable law, it shall be deemed to be deleted and the remaining provisions of this Guarantee shall continue in full force and effect.

19. NO WAIVER

The rights and remedies of the parties to this Guarantee shall not be affected by any failure to exercise or delay or forbearance in exercising any right or remedy or by the giving of any indulgence by one party to this Guarantee or by anything whatsoever except a specific waiver or release in writing and any such waiver or release shall not prejudice or affect any other rights or remedies of the parties to this Guarantee. No single or partial exercise of any right or remedy shall prevent any further or other exercise thereof or the exercise of any other right or remedy.

20. ENTIRE AGREEMENT

Each party confirms that this Guarantee, the Site M&O Contract, the Parent Body Agreement, the Overarching Costs Management Agreements, the Transition Agreement and the Records Agreements and any and all of the Claims Handling and Insurance Agreement(s), represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto.

21. RIGHTS CUMULATIVE WITH THOSE AT LAW

21.1 Rights Cumulative

The powers, rights and remedies conferred on the parties herein shall be in addition and without prejudice to all other powers, rights and remedies available to the parties by law.

21.2 Equitable Remedies

Without prejudice to any other rights or remedies that the parties may have, the parties acknowledge and agree that the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of the provisions of this Guarantee by any party shall be available to the parties and that no proof of special damages shall be necessary for the enforcement of the provisions of this Guarantee

22. LANGUAGE

This Guarantee is executed in English and all communications under this Guarantee shall be made in English.

23. CURRENCY AND EXCHANGE RATE

All payments under this Guarantee shall be made in pounds sterling. All risks associated with movements in foreign currency exchange rates shall be borne by the Guarantor.

24. CONFIDENTIALITY

The parties hereby agree that the terms of Clause 19 (*Confidentiality*) of the PBA shall apply as appropriate to this Guarantee as if set out in this Guarantee in full save that references to "PBO" shall be replaced by "Guarantor" and references to "Agreement" shall be replaced by "Guarantee".

25. VARIATION

No variation of this Guarantee shall be effective unless it is made by deed and executed by or on behalf of each of the parties to this Guarantee. The expression "variation" includes supplement, deletion or replacement, however effected.

26. FURTHER ASSURANCE

Each party to this Guarantee shall (at its own cost) do and execute, or arrange for the performance and execution of, each necessary act or document to implement its obligations under this Guarantee.

27. COUNTERPARTS

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

28. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT

No provision of this Guarantee is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Guarantee.

29. NOTICES

Any notice (including any written demand to the Guarantor made by the Authority pursuant to the terms of Clause 2.1.2 (which, for the avoidance of doubt, neither imposes

an obligation on the Authority to copy a written demand of the PBO to the Guarantor, nor creates a liability suffered by the Authority for failing to do so)) to be given under this Guarantee is to be delivered personally (which includes delivery by courier) or sent by pre-paid recorded or special delivery post to the party concerned at its address set out below or to such other address as may be notified by such party for the purposes of this clause:

If to the Authority to:

Nuclear Decommissioning Authority

Address: Herdus House, Westlakes Science and Technology Park, Moor Row, Cumbria, CA24 3HU

Facsimile: _____
Email: _____
Addressee: _____
Copied to: _____

If to the Guarantor to:

WIHL

Address: Washington International Holding Limited, Washington House, Birchwood Park Avenue, Birchwood, Warrington, Cheshire, WA3 6GR

Facsimile: _____
Email: _____
Attention: _____
Copied to: _____

OR

AREVA-NC

Address: 1 rue des Hérons, Montigny le Bretonneux, 78182 St Quentin, Yvelines Cedex, France

Facsimile: _____
Email: _____
Attention: _____
Copied to: _____

and

AREVA SA

Address: 33, rue La Fayette, 75 442 Paris Cedex 09

Facsimile:

Email:

Attention:

----- ----- -----

OR

Studsвик

Address: Studsvik UK Limited, Unit 14 Princess Park, 4th Avenue, Team Valley Trading Estate, Gateshead, Tyne & Wear, NE11 0NF

Facsimile:

Email:

Attention:

----- ----- -----

- 29.1 Any notice given pursuant to this Guarantee will be deemed to have been served as follows:
 - 29.1.1 if delivered personally, at the time of delivery, and
 - 29.1.2 if sent by recorded or special delivery post, on the third Working Day after being delivered into the custody of the postal authorities or if posted from a place outside the United Kingdom, on the tenth Working Day after being delivered into the custody of the postal authorities.

30. GOVERNING LAW AND JURISDICTION

- 30.1 This Guarantee shall be governed by and construed in accordance with English law.
- 30.2 Subject to Clause 17 (*Dispute Resolution*), the English Courts shall have exclusive jurisdiction in relation to any claim, dispute or difference ("**Proceedings**") concerning this Guarantee and any matter arising therefrom. For these purposes, each party hereto or thereto irrevocably submits to the exclusive jurisdiction of the English Courts.
- 30.3 Each party irrevocably waives any right that it may have to object to any Proceedings being brought in the English Courts, to claim that the Proceedings have been brought in an inconvenient forum, or to claim that the English Courts do not have jurisdiction.
- 30.4 Without prejudice to any other mode of service allowed under any relevant law, the Guarantor irrevocably appoints Washington International Holding Limited whose registered office is at Washington House, Birchwood Park Avenue, Birchwood, Warrington, Cheshire, WA3 6GR, United Kingdom as its agent for service of process in relation to any Proceedings before the English courts in connection with this Guarantee and agrees that failure by a process agent to notify the Guarantor of the process will not invalidate the Proceedings concerned.

OR

30.4 Without prejudice to any other mode of service allowed under any relevant law, the Guarantor irrevocably appoints Studsvik UK Limited whose registered office is at Unit 14 Princess Park, 4th Avenue, Team Valley Trading Estate, Gateshead, Tyne & Wear, NE11 0NF, United Kingdom as its agent for service of process in relation to any Proceedings before the English courts in connection with this Guarantee and agrees that failure by a process agent to notify the Guarantor of the process will not invalidate the Proceedings concerned.

OR

30.4 Without prejudice to any other mode of service allowed under any relevant law, the Guarantor irrevocably appoints Areva T&D UK Limited whose registered office is at St Leonards Works, St Leonards Avenue, Stafford, Staffordshire ST17 4LX, registered number 4955841, FAO: Company Secretary, United Kingdom as its agent for service of process in relation to any Proceedings before the English courts in connection with this Guarantee and agrees that failure by a process agent to notify the Guarantor of the process will not invalidate the Proceedings concerned.

IN WITNESS whereof this **DEED** has been executed by the parties hereto.

EXECUTED (but not delivered until the)
date hereof) as a deed by [Guarantor] acting)
by one director and its secretary or by two)
directors)

Director

Director/Secretary

The **COMMON SEAL** of the **NUCLEAR**)
DECOMMISSIONING AUTHORITY)
was hereunto affixed in the presence of:)

Director

Director/Secretary

SCHEDULE 5

Working Capital Arrangements

Guidance Note: These provisions and those of Appendix A to this Schedule 5 (Working Capital Arrangements) duplicate those set out in Part 7 of Schedule 6 (Finance) of the Site M&O Contract. Any agreed amendments to the working capital arrangements should be replicated in this Schedule 5 (Working Capital Arrangements) and in Part 7 of Schedule 6 (Finance) of the Site M&O Contract.

Definitions

"LIBOR" means the overnight London Inter Bank Offer Rate as calculated by the British Bankers Association;

"PBO Current Account" means the nominal ledger account in the SLC's accounting records that records the transfer of working capital funding between the PBO and the SLC.

General principles

The SLC shall provide an Approved Working Capital Facility (AWCF) that meets its obligations under clause 6.6 (Cashflow) of the Site M&O Contract.

The SLC and the Authority shall work together to ensure that the AWCF represents value for money to the Authority and they shall have regard to the following principles:

- (A) The SLC and the Authority will work together to improve the accuracy of the Cash Flow Forecasts produced by the SLC recognising that the SLC is ultimately responsible for the Cash Flow Forecasts.
- (B) The SLC and the Authority will work together to minimise the overall size of the AWCF, without compromising the SLC's obligations under clause 6.6.1 of the Site M&O Contract to pay all creditors of the SLC as they fall due.
- (C) The SLC and the Authority will work together to identify any Exceptional Costs that will minimise the overall size and cost of the AWCF.
- (D) The SLC and the Authority will annually (and as otherwise required by the circumstances described in paragraph 3.2 of this Schedule 5 (Working Capital Arrangements)) review the payment terms of the monthly invoice, in order that the overall size and cost of the AWCF is minimised and that the Authority is not pre-funding the SLC in any three month cycle.

1. CALCULATION OF TARGET INTEREST COST

- 1.1 By the 31st January in each year, the SLC will produce a 12 month forecast of the daily movements in the Contractor's Payments Account for the following financial year ended 31st March (the **"Base Cash Flow Forecast"**). For the initial period from the Commencement Date to the 31st March 2008, this base forecast will be provided by the SLC in the period up to the Commencement Date.
- 1.2 The SLC and the Authority will review the Base Cash Flow Forecast and agree:
 - 1.2.1 The validity and accuracy of the Base Cash Flow Forecast;

- 1.2.2 Any Exceptional Costs that would reduce the overall size and cost of the AWCF;
- 1.2.3 The payment profile to be applied to the Monthly Invoices;
- 1.2.4 The forecast working capital that will be required from the PBO;
- 1.2.5 The budgetary assumptions to be used for the purposes of cashflow forecasting.

The cash flow forecast that results from the above agreements is the "**Agreed Cash Flow Forecast**".

- 1.3 An interest rate of 43(2) Commercial (the "**Approved Interest Rate**") will be applied equally on a daily basis to:
 - 1.3.1 The forecast cumulative drawings from the PBO in the year as represented by the credit balance on the PBO Current Account ("**Interest payable on PBO Funding**");
 - 1.3.2 The forecast surplus cash balances ("**Interest on surplus cash balances**"); and
 - 1.3.3 The forecast periods where the PBO Current Account is a debit balance ("**Interest on Working Capital Provided to the PBO**").

1.4 The "**Annual Target Interest Charge**" will be calculated as follows:

Interest payable on PBO funding	£X
LESS:	
Interest on surplus cash balances and	(£X)
<u>Interest on working capital provided to the PBO</u>	(X)
<u>ANNUAL TARGET INTEREST CHARGE</u>	£X

1.5 The Annual Target Interest Charge will be adjusted monthly within the year for changes in the rate of LIBOR.

2. CALCULATION AND REIMBURSEMENT OF ALLOWABLE INTEREST COSTS

2.1 By applying the Approved Interest Rate to the daily balances on the SLC's Payment Account and the PBO Current Account, the SLC will calculate the monthly Allowable Interest Cost that is due from the Authority. The Allowable Interest Cost for any month will be:

Interest payable on PBO funding	£X
LESS:	
Interest on surplus cash balances and	(£X)
<u>Interest on working capital provided to the PBO</u>	(X)
<u>MONTHLY ALLOWABLE INTEREST COST</u>	£X

- 2.2 If the monthly Allowable Interest Cost, when added to the Allowable Interest Costs claimed in earlier months of the financial year, is no greater than the Annual Target Interest Cost, the SLC may claim the Monthly Allowable Interest Cost on the Monthly Invoice as an allowable cost. Interest costs above the Annual Target Interest Charge in any financial year will be Disallowable Costs.
- 2.3 The Authority will reimburse the Allowable Interest Cost to the SLC in line with the agreed payment terms of the monthly invoice.

3. REVIEW OF THE MONTHLY INVOICE PAYMENT PROFILE

- 3.1 The SLC and the Authority will review cash management on a monthly basis.
- 3.2 The Authority or the SLC may request a change in the payment profile of the Monthly Invoice if any of the following events are identified at the monthly review of cash management.
- 3.2.1 If in the previous three months the interest due to the SLC from surplus cash balances plus interest on working capital provided to the PBO is greater than the interest payable on PBO Funding;
- 3.2.2 A change in business circumstances that could not have reasonably been incorporated into the Agreed Cash Flow Forecast and which results in a movement in the Annual Target Interest Charge of more than the greater of:-
- (A) 43(2) Commercial
- (B) 43(2) Commercc
- 3.2.3 An unforeseen event that was not known by the management of the SLC at the time of preparation of the Agreed Cash Flow Forecast and which results in a movement in the Annual Target Interest Charge of more than the greater of:-
- (A) 43(2) Commercial
- (B) 43(2) Commer
- 3.3 The impact of any agreed changes to the cash flows and/or the payment profile of the Monthly invoice will be incorporated into the Agreed Cash Flow Forecast to produce a **Revised Cash Flow Forecast** and a **Revised Annual Target Interest Charge**.
- 3.4 In considering any changes to the payment profile of the Monthly Invoice, both the SLC and the Authority will have regard to the General Principles contained in this Schedule.

4. REPORTING

- 4.1 The SLC will provide the following reports to the Authority:
- 4.1.1 A Base Cash Flow Forecast for the following financial year by 31 January in each year;
- 4.1.2 An Agreed Cash Flow Forecast for each financial year by 31 March.

- 4.1.3 Every month, a cash flow report that identifies actual performance against forecast and also forecasts the SLC cash flows over the following 12 months
- 4.1.4 By the last day of every month, a report that identifies the forecast cash flows for each day of the following two months
- 4.1.5 Any other reports that the Authority may require during the life of the contract.

These reports will be in the format required by the Authority from time to time.

5. ACCURACY AND PUNCTUALITY

The accuracy and punctuality of all cash management reports will be an item recorded on the Balanced Scorecard. Consequently, inaccurate or late reports may result in the deduction of Incentive Fee.

APPENDIX A

Payment Profile of Monthly Invoice

The Monthly Invoice submitted by the SLC will be reimbursed by the Authority in the following manner:

Cost Type	Date Reimbursed by the Authority
43(2) Commercial	----- ----- -----
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-----	----- -----
-----	----- -----

SCHEDULE 6

Renewal Conditions

1. How much of the Bid Commitments:
 - (a) have been delivered; and
 - (b) are on course to be delivered?
2. Have the Nominated Staff put forward in the PBO's bid remained in place if appropriate and as agreed and required by the Authority?
3. How has the PBO scored on the Balanced Scorecard for the preceding three Contract Years?
4. Have the Nominated Staff been adjusted, as appropriate, to meet the need of the enduring SLC?
5. Has the Contractor been proactive in proposing ARTs for innovations and alternative pricing mechanisms?
6. Has reachback been effective and valuable?
7. Has the SLC carried out stakeholder engagement in an effective way?

43(2) Commercial

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43(2)	Commercial	
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43(2)	Commercial	

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43(2) Commercial		
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3.

43(2) Commercial

SCHEDULE 9

**REGULARITY, PROPRIETY, VALUE FOR MONEY AND MANAGING PUBLIC
MONEY**

Part 1

Managing Public Money

Part 2

Regularity, Propriety and Value for Money

SCHEDULE 10

Claims Handling and Insurance Agreement

Herbert Smith

_____ 20[]

THE NUCLEAR DECOMMISSIONING AUTHORITY

and

[INDEMNIFIED PARTY]

and

UK NUCLEAR WASTE MANAGEMENT LIMITED

**CLAIMS HANDLING AND INSURANCE
AGREEMENT**

Herbert Smith LLP

THIS AGREEMENT is made on

20[]

BETWEEN:

- (1) **THE NUCLEAR DECOMMISSIONING AUTHORITY** a non departmental public body whose registered office is at Herdus House, Westlakes Science and Technology Park, Moor Row, Cumbria, CA24 3HU (the "**Authority**");
- (2) [**Name and details of Party wishing to be indemnified**] ([name]); and
- (3) **UK NUCLEAR WASTE MANAGEMENT LIMITED** a company incorporated in England and Wales with registered number 06040606 whose registered office is at Ingwell Complex, Westlakes Science and Technology Park, Moor Row, Cumbria, CA24 5JZ (the "**PBO**"),

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

WHEREAS

- (A) The Authority has entered a Parent Body Agreement with the PBO and LLW Repository Limited (the "**SLC**").
- (B) Under the terms of the Parent Body Agreement, the Authority has agreed to indemnify the PBO for and on behalf of and for the benefit of [name] in respect of certain costs, losses, liabilities, claims and expenses (the "**Indemnified Parties Indemnities**").
- (C) In order for the PBO to be indemnified by the Authority under the Indemnified Parties Indemnities for the benefit of [name], and for [name] to become an Indemnified Party, [name] must enter into and comply with the terms of this Agreement.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Agreement the defined terms used shall have the same meaning as defined terms used in the Parent Body Agreement except to the extent that such defined terms are given a different meaning below. Defined terms used in this Agreement which are not defined in the Parent Body Agreement shall have the meaning specified below.

In this Agreement (including the Recitals, Schedules and Table of Contents), the following term shall, unless the context requires otherwise, have the following meaning:

"Indemnified Parties Indemnities" means the indemnities set out in clause 7.3 (Authority Indemnity) of the Parent Body Agreement which are expressed to be given to the PBO for the benefit of the Indemnified Parties.

"Indemnified Parties Required Insurances" means the insurances set out in Schedule 1 (Indemnified Parties Required Insurances).

"**Indemnified Party**" means a party which benefits from the Indemnified Parties Indemnities.

1.2 Interpretation

- 1.2.1 Headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;
- 1.2.2 all references to Clauses and Schedules are references to clauses of and schedules to this Agreement and all references to Parts, Sections, Paragraphs, Annexes or Appendices are references to parts, sections and paragraphs contained in and annexes and appendices to the Schedules;
- 1.2.3 the Schedules are an integral part of this Agreement and reference to this Agreement includes reference to the Schedules;
- 1.2.4 all references to agreements, procedures, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time;
- 1.2.5 all references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision;
- 1.2.6 words importing the singular include the plural and vice versa;
- 1.2.7 words importing a particular gender include all genders;
- 1.2.8 "person" includes an individual, partnership, firm, trust, body corporate, government department, corporation sole, governmental body, authority, agency or unincorporated body of persons or associations;
- 1.2.9 any reference to a public organisation shall be deemed to include a reference to any successor to such public organisation or entity which has taken over the functions or responsibilities of such public organisation;
- 1.2.10 references to "Party" and "Parties" means a party or the parties to this Agreement as applicable;
- 1.2.11 all monetary amounts are expressed in pounds sterling;
- 1.2.12 a reference to a balance sheet or profit and loss account includes a reference to any note forming part of or attached to it;
- 1.2.13 references to the word "includes" or "including" are to be construed without limitation;
- 1.2.14 references to a document being "in the agreed form" means a copy of such document initialled for the purposes of identification by the Parties;
- 1.2.15 any reference in this Agreement to a Party providing its consent or approval shall be deemed to be a reference to prior written consent or approval; and

2. TERM

2.1 This Agreement shall take effect on [the Commencement Date of the Parent Body Agreement] [**review when transition clear**] and shall remain in full force and effect for as long as clause 7 (PBO Guarantee and Indemnities) and clause 8 (Claims Handling) of the Parent Body Agreement remain in force.

3. THIRD PARTY CLAIMS

3.1 As soon as reasonably practicable after the Indemnified Party becomes aware of a claim by a Third Party (or any matter likely to give rise to any claims by Third Parties) pursuant to which the Authority may become liable under the Indemnified Parties Indemnities in respect of the Indemnified Party ("**Third Party Claim**"), the Indemnified Party shall notify the Authority and the PBO.

3.2 Each Indemnified Party will provide to the Authority and the PBO such information concerning the claim or potential claim as the Authority and the PBO may reasonably request, within the time frame reasonably requested by the Authority and the PBO. So far as possible, such information shall be provided in such a manner as to maintain any applicable legal privilege in relation to such information.

3.3 The Parties will consult each other about which of them may, potentially, have liability in relation to the claim or potential claim and, subject to Clause 8.4 below (*Authority's Handling*), and Clause 8.6 (Shared Liability) will seek to agree which Party shall handle the claim or potential claim.

Guidance Note:

All references to a party having conduct of a claim include the concept of that party's nominee – eg its insurers – having practical conduct.

4. AUTHORITY'S HANDLING

4.1 If a Third Party Claim is made against the Indemnified Party in respect of which the Authority reasonably believes that the Authority will have liability under the Indemnified Parties Indemnity for the entire financial effect of that Third Party Claim:

4.1.1 the Authority shall have the right, upon notice to the Indemnified Party, to have the conduct (or take over the conduct) of all Legal Proceedings in respect of any such Third Party Claim and the Indemnified Party shall:

- (A) give or cause to be given to the Authority all such assistance as the Authority may reasonably require in resisting any such Third Party Claim and conducting any Legal Proceedings; and
- (B) instruct such solicitors or other professional advisers as the Authority may nominate to act on behalf of the Indemnified Party as applicable, but in accordance with the instructions of the Authority,

provided that the Authority shall, if required by the Indemnified Party, notify the Third Parties engaged in the Legal Proceedings that the Authority has conduct of the Legal Proceedings on behalf of the Indemnified Party as applicable; and

4.1.2 the Authority shall use reasonable endeavours to keep the Indemnified Party notified of the progress of any Legal Proceedings of which it has conduct in accordance with this Clause 8.4 (*Authority's Handling*) and, subject to any overriding public policy considerations, and any urgent timing requirements, shall take account of all reasonable requests of the PBO or relevant Indemnified Party in relation to any matter which may involve loss of reputation or impact on the business of the PBO or relevant Indemnified Party.

4.2 The Indemnified Party shall comply with all of the instructions of the Authority in relation to such claim or potential claim. The Indemnified Party will comply with the requirements set out in any insurance policies benefiting the Authority in relation to the Indemnified Parties Indemnities of which it is notified by the Authority or the PBO.

5. SHARED LIABILITY

5.1 If a Third Party Claim is made against the Authority and the PBO or against the Authority and an Indemnified Party or against the Authority, the PBO and an Indemnified Party in respect of which the Authority reasonably believes that the Authority and the Indemnified Party, or the Authority, the PBO and the Indemnified Party together, will share liability for the entire financial effect of that Third Party Claim:

5.1.1 subject to Clause 5.1.2 (*Shared Liability and co-operation of insurers*) below, the Authority shall have the right, upon notice to the Indemnified Party and the PBO, to have the conduct (or to take over the conduct) of all Legal Proceedings in respect of the whole of any such Third Party Claim and the PBO and the Indemnified Party shall:

(A) give or cause to be given to the Authority all such assistance as the Authority may reasonably require in disputing any such Third Party Claim and conducting Legal Proceedings; and

(B) instruct such solicitors or other professional advisers as the Authority may nominate to act on behalf of the Indemnified Party as applicable, but in accordance with the instructions of the Authority;

5.1.2 the Authority shall cooperate and shall use reasonable endeavours to procure that its relevant insurers (if any) cooperate with the relevant insurers of the Indemnified Party in relation to the conduct of the Legal Proceedings in respect of the Third Party Claim. If the Authority and its relevant insurers do not agree a course of action with the relevant insurers of the Indemnified Party concerning the conduct of the Legal Proceedings in respect of the Third Party Claim then the Authority, acting reasonably, shall determine the course of action and the Indemnified Party shall comply with the Authority's reasonable instructions in relation thereto and the Indemnified Party shall use reasonable endeavours to procure the compliance of its relevant insurers. The Authority shall, if required by the Indemnified Party, notify the Third Parties engaged in the Legal Proceedings that the Authority has conduct of the Legal Proceedings on behalf of the Indemnified Party as applicable;

5.1.3 the Authority shall keep the Indemnified Party fully informed of its conduct of any Legal Proceedings and, additional to its obligations under Clause 5.1.2 (*Shared Liability and co-operation of insurers*) above, shall give the Indemnified Party the opportunity to comment on any matter which is or is likely to be

material in relation to any Legal Proceedings, including the loss of reputation or potential impact on the business of the Indemnified Party, and the Authority shall consider any such comments received from the Indemnified Party.

6. INDEMNIFIED PARTY RIGHTS TO DEFEND LEGAL PROCEEDINGS

Where the Indemnified Party has made representations to the Authority pursuant to Clause 4.1.2 (*Authority's Handling*) and the Authority chooses not to defend a Third Party Claim which the Indemnified Party wishes to defend for reputational reasons or because it may impact on the Indemnified Party's business, the Authority, in its sole discretion (which shall not be capable of challenge by the PBO or the Indemnified Party), may agree that the Indemnified Party may have control of the Legal Proceedings at its sole risk and the provisions of clause 8.5 (*PBO Handling*) of the Parent Body Agreement shall apply.

7. CHANGE IN CIRCUMSTANCES

If the Authority, acting reasonably, believes that the circumstances relating to the Third Party Claim have changed or are not what the Authority initially believed the relevant circumstances to be, the Authority shall review the Third Party Claim in the light of the changed circumstances and shall determine, acting reasonably, whether the Authority should continue to handle such Third Party Claim as appropriate and the provisions of Clause 8.4 (*Authority's Handling*) or Clause 8.6 (*Shared Liability*) shall apply as appropriate.

8. INSURANCE

Each of the Indemnified Parties have or have the benefit of the Indemnified Parties Required Insurances and shall maintain the Indemnified Parties Required Insurances, at all times during the Term and until the date on which the Authority's liability to the Indemnified Parties pursuant to clause 7.3 of the Parent Body Agreement (*Authority Indemnity*) expires.

8.1 Each of the Indemnified Parties shall:

8.1.1 procure that the Indemnified Parties Required Insurances:

- (A) include an indemnity to principals clause providing that the Authority is indemnified in respect of any claims against it arising out of any acts or omissions of the PBO and/or of the Nominated Staff; and
- (B) are arranged with an insurer whose rating is not less than Standard and Poor's BBB+ or equivalent;

8.1.2 provide, or procure the provision, to the Authority on request copies of all Indemnified Parties Required Insurances (and all other relevant information reasonably requested by the Authority) together with such evidence as the Authority may reasonably require that all premiums payable in respect of the Indemnified Parties Required Insurances have been paid and that the same are in full force and effect as required under this Agreement.

8.2 Authority's Right to Insure

8.2.1 If any of the Indemnified Parties fails to obtain or maintain or procure the obtaining or maintaining of the Indemnified Parties Required Insurances or to comply or procure compliance with the provisions of any insurance policy, including any provision relating to the payment of premiums, the Authority may provide the relevant Indemnified Party with notice in writing advising the relevant Indemnified Party of such failure and requiring (where rectification is possible) rectification of such default.

8.2.2 If after the expiry of seven (7) Calendar Days following the date of the Authority's notice the relevant Indemnified Party has failed to rectify such default (or immediately on providing the notice if rectification is not possible) the Authority shall, without prejudice to any of its other rights under this Agreement, have the right but not the obligation to procure the Indemnified Parties Required Insurances that are due to be taken out or renewed pursuant to this Clause 8 (*Insurance*), or to rectify the default by paying any premiums required to keep the Indemnified Parties Required Insurances in force.

8.2.3 The Authority shall be entitled to exercise its rights under this Clause 8.2 (*Authority's Right to Insure*) without providing notice where the Authority considers that unless such rights are exercised any Indemnified Parties Required Insurance may become void.

8.2.4 Any sum paid and any expense reasonably incurred by the Authority in accordance with this Clause 8.2 (*Authority's Right to Insure*) shall immediately become due and payable to the Authority by the relevant Indemnified Party.

8.3 Claiming on Existing Insurance

8.3.1 Not Used

8.3.2 Not Used

8.3.3 No Subrogation

Each of the Indemnified Parties shall procure that each insurance policy from which it may benefit contains a term preventing the insurer subrogating against the Authority, the SLC or their insurers, and that its insurers are aware of and accept the terms of this Claims Handling Agreement.

9. ACKNOWLEDGEMENT

[name] acknowledges that any breach by it of any term of this Agreement will cause it to cease to be an Indemnified Party.

10. CONFIDENTIALITY

The confidentiality provisions set out in clause 7 of the Parent Body Agreement relating to the PBO shall apply mutatis mutandis to the PBO and the Indemnified Party, and the confidentiality provisions set out in clause 7 of the Parent Body Agreement relating to the Authority shall apply mutatis mutandis to the Authority in relation to this Agreement.

11. ASSIGNMENT

11.1 Assignment by PBO and Indemnified Party

Neither of the PBO or Indemnified Party shall without the Authority's prior written consent, assign (whether absolutely or by way of security and whether in whole or in part), transfer, mortgage, charge or otherwise dispose in any manner whatsoever of the benefit of this Agreement or any part of it and shall not delegate in any manner whatsoever its performance under this Agreement.

11.2 Assignment by Authority

The Authority shall not, without the prior written consent of the PBO, assign, transfer or otherwise dispose of the Agreement or any part thereof or any benefit or interest therein or thereunder unless to the Crown or another manifestation or agency of the Crown or unless the obligations of the person to whom and in whose favour any such interest is assigned, transferred or otherwise disposed of are fully and unconditionally guaranteed by the Crown.

12. ENTIRE AGREEMENT

12.1 The Authority, the Indemnified Party and the PBO confirm that this Agreement, together with the Parent Body Agreement, the Site M&O Contract, the Overarching Costs Management Agreement and the Records Agreements represents the entire understanding, and constitutes the whole agreement between them, in relation to its subject matter and supersedes any previous agreement between each of them with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at Law or by custom.

12.2 Each Party confirms that:

12.2.1 in entering into this Agreement it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out in this Agreement or the documents in the agreed form; and

11.2.2 in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the only rights or remedies in relation to any representation, warranty, assurance, covenant, indemnity, undertaking or commitment given or action taken in connection with this Agreement or with any of the documents in the agreed form are those contained or referred to in this Agreement or such agreed form document and for the avoidance of doubt and without limitation, no Party has any other right or remedy (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in, this Agreement).

13. UNENFORCEABLE PROVISIONS

If any provision or part of this Agreement is void or unenforceable due to any applicable Law, it shall be deemed to be deleted and the remaining provisions of this Agreement shall continue in full force and effect.

14. FURTHER ASSURANCE

Each Party shall, at its own cost after the Commencement Date of this Agreement execute all such deeds and documents and do all such things as the PBO or the Authority may reasonably require for perfecting the transactions intended to be effected under or pursuant to this Agreement and for giving the each Party the full benefit of the provisions of this Agreement.

15. WAIVER

The rights and remedies of the Parties shall not be affected by the giving of any indulgence by any other Party or by anything whatsoever except a specific waiver or release in writing and any such waiver or release shall not prejudice or affect any other rights or remedies of the Parties.

16. VARIATION

No variation of this Agreement (or any document referred to in it) shall be effective unless it is in writing (which for this purpose, does not include electronic mail) signed by or on behalf of each of the Parties. The expression "variation" includes supplement, deletion or replacement, however effected.

17. COSTS

The PBO, the Indemnified Party and the Authority shall pay their own costs in connection with the preparation and negotiation of this Agreement.

18. NOTICES

18.1 A notice, approval, consent, electronic mail (in the case of Clause 24.4 (*Notices*) below only) or other communication ("**Notice**") in connection with this Agreement and the documents referred to in it must be in written form in the English language and must be delivered by hand, by first class prepaid post (or airmail if posted to or from a place outside the United Kingdom) or by facsimile transmission to the relevant address or facsimile number specified in Clause 24.3 (*Notices*) below or, for the purposes of Clause 24.4 (*Notices*) below only, by electronic email to an address for the time being notified for that purpose to the Party giving notice.

18.2 All Notices must be marked for the attention of the addressee.

18.3 The relevant details of each Party at the date of this Agreement are:

Authority

Address: Herdus House, Westlakes Science and Technology Park, Moor Row, Cumbria CA24 3HU

Facsimile:
Email: -----
Attention: -----

Copied to: [Redacted]

PBO

WIHL

Address: Washington International Holding Limited, Washington House,
Birchwood Park Avenue, Birchwood, Warrington, Cheshire, WA3 6GR

Facsimile: [Redacted]
Email: [Redacted]
Attention: [Redacted]
Copied to: [Redacted]

AREVA-NC

Address: 1 rue des Hérons, Montigny le Bretonneux, 78182 St Quentin, Yvelines
Cedex, France

Facsimile: [Redacted]
Email: [Redacted]
Attention: [Redacted]
Copied to: [Redacted]

Studsvik

Address: Studsvik UK Limited, Unit 14 Princess Park, 4th Avenue, Team Valley
Trading Estate, Gateshead, Tyne & Wear, NE11 0NF

Facsimile: [Redacted]
Email: [Redacted]
Attention: [Redacted]
Copied to: ---

Serco

Address: Serco Assurance, Thomson House, Birchwood Park, Warrington,
Cheshire, WA3 6GA

Facsimile: [Redacted]
Email: [Redacted]
Attention: [Redacted]
Copied to: ---

Indemnified Party

Address: [•]

Facsimile: [•]

Email: [•]

Attention: [•]

Copied to: [•]

[NDA/PBO to supply]

Any change to the address, facsimile number or to the addressee must be notified by the relevant Party to the other Party as soon as reasonably practicable by notice given in accordance with this Clause 18 (*Notices*).

- 18.4 If an electronic mail address has been provided pursuant to Clause 24.1 (*Notices*) above, the following Notices may be sent by electronic mail:
 - 18.4.1 electronic transmittal of a scanned image of an original executed Notice; and
 - 18.4.2 day-to-day communication in connection with this Agreement and the documents referred to in it.
- 18.5 In the absence of evidence of earlier receipt, any Notice shall take effect from the time that it is deemed to be received in accordance with Clause 24.6 (*Notices*) below.
- 18.6 Subject to Clause 24.7 (*Notices*) below, a Notice is deemed to be received:
 - 18.6.1 where delivered by hand, upon delivery at the address of the addressee;
 - 18.6.2 where delivered by posted letter, on the third day after posting or, if posted to or from a place outside the United Kingdom, on the seventh day after posting;
 - 18.6.3 where sent by facsimile, on production of a transmission report from the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; and
 - 18.6.4 where sent by electronic mail (where applicable), on the second (2nd) day after such electronic mail was sent. The place of receipt of electronic mail shall be deemed to be the postal address of the addressee given in, or amended in accordance with, Clause 24.3 (*Notices*) above.
- 18.7 A Notice received or deemed to be received in accordance with Clause 24.6 (*Notices*) above on a day which is not a Working Day or after 5p.m. on any Working Day, according to the local time in the place of receipt, shall be deemed to be received on the next following Working Day.
- 18.8 A Notice given or document supplied to the PBO or any of them in accordance with the details specified for the PBO above shall be deemed to have been given or supplied to all the PBO to whom such Notice is addressed.

- 18.9 Each Party undertakes to notify all of the other Parties by notice served in accordance with this Clause if the address specified herein is no longer an appropriate address for the service of Notices.
- 18.10 Notwithstanding Clauses 24.1 and 24.3 (*Notices*) above, if the Authority determines, in its absolute discretion, that any Notice is to be protectively marked and should be delivered in a secure manner, it shall inform the PBO and Indemnified Party and shall instruct the PBO and Indemnified Party as to whom to deliver such Notice and how such Notice should be delivered.
- 18.11 Where the Indemnified Party and/or PBO receive a Notice from the Authority that is from someone other than the LLWR Contract Manager, the Indemnified Party or PBO (as applicable) shall notify the LLWR Contract Manager of such Notice and seek confirmation of whether to act upon it. For the avoidance of doubt, the Indemnified Party or PBO shall not act upon such a Notice until such confirmation is received from the LLWR Contract Manager.

19. COUNTERPARTS

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

20. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Agreement.

21. GOVERNING LAW AND JURISDICTION

- 21.1 This Agreement shall be governed by, and construed in accordance with, English law.
- 21.2 Subject to clause 18 (*Dispute Resolution*) of the Parent Body Agreement, if any organisation claim, legal action or proceedings arise out of or in connection with a dispute concerning this Agreement and any matter arising therefrom, each Party irrevocably:
- 21.2.1 agrees to submit to the exclusive jurisdiction of the courts of England; and
 - 21.2.2 waives any right that it may have to object to an action being brought in the courts of England on the grounds of inconvenient forum or to claim that those courts do not have jurisdiction.

IN WITNESS whereof this **DEED** has been executed by the Parties hereto and it is intended to be and is hereby delivered on the date first written above.

The **COMMON SEAL** of the **NUCLEAR
DECOMMISSIONING AUTHORITY** was)
hereunto affixed in the presence of)
[•], Director)
) Director
)
)
)
)
)
)
[•], Director/Secretary)
) [Director/Secretary]

EXECUTED AS A DEED by)
[INDEMNIFIED PARTY])
acting by)
[•], Director)
) Director
)
)
)
)
)
[•], Director/Secretary)
) [Director/Secretary]

EXECUTED AS A DEED by)
UK NUCLEAR WASTE MANAGEMENT)
LIMITED)
acting by)
[•], Director)
) Director
)
)
)
)
)
[•], Director/Secretary)
) [Director/Secretary]

SCHEDULE 1

Indemnified Parties Required Insurances

Public/General Third Party Liability with a limit of not less than £10M any one occurrence unlimited in the aggregate any one period of insurance.

Employers' Liability/Workers Compensation Act.

SCHEDULE 12

NOT USED

SCHEDULE 13

Reporting Schedule

1. No later than five (5) Working Days after the commencement of each Quarter (being 1 April, 1 July, 1 October, 1 January of each year), the PBO shall:
 - 1.1 provide the Authority with management accounts in relation to the PBO's finances for the previous Quarter and comparisons to budgets and latest forecasts, including a profit and loss account, a balance sheet and a cashflow statement; and
 - 1.2 provide the Authority with a rolling 12-month cashflow forecast for the PBO in the format required from time to time by the Authority.
2. The PBO shall provide to the Authority as soon as they come publicly available and, in any event, not later than ninety (90) Calendar Days after the close of the relevant statutory accounting period:
 - 2.1 a copy of the audited financial statements of the PBO prepared in accordance with UK GAAP (or another accounting framework as agreed by the Authority prior to the commencement of the relevant statutory account period) including (but not limited to) a balance sheet prepared at the end of such accounting period, a profit and loss account and cashflow statement in respect of such accounting period;
 - 2.2 a copy of the audited financial statements of each of the PBO's direct shareholders including a balance sheet prepared at the end of such accounting period, a profit and loss account and cashflow statement in respect of such accounting period.
3. The PBO shall also provide to the Authority copies of:
 - 3.1 quarterly management accounts for each of the Ultimate Parents whose registered office is in the UK;
 - 3.2 the quarterly accounts required to be produced for regulatory purposes for each of the Ultimate Parents whose registered office is in the USA;
 - 3.3 the statutory, regulatory or management accounts (as applicable) that are required to be produced quarterly for each of the Ultimate Parents as applicable in the jurisdiction of any Ultimate Parent whose registered office is not in the UK or the USA.

SCHEDULE 14
Form of Secondment Agreement

Herbert Smith

..... 200[]

(1) UK NUCLEAR WASTE MANAGEMENT LTD

and

(2) LLW REPOSITORY LTD

and

(3) [EMPLOYER – IF DIFFERENT FROM THE PARENT BODY ORGANISATION]

and

(4) [ULTIMATE PARENT]

(5) [EMPLOYEE]

SECONDMENT AGREEMENT

Herbert Smith LLP

THIS AGREEMENT is made on []

BETWEEN:

- (3) **UK NUCLEAR WASTE MANAGEMENT LIMITED**, (a company incorporated in England and Wales (registered number 06040606) whose registered office is at Ingwell Complex, Westlakes Science & Technology Park, Moor Row, Cumbria CA24 5JW (the "**Parent Body Organisation**");
- (4) **LLW REPOSITORY LIMITED**, whose registered office is at 1100 Daresbury Park, Daresbury, Warrington, Cheshire WA4 4GB a company incorporated under the laws of England and Wales with registered number 5608448 (the "**Company**"); [and]
- (5) **[[EMPLOYER]**, a company incorporated under the laws of [England and Wales/other] (the "**Original Seconding Company**") [**Note: only include if employer different entity from Parent Body Organisation**]; [and]
- (6) **[[ULTIMATE PARENT]**, a company incorporated in [•] (registered number [•]) whose registered address is at [•] (the "Ultimate Parent"); [and] [**Note: depending on the identity of the Original Seconding Company, it may be sensible to have the Ultimate Parent as a party to the secondment agreement as well.**]
- (7) **[EMPLOYEE]** of [address] (the "**Employee**").

WHEREAS

- (D) The Employee is employed by [the Parent Body Organisation/the Original Seconding Company] under an employment contract dated [●] (the "**Contract of Employment**") [and has been seconded to the Parent Body Organisation by the Original Seconding Company under a secondment [agreement/arrangement] dated [●] (the "**Original Secondment Agreement**")].
- (E) The Parent Body Organisation has agreed with the Company that it will make available the services of the Employee to the Company by way of a secondment arrangement in accordance with the terms of this Agreement and the Employee has agreed to such secondment arrangement. [The Original Seconding Company has also agreed to the Employee's services being made available to the Company by way of a secondment arrangement and the Employee has agreed to such secondment arrangement.]
- (F) By signing this Agreement, the parties record their agreement to the Employee being seconded to the Company on the terms set out below.

IT IS AGREED as follows:

1. COMMENCEMENT

- 1.1 The secondment under this Agreement will commence on [date] and will continue [for a minimum term of ~~43(2) Commercial~~] [for a minimum term as determined by the Authority] [**Note: Insert latter provision if a shorter term is agreed with a replacement Nominated Staff to combine to make ~~24.1.2005~~**] unless and until terminated in

accordance with the terms of this Agreement (the "Secondment Period"). For the avoidance of doubt, the Employee will continue to be an employee of the [Parent Body Organisation/Original Seconding Company] throughout the Secondment Period, and [his] Contract of Employment [as amended by the Original Secondment Agreement] will remain in full force and effect, save as may be varied from time to time. [At the end of the Secondment Period the [Parent Body Organisation/Original Seconding Company] will offer the Employee employment in either the same position (or, as similar a position as is reasonably practicable) as the position the Employee held with the [Parent Body Organisation/Original Seconding Company] immediately prior to the start of the Secondment Period.]

2. DUTIES OF THE EMPLOYEE

- 2.1 During the Secondment Period the Employee will be available, subject to the other provisions of this Agreement and to any short term leave (e.g. holiday, sick leave, compassionate leave, study leave etc) taken in accordance with the Contract of Employment or other applicable policies of the [Parent Body Organisation/Original Seconding Company/Company], to provide services to the Company. In the event of any conflict between clause 2.1 and clause 4.2 of this Agreement, the provisions of clause 4.2 shall prevail.
- 2.2 The Employee's working hours shall be as set out in the Contract of Employment as may be varied from time to time.
- 2.3 During the Secondment Period, the Employee will at all times act in the best interests of the Company and will comply with all lawful directions given by or under authority of the board of directors of the Company (the "Board"). The Employee will comply with the provisions of any Company policy relating to health and safety and confidentiality. The Employee shall also be under a duty to use all reasonable endeavours to ensure that the Company does not contravene the terms of the Licence(s). In the event of any conflict during the Secondment Period between the duties that the Employee may owe to the Company and any duty that the Employee may owe to the [Parent Body Organisation/Original Seconding Company], [his] duties to the Company shall prevail. It is agreed that, subject to clause 2.6, nothing in this Agreement is intended to prevent the Employee from participating on behalf of the Parent Body Organisation in any process undertaken by the Parent Body Organisation (directly or indirectly) in response and/or in relation to an invitation issued by the Authority to the Parent Body Organisation to tender or re tender for any replacement or other Site Management and Operations Contract or other similar contract for any site within the nuclear industry.
- 2.4 If the Employee is a Board director of the Company, [he] shall owe a fiduciary duty to the Company. Any fiduciary duty that the Employee may owe as a Board director of the Company shall include (but not be limited to) a duty to use all reasonable endeavours to ensure that the Company does not contravene the terms of the Licence(s). In the event of any conflict during the Secondment Period between any duty that the Employee may have to the [Parent Body Organisation/Original Seconding Company] and [his] fiduciary duty to the Company, [his] fiduciary duty to the Company shall prevail. It is agreed that, subject to clause 2.6, nothing in this Agreement is intended to prevent the Employee from participating on behalf of the Parent Body Organisation in any process undertaken by the Parent Body Organisation (directly or indirectly) in response and/or in relation to an invitation issued by the Authority to the Parent Body Organisation to tender or re tender for any replacement or other site management and operations contract or other similar contract for any site within the nuclear industry.

- 2.5 During the Secondment Period the [Parent Body Organisation/Original Seconding Company] must obtain the Company's prior consent to the Employee taking holiday (such consent not to be unreasonably withheld or delayed).
- 2.6 The Employee acknowledges that before the expiry of the applicable Site Management and Operations Contract, the Authority may invite persons to tender for the right to own the Shares in the Company and to negotiate a replacement site management and operations contract to be entered into by the Company and the Authority upon the effective date of such replacement contract. The Employee agrees that if he or she is invited or required by the Employer to form part of a team assisting the Company with the competitive process, he or she will be required to enter into an impartiality undertaking with the Authority.

3. PAYMENT OF SALARY AND PROVISION OF BENEFITS

- 3.1 In respect of the Secondment Period the [Parent Body Organisation/Original Seconding Company] shall be responsible for paying the Employee the salary and providing the Employee with the contractual benefits referred to in the Contract of Employment (as may be varied from time to time) and for all other employment costs arising in respect of the Employee's employment during the Secondment Period, including any discretionary bonus awarded to the Employee by the [Parent Body Organisation/Original Seconding Company] and all related taxes and national insurance contributions, in accordance with the provisions of the applicable Site Management and Operations Contract. All such salary, contractual benefits and other employment costs and all related taxes and national insurance contributions shall be reimbursed by the Company.
- 3.2 Notwithstanding clause 3.1, the [Parent Body Organisation/Original Seconding Company] shall continue to be responsible for the payment of any employer's pension contributions in respect of the Employee's employment during the Secondment Period, the cost of which shall be reimbursed by the Company.
- 3.3 The Employee authorises the [Parent Body Organisation/Original Seconding Company] to deduct from the Employee's remuneration during the Secondment Period any employee's pension contributions and any other amounts required to be remitted to the [Parent Body Organisation/Original Seconding Company] in respect of any ongoing contributory benefits provided by the [Parent Body Organisation/Original Seconding Company] during the Secondment Period.
- 3.4 During the Secondment Period, the [Parent Body Organisation/Original Seconding Company] agrees that, subject to as required by Law (as defined in the applicable Site Management and Operations Contract), it will not without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed) amend any material term or condition of the Employee's Contract of Employment. For the purposes of this clause 3.4 only, "material" shall include, but not be limited to, any term or condition of the Employee's Contract of Employment which could affect the duration of this Agreement or the duties owed by the Employee to the Company.
- 3.5 For the avoidance of doubt, the [Parent Body Organisation/Original Seconding Company] shall reimburse the Employee all reasonable expenses incurred by the Employee wholly and necessarily in the course of providing [his] services to the Company during the Secondment Period or otherwise incurred in accordance with Internal Procedures (as defined in the Site Management and Operations Contract), subject to the production of appropriate evidence of expenditure and to the terms of the [Parent Body Organisation's/Original Seconding Company's] expenses policy as may be varied from

time to time. The Company shall reimburse the [Parent Body Organisation/Original Seconding Company] for any such expenses that it reimburses to the Employee.

4. TERMINATION AND ASSIGNMENT

4.1 The [Parent Body Organisation/Original Seconding Company] may terminate this Agreement by withdrawing the Employee with the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed). It is agreed that it will not be unreasonable for the Authority to withhold such consent if the [Parent Body Organisation/Original Seconding Company] does not agree to replace immediately the Employee with a person who has the necessary skills and experience to provide the services to the Company required for the role undertaken by the Employee. Nothing in this clause 4.1 shall prevent the [Parent Body Organisation/Original Seconding Company] from immediately dismissing or suspending the Employee from his or her duties where, in the reasonable opinion of the [Parent Body Organisation/Original Seconding Company], such action is:

4.1.1 necessary to comply with any applicable Law or Regulatory Requirement (as defined in the applicable Site Management and Operations Contract); and/or

4.1.2 required to safeguard the health and wellbeing of any employee on the site to which the Site Management and Operations Contract applies; and/or

4.1.3 justified on the grounds that the Employee has committed an act of negligence or gross misconduct; and/or

4.1.4 justified on the grounds that the Employee has failed a drugs and/or alcohol test.

Reference in this clause 4.1 to "withdrawing" does not include the retirement, long term illness, death, the long term illness of a close family member (being a spouse, partner, children or other dependants) or voluntary resignation from the employment of the Parent Body Organisation or Relevant Affiliate of the relevant individual.

4.2 During the Secondment Period, neither the [Parent Body Organisation/Original Seconding Company] nor the Company may assign the Employee away (whether temporarily or permanently) from providing services to the Company without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed in accordance with clause 16.1.6 of the applicable Parent Body Agreement) and the provisions of clause 16.1.6 of the applicable Parent Body Agreement shall apply. It is acknowledged that it will not be unreasonable for the Authority to withhold such consent if the [Parent Body Organisation/Original Seconding Company] or the Company, as appropriate, fails to comply with the provisions of clauses 16.1.4 of the [Parent Body Agreement – insert definition/description]. [To the extent that the applicable Site Management and Operations Contract permits the [Parent Body Organisation/Original Seconding Company] temporarily to assign the Employee away in relation to business development work and other temporary assignments, the Authority's consent shall not be required provided that the [Parent Body Organisation/Original Seconding Company] gives reasonable notice of such assigning away, records the time spent on any such assigning away and provides that record to the Authority.

4.3 Without prejudice to the Authority's rights under clause 5 (Employees) of the Site Management and Operations Contract and clauses 16 (Provision of staff to the SLC) and 17 (Transition Out) of the Parent Body Agreement, if the Employee wishes to terminate this Agreement at any stage during the Secondment Period, the Employee agrees that [he]

will not be able to relinquish [his] duties for the Company and return to the [Parent Body Organisation/Original Seconding Company] until such time as the [Parent Body Organisation/Original Seconding Company] is able to replace the Employee with a person who has the necessary skills and experience to provide the services to the Company required for the role undertaken by the Employee.

- 4.4 The Secondment Period shall automatically terminate on the termination of the Contract of Employment, howsoever arising.
- 4.5 For the avoidance of doubt, the termination of this Agreement or the expiry of the Secondment Period shall not automatically operate so as to terminate the employment of the Employee with the [Parent Body Organisation/Original Seconding Company]. In such a case the provisions of clause 1 of this Agreement will apply.

5. CONFIDENTIALITY

Save and so far as such information is already in the public domain the Employee agrees to keep confidential and not at any time (whether during or after the Secondment Period) use for [his] own or another's advantage, or reveal to any person, firm, company or organisation any information which the Employee knows or reasonably to have known to be confidential, concerning the business or affairs of the Company. These restrictions will not apply (i) to any disclosure authorised by the Board or required by law or to perform the Employee's duties during the Secondment Period; (ii) so as to prevent the Employee from using [his] own personal skill in any business in which [he] may be lawfully engaged after the Secondment Period ends; or (iii) to prevent the Employee making a protected disclosure within the meaning of section 43(A) of the Employment Rights Act 1996.

6. PROPER LAW AND JURISDICTION

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

7. EMPLOYEE DISPUTES

- 7.1 If any disputes arise between the Employee and the Company during the Secondment Period, the Company will provide the [Parent Body Organisation/Original Seconding Company] with full particulars of the dispute. Without prejudice to the Authority's rights under clause 5 (Employees) of the Site Management and Operations Contract and clauses 16 (Provision of staff to the SLC) and 17 (Transition Out) of the Parent Body Agreement, for the avoidance of doubt, the Company will not have the authority to dismiss or discipline the Employee in respect of any disputes or other matters.

8. RECOURSE FOR LIABILITY OF NOMINATED STAFF

- 8.1 Subject and without prejudice to Clause 8.2, all costs, claims, losses, liabilities and expenses suffered by the Authority in relation to the Employee (as defined in this Agreement) shall be dealt with under the regime set out in clause 7.2 (General Indemnity) of the Parent Body Agreement and there will be no separate liability regime under this Agreement.
- 8.2. The Parties agree that any costs, claims, losses, liabilities and expenses arising out of vicarious liability for the acts or omissions of the Employee shall be borne by the Parent Body Organisation both as between the Parent Body Organisation and

the Company and between the Parent Body Organisation, the Original Seconding Company and the Ultimate Parent.

9. DEFINITIONS

For the purposes of this Agreement, the following terms shall have the following meanings:

"**Authority**" has the meaning given in the Site Management and Operations Contract;

["**Employer**" shall mean:

- i. in the case of an Employee whose employer under his or her Contract of Employment is the Parent Body Organisation, the Parent Body Organisation; and
- ii. in the case of an Employee whose employer under his or her Contract of Employment is the Original Seconding Company, the Original Seconding Company; **Note:** this definition will not be required if the Agreement specifies which of the Parent Body Organisation or the Original Seconding Company is the employer of the Employee.]

"**Group Company**" shall mean the Company, any subsidiary of the company and any holding company of the Company or of any subsidiary (with subsidiary and holding company having the meanings ascribed to them in section 736 of the Companies Act 1985.

"**Licence**" shall mean the Nuclear Site Licence for the relevant site or sites in respect of which the Employee is required to provide services under this Agreement.

"**Site Management and Operations Contract**" means the Site Management and Operations Contract between the NDA and the Company commencing on 1 April 2008.

Signed

For and on behalf of the Parent Body Organisation

Signed

For and on behalf of the SLC

[Signed

For and on behalf of the Original Seconding Company]

[Signed

For and on behalf of the Ultimate Parent]

Signed

Employee

SCHEDULE 15

Agreed Directors

Position	Name
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SCHEDULE 16

Authority Commitments to changes to the M&O Contract

43(2) Commercial

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