

## **Schedule 4**

### **Seconded and Pensions Schedule**

## Schedule 4: Seconded and Pensions Schedule

### Part 1: Nominated Staff

The appointment durations of the following table provide the minimum time from share transfer (December 2008) that each of the nominated staff are proposed to be in post. Adherence to these appointment durations will be monitored in evaluating elements of fee abatement and PBA Schedule 5 Minimum Performance Standards.

<b>Position</b>	<b>Name</b>	<b>Appointment Duration</b>
Managing Director	[Redacted]	[Redacted]
Deputy Managing Director, Operations	[Redacted]	[Redacted]
Deputy Managing Director, Transformation/Support	[Redacted]	[Redacted]
Transformation Director	[Redacted]	[Redacted]
INS Relations & Business Development	[Redacted]	[Redacted]
Contract Management Director	[Redacted]	[Redacted]
Project Management Director	[Redacted]	[Redacted]
Chief Engineer	[Redacted]	[Redacted]
Technical Director	[Redacted]	[Redacted]
Stakeholder Relations Director	[Redacted]	[Redacted]
Infrastructure Director	[Redacted]	[Redacted]
Production Operations Director	[Redacted]	[Redacted]
MOX Operations Director	[Redacted]	[Redacted]
THORP Operations Director	[Redacted]	[Redacted]
Human Resources Director	[Redacted]	[Redacted]
Clean up Director	[Redacted]	[Redacted]
Finance Director	[Redacted]	[Redacted]
HSSEQ Director	[Redacted]	[Redacted]
Strategy & Programme Planning Director	[Redacted]	[Redacted]

***NB: The time period in column 3 is the length of time from the Commencement Date that the Parent Body Organisation shall procure that that member of Nominated Staff continues to work for the SLC.***

## **Schedule 4: Seconded and Pensions Schedule**

### **Part 2: Key Personnel**

The listing of Key Personnel is to be populated prior to 31 March 2009. In nominating the list of Key Personnel the Authority will act in accordance with Clause 5.2.1 (Key Personnel), taking into consideration the requirement to maintain the Contractor as an enduring entity, the Contractor's succession plan and other matters as the Authority reasonably considers relevant.

**Schedule 4: Seconded and Pensions Schedule**

**Part 3: Pro Forma Secondment Agreement**

Date:

**NUCLEAR MANAGEMENT PARTNERS LIMITED**

The Parent Body Organisation

***[Insert name of organisation which employs Secondee]***

The Seconding Employer

**SELLAFIELD LIMITED**

The SLC

**THE NUCLEAR DECOMMISSIONING AUTHORITY**

The Authority

***[Insert name of individual]***

The Secondee

# Secondment Agreement

**THIS AGREEMENT** is made this        day of

**BETWEEN:**

- (1) **NUCLEAR MANAGEMENT PARTNERS LIMITED** a company incorporated in England and Wales with registered number 05894268 whose registered office is at Booths Park, Chelford Road, Knutsford, Cheshire WA16 8QZ (the “**Parent Body Organisation**”);
- (2) [*insert name of organisation which employs/engages Secondee*] a company [*insert incorporation and address details of organisation*] (the “**Seconding Employer**”);

*[DRAFTING NOTE: if the Parent Body Organisation is the Secondee’s employer any reference to the Seconding Employer should be deleted and replaced with references to the Parent Body Organisation, save where such references would simply repeat an existing reference to the Parent Body Organisation.]*

- (3) **SELLAFIELD LIMITED** a company incorporated in England and Wales with registered number 1002607 whose registered office is at 1100 Daresbury Park, Daresbury, Warrington, Cheshire WA4 4GB (the “**SLC**”);
- (4) **THE NUCLEAR DECOMMISSIONING AUTHORITY** a non departmental public body whose head office is at Herdus House, Westlakes Science and Technology Park, Moor row, Cumbria CA24 3HU (the “**Authority**”); and
- (5) [*insert individual secondee’s name*] of [*insert address*](the “**Secondee**”);

each one a “Party” and together the “Parties”.

**WHEREAS:**

- A. The Parent Body Organisation, the SLC and the Authority have entered into the Parent Body Agreement, and the Authority and the SLC have entered into the Site M&O Contract.
- B. The Secondee is employed by the Seconding Employer and has experience relevant to the SLC’s requirements.
- C. Pursuant to the terms of the Parent Body Agreement and the Site M&O Contract the Parent Body Organisation has agreed to provide assistance to the SLC [by seconding] *or* [by procuring the secondment from the Seconding Employer of] the Secondee to the SLC from the Secondment Start Date for the duration of the Term.

- D. The Parties agree that while the Secondee shall comply with the terms of this Secondment Agreement in providing services and assistance to the SLC, the Secondee shall at all times remain employed by the Seconding Employer.

**IT IS AGREED** as follows:

1 **Definitions**

In this Secondment Agreement the following terms shall, unless the context otherwise requires, have the meanings ascribed below:

**Board** means the board of directors of the SLC;

**Impartiality Undertaking & Confidentiality Agreement** means the letter and agreement in the form set out in Schedule 2;

**Contract of Employment** the contract of employment or engagement between the Seconding Employer and the Secondee;

**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;

**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 binding on the Parties directly or through precedent, international convention or Treaty ratified by the United Kingdom, 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 and any United Kingdom government policy binding on the Parties either expressly or as part of a class;

**Parent Body Agreement**

means the agreement of that name entered into between the Authority, the SLC and the Parent Body Organisation on [*insert date*];

**Regulators**

means the Health and Safety Executive, the Environment Agency, the Scottish Environment Protection Agency, the Office for Civil Nuclear Security or any body having responsibility for civil nuclear security in the United Kingdom, the Scottish Executive, the Financial Services Authority, the Pensions Regulator, the Pension Protection Fund, others specific to the SLC's obligations under the Site M&O contract and as applicable in the relevant jurisdiction (including in relation to international waters) where the SLC's obligations under the Site M&O Contract are carried out and "Regulator" shall mean each or any one of them;

**Regulatory Requirement**

means any legally enforceable requirement of any Regulator;

**Secondment Agreement**

means this agreement and the attached schedules;

**Secondment Start Date**

has the meaning set out in Schedule 1;

**Site M&O Contract** means the agreement of that name governing the management and operation of the Site as amended by the deed of variation entered into between the SLC and the Authority on [*insert date*];

**Term** has the meaning set out in Schedule 1.

## 2 **Commencement**

The secondment under this Secondment Agreement will commence on the Secondment Start Date and will continue for the duration of the Term unless and until terminated in accordance with the terms of this Secondment Agreement.

## 3 **Duties of the Secondee**

3.1 During the Term the Secondee will be available, subject to the other provisions of this Secondment Agreement and to any short-term leave (such as sick leave, compassionate leave, or study leave) taken in accordance with the Contract of Employment or other applicable policies of the Seconding Employer, to provide services to the SLC in accordance with the Job Title and Job Description set out in Schedule 1.

3.2 The hours during which the Secondee shall provide services to the SLC during the Term shall be the Secondee's normal working hours as set out in the Contract of Employment (subject to any restriction or variation required by the SLC having regard to its normal office hours and service requirements).

3.3 The Seconding Employer shall not permit or authorise the Secondee:

3.3.1 to carry out duties or provide services other than for the SLC during the Secondee's normal working hours; or

3.3.2 to take holiday;

except where the Parent Body Organisation or Seconding Employer obtains the SLC's prior written consent (such consent not to be unreasonably withheld or delayed). The Secondee will at all times during the Term act in the best interests of the SLC and will comply with all lawful directions given by or under authority of the Board.

3.4 During the Term the Secondee will comply with the provisions of the SLC policies, including, without limitation, those relating to health and safety and confidentiality, and will at all times act in accordance with the Law.

- 3.5 In the event of any conflict between the duties that the Secondee may owe to the SLC and any duty that the Secondee may owe to the Seconding Employer, the Secondee's duties to the SLC shall prevail.
- 3.6 The Secondee may act as a director of the SLC. If the Secondee does so, the Secondee shall owe a fiduciary duty to the SLC (which for the avoidance of doubt shall prevail over any duty owed to the Seconding Employer or the Parent Body Organisation).
- 3.7 During the Term, the Secondee shall not, except in the course of providing services to the SLC in accordance with the terms of this Secondment Agreement:
- 3.7.1 incur any expenditure in the name of or on behalf of the SLC;
  - 3.7.2 hold out as having any authority to do or say anything in the name of or on behalf of the SLC;
  - 3.7.3 commit the SLC to any contracts or other arrangements involving the SLC in financial or other commitments or incur any liability in the name of or on behalf of the SLC or in any way pledge its credit or hold out as being authorised to do so; or
  - 3.7.4 make any press, radio or television statement or submit for publication or publish any letter, article or statement relating directly or indirectly to the business or affairs of the SLC or the Authority without first obtaining the consent in writing of the SLC and the Authority.
- 3.8 The Secondee may:
- 3.8.1 serve on the board of the Parent Body Organisation provided that such service does not materially detract from the Secondee's ability to perform services for the SLC pursuant to this Secondment Agreement; and
  - 3.8.2 assist the Parent Body Organisation or the Seconding Employer in tendering or competing for contracts with the Authority (other than those connected with the Parent Body Agreement or the Site M&O Contract) provided that such assistance does not conflict with or materially detract from the Secondee's ability to perform services for the SLC pursuant to this Secondment Agreement.
- 3.9 The Authority may by notice in writing require that the Secondee execute an Impartiality Undertaking & Confidentiality Agreement, and the Secondee shall if so required immediately take all necessary steps to comply with this requirement.

#### **4 Relationship of parties**

- 4.1 For the avoidance of doubt, the Seconded will continue to be employed by the Seconding Employer throughout the Term, and the Contract of Employment will remain in full force and effect, save as modified pursuant to this Secondment Agreement.
- 4.2 Nothing in this Secondment Agreement shall or is intended to create a relationship of employment between the Seconded and the SLC or the Authority, or between the Seconded and the Parent Body Organisation.
- 4.3 The Seconding Employer will retain responsibility for carrying out any appraisals of the Seconded's work during the Term. The SLC will provide such information regarding the Seconded's performance as may be reasonably requested by the Seconding Employer in order to assist it in carrying out any appraisal.

#### **5 Payment of salary and provision of benefits**

- 5.1 The Seconding Employer shall remain responsible during the Term for:
- 5.1.1 paying the Seconded the salary and providing the Seconded with the contractual benefits provided for within the Contract of Employment (as amended from time to time) and for all other employment costs arising in respect of the Seconded's employment; and
- 5.1.2 any statutory obligation to pay (or deduct) tax or national insurance contributions in respect of the Seconded.
- 5.2 Subject to and in accordance with the terms of the Parent Body Agreement and the Site M&O Contract, the SLC agrees to pay [the Parent Body Organisation/the Seconding Employer] the costs described in clause 5.1 for the period of the Term (so long as the Seconded remains seconded to the SLC in accordance with the terms of this Secondment Agreement), save that the SLC will not be responsible for the payment of any non-standard or non-contractual bonus or other payments awarded by the Seconding Employer to the Seconded without the consent of the SLC.

#### **6 Terms of Seconded's engagement**

- 6.1 During the Term the Seconding Employer agrees that it will not without the prior written consent of the SLC amend or seek to amend any term or condition of the Seconded's Contract of Employment in any way which might be materially adverse to the SLC.

6.2 During the Term the Seconding Employer will not dismiss or give notice to terminate the Secondee's employment by the Seconding Employer, nor will it or the Parent Body Organisation seek to procure the resignation of the Secondee, except where in the reasonable opinion of the Seconding Employer dismissal of the Secondee is justified by reason of misconduct, poor performance or incapacity.

## 7 **Secondee's expenses**

7.1 The SLC shall reimburse the Secondee in respect of all reasonable expenses incurred by the Secondee which are wholly and necessarily incurred in the course of providing the Secondee's services to the SLC during the Term, subject to the production of appropriate evidence of expenditure and to the terms of the SLC's expenses policy in place from time to time.

7.2 In respect of relocation, travel to and from the Secondee's normal residence or place of work prior to the secondment, and accommodation during the Term, the SLC, the Seconding Employer and the Secondee will agree such reimbursement as is reasonable.

## 8 **Termination**

8.1 This Secondment Agreement shall automatically terminate on the first to occur of:

8.1.1 the termination of the Secondee's employment with the Seconding Employer;

8.1.2 the expiry or termination of the Parent Body Agreement (subject to the provisions of clause 8.5); or

8.1.3 the expiry of the Term.

8.2 For the avoidance of doubt, the termination of this Secondment Agreement shall not operate so as to terminate the employment of the Secondee with the Seconding Employer.

8.3 Notwithstanding any other provision in this Secondment Agreement, the Parent Body Organisation and the Authority may agree in writing to terminate this Secondment Agreement on a specified termination date and this Secondment Agreement will then terminate on that date, subject to the Parent Body Organisation procuring a replacement secondee approved in writing by both the Authority and the SLC who is available to commence providing services as a secondee immediately after the termination of this Secondment Agreement.

8.4 Any one of the Parent Body Organisation, the SLC or the Authority may terminate this

Secondment Agreement with immediate effect if in their reasonable opinion such termination is required:

- 8.4.1 in order to comply with Law or any Regulatory Requirement;
- 8.4.2 in order to safeguard any person's health and safety;
- 8.4.3 as a result of the Secondee's gross misconduct;
- 8.4.4 as a result of the Secondee's persistent misconduct;
- 8.4.5 because of the Secondee's breach of the Impartiality and Confidentiality Agreement;
- 8.4.6 because of the Secondee's breach of the Impartiality Undertaking; or
- 8.4.7 because the Secondee has failed a drug or alcohol test;

and in the event of termination in such circumstances the Parent Body Organisation shall procure a replacement secondee approved in writing by both the Authority and the SLC.

- 8.5 In the event of termination of the Parent Body Agreement for whatsoever reason:
  - 8.5.1 Subject to clause 8.5.3 below, the Authority may specify in writing to the Parent Body Organisation that the Secondee remain seconded to the SLC;
  - 8.5.2 where the Authority has specified that the Secondee shall remain seconded to the SLC, the Parent Body Organisation and the Seconding Employer shall procure that the Secondee remains seconded to the SLC in accordance with the terms of this Secondment Agreement until such time as the Authority notifies the Parent Body Organisation that the Secondee is no longer required, at which point this Secondment Agreement shall terminate with immediate effect;
  - 8.5.3 the Authority will not be entitled to require the Secondee to remain seconded to the SLC any longer than six months from the date of termination of the Parent Body Agreement; and
  - 8.5.4 in the event that the Secondee remains seconded to the SLC in compliance with the terms of this Secondment Agreement for the duration of any period during which the Secondee is required to provide services to the SLC subsequent to the termination of the Parent Body Agreement in accordance with the above, the Secondee will be entitled to a bonus to be paid by the SLC

to be determined in accordance with the provisions of the Parent Body Agreement, provided that if the reason that the Authority no longer requires the Seconded is the Seconded's misconduct, poor performance or incapacity, the Seconded will not be so entitled.

8.6 Upon the termination of this Secondment Agreement howsoever arising the Seconded shall and the Seconding Employer shall procure that the Seconded shall:

8.6.1 deliver up to the SLC any documents or property of any nature whether tangible or intangible which belong to the SLC or the Authority or otherwise relates to the business or affairs of the SLC or the Authority and which is in the Seconded's possession, custody, care or control;

8.6.2 irretrievably delete any information relating to the business or the affairs of the SLC or the Authority stored in any medium or media which is within the Seconded's possession, custody, care or control having first ensured that the SLC or the Authority (as the case may be) has retained a copy of that information; and

8.6.3 confirm in writing and produce such evidence as is reasonably required by the SLC and the Authority to prove compliance with the obligations contained in this clause.

## 9 **Confidentiality**

9.1.1 Save and so far as such information is already in the public domain the Seconded agrees to keep confidential and not at any time (whether during or after the Term) use for the Seconded's own or another's advantage, or reveal to any person, firm, company or organisation any information which the Seconded knows or reasonably ought to have known to be confidential, concerning the business or affairs of the SLC or the Authority. These restrictions will not apply to any disclosure authorised by the Board or required by Law, or to prevent the Seconded making a protected disclosure within the meaning of section 43A of the Employment Rights Act 1996.

9.1.2 The Parties acknowledge that with the exception of confidential information and IP made available by the Parent Body Organisation under the Parent Body Agreement, (to which, for the avoidance of doubt, the terms and conditions of the Parent Body Agreement shall apply) and notwithstanding anything else to the contrary in this Secondment Agreement the Seconded shall not be obliged to (and the Seconded undertakes to the other Parties not to) use, make available or disclose in the course of performing its obligations under this Secondment Agreement any other confidential information or other IP:

9.1.2.1 obtained or developed by the Secondee prior to its appointment under this Secondment Agreement; or

9.1.2.2 obtained or developed by the Secondee other than in the course of performing his/her duties under this Secondment Agreement.

9.1.3 Save as provided under Clause 9.1.2 above, the Parties also acknowledge that the Secondee shall not be obliged to disclose confidential information to any other Party in fulfilling the terms of this Secondment Agreement.

## 10 **Intellectual Property Rights**

10.1 Subject to the terms of the Parent Body Agreement (including without limitation clause 14 of the Parent Body Agreement and any terms governing the ownership and licensing of IP agreed pursuant to the Parent Body Agreement) the SLC shall be the legal and beneficial owner of all IP created by the Secondee in the course of the Secondee providing services to the SLC under this Secondment Agreement.

10.2 To the extent that any IP that is to be owned by the SLC pursuant to clause 10.1 does not vest automatically in the SLC, the Secondee holds such IP on trust for the SLC, and will immediately upon request by the SLC assign all such IP to the SLC or its nominee (as legal and beneficial owner) with full title guarantee to the fullest extent permitted by Law.

10.3 The Secondee hereby irrevocably and unconditionally waives all moral rights under the Copyright, Designs and Patents Act 1988 which the Secondee has or will have in any existing or future works prepared in connection with providing services to the SLC under this Secondment Agreement.

10.4 The Secondee shall (and the Seconding Employer shall procure that the Secondee shall) at the SLC's reasonable cost and expense promptly execute all documents and do all acts as may, in the reasonable opinion of the SLC, be necessary to give effect to the terms of this clause.

## 11 **Non-Solicitation**

11.1 The Parent Body Organisation shall procure that and the Seconding Employer and the Secondee agree that neither the Seconding Employer nor the Secondee shall for the period of two (2) years from the date of termination of this Secondment Agreement, unless they have obtained the prior written consent 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 who is 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 performance of its operations, 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).

- 11.2 Notwithstanding Clause 11.1, any recruitment of any person by the Parent Body Organisation or the Seconding Employer as a result of that person independently responding to a general recruitment advertisement in general or specialist publications shall not constitute a breach of this Secondment Agreement.

## 12 **Liabilities**

- 12.1 The Parties agree that the provisions of the Parent Body Agreement govern the liabilities of the Parent Body Organisation and of the Seconding Employer which may arise as a result of or in connection with the breach of this Secondment Agreement or the Secondee's acts or omissions or default, save in respect of such liabilities arising as a result of fraud or in connection with other civil or criminal acts unrelated to the performance of obligations under the Parent Body Agreement.

- 12.2 The SLC shall indemnify the Parent Body Organisation and the Seconding Employer and keep them indemnified against any claim for loss, injury or damage made by the Secondee arising out of:

12.2.1 any unlawful act or omission of the SLC, or any of its officers, employees or agents in circumstances where it is vicariously liable, where the loss injury or damage was sustained by the Secondee in the course of providing services under this Secondment Agreement; or

12.2.2 any claim by the Secondee that the termination of this Secondment Agreement by the SLC or otherwise that the actions of the SLC amounts to a repudiatory breach of the Contract of Employment.

- 12.3 [*Use only if Secondee is a member of the Nominated Staff:* The Parent Body Organisation and the Seconding Employer will take all reasonable steps to provide the Secondee with access to the Compensation Scheme for Radiation Linked Diseases.]

## 13 **Assignment**

The Seconding Employer and the Secondee will not assign or otherwise transfer their respective rights or obligations under this Secondment Agreement except with the written consent of the SLC and the Authority.

14     **Waiver**

14.1    No failure or delay on the part of either party to exercise any right or remedy under this Secondment Agreement shall be construed or operate as a waiver of that right or remedy nor shall any single or partial exercise of any right or remedy.

14.2    The rights and remedies provided in this Secondment Agreement are cumulative save where expressed otherwise in this Secondment Agreement and are not exclusive of any rights or remedies provided by law save where expressed otherwise.

15     **Variation**

No variation of this Secondment Agreement shall be effective unless made in writing.

16 **Law and Jurisdiction**

This Secondment Agreement will be governed by and construed in accordance with the laws of England and Wales and will be subject to the jurisdiction of the English courts.

Signed for and on behalf of the Parent Body Organisation

Signed ..... Date .....

Signed for and on behalf of the Seconding Employer

Signed ..... Date .....

Signed for and on behalf of the SLC

Signed ..... Date .....

Signed for and on behalf of the Authority

Signed ..... Date .....

Signed for and on behalf of the Secondee

Signed ..... Date .....

## **Schedule 1**

Secondment Start Date:        *[insert start date]*

Term:                                the period of *[insert period]* from the Secondment Start Date

Job Title                            *[insert details]*

Job description:                 *[insert details]*

## Schedule 2

*[Letter to be prepared on NDA headed notepaper]*

Company Secretary  
Sellafield Limited

Reference:[        ]

Dear Sir

**Contract Reference:[        ]**

**Sellafield M&O and Sellafield Competition – SLC impartiality undertaking and form of agreement for SLC Secondees providing assistance to NDA’s competition process**

The Nuclear Decommissioning Authority (the “NDA”) intends to commence a competition process to select a new Parent Body Organisation for Sellafield Limited (the “SLC”). In order to facilitate this process and in accordance with Clause [] of the Site Management and Operations Contract for Sellafield, the NDA requests assistance from the SLC with regard to the conduct of the competition.

The NDA has a duty to ensure that all bidders are treated impartially during the competition process. In order to underpin the acknowledgement which the SLC has already given as to the importance to the NDA of the need for a fair and unbiased competitive process, the NDA also requests the SLC to undertake to:

- (a) act impartially as regards the treatment of bidders in relation to the Sellafield competition, and
- (b) to secure individual SLC staff members’ signature to the undertaking in the form of the exhibit annexed, before such member of staff provides assistance to the NDA in support of such competition.

The SLC’s undertaking at (a) above, and the individual SLC staff members’ undertakings, will cease to apply once the Sellafield SLC shares have transferred to the new parent body.

I would be grateful if you would please sign the duplicate of this letter by way of acknowledgement and confirmation of your agreement to the above.

Yours etc

[Duplicate to carry signature clauses for the SLC Director and Company Secretary]



The Secondee acknowledges that any failure to comply with any of the terms of this Impartiality and Confidentiality Agreement will entitle the SLC or the NDA to require the immediate termination of their secondment and their replacement by a different secondee and that deliberate or reckless failure will constitute a breach of the Parent Body Organisation /Seconding Employer's obligations under the Secondment Agreement entitling the SLC or the NDA to seek such legal remedy as may be appropriate.

If the Secondee becomes concerned that he/she cannot or can no longer comply with the terms of the undertaking, the Secondee will declare this position immediately to the SLC to enable appropriate alternative arrangements to be made.

This Impartiality and Confidentiality Agreement will cease to apply when the shares in the SLC have transferred to a new parent body but the Secondee will continue to be bound indefinitely to maintain and protect the SLC's and the NDA's confidentiality in accordance with the Secondment Agreement executed by the Secondee, the SLC, the NDA and the Parent Body Organisation/Seconding Employer on [date].

Signed for and on behalf of the Secondee

Signed ..... Date .....

Signed for and on behalf of Sellafield Ltd

Signed ..... Date .....

## **Schedule 4: Seconded and Pensions Schedule**

### **Part 4: Deed of Participation**

DATED

2008

**NUCLEAR DECOMMISSIONING AUTHORITY** (1)

and

**SELLAFIELD LIMITED** (2)

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**DEED OF PARTICIPATION**

**for the**

**COMBINED NUCLEAR PENSION PLAN**

## **DATE OF DEED OF PARTICIPATION**

**2008**

## **PARTIES**

- (1) **NUCLEAR DECOMMISSIONING AUTHORITY** a statutory body set up under section 1 of the Energy Act 2004 (the "**NDA**"); and
- (2) **SELLAFIELD LIMITED** (Company Number 01002607) whose registered office is at 1100 Daresbury Park Daresbury Warrington Cheshire WA4 4GB (the "**New Employer**")

## **RECITALS**

- A This deed is supplemental to the Scheme Documents by which the Scheme is constituted and established.
- B The NDA is currently the "Lead Company" for the purposes of the Scheme.
- C Clause 7 of the Definitive Deed permits companies or bodies which execute an appropriate deed of participation with NDA to participate in the Scheme.
- D The NDA and the New Employer have agreed that the New Employer should participate in the Scheme in the new Section to be termed the "Sellafield Section" with effect on and from the Effective Date on the terms set out in this deed.
- E The NDA has pursuant to Clause 6.4 of the Definitive Deed notified the Trustee of the creation of the Sellafield Section.

## **OPERATIVE PROVISIONS**

### **1 DEFINITIONS AND INTERPRETATION**

- 1.1 The following words which begin with capital letters in this deed have the meanings set out below:

"Definitive Deed" means the deed effective from 1 October 2006 by which the Scheme is established and constituted including the rules and schedules attached to it.

"Effective Date" means

"Energy Act CPS Member" has the same meaning as in the Definitive Deed.

"Scheme" means the Combined Nuclear Pension Plan.

"Scheme Documents" means the Definitive Deed and any other documents which relate to or govern the operation of the Scheme.

"Section" means a section of the Scheme created pursuant to Clause 6 of the Definitive Deed.

"Trustee" means the trustee of the Scheme for the time being.

- 1.2 Any other words used in this deed which begin with capital letters shall, where the context permits, have the same meanings as in the Definitive Deed.
- 1.3 The introduction to and headings used in this deed have been inserted for ease of reference only. They do not affect its interpretation.
- 1.4 Unless the context requires otherwise, words in the singular include the plural and vice versa; words in the masculine gender include the feminine and vice versa.

## **2 NEW PARTICIPATION**

- 2.1 Pursuant to Clause 7 of the Definitive Deed the NDA admits the New Employer to participation in the Scheme on and from the Effective Date on the terms set out in this deed.
- 2.2 The New Employer shall participate in the new Section created by the NDA and called the Sellafield Section.
- 2.3 All employees of the New Employer are eligible for membership of the Sellafield Section. Employees who are Energy Act CPS Members shall be entitled to participate in the Scheme by reference to the CPS Benefit Structure as set out in Schedule 2 to the Definitive Deed. An employee's active membership shall commence on the Effective Date (subject to any employee exercising his option to opt out of the Scheme). Any other employees shall be entitled to participate in the Scheme by reference to the New Joiners Benefit Structure as set out in Schedule 4 to the Definitive Deed.
- 2.4 The New Employer agrees that the NDA may, if it wishes to do so, act as its representative on any and all occasions on which the Trustee is required by general law or under the Scheme Documents to consult, negotiate or agree with the Employers.
- 2.5 The New Employer covenants with the NDA and the Trustee on behalf of the NDA and the Trustee to observe and perform all things which are applicable to it as an

Employer under the provisions of the Scheme, the Scheme Documents, this deed and the general law on and from the Effective Date.

**IN WITNESS** of which this document has been executed and on the date set out above, delivered as a deed.

The **COMMON SEAL** of **THE NUCLEAR DECOMMISSIONING AUTHORITY**

was affixed in the presence of: .....

.....

**SIGNED** as a **DEED** by the said **SELLAFIELD LIMITED** acting by a director or duly authorised attorney in the presence of:-

Witness.....

Address .....

.....

Occupation .....

## **Schedule 4: Seconded and Pensions Schedule**

### **Part 5 : Pro Forma Impartiality Undertaking**

*[Letter to be prepared on NDA headed notepaper]*

Company Secretary  
Sellafield Limited

Reference:[        ]

Dear Sir

**Contract Reference:[        ]**

**Sellafield M&O and Sellafield Competition – SLC impartiality undertaking and form of agreement for SLC Seconded providing assistance to NDA’s competition process**

The Nuclear Decommissioning Authority intends to commence a competition process to select a new Parent Body Organisation for Sellafield Limited. In order to facilitate this process and in accordance with Clause [] of the Site Management and Operations Contract for Sellafield, the NDA requests assistance from Sellafield Ltd with regard to the conduct of the competition.

The NDA has a duty to ensure that all bidders are treated impartially during the competition process. In order to underpin the acknowledgement which the SLC has already given as to the importance to the NDA of the need for a fair and unbiased competitive process, the NDA also requests Sellafield Limited to undertake to:

- (a) act impartially as regards the treatment of bidders in relation to the Sellafield competition, and
- (b) to secure individual SLC staff members’ signature to the undertaking in the form of the exhibit annexed, before such member of staff provides assistance to the NDA in support of such competition.

Sellafield Ltd’s undertaking at (a) above, and the individual SLC staff members’ undertakings, will cease to apply once the Sellafield SLC shares have transferred to the new parent body.

I would be grateful if you would please sign the duplicate of this letter by way of acknowledgement and confirmation of your agreement to the above.

Yours etc

[Duplicate to carry signature clauses for Sellafield Ltd Director and Company Secretary]



- 4 If he/she receives a notification from the NDA requesting, on reasonable notice, attendance at a meeting or interview requested by a bidder, he/she will attend and will fully co-operate with the bidder (subject to the terms of this undertaking).

All references to the bidder include reference to its respective directors, officers, Secondees, advisers, subcontractors and agents.

The Secondee acknowledges that any failure to comply with any of the terms of this Impartiality and Confidentiality Undertaking will entitle Sellafield or the NDA to require the immediate termination of their secondment and their replacement by a different Secondee and that deliberate or reckless failure will constitute a breach of the PBO/Seconding Employer's obligations under the Secondment Agreement entitling Sellafield or the NDA to seek such legal remedy as may be appropriate.

If the Secondee becomes concerned that he/she cannot or can no longer comply with the terms of the undertaking, the Secondee will declare this position immediately to Sellafield Ltd to enable appropriate alternative arrangements to be made.

This Impartiality and Confidentiality Undertaking will cease to apply when the shares in Sellafield Ltd have transferred to a new Parent Body but the Secondee will continue to be bound indefinitely to maintain and protect Sellafield's and the NDA's confidentiality in accordance with the Secondment Agreement executed by the Secondee, Sellafield, the NDA and the PBO/Seconding Employer on (date).

Signed: .....

Date: .....

## **Schedule 5**

### **Subcontracting/Procurement Requirements – CT 15**

#### **Part 1: Subcontracting/Procurement Requirements – CT 15**

The current edition of CT 15 is attached. To be reviewed and updated after the Commencement Date, to ensure among other matters that the benefits of the acceptance of liability, in accordance with s12(3A) Nuclear Installations Act 1965, required by Part 2 of the Appendix, are flowed down to Subcontractors and Sub-subcontractors.

## **CT-15 SUBCONTRACTING/PROCUREMENT REQUIREMENTS**

### **1. PURPOSE AND APPLICATION**

#### **1.1 Purpose**

*This procedure sets out the requirements for the Contractor's subcontracting and procurement system. The Contractor cannot subcontract its legal duties and responsibilities down to a lower tier.*

**1.1.1 In addition to complying with the provisions of this CT-15 (Subcontracting/Procurement Requirements), the Contractor must also ensure that it complies with all applicable EU Procurement Rules.**

**1.1.2 To the extent that there is any conflict between this CT-15 (Subcontracting/Procurement Requirements) and the EU Procurement Rules, the EU Procurement Rules shall prevail. Where the Contractor believes there is such conflict, it shall inform the NDA and the Parties agree that the interpretation of the applicable EU Procurement Rules shall be within the sole discretion of the NDA. The Contractor shall not be entitled to challenge any such NDA interpretation.**

#### **1.2 Application**

**1.2.1 Before seeking the NDA's approval under any provisions in this CT-15 (Subcontracting/Procurement Requirements), the Contractor shall consult the provisions set out in the overarching validation procedure of Part A (Overarching Validation Procedure) of CT-14 (Project Validation and Financial Sanction). In complying with this CT-15 (Subcontracting/Procurement Requirements), the Parties shall work together to endeavour to ensure that the process set out in this CT-15 (Subcontracting/Procurement Requirements) is, so far as possible, run simultaneously with consultation under and oversight of the processes set out in CT-14 (Project Validation and Financial Sanction), CT-16 (Customer Contracts) and/or Schedule P (Setting the NTWP and Change Control) as applicable such that each Party is aware of what is happening and what decisions are being taken and the reasons for them under each approval process and there is minimal requirement for the duplication of the same information to obtain different approvals.**

**1.2.2 This CT-15 (Subcontracting/Procurement Requirements) applies in respect of:**

**(A) subject to Contract Clause 4.7 (Assumption of Existing Agreements) and Paragraph 3.13.5 of this CT-15 (Subcontracting/Procurement Requirements):**

- (1) all Subcontracts and Series of Subcontracts to be awarded or amended by the Contractor; and**
- (2) the renewal of all Existing Agreements by the Contractor,**

**and not otherwise in respect of Existing Agreements;**

- (B) **all contracts and other arrangements between the Contractor and another SLC, but, save for Paragraph 3.16.1(F), excluding Joint Internal Procedures; and**
- (C) **in relation to any Existing Agreements with Affiliates which provide for the Contractor to call down services from the relevant Affiliates, any call down of services, whether by way of a separate contract or otherwise, under the relevant Existing Agreement.**

1.2.3 **Except as expressly stated otherwise all references to Subcontracts and Series of Subcontracts in this CT-15 (Subcontracting/Procurement Requirements) shall be deemed to include reference to each of the contracts or other arrangements listed in Paragraph 1.2.2 as applicable and all references to the Subcontractor in this CT-15 (Subcontracting/Procurement Requirements) shall accordingly be deemed to include reference to the relevant counterparty as applicable.**

1.2.4 **This CT-15 (Subcontracting/Procurement Requirements) does not apply in respect of the Secondment Agreements.**

1.2.5 **The NDA's powers in this CT-15 (Subcontracting/ Procurement Requirements) are for the purpose of ensuring the efficient procurement of clean up services and achieving best market value.**

1.2.6 *The contractually binding language is in bold regular font, with narrative identified in italics.*

1.2.7 **This Part Schedule F Part 4 (CT-15 (Subcontracting/Procurement Requirements)) shall be applied by the Parties on a site-by-site basis such that the provisions herein are operated separately for Sellafield and Windscale.**

## **2. DEFINITIONS**

*Contract Clause or Contract Schedule: refers to a Clause or Schedule as applicable in this Contract between the NDA and the Contractor and all defined terms have the meaning given to them in Contract Schedule A (Definitions).*

## **3. REQUIREMENTS**

*In relation to the time limits within which the Parties must respond to each other as specified in this CT-15 (Subcontracting/Procurement Requirements), the Parties agree that such time limits are maximum limits (unless otherwise specified) and that each Party shall use reasonable endeavours to respond to the other Party within shorter timescales, particularly where one Party has informed the other that a faster response is required.*

*The NDA's intent is that this CT-15 (Subcontracting/Procurement Requirements) in practice will be more or less a formality since the NDA will be involved in the Contractor's subcontracting/procurement decision-making processes much earlier on through the mechanics of the process in CT-14 (Project Validation and Financial Sanction Procedure).*

### 3.1 Procurement Plan

The Contractor shall prepare and submit within the first thirty (30) Calendar Days of each Contract Year a procurement plan (the “Annual Procurement Plan”) setting out the total number of Subcontracts or Series of Subcontracts which the Contractor intends to award during that Contract Year. Such procurement plan must:

- 3.1.1 list the relevant Subcontracts or Series of Subcontracts by category;
- 3.1.2 include as much information regarding each such Subcontract and Series of Subcontracts as the NDA (acting reasonably) requires; and
- 3.1.3 contain an analysis of whether any arrangements which are the subject of any Joint Internal Procedure should be offered for competitive tender save that in the first Contract Year, such analysis may be prepared and submitted within ninety (90) Calendar Days of the Commencement Date.

### 3.1A Payment to Subcontractors

Unless the NDA agrees otherwise, the Contractor must meet its obligations to make payments to Subcontractors as they Fall Due and in accordance with Government Payment Obligations.

### 3.2 NDA Approval of Certain Subcontracts

The Contractor must seek the prior written approval of the NDA before awarding or amending any Subcontract or Series of Subcontracts or before renewing any Existing Agreement:

- 3.2.1 arising out of the subcontracting of the Contractor's obligations under a New Customer Contract or amended Customer Contract; and/or
- 3.2.2 which has/have one or more of the following characteristics:
  - (A) in respect of Clean-up Tasks and subject to Paragraph 3.2.2(B), a total value in excess of £1,000,000;
  - (B) in respect of Clean-up Tasks, a total value in excess of £1,000,000 where the Subcontract or Series of Subcontracts imposes any obligations on the Contractor which survive the expiry of this Contract;
  - (C) in respect of Commercial Operations Tasks or Tasks relating to the Utility Customer Contracts and subject to Paragraph 3.2.2(D), a total value in excess of £1,000,000;
  - (D) in respect of Commercial Operations Tasks or Tasks relating to the Utility Customer Contracts, a total value in excess of £1,000,000 where the Subcontract or Series of Subcontracts imposes any obligations on the Contractor which survive the expiry of this Contract;
  - (E) in respect of Asset Purchases, a total value in excess of £50,000;

- (F) **payment on the basis of Cost Reimbursement in respect of any Subcontract with a total value in excess of £100,000;**
- (G) **payment on the basis of Time and Materials in respect of any Subcontract with a total value in excess of £100,000;**
- (H) **termination payments which could potentially exceed 15% of the total value of the Subcontract or Series of Subcontracts;**
- (I) **the Subcontract or Series of Subcontracts is/are to be the subject of a sole source award and is/are not to be offered for competitive tender and have a total value in excess of £75,000;**
- (J) **the Subcontract or Series of Subcontracts does/do not contain all of the flowdowns specified in Paragraph 3.13 (Flowdown of Contractual Provisions);**
- (K) **the Subcontract or Series of Subcontracts is/are a contract of the type referred to in Paragraph 3.8 (Requirement to maintain a Skilled Workforce);**
- (L) **the Subcontract or Series of Subcontracts is/are a contract subject to which the provisions of Contract Schedule G (Construction Obligations) apply;**
- (M) **save where the Subcontract or Series of Subcontracts relate(s) solely to the provision of clerical staff, the Subcontract or Series of Subcontracts is/are in the NDA's reasonable opinion a contract for staff augmentation;**
- (N) **the Subcontract is an IT Contract having an actual or likely annual cost of £25,000 or more; and/or**
- (O) **the Subcontract is an IT Contract with an Affiliate;**

**and/or**

- 3.2.3 **involving a 'make/buy' analysis that results in a 'make' decision in excess of a total value of £1,000,000 per year.**

*It is the intention that Paragraph 3.2.3 applies only to 'make' decisions as from 1 April 2005 and not to such decisions made prior to such date.*

- 3.2.4 **Where a monetary value is a trigger in accordance with Paragraphs 3.2.2 or 3.2.3 (NDA Approval of Certain Subcontracts), Paragraph 3.11 (Notification of Subcontracts not requiring NDA approval) or Paragraph 3.13 (Flow down of Contractual Provisions), the relevant monetary value to be considered will be the maximum amount of money committed to the potential Subcontractor. Such amount will be assessed prior to entering into or amending the Subcontract or Series of Subcontracts or prior to renewing the Existing Agreement as applicable.**

- 3.3 **The NDA shall respond to the Contractor's request for approval pursuant to Paragraph 3.2 (NDA Approval of Certain Subcontracts) within thirty (30) Calendar Days of receipt of such request. The NDA shall grant or withhold its consent to the**

**Contractor entering into or amending a Subcontract or Series of Subcontracts or renewing an Existing Agreement in its sole discretion, but shall take into account the Contractor's obligations under the EU Procurement Rules. The NDA shall not withhold consent unreasonably provided that the Contractor has complied with all its obligations set out in this CT-15 (Subcontracting/Procurement Requirements).**

**3.3A The Contractor shall comply with its obligations under paragraphs 559 to 567 of the Taxes Act and the Income Tax (Sub-Contractors in the Construction Industry) Regulations 1993 (as amended by the Income Tax (Sub-Contractors in the Construction Industry) (Amendment) Regulations 1998 and any successor legislation.**

**3.4 The Contractor shall use its reasonable endeavours to ensure that all Subcontractors shall provide the Contractor with such information as the Contractor may reasonably require to enable the Contractor to comply with its obligations under paragraphs 559 to 567 of the Taxes Act and the Income Tax (Sub-Contractors in the Construction Industry) Regulations 1993 (as amended by the Income Tax (Sub-Contractors in the Construction Industry) (Amendment) Regulations 1998) and any successor legislation.**

### **3.5 Subcontracts with Affiliates**

*Except as otherwise provided in Contract Clause 4.7 (Assumption of Existing Agreements), it is the intention that this CT-15 applies only to new contracts with Affiliates entered into on or after 1 April 2005 and not to contracts with Affiliates existing prior to such date.*

**The Contractor shall not enter into a Subcontract or Series of Subcontracts with an Affiliate unless:**

**3.5.1 the Subcontract or Series of Subcontracts has/have been offered for competitive tender and the Contractor has procured that there is open and equitable competition with no advantage of any nature accruing to the relevant Affiliate(s) and, in advance of the award to the Affiliate, the NDA was notified of the inclusion of the Affiliate in any competitive tender and it reviewed and approved in writing (within thirty (30) Calendar Days of receipt of a request from the Contractor to so do) the proposed award of the Subcontract or Series of Subcontracts to the Affiliate prior to the award being made; or**

**3.5.2 the Contractor has awarded the Subcontract or a Series of Subcontractors in accordance with Paragraph 3.7 (Sole Source Awards), acting properly, and accordingly can provide adequate substantiating documentation and rationale for not competing.**

**3.6 Should the Contractor wish to effect any subsequent changes to a Subcontract or Series of Subcontracts awarded to an Affiliate, it must seek the prior written approval of the NDA (which will respond within thirty (30) Calendar Days of receipt of such request) for such changes(s). In giving its approval, the NDA may require such changes, if carried out, to be carried out either at a flat reduced rate of fee or with no opportunity for the relevant Affiliate to earn fee for the revised works.**

### **3.7 Sole Source Awards**

**The Contractor shall not make an award of any Subcontract or Series of Subcontracts where such Subcontract or Series of Subcontracts is/are not to be offered for**

**competitive tender unless the Contractor demonstrates to the satisfaction of the NDA that it is not required by the EU Procurement Rules to hold a competitive tender and the making of a sole source award (including to an Affiliate) to the proposed Subcontractor is reasonably justified in the circumstances of the award. For the purposes of this Paragraph 3.7 (Sole Source Awards):**

- 3.7.1 the Contractor is deemed to be subject to and obliged to comply with the EU Procurement Rules; and**
- 3.7.2 in demonstrating that it is not required to hold a competitive tender, the Contractor may not rely on the fact that:**
  - (A) the award of the Subcontract or Series of Subcontracts does not trigger the financial thresholds specified in the EU Procurement Rules for the application of those rules;**
  - (B) the Subcontract or Series of Subcontracts are Part B services contracts (as defined in the Public Services Contracts Regulations 1993); or**
  - (C) the Subcontract or Series of Subcontracts are services concessions or works concessions.**

*The NDA in its sole discretion may decide to give generic approval of the Contractor's subcontracting/procurement system enabling the Contractor to make subcontracting /procurement awards in accordance with such system reducing the need for the Contractor to seek the NDA's approval for each individual award.*

**3.8 Requirement to Maintain a Skilled Workforce**

**The Contractor shall seek the prior written approval of the NDA before entering into any Subcontract or Series of Subcontracts which results in the transfer of employees of the Contractor into the employment of a Subcontractor, or results in an activity currently undertaken by the Contractor being undertaken by a Subcontractor.**

**3.9 When seeking the approval of the NDA under Paragraph 3.8 above, the Contractor must set out in a level of detail reasonably satisfactory to the NDA the Contractor's strategy for:**

- 3.9.1 ensuring the maintenance of a skilled workforce;**
- 3.9.2 its retention of intelligent customer capability and control; and**
- 3.9.3 ensuring that the Subcontractor complies with the NDA's policies for the provision of pensions within the nuclear industry.**

**3.10 Detail Required in Request for Approval**

**The Contractor's request for NDA approval in accordance with Paragraph 3.2 (NDA Approval of Certain Subcontracts) must be submitted to the NDA and must include the following information in a level of detail reasonably satisfactory to the NDA:**

- 3.10.1 a description of the supplies or services to be subcontracted;**

- 3.10.2 **identification of the pricing mechanism of the Subcontract or Series of Subcontracts to be used;**
- 3.10.3 **where there has been a competition:**
  - (A) **the basis of competition for the award of the Subcontract or Series of Subcontracts;**
  - (B) **the pre-qualification criteria; and**
  - (C) **the evaluation criteria;**
- 3.10.4 **identification of the proposed Subcontractor;**
- 3.10.5 **the proposed price of the Subcontract or Series of Subcontracts;**
- 3.10.6 **the Subcontractor's current, complete, and accurate cost or pricing data;**
- 3.10.7 **value engineering exercises if required by the NDA;**
- 3.10.8 **the Contractor's proposed strategy for managing the Subcontract or Series of Subcontracts, addressing in particular cost control and performance management. In the case of an Affiliate, the Contractor shall set out its strategy for managing the performance of the Affiliate as though it were an unrelated party;**
- 3.10.9 **subject to Paragraph 3.15 (Exception to Automatic Flowdown), confirmation that the required provisions of this Contract have been flowed down to the Subcontract or Series of Subcontracts in accordance with Paragraph 3.13 (Flowdown of Contractual Provisions);**
- 3.10.10 **in relation to a Subcontract or Series of Subcontracts of the type referred to in Paragraph 3.8, the Contractor's strategy referred to in Paragraph 3.9;**
- 3.10.11 **the details of any Performance Bond in accordance with Paragraph 3.18 (Provision of Performance Bond);**
- 3.10.12 **the details of any proposed 'contracts works' or other project specific insurance; and**
- 3.10.13 **a memorandum reflecting:**
  - (A) **the principal elements of the Subcontract price discussions;**
  - (B) **the most significant considerations controlling establishment of initial or revised prices;**
  - (C) **the extent, if any, to which the Contractor did not rely on the Subcontractor's cost or pricing data in determining the price objective and in agreeing the final prices;**
  - (D) **the extent to which it was recognised in the discussions that the Subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the Subcontractor; and the effect of any such defective data on the total price agreed;**

- (E) the reasons for any significant difference between the Contractor's price objective and the price agreed; and
- (F) a complete explanation of the incentive fee or profit plan where incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

**For the avoidance of doubt, the NDA shall be entitled to audit all information supplied by the Contractor in accordance with this Paragraph 3.10 (Detail Required in Request for Approval) pursuant to Contract Clause 13 (Inspection and Audit).**

### **3.11 Notification of Subcontracts not Requiring NDA approval**

**3.11.1 The Contractor shall notify the NDA in writing no less than seven (7) Calendar Days prior to awarding or amending any Subcontract or Series of Subcontracts or renewing any Existing Agreement:**

- (A) in relation to which NDA approval is not required pursuant to Paragraph 3.2 (NDA Approval of Certain Subcontracts), but which has/have a total value in excess of £25,000; and/or
- (B) arising out of the subcontracting of the Contractor's obligations under a New Customer Contract or the Tasks relating to the Utility Customer Contracts or the amendment of a Customer Contract and in relation to which NDA approval is not required pursuant to Paragraph 3.2 (NDA Approval of Certain Subcontracts), but which has/have a total value in excess of £25,000.

**3.11.2 The notification pursuant to Paragraph 3.11.1 shall provide the following information:**

- (A) a description of the supplies or services to be subcontracted;
- (B) identification of the type of Subcontract or Series of Subcontracts to be used;
- (C) identification of the proposed Subcontractor;
- (D) the proposed price of the Subcontract or Series of Subcontracts; and
- (E) subject to Paragraph 3.15 (Exception to Automatic Flowdown), confirmation that the required provisions of this Contract have been flowed down to the Subcontract or Series of Subcontracts in accordance with Paragraph 3.13 (Flowdown of Contractual Provisions).

**3.11.3 For the avoidance of doubt, the NDA shall be entitled to audit all information supplied by the Contractor in accordance with this Paragraph 3.11 (Notification of Subcontracts not Requiring NDA approval) pursuant to Contract Clause 13 (Inspection and Audit).**

**3.12 Terms of NDA Approval**

**Unless any written NDA approval specifically provides otherwise in relation to a particular Subcontract or Series of Subcontracts, the written approval of the NDA to the award or amendment of any Subcontract or Series of Subcontracts or the renewal of any Existing Agreement shall not constitute an NDA agreement:**

- 3.12.1 of the acceptability of any Subcontract or Series of Subcontracts terms and conditions which could not in the reasonable opinion of the NDA be ascertained from the information provided by the Contractor pursuant to the notification and disclosure requirements of Paragraphs 3.2 to 3.11;**
- 3.12.2 of the charging of any costs by the Subcontractor under the Subcontract as either an Allowable Cost or a Disallowable Cost;**
- 3.12.3 to relieve the Contractor of any responsibility for performing the works or delivering/receiving the supplies which form the subject matter of the Subcontract or Series of Subcontracts; or**
- 3.12.4 to relieve the Contractor of any of its responsibilities under this Contract.**

**3.13 Flowdown of Contractual Provisions**

**3.13.1 The Contractor shall procure that the contractual provisions of this Contract specified in Paragraph 3.13.2 (Mandatory Flowdowns) and 3.13.3 (Reasonable Endeavours Flowdowns) are incorporated in all Subcontracts and Series of Subcontracts in the manner and to the extent described in Paragraphs 3.13.2 (Mandatory Flowdowns) and 3.13.3 (Reasonable Endeavours Flowdowns) and so as to enable such contractual provisions to operate as between the Contractor and the Subcontractor and be enforced by the Contractor against the relevant Subcontractor.**

**Except where specified otherwise, this Paragraph 3.13 (Flowdown of Contractual Provisions) shall apply to all of the Contractor's Subcontractors, whether carrying on activities on the Site or carrying on activities off the Site but in connection with this Contract.**

**3.13.2 Mandatory Flowdowns**

**The Contractor shall procure that in all Subcontracts and Series of Subcontracts, the relevant Subcontractor shall be obliged to:**

- (A) comply with the Contractor's Internal Procedures relating to safety and Site security. This obligation shall apply only to Subcontractors who carry on activities on the Site;**
- (B) comply with all applicable Regulatory Requirements of the Regulators and other relevant regulatory bodies. This obligation shall apply only to Subcontractors who carry on activities on the Site;**
- (C) perform its obligations in a safe, secure, efficient and cost effective manner;**
- (D) comply with all applicable Law;**

- (E) to the extent that the Subcontract or Series of Subcontracts involves Construction Operations, comply with Paragraphs (1), (2) and (3) of Schedule G (Construction Obligations) but so that all references to the Contractor shall read the Subcontractor;
- (F) identify potential Changes and trends arising in connection with the relevant Subcontract or Series of Subcontracts and report such Changes and/or trends to the Contractor accordingly and provide sufficient information on cost, schedule and performance under the Subcontract to enable the Contractor to:
  - (1) comply with the provisions of Contract Clause 9 (Setting the NTWP and Change Control) and Schedule P (Setting the NTWP and Change Control); and
  - (2) be able to determine at any time its financial position as against the relevant PSWBS Category Levels, Resource Budget, Capital Budget and/or Annual Site Funding Limit.

This Paragraph 3.13.2(F) shall only apply to Asset Purchases to the extent that the Subcontractor to an Asset Purchase must inform the Contractor of any changes which will or may affect the pricing mechanism of the relevant Asset Purchase;

- (G) accept a provision stating that no change in the ownership, management or control of the Contractor will entitle any counterparty to terminate or make any amendment to the Subcontract or Series of Subcontracts;
- (H) ensure that when the Subcontractor replaces any of its employees engaged in work on the Site under the relevant Subcontract, the replacement has the necessary level of skills and experience which:
  - (1) is at least broadly comparable to that of the employee that he or she is replacing; or
  - (2) if more appropriate depending on the relevant job position, matches the necessary skills and experience required for that job position.

This Paragraph 3.13.2(H) shall apply only to Subcontractors who carry on activities on the Site;

- (I) operate an appropriate equal opportunities policy;
- (J) comply with the terms of all agreements with trade unions and other bodies representing any of its employees where those agreements relate to any of the Subcontractor's employees;
- (K) comply with the NDA's policies for the provision of pensions within the nuclear industry;
- (L) ensure that any IP created by or on behalf of the Subcontractor during the performance of the Subcontract or Series of Subcontracts

shall vest in the NDA, subject to any pre-existing rights of third parties and, for the avoidance of doubt, the Parent Company. This obligation shall not apply to Asset Purchases;

- (M) promptly report to the Contractor the creation of any IP and keep such IP secure. This obligation shall not apply to Asset Purchases;
- (N) execute such further documents and do such further acts as the NDA requires to give full effect to the terms of Paragraphs 3.13.2(L) and (M) above and perfect the NDA's title to any such IP. This obligation shall not apply to Asset Purchases;
- (O) subject to the provision in relation to confidentiality provided for in Paragraph 3.13.2(T) below, share information and know-how relating to the Authority Field of Use with the NDA and with third parties as directed by the NDA. This obligation shall not apply to Asset Purchases;
- (P) ensure the back-up and storage in safe custody of all electronic data, material and documents required to be maintained and retained under the Subcontract or Series of Subcontracts in accordance with procedures relating to records and data management specified by the Contractor. This obligation shall not apply to Asset Purchases;
- (Q) at the request of the NDA or the Contractor, provide to the NDA or the Contractor any documents and other materials in any form and any other articles (including copies) in its possession or control bearing or embodying any IP owned by or licensed to the NDA subject to any pre-existing rights of third parties and the Parent Company. This obligation shall not apply to Asset Purchases;
- (R) on expiry or termination of the Subcontract or Series of Subcontracts, preserve and deliver-up to the NDA all documents and other articles (including copies) in its possession or control bearing or embodying any IP owned by or licensed to the NDA subject to any pre-existing rights of third parties and the Parent Company. This obligation shall not apply to Asset Purchases;
- (S) keep the Contractor informed of all matters relevant to the protection of the IP owned by the NDA and to provide the Contractor with all assistance as it may reasonably require and request in the protection and maintenance of the IP owned by the NDA. This obligation shall not apply to Asset Purchases;
- (T) accept a provision in relation to confidentiality which enables the Contractor to comply with its obligations to the NDA under Contract Clause 18 (Confidentiality);
- (U) maintain appropriate insurances relevant to the subcontracted work or services;

- (V) **accept a provision ensuring that the Subcontract or Series of Subcontracts is/are capable of being novated or assigned to the NDA's nominee either:**
- (1) **without the consent of the Subcontractor; or**
  - (2) **with the consent of the Subcontractor such consent not to be unreasonably withheld,**
- and in each case without requiring the consent of any other third party and without incurring any payment obligation or other additional liability;**
- (W) **accept a Termination for Convenience provision enabling the Contractor to terminate at any time on giving reasonable notice to the Subcontractor. In the event of such Termination for Convenience, the Contractor shall only agree, subject to the NDA's approval, to pay the Subcontractor's reasonable costs arising directly from termination of the relevant Subcontract or Series of Subcontracts and shall not agree any payment in respect of loss of anticipated profits, loss of opportunity or the consequential losses of affiliates of the Subcontractor. This obligation shall not apply to an Asset Purchase except where the period of supply under such Asset Purchase is in excess of twelve (12) Months;**
- (X) **agree to be bound by the Dispute Resolution Procedure in relation to any dispute under the Subcontract or Series of Subcontracts;**
- (Y) **accept a provision agreeing only to undertake processing of personal data reasonably required in connection with the Contractor's obligations under this Contract and to not transfer any personal data to any country or territory outside the European Economic Area;**
- (Z) **acknowledge the contractual rights of the NDA as against the Contractor in relation to the Subcontractor and its employees as set out in Contract Clause 28.6 (Corrupt Gifts);**
- (AA) **where the Subcontract or Series of Subcontracts is/are on a cost reimbursable basis, accept provisions which make disallowable as between the Contractor and Subcontractor costs of the equivalent nature to those costs which are Disallowable as between the NDA and the Contractor pursuant to CT-03 (Costs Principles and Procedures) and which allow the Contractor to determine the allowable and disallowable costs under the Subcontract or Series of Subcontracts in a way which enables the Contractor to be able to determine at any time its financial position as against the Annual Site Funding Limit. This obligation shall not apply to Asset Purchases; and**
- (BB) **accept provisions which have the same or substantially the same effect as the provisions set out in Part 1 or Part 2 (as applicable) of the Appendix.**

### 3.13.3 Reasonable Endeavours Flowdowns

The Contractor shall use all reasonable endeavours to procure that in all Subcontracts and Series of Subcontracts, the relevant Subcontractor shall be obliged to:

- (A) comply with those of the Contractor's Internal Procedures relevant to the performance of the Subcontract or Series of Subcontracts. This obligation shall only apply to Subcontractors who carry on activities on the Site;
- (B) comply where relevant and to an internationally accepted standard with all aspects of the Contractor's quality management system referred to in Contract Clause 4.4 (Quality Management System). This obligation shall apply only to Subcontractors who carry on activities on the Site;
- (C) comply with the provisions of Contract Clause 13 (Inspection and Audit) such that the Subcontractor must permit the NDA where relevant to have the same rights of access, inspection and audit over the books, accounts, receipts, invoices, records and any other documents of the Subcontractor relating to the Subcontractor's activities in connection with the Subcontract or Series of Subcontracts, which the NDA has in relation to the Contractor under Contract Clause 13 (Inspection and Audit) and the Subcontractor must fully co-operate in relation to such NDA rights of access, inspection and audit particularly:
  - (1) to enable the NDA and any NDA Agent, acting reasonably, and subject to compliance with all applicable Law and Regulatory Requirements and the Contractor's Internal Procedures relating to safety and Site security and for the purpose of fulfilling the NDA's statutory functions and duties and contractual rights pursuant to this Contract:
    - (a) to audit the Subcontractor's compliance with the Contractor's quality management systems and any operating procedures, policies or standards ancillary to, or used in connection or accordance with, the same in the undertaking of activity on or related to the Site; and
    - (b) to interview any employee, secondee or other personnel of the Subcontractor on the Site;
  - (2) to provide the NDA or any NDA Agent with all information reasonably required in connection with the exercise of the NDA's rights under Contract Clause 13 (Inspection and Audit); and
  - (3) to keep all records and other relevant documentation relating to the Contractor's quality management system and all information required to be held by the Contractor in good

order and in such form as to be capable of audit (including by electronic means) by the NDA or by any NDA Agent and:

- (i) make such records available for inspection by the NDA or any NDA Agent at all reasonable times; and
  - (ii) at the NDA's or any NDA Agent's request, make available to the NDA or NDA Agent as applicable any software necessary to review such records;
- (D) co-operate and provide such reasonable assistance to the Contractor so as to enable the Contractor to comply with its obligations as set out in this CT-15 (Subcontracting/Procurement Requirements);

and

- (E) accept a provision which mirrors the provisions of Contract Clause 20 (Force Majeure) to the extent relevant in the context of the Subcontract or Series of Subcontracts but so that all references to the NDA shall read the Contractor and all references to the Contractor shall read the Subcontractor, save that in relation to Contract Clause 20.2.4, the Subcontractor shall be required to comply with internationally accepted standards rather than Good Industry Practice. As a minimum, this obligation must, where there is a Force Majeure Event persisting in accordance with Contract Clause 20 (Force Majeure), trigger force majeure under the relevant Subcontract or Series of Subcontracts to the extent that the Force Majeure Event affects the relevant Subcontract or Series of Subcontracts.

3.13.4 For the purposes of this Paragraph 3.13 (Flowdown of Contractual Provisions):

- (A) the Contractor shall ensure, and shall procure that all its Subcontractors ensure, that the provisions specified in Paragraph 3.13.2 (Mandatory Flowdowns) are incorporated into all Subcontracts and all other subcontracts of lower tiers; and
- (B) the Contractor shall use reasonable endeavours to ensure that the provisions specified in Paragraph 3.13.3 (Reasonable Endeavours Flowdowns) are incorporated into all Subcontracts, but where possible incorporated into other subcontracts of lower tiers,

but in each case, only in relation to Subcontracts and other subcontracts which have a total value per annum in excess of £25,000.

3.13.5 Subject to Paragraph 3.13.4, the provisions of this Paragraph 3.13 (Flowdown of Contractual Provisions) shall apply to:

- (A) all Subcontracts and Series of Subcontracts entered into by the Contractor on or after 1 April 2005 save to the extent that the NDA has agreed an exemption to the flowdown of the relevant contractual provision(s) in accordance with Paragraph 3.15 (Exception to Automatic Flowdown); and

- (B) Existing Agreements to the extent the Contractor has used all reasonable endeavours to amend such Existing Agreements to incorporate the provisions of this Paragraph 3.13 (Flowdown of Contractual Provisions).
- 3.14 The Contractor shall procure that no Subcontract or Series of Subcontracts contains any term which directly or indirectly:
  - 3.14.1 excludes or attempts to exclude the application of the Contracts (Rights of Third Parties) Act 1999 as regards the NDA; and/or
  - 3.14.2 has or is intended to have the effect of prohibiting the NDA from enforcing its/their terms.
- 3.15 Exception to Automatic Flowdown
  - 3.15.1 If the Contractor reasonably believes that as a result of the pricing mechanism or subject matter of any proposed Subcontract or Series of Subcontracts or otherwise, it is inappropriate for any of the contractual provisions (or any part of any of them) specified in Paragraph 3.13 (Flowdown of Contractual Provisions) to be included in the Subcontract or Series of Subcontracts, it must include in its request for NDA approval pursuant to Paragraph 3.2 (NDA Approval of Certain Subcontracts), a request for the NDA's approval for the relevant contractual provision to be excluded (in part if applicable) from the terms of the relevant Subcontract or Series of Subcontracts.
  - 3.15.2 The Contractor's request to the NDA pursuant to Paragraph 3.15.1 must specify:
    - (A) with reference to the Annual Procurement Plan for the relevant Contract Year, which nominated Tasks forming the subject of the proposed Subcontract or Series of Subcontracts is the subject of the request;
    - (B) which contractual provision specified in Paragraph 3.13 (Flowdown of Contractual Provisions) the Contractor wishes to be excluded (in part if applicable) in respect of the proposed Subcontract or Series of Subcontracts; and
    - (C) an explanation as to how the relevant contractual provision(s) (or part of the contractual provision(s) if applicable) will affect the pricing mechanism of the Subcontract or Series of Subcontracts if not excluded.
  - 3.15.3 When responding to any Contractor request submitted pursuant to this Paragraph 3.15 (Exception to Automatic Flowdown), the NDA shall:
    - (A) not unreasonably withhold consent to the exclusion of the relevant contractual provision (or part thereof if applicable) identified by the Contractor in its request;
    - (B) respond in writing and without unreasonable delay; and

(C) provide reasons for any refusal of consent to the Contractor's request.

3.15.4 Where the proposed Subcontract or Series of Subcontracts is/are, or is/are intended to be, awarded to an Affiliate, the NDA may require that certain contractual provisions are flowed down to such Affiliate even though the NDA may have consented to the disapplication of some or all of those contractual provisions in relation to the potential award of the relevant Subcontract or Series of Subcontracts to a party which is not an Affiliate, where the NDA believes that the commercial dynamic of this cost plus Contract as between the NDA and the Contractor necessitates such a requirement. To the extent that there is any conflict between this CT-15 (Subcontracting/ Procurement Requirements) and the EU Procurement Rules, the EU Procurement Rules shall prevail. Where the Contractor believes there is such conflict, it shall inform the NDA and the Parties agree that the interpretation of the applicable EU Procurement Rules shall be within the sole discretion of the NDA. The Contractor shall not be entitled to challenge any such NDA interpretation.

### 3.16 NDA's Right to Instruct

3.16.1 The NDA shall be entitled to instruct the Contractor to:

- (A) exercise its rights to terminate (or not terminate) a Subcontract or Series of Subcontracts;
- (B) seek to amend any Subcontract or Series of Subcontracts either through the Subcontract's variation mechanism or through the mutual agreement of the parties to the Subcontract or Series of Subcontracts;
- (C) enter into a new Subcontract or Series of Subcontracts in accordance with timescales, with counterparties and on terms specified by the NDA;
- (D) resist an amendment proposed by a counterparty to any Subcontract or Series of Subcontracts;
- (E) waive or not to waive any of the counterparty's obligations under a Subcontract or Series of Subcontracts;
- (F) amend the Contractor's JIP(s) or contract(s) with LLW Repository Limited,

in each case where the NDA reasonably believes that such steps will best enable the NDA to fulfil its statutory functions and duties.

3.16.2 If the NDA wishes to issue instructions to the Contractor pursuant to Paragraph 3.16.1, the NDA shall where practicable discuss the relevant issue with the Contractor and the Contractor shall assist the NDA in obtaining any information that the NDA may reasonably require. During such discussion, the Contractor shall (having regard to the preliminary nature of the NDA's wish to issue instructions) inform the NDA of any impact of which the Contractor is aware that the relevant issue may have upon the NDA, the Contractor, any Subcontract of Series of Subcontract, the performance of or

terms of this Contract (including the application of CT-03 (Costs Principles and Procedures)), the Customer Contracts or Tasks relating to the Utility Customer Contracts.

3.16.3 If the NDA wishes to issue instructions to the Contractor pursuant to Paragraph 3.16.1, the NDA shall serve a written notice (a "Subcontracting Instructions Notice") on the Contractor setting out:

- (A) the date of the Subcontracting Instructions Notice;
- (B) the NDA's instructions in sufficient detail to enable the Contractor to implement them, including:
  - (1) in all cases where the instructions relate to an existing Subcontract or Series of Subcontracts, details of the relevant Subcontract or Series of Subcontracts, including:
    - (a) a sufficient description of the Subcontract or Series of Subcontracts in order for the Contractor to be able to identify it;=
    - (b) the detailed instructions which the NDA requires the Contractor to implement; and
    - (c) details of any waiver to be given by the NDA pursuant to Paragraph 3.16.6;

or

- (2) where the NDA wishes the Contractor to enter into a new Subcontract or Series of Subcontracts, details of:
  - (a) the identity of the counterparty to the new Subcontract or Series of Subcontracts and any details in respect of the counterparty and its business and/or the NDA's relationship with the counterparty;
  - (b) a description of the subject matter of the new Subcontract or Series of Subcontracts;
  - (c) the contract term and commencement date of the new Subcontract or Series of Subcontracts;
  - (d) any estimated Capital Costs and Resource Costs which are likely to be incurred or no longer incurred as a result of the Contractor entering into the new Subcontract or Series of Subcontracts;
  - (e) the principal terms which should be contained in the new Subcontract or Series of Subcontracts such as the pricing mechanism, the parties' key obligations, any indemnities, any limits on the parties' liability, the force majeure provisions and the parties' termination rights including any termination payments payable;

- (C) any reason for the NDA's instructions which the NDA wishes (but, for the avoidance of doubt, is not obliged) to convey to the Contractor;
  - (D) the date by which the NDA wishes its instructions to have been implemented; and
  - (E) any other information that the NDA reasonably considers would assist the Contractor in carrying out its instructions.
- 3.16.4 Any instructions issued by the NDA pursuant to this Paragraph 3.16 (NDA's Right to Instruct) shall be deemed to be an NDA Change and the Contractor shall prepare and submit to the NDA a Change proposal in accordance with Schedule P (Setting the NTWP and Change Control) and/or CT-05 (Use of Performance Based Incentives), as applicable.
- 3.16.5 Subject to Paragraph 3.16.6, the Contractor shall be entitled at any time before the NDA confirms its Subcontracting Instructions Notice in accordance with Paragraph 3.16.7, to serve on the NDA a written objection notice setting out in detail the grounds on which the Contractor objects to the Subcontracting Instructions Notice, provided that the Contractor shall only be entitled to object to a Subcontracting Instructions Notice if the content of the Subcontracting Instructions Notice would, if implemented:
- (A) be inconsistent with the Contractor's obligations under Contract Clause 4.2 (Standard of Performance);
  - (B) be inconsistent with the Contractor's obligations under Contract Clause 4.2.4;
  - (C) result in the Contractor being in breach of any of its obligations under this Contract (other than its obligation to perform the Customer Contracts in relation to which a waiver will be provided);  
or
  - (D) materially alter the basic nature of the Services to be provided,
- and upon the NDA receipt of any objection notice, if the Parties cannot agree within thirty (30) Calendar Days (or any longer period as the Parties may agree) whether the Contractor's objections are valid, the matter shall be referred to the Dispute Resolution Procedure in accordance with Contract Clause 26 (Dispute Resolution). If the Parties agree, or the Dispute Resolution Procedure determines, that the Contractor's objections are valid, the NDA shall withdraw or modify the Subcontracting Instructions Notice.
- 3.16.6 If the NDA instructs the Contractor not to perform any of its obligations under any Subcontract or Series of Subcontracts and this impacts on the Contractor's ability to perform any Customer Contract, the NDA shall waive the Contractor's obligation under this Contract to perform in respect of the relevant Customer Contract and the Contractor shall not be entitled to object to the relevant Subcontracting Instructions Notice on the ground set out in Paragraph 3.16.5(C).

- 3.16.7 The NDA may confirm, modify or withdraw the Subcontracting Instructions Notice (or, if it is determined under the Dispute Resolution Procedure that the objections in any objection notice are valid, the NDA shall modify or withdraw the Subcontracting Instructions Notice) and, accordingly, the Contractor may confirm, modify or withdraw any Related Change (in accordance with the relevant provisions of Schedule P (Setting the NTWP and Change Control) and/or CT-05 (Use of Performance Based Incentives), as applicable). The Parties shall issue each other any such confirmation, modification or withdrawal (as the case may be) as soon as reasonably practicable.
- 3.16.8 Upon receipt of any confirmation pursuant to Paragraph 3.16.7, the Contractor shall implement the NDA's instructions in accordance with the Subcontracting Instructions Notice and in accordance with any further guidance from the NDA (as applicable given the nature of the instruction). Upon receipt of any modification pursuant to Paragraph 3.16.7, the provisions of Paragraph 3.16 shall apply *mutatis mutandis*.
- 3.16.9 In issuing any instruction pursuant to this Paragraph 3.16 (NDA's Right to Instruct) the NDA shall take into account the Contractor's obligations under the EU Procurement Rules.
- 3.16.10 If the counterparty (or proposed counterparty) to the Subcontract or Series of Subcontracts is unwilling to proceed in the manner prescribed by the NDA in its Subcontracting Instructions Notice, the Contractor shall use its best endeavours to carry out the NDA's instructions and the NDA and the Contractor shall consult with one another in order to agree how to resolve the issue.
- 3.17 **Provision of Performance Bond**
- 3.17.1 If the Contractor decides, acting reasonably and on a case-by-case basis, that it is desirable to procure a performance bond in relation to a Subcontract, it shall obtain the NDA's prior approval to procuring such performance bond by submitting to the NDA the details of the relevant performance bond the Contractor has negotiated in accordance with Paragraph 3.10.11.
- 3.17.2 If the NDA decides that it is desirable that the Contractor procures a performance bond in relation to a Subcontract then the Contractor shall follow the NDA's reasonable instructions in procuring such a bond.
- 3.17.3 The NDA may request in its sole discretion that the Contractor obtain a performance bond in a form acceptable to the NDA at any time prior to giving approval in accordance with Paragraph 3.2 (NDA Approval of Certain Subcontracts).
- 3.18 **Provision of Replacement Performance Bond**
- 3.18.1 The Contractor may permit the Subcontractor to replace a performance bond at any time, provided that the Contractor receives a replacement performance bond which is in a form acceptable to the NDA in its reasonable discretion.

3.18.2 The Contractor undertakes to ensure that, as and when necessary, the Subcontractor replaces each performance bond it has provided to the Contractor at least three (3) Months prior to the scheduled expiry of such performance bond with a replacement which is in a form acceptable to the NDA in its reasonable discretion.

### 3.19 CDM Regulations

Where the CDM Regulations are applicable to the subject matter of a Subcontract or Series of Subcontracts:-

3.19.1 the Contractor warrants and undertakes to the NDA that it possesses sufficient competence and adequate resources to fulfil the obligations of the client under the CDM Regulations. Should that situation alter the Contractor shall notify the NDA forthwith;

3.19.2 without prejudice to the generality of Clause 4.6 (*CDM Regulation*), the Contractor hereby elects to be treated for the purposes of the CDM Regulations as the only client in relation to each relevant Subcontract or Series of Subcontracts and the Authority hereby consents to this election;

3.19.3 the Contractor shall not withdraw, terminate or in any way derogate from its declaration that it will act as and fulfil the role of the client for all purposes of the CDM Regulations;

3.19.4 the Contractor shall thereafter comply with the obligations incumbent on the client under the CDM Regulations; and

3.19.5 the Contractor shall deliver to the NDA (in the format requested by the NDA) a copy of every health and safety file prepared by it pursuant to the CDM Regulations.

For the purposes of this Paragraph 3.19 (CDM Regulations), "the client" and "the Executive" shall have the same meanings as ascribed to them in the CDM Regulations.

### 3.20 Housing Grants, Construction and Regeneration Act 1996 ("the Housing Grants Act")

Where any Subcontract or Series of Subcontracts is a "construction contract" for the purposes of the Housing Grants Act the procedure for payment in the Subcontract or Series of Subcontracts as applicable shall be as follows or shall be such other procedure which is compliant with the Housing Grants Act:-

3.20.1 the Subcontractor shall on the due date submit each fee invoice to the Contractor and the final date for payment shall be twenty-one (21) days from the date of receipt of the relevant invoice by the Contractor or ten (10) days from the date of receipt by the Contractor from the Subcontractor of a properly prepared Value Added Tax invoice showing the correct amount of the Value Added Tax due, whichever is the later;

3.20.2 not later than five (5) days after the receipt of each fee invoice the Contractor shall, if it disagrees with such invoice, give a written notice specifying the amount of payment proposed to be made in respect of that

invoice, the basis on which such amount is calculated and to what the amount relates and, subject to Paragraph 3.20.3 below, shall pay the amount proposed no later than the final date for payment;

3.20.3 not later than five (5) days before the final date for payment of an amount due pursuant to Paragraph 3.20.2 above the Contractor may give one or more written notices to the Subcontractor which shall specify any amount proposed to be withheld and/or deducted from that due amount, the ground or grounds for such withholding and/or deduction and the amount of withholding and/or deduction attributable to each ground; and

3.20.4 where the Contractor does not give any written notice pursuant to Paragraphs 3.20.2 and/or 3.20.3 above the Contractor shall pay the Subcontractor the amount stated in the relevant fee invoice issued by the Subcontractor.

The notice given by the Contractor in Paragraph 3.20.2 above shall constitute a written notice for the purposes of Paragraph 3.20.3 above if and to the extent it contains the information referred to therein.

### 3.21 Insurance

If either the Contractor or the NDA, both acting reasonably, decide that it is desirable to purchase project specific or "contracts works" insurance in relation to a particular Task the Contractor shall obtain the NDA's prior written approval to purchasing such insurance by submitting to the NDA the details of the proposed insurance including coverage, premium cost and named beneficiaries.

## APPENDIX

### PART 1 – Where the Subcontractor is not bringing any equipment or other property onto the Site

- [.1] Notwithstanding anything to the contrary in the [Subcontract], [insert site licensee's name] shall be liable to the [insert Subcontractor's name] for the consequences of a nuclear incident caused by or emanating from the [insert details of the licensed site] pursuant to the provisions of the Nuclear Installations Act 1965 (as amended).
- [.2] For the purposes of this clause [ ] nuclear incident shall be as defined in Article 1(a)(i) of the Convention on Third Party Liability in the Field of Nuclear Energy signed in Paris on 29 June 1960, as amended.

### PART 2 – Where the Subcontractor is bringing equipment or other property onto the Site

- [.1] [insert site licensee's name] shall be liable to the [insert Subcontractor's name] for the consequences of a nuclear incident caused by or emanating from the Site pursuant to the provisions of the Nuclear Installations Act 1965 (as amended) ("the Act").
- [.2] For the purposes of this Clause [ ]:
- (a) "nuclear incident" shall be as defined in Article 1(a)(i) of the Convention on Third Party Liability in the Field of Nuclear Energy signed in Paris on 29 June 1960, as amended.
- (b) "nuclear damage" means damage arising out of or resulting from:
- (ii) the radioactive properties, or a combination of those and any toxic, explosive or other hazardous properties, of nuclear matter on the premises occupied by [insert site licensee's name] on which is the aforesaid property of, or on hire to, the [insert Subcontractor's name], or
- (ii) ionising radiations emitted from anything caused or suffered by [insert site licensee's name] to be on such premises which is not nuclear matter;
- (c) "nuclear installation" means a nuclear reactor or an installation of a class or description which is prescribed for the purposes of Section 1 (1)(b) of the Act; and
- (d) "nuclear matter" shall have the meaning assigned to that expression in Section 26(1) of the Act.
- [.3] For the purposes of Section 12(3A) of the Act, this clause shall amount to an agreement to incur liability in respect of nuclear damage to the [Works] to the extent that such damage is not recovered under the [insert site licensee's name] [Owner Controlled] [insert Subcontractor's name] "All risk" insurance issued in accordance with Clause [ ] of the [Terms and Conditions].
- [.4] Compensation shall be payable by [insert site licensee's name] in respect of any nuclear damage to any property of, or on hire to, the [insert Subcontractor's name] which is on premises occupied by [insert site licensee's name] and is on those premises

**for the purpose of the construction of a nuclear installation thereon or for the purpose of use in connection with the operation, or the cessation of the operation, of a nuclear installation thereon. Provided that the amount of any such compensation shall be reduced to the extent that the causing of that damage is attributable to any negligence or default of the [*insert Subcontractor's name*] or the person from whom he has hired the property or any servant or agent of the [*insert Subcontractor's name*] or that person.**