

SITE LICENCE COMPANY AGREEMENT

relating to the restoration of the Magnox Limited and Research Sites Restoration Limited
nuclear licensed sites

NUCLEAR DECOMMISSIONING AUTHORITY (1)

and

MAGNOX LIMITED (2)

and

RESEARCH SITES RESTORATION LIMITED (3)

Contract Ref: NDA-T1-MXR-14

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THIS AGREEMENT is made as a deed on 27 AUGUST 2014

BETWEEN:

- (1) **NUCLEAR DECOMMISSIONING AUTHORITY**, a Non-Departmental Public Body whose head office is at Herdus House, West Lakes Science and Technology Park, Moor Row, Cumbria (the "**Authority**");
- (2) **MAGNOX LIMITED**, whose registered office is at Berkeley Centre, Berkeley, Gloucestershire, GL13 9PB a company incorporated under the laws of England and Wales with registered number 02264251 (the "**Magnox Contractor**"); and
- (3) **RESEARCH SITES RESTORATION LIMITED**, whose registered office is at Building 392.10/Room 1.05, Harwell Oxford, Didcot, Oxfordshire, OX11 0DF, a company incorporated under the laws of England and Wales with registered number 05915837 (the "**RSRL Contractor**"),

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

WHEREAS:

- (A) by an advertisement in the Supplement to the Official Journal of the European Union dated 18 July 2012 (reference 227570-2012) the Authority invited expressions of interest from economic operators wishing to be appointed to acquire and hold the share capital of the Magnox Contractor and the RSRL Contractor and to provide Nominated Staff and other services to the Magnox Contractor and the RSRL Contractor as the parent body organisation of the Magnox Contractor and the RSRL Contractor, with a view to promoting and supporting the delivery of improved value for money in the Magnox Contractor's and the RSRL Contractor's operations without compromising health, safety, security or the protection of the environment;
- (B) the Parent Body Organisation submitted an expression of interest and was selected to act as the parent body organisation of the Magnox Contractor and the RSRL Contractor;
- (C) the Authority, the Magnox Contractor and the RSRL Contractor and the Parent Body Organisation have entered into the Parent Body Agreement and, as of the Commencement Date, the Parent Body Organisation holds the Magnox A Share and the RSRL A Share;
- (D) the Magnox Contractor and the RSRL Contractor and all relevant individuals hold the relevant licences, authorisations, registrations, permits and consents required by Legislation or Regulatory Requirements.

IT IS AGREED AS FOLLOWS:

PART 1: Interpretation

1 INTERPRETATION

1.1 Definitions

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

"Accounting Month" means the four or five week accounting month used by the Contractor for the purposes of its reporting requirements (and **"Accounting Monthly"** shall be construed accordingly);

"Accounting Policies and Procedures" means the Contractor's accounting policies and procedures used by the Contractor in the production of financial statements on the Commencement Date as the same may be amended and updated with the agreement of the Authority from time to time;

"Accounting Standards" means the rules and conventions according to which financial statements have to be prepared either by the Contractor for the production of its statutory accounts or by the Contractor and Authority for the production of the Authority statutory accounts, the latter to be advised by the Authority to the Contractor from time to time;

"Accumulated Site Target Fee" means, in respect of a Site, the sum of all Allocated Target Fee amounts in respect of Target Fee Payment Milestones pertaining to that Site (as set out in the columns headed "Site" of the tables at Appendix K (*Target Fee Payment Milestones*) to Schedule 6 (*Finance*)) which have been Achieved either:

- (a) where a Site Substantial Completion Date has not been achieved, since the Commencement Date; or
- (b) where a Site Substantial Completion Date has been achieved, since the achievement of that Site Substantial Completion Date;

"Achievement" means completion of the scope of work entailed by:

- (a) a Target Fee Payment Milestone, in accordance with the completion criteria and evidence of completion specified for such Target Fee Payment Milestone in the relevant table at Appendix K (*Target Fee Payment Milestones*) to Schedule 6 (*Finance*), as further developed and underpinned by the relevant Performance Agreement Form agreed pursuant to Section B (*Performance Agreement Forms for Target Fee Payment Milestones*) of Part 5 (*Performance Agreement Form*) of this Schedule 6 (*Finance*);

- (b) Phase 1 Completion, as evidenced in accordance with Schedule 1 (*Client Specification*); or
- (c) Phase 2 Completion, as evidenced in accordance with Schedule 1 (*Client Specification*),

and "**Achieve**", "**Achieved**" and "**Achieving**" shall be construed accordingly;

"**Actual Phase 1 Inflation**" has the meaning given to it in Paragraph 3.2 (*Adjustment of the Phase 2 Target Fee*) of Part 8 (*Indexation*) of Schedule 6 (*Finance*);

"**Additional Quarterly Retention**" has the meaning given to it in Paragraph 2.9 (*Calculation of Retention Balance*) of Part 4B (*Calculation of Target Fee*) of Schedule 6 (*Finance*);

"**Additional Site Release**" has the meaning given to it in Paragraph 5 (*Release of retention for incomplete Sites*) of Part 4D (*Arrangements on Termination for Convenience*) of Schedule 6 (*Finance*);

"**Advance Agreement**" means any agreement between the Authority and the Contractor entered into in accordance with Paragraph 3 (*Advance Agreements*) of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*);

"**Affected Party**" has the meaning given in Clause 13.1 (*Force Majeure*);

"**Affiliate**" means any entity, not being the Magnox Contractor, the RSRL Contractor or the Parent Body Organisation, which is:

- (a) a shareholder in the Parent Body Organisation ("**PBO Shareholder**") or any holding company or subsidiary of any PBO Shareholder ("holding company" and "subsidiary" having the same meanings as in section 1159 of the Companies Act 2006), together "**Related Companies**";
- (b) a subsidiary or holding company of a Related Company;
- (c) a company which has shareholdings or any other form of economic interest, either directly or indirectly, of more than thirty per cent (30%) in the Parent Body Organisation or in any Related Company;
- (d) a wholly owned subsidiary of the Contractor or Parent Body Organisation;
- (e) a company in which the Contractor and/or the Parent Body Organisation, either jointly or separately, has shareholdings or any other form of economic interest totalling more than thirty per cent (30%) of the issued shares;

- (f) a company with which the Contractor and/or the Parent Body Organisation, either jointly or separately, has a Relevant Partnering Arrangement in force;
- (g) a company in which the Contractor and/or the Parent Body Organisation, either jointly or separately, has less than a thirty per cent (30%) economic interest, but where the economic interest is of such a nature as to create the perception of a conflict of interest; or
- (h) a company owned or controlled, directly or indirectly, to the extent of thirty per cent (30%) or more of the outstanding equities, securities or assets by the Parent Body Organisation or any of the companies described in (a), (b), (c) or (d) above;

"Agreed Cash Flow Requirement" has the meaning given to it in Paragraph 2.1(c) (*Invoicing and Payment Process*) Part 2B (*Payment of Allowable Costs*) of Schedule 6 (*Finance*);

"Agreed Payment Profile" has the meaning given to it in Paragraph 2.1(b) (*Invoicing and Payment Process*) Part 2B (*Payment of Allowable Costs*) of Schedule 6 (*Finance*);

"AiP" or **"Approval in Principle"** has the meaning given to it in Paragraph 3.2.4.1 (*Gated Process for Sanction and Validation of Work Activities*) of Schedule 3 (*Financial Sanction and Validation*);

"AiP Submission" has the meaning given to it in Paragraph 5.1.1 (*Approval in Principle*) of Schedule 3 (*Financial Sanction and Validation*);

"Allocated Target Fee" means the base amount of Phase 1 Target Fee or Phase 2 Target Fee (as applicable) payable in respect of a Target Fee Payment Milestone (as set out in the columns headed "Allocated Target Fee" of the tables at Paragraph 2.1 (*Target Fee Payment Milestones for Phase 1*) and Paragraph 2.2 (*Target Fee Payment Milestones for Phase 2*) of Part 4B (*Calculation of Target Fee*) of Schedule 6 (*Finance*));

"Allowable Cost(s)" has the meaning given in Paragraph 2 (*Allowable Costs*) Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) and **"Allowable"** and **"Allowability"** shall be construed accordingly;

"Alternative Credit Support" has the meaning given to it in the Parent Body Agreement;

"Alternative Strategy" means a strategy developed pursuant to Strategy Development Support and that necessitates a change to a Site Strategic Specification;

"Amendment" has the meaning given in Clause 20.1 (*Amendments to Customer Contracts and New Customer Contracts*);

"Annual Reconciliation Report" has the meaning given to it in Paragraph 8.1 (*Annual Reconciliation of Allowable Costs*) of Part 2B (*Payment of Allowable Costs*) of Schedule 6 (*Finance*);

"Annual Site Funding Limit" or **"ASFL"** means the overall funding limit for the Costs to be incurred by the Contractor in performing all of its obligations under this Agreement in each Contract Year, as specified in or determined in respect of each Contract Year in accordance with Part 7 (*Financial Limits*) of Schedule 6 (*Finance*) as the same may be adjusted (if at all) pursuant to the Change Control Procedure;

"Applicable Schemes" means:

- (a) the UKAEA Combined Pension Scheme including the Additional Voluntary Contribution Scheme and the Shift Pay Pension Savings Plan;
- (b) the Magnox Group of the Electricity Supply Pension Scheme (ESPS);
- (c) the British Energy Generation Group of the Electricity Supply Pension Scheme (ESPS);
- (c) the CNPP;
- (d) any other pension scheme set up, maintained and/or nominated by the Authority whether pursuant to Section 8 and Schedule 8 of the Energy Act or otherwise;
- (e) any Automatic Enrolment Scheme; and
- (f) any pension scheme which the Authority agrees shall be an Applicable Scheme pursuant to Clause 32.2.3 (*Participation in Other Applicable Schemes*);

"Approval" means that the approval required in relation to any Proposed Change in accordance with Paragraphs 5 (*Category I, Category II and Category III Changes*) and 6 (*Category 0 Changes*) of Schedule 2 (*Change Control Procedure*) has been given by either:

- (a) the appropriately authorised individual of the Contractor where the Proposed Change in question is (pursuant to the provisions of the Change Control Procedure) subject to the Contractor's Internal Change Control Procedure; or
- (b) the Authority in all other instances,

and **"Approve"**, **"Approved"** and **"Approving"** shall be construed accordingly;

"Approved Working Capital Allowance" means the budget for the Contract Year for the net Costs which the Parties anticipate are likely to arise (after allowing for Authority

Entitled Interest) under an Approved Working Capital Facility as such budget is agreed in accordance with Paragraph 2 (*Invoicing and Payment Process*) Part 2B (*Payment of Allowable Costs*) of Schedule 6 (*Finance*);

"Approved Working Capital Facilities" means all loan facilities entered into by the Contractor which:

- (a) have been negotiated pursuant to a funding competition approved by the Authority and are on terms that represent the best value for money of the proposals made by the proposed lenders pursuant to such competition or which have otherwise been approved by the Authority;
- (b) have been provided by the Parent Body Organisation or an Affiliate and are on terms that represent the best value for money and which have been approved by the Authority;
- (c) have been negotiated with lenders with whom the Parent Body Organisation had arrangements with prior to its entering into the Parent Body Agreement, and in relation to which the Authority has given its prior written consent; or
- (d) are on terms not materially worse than the latest Benchmark established in accordance with Clause 16.4 (*Benchmarking – Working Capital Facilities*),

and with each being an **"Approved Working Capital Facility"**;

"Asset Purchase" means the purchase of supplies, goods, materials, equipment and/or utilities (including gas, electricity, water, sewerage, heat, cable and telecommunications) and excluding the creation, design, development or building by any Subcontractor of any supplies, goods, materials, equipment and/or utilities, and **"Asset Purchases"** shall be construed accordingly;

"Asset Register" means the asset register to be maintained by the Contractor in accordance with Clause 6.5 (*Maintenance of Sites and Authority Assets*) to record all the Authority Assets on the Sites;

"Associated Allocable Cost" means overhead Costs (also known as burden) associated with Tasks, such Costs to be allocated to activities on a cause and effect or resource consumption basis depending on which is most appropriate and reasonable for the relevant Cost concerned;

"Assured Retention" has the meaning given to it in Paragraph 4 (*Release of retention for incomplete Sites*) of Part 4D (*Arrangements on Termination for Convenience*) of Schedule 6 (*Finance*);

"**Audit**" means an audit carried out by the Authority or Authority Agents pursuant to Clause 15 (*Inspection and Audit*);

"**Audit Close-Out Meeting**" means a meeting following receipt by the Contractor of the Authority's audit findings to discuss those findings generally together with any areas identified in the findings as requiring Corrective Action;

"**Authority Agents**" has the meaning given in Clause 15 (*Inspection and Audit*);

"**Authority Assets**" means all the assets (whether fixed or movable) on or off the Sites which are currently owned by the Authority (whether leased to the Contractor under the Property Leases or otherwise) and any New Assets acquired by the Contractor on behalf of the Authority in complying with the Client Specification, but excluding any Subcontracts and Customer Contracts;

"**Authority Assumption**" means an assumption set out at Appendix J (*Authority Assumptions*) to Schedule 6 (*Finance*);

"**Authority Customer Contracts**" means the contracts between the Authority and Third Parties relating to the provision at the Sites of Commercial Operations Tasks to Third Parties;

"**Authority Default**" means non-payment by the Authority of any sums exceeding one million pounds sterling (£1,000,000) in aggregate for a period of sixty (60) Calendar Days beyond the due date for payment of such sums where payment of such sums is not the subject of a bona fide dispute;

"**Authority Deliverables**" has the meaning given to it in paragraph 1.1 (*Authority Deliverables*) of Schedule 11 (*Authority Deliverables*);

"**Authority Direction**" means a direction given by the Authority to the Contractor in accordance with its powers under section 18 of the Energy Act;

"**Authority Entitled Interest**" any credit interest which may accrue on credit balances in the Contractor's Payments Account and/or any foreign exchange or other accounts of the Contractor which are used for similar purposes to the Contractor's Payments Account;

"**Authority Facing Work**" means employment for Authority purposes as defined in the Energy Act 2004;

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

"Authority Insurances" means the insurance policies and the specified terms thereof set out in the Magnox Register of Insurances and the RSRL Register of Insurances in Schedule 10 (*Insurance*), and any further insurances that the Contractor is required by Legislation to maintain;

"Authority IP" means IP owned by or licensed to (in which case, to the extent licensed to) the Authority which relates to the activities to be undertaken by the Contractor or the Authority under the terms of this Agreement and includes:

- (a) Developed IP ownership of which vests in, or is licensed to, the Authority by virtue of Clause 29.4 (*Authority's Rights to IP developed by or on behalf of the Contractor and/or Subcontractors*);
- (b) Parent IP licensed to the Authority under the provisions of Clause 29.3 (*IP contributed by Parent Body Organisation*); and
- (c) Third Party IP licensed to the Authority under the provisions of Clause 29.6 (*Third Party IP*);

"Authority IT Systems" means all communications and information technology systems which are used by the Authority from time to time including all hardware, networks, software and data comprised therein;

"Authority Milestones" means the Target Fee Payment Milestones identified as "Authority Milestones" in Paragraph 2 (*Target Fee Payment Milestones*) of Part 4B (*Calculation of Target Fee*) and Appendix K (*Target Fee Payment Milestones*) to Schedule 6 (*Finance*);

"Authority Owned IP" has the meaning given in Clause 29.5.1.1 (*Infringement of IP owned by the Authority*);

"Authority Policies and Procedures" means the policies and procedures identified as such in Schedule 19 (*Authority Policies and Procedures*);

"Authority Records" has the meaning given in Clause 14.2.3 (*Ownership of Records*);

"Authority's IP Register" has the meaning given to it in Paragraph 4.1 (*Exploitation of Innovations*) of Schedule 8 (*Intellectual Property*);

"Authority's Representative" means the person identified as the Authority's Representative in Clause 37.7.3 (*Notices*) or any successor appointed to that role in accordance with Clause 37.2.4 (*Change in Representative*);

"Automatic Enrolment Scheme" means the pension scheme or schemes nominated by the Authority pursuant to Clause 32.7 (*Automatic Enrolment Scheme*);

"Background IP" means any IP which a Subcontractor owns immediately prior to the commencement of the relevant Subcontract, which relates to the deliverables under that Subcontract, is to be used in the performance of the Subcontract and which could be reasonably judged necessary for the Authority, the Contractor or any licensee of the Authority or the Contractor to use, exploit or license any Output or Developed IP;

"Benchmark" has the meaning given in Clause 16.4 (*Benchmarking – Working Capital Facilities*);

"Benchmark Assessment" has the meaning given in Clause 16.4 (*Benchmarking – Working Capital Facilities*);

"Berkeley Site" means the site at Berkeley demised by a Magnox Property Lease as the same may be varied pursuant to the terms of such Magnox Property Lease from time to time;

"Bradwell Site" means the site at Bradwell demised by a Magnox Property Lease as the same may be varied pursuant to the terms of such Magnox Property Lease from time to time;

"Budgeted Cost of Work Scheduled" or **"BCWS"** means the estimated aggregate of all Allowable Costs (and Associated Allocable Costs) which are provided for in the LTP Performance Plan in respect of activities to be undertaken;

"Business Case" means a business case prepared by the Contractor in accordance with public sector good practice and guidance issued by the Authority from time to time;

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

"Call-off Support" means the provision of support by the Contractor in accordance with Schedule 20 (*Call-off Support*);

"Capital Budget" means, in relation to each Annual Site Funding Limit, that proportion of the Annual Site Funding Limit which the Contractor is permitted to spend on Capital Costs;

"Capital Costs" means expenditure in accordance with the application of the Authority's requirements under FNP-02 for SLC reporting in respect of Owner Books, as amended from time to time and as notified by the Authority to the Contractor;

"Category" means the relevant Category 0 Change, Category I Change, Category II Change or Category III Change;

"Category 0 Change" means any Proposed Change which, if implemented, would be reasonably likely to:

- (a) require any amendment to this Agreement (including any of its schedules, appendices or annexes); and/or
- (b) have a material and adverse effect on the Contractor's ability to perform its obligations under this Agreement or increase the likelihood of the Contractor failing to meet the Client Specification; and/or
- (c) constitute a Change which the Contractor knows (or ought reasonably to know) is Novel, Contentious or Repercussive,

and in any event shall include Proposed Changes which, if implemented, are reasonably likely to require or entail:

- (i) a Change to the Contract Baseline, Client Specification, or a Milestone Delivery Date for an Authority Milestone;
- (ii) any Change to the Annual Site Funding Limit;
- (iii) any transfer of amounts between the Capital Budget and the Current Budget;
- (iv) any Change to the Phase 1 Target Cost or the Phase 2 Target Cost;
- (v) any Change to the circumstances in which PBI Fee is payable, except to the extent to which such change falls within Paragraph 2 (*Establishing PBI Levels*) of Part 4A (*Calculation of PBI Fee*) of Schedule 6 (*Finance*);
- (vi) any Changes that equate to an amount above the thresholds set out in the Schedule of Delegated Authority;
- (vii) the addition of a Work Activity to or removal of a Work Activity from the LTP Performance Plan which will have a material impact on the calculation of the Phase 1 Shareline or the Phase 2 Shareline;
- (viii) the addition of a Work Activity to the LTP Performance Plan which is not reasonably necessary to meet the Client Specification;
- (ix) a Cost being treated as an Allowable Cost where that Cost would be treated as a Disallowable Cost if the Change were not implemented;

- (x) a reallocation of a Work Activity or a cost of a Work Activity, which is allocated in the LTP Performance Plan to Phase 1, from Phase 1 to Phase 2 (or vice versa);
- (xi) a deferral of a Work Activity scheduled in the LTP Performance Plan to be carried out or completed during the Term to beyond the Term;
- (xii) an increase or decrease to the Estimate at Phase 2 Completion of more than fifteen million pounds sterling (£15,000,000) prior to the date on which the final adjustment to the Phase 2 Target Cost has been made pursuant to Appendix G (*Special adjustment to the Phase 2 Target Cost*); or
- (xiii) any increase in Cost (including, for the purposes of this sub-Clause (xiii) only, any rents and other charges payable under any leases including the Property Leases) arising out of any Change as described in sub-Clause (g) of the definition of "Change";

"Category 0 Change Control Form" means the form completed in respect of Category 0 Changes and in accordance with the provisions of the Change Control Procedure which shall be substantially in the form of or contain the requirements set out in the "Change Control Form" attached at Appendix A of Schedule 2 (*Change Control Procedure*);

"Category I Change" means any Proposed Change which:

- (a) is not a Category 0 Change; and
- (b) is reasonably likely to result in a variation to the Budgeted Cost of Work Scheduled of an amount that is above five million pounds sterling (£5,000,000) but below the thresholds for changes set out in limb (vi) of the definition of Category 0 Change;

"Category II Change" means any Proposed Change which:

- (a) is not a Category 0 Change; and
- (b) is reasonably likely to result in a variation to the Budgeted Cost of Work Scheduled of an amount that is above two million pounds sterling (£2,000,000) up to and including five million pounds sterling (£5,000,000);

"Category II Revenue" means:

- (a) all monies received and receivable by the Contractor from another SLC within the NDA estate, namely Dounreay Site Restoration Limited, LLW Repository

Limited, Sellafield Limited or any other entity as may be notified from time to time in writing by the Authority whose accounts are consolidated as part of the Authority's group accounts, including Direct Rail Services Limited, International Nuclear Services Limited, NDA Properties Limited and Rutherford Indemnity Limited; and

- (b) any other income received and receivable by the Contractor other than in respect of the Contract Price, excluding that received under (a) above;

"Category III Change" means any Proposed Change which:

- (a) is not a Category 0 Change; and
- (b) is reasonably likely to result in no variation to the Budgeted Cost of Work Scheduled or a variation to the Budgeted Cost of Work Scheduled of an amount that is up to and including two million pounds sterling (£2,000,000);

"CDM Regulations" means the Construction (Design and Management) Regulations 2007 (SI 2007/320) as amended or revised from time to time;

"Change" means any change to:

- (a) this Agreement (including the Phase 1 Target Cost, the Phase 2 Target Cost, the Contract Baseline and any other schedules, appendices or annexes);
- (b) the LTP Performance Plan;
- (c) a Performance Agreement Form which has been agreed in accordance with Part 5 (*Performance Agreement Form*) of Schedule 6 (*Finance*);
- (d) the Nominated Staff Plan;
- (e) the Supply Chain Strategic Plan; or
- (f) [Not used]
- (g) any Property Lease, including any variation to and/or partial or full termination and/or replacement of any of the Property Leases (excluding the RSRL Property Deeds of Variation but including, for the avoidance of doubt, any letting of any land and/or premises to the Contractor for the purposes of this Agreement as a direct result of any whole or partial termination of any Property Lease) and any change to (including any variation to and/or partial or whole termination and/or replacement of) any replacement leases;

which is Approved (or deemed to be Approved) in accordance with the provisions of the Change Control Procedure;

"Change Control Log" means the log to record Changes maintained by the Contractor under the Change Control Procedure and in accordance with PCP-05 (*Change Control*);

"Change Control Procedure" means the procedure outlined in Schedule 2 (*Change Control Procedure*) and PCP-05 (*Change Control*);

"Change Control Programme" means a programme specifying the nature, Category and schedule of Proposed Changes to be made to the Magnox LTP and the RSRL LTP to achieve the objective specified in Paragraph 1 (*Consolidation Objective*) of Appendix B (*Development of the LTP Performance Plan*) of Schedule 2 (*Change Control Procedure*);

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

- (a) such company; or
- (b) any person who (whether directly or by means of holding Control over one or more other persons) has Control of such company;

"Change in Law" means:

- (a) the adoption, promulgation, modification or revocation of Legislation, other than any Legislation which on the date two months prior to 1 November 2013 (being the date on which the Final Tender was submitted to the Authority) has been published:
 - (i) in a draft Bill as part of a Government departmental consultation paper;
 - (ii) in a Bill;
 - (iii) in a draft statutory instrument; or
 - (iv) as a proposal in the Official Journal of the European Union,

but including any Legislation which implements or intends to implement in the United Kingdom the Protocols of 12 February 2004 to amend the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 as amended and as supplemented by the Brussels Convention of 31 January 1963 Supplementary to the Paris Convention of 29 July 1960 as amended, whether or not such Legislation was published in any draft form or as a Bill on or before the date of this Agreement; or

- (b) any applicable judgement of a relevant court of law which changes a binding precedent;

"Chapelcross Site" means the site at Chapelcross demised by a Magnox Property Lease as the same may be varied pursuant to the terms of such Magnox Property Lease from time to time;

"CIL Change" means any change to this Agreement as a result of a Change in Law pursuant to Clause 37.1 (*Change in Law*);

"Client Specification" means the document specifying the Authority's requirements in respect of the Sites set out at Schedule 1 (*Client Specification*);

"Client Specification Completion State" means Phase 1 Completion and Phase 2 Completion;

"CNPP" means the Combined Nuclear Pension Plan set up by the Authority pursuant to Section 8 and Schedule 8 of the Energy Act;

"Collaborative Procurement" means the procurement of goods and services for benefit across the Authority's estate, whether by:

- (a) one SLC on behalf of more than one SLC, and/or including a member of the Authority's estate, and/or an agreed external member forming part of a Collaborative Procurement initiative; or
- (b) a centralised function within the Authority's estate; or
- (c) a Third Party,

and including the Shared Service Alliance;

"Commencement Accounts" has the meaning given to it in Clause 16.11.10.6 (*Payments to Parent*);

"Commencement Date" means 1 September 2014;

"Commercial Guidance 02" means processes set out in Annex 2 to Schedule 8 (*Intellectual Property*) that may be proposed by the Authority and agreed by the Contractor from time to time, which following such agreement are to be followed by the Parties in implementing the provisions of Clause 29 (*Intellectual Property*);

"Commercial Operations Tasks" means those Tasks in the LTP Performance Plan which generate Category II Revenue (or revenue received directly by the Authority from a Third Party);

"Comptroller and Auditor General" means the Comptroller and Auditor General of the UK National Audit Office;

"Consolidation Phase" means the period from the Commencement Date up to the date upon which the Contractor has completed the execution of the Consolidation Plan and the Authority has accepted the LTP Performance Plan and Contract Baseline under Paragraph 7.5 (*Approval of the LTP Performance Plan and Contract Baseline*) of Appendix B (*Development of the LTP Performance Plan*) to Schedule 2 (*Change Control Procedure*) which shall be no more than twelve (12) Months from the Commencement Date;

"Consolidation Plan" means the plan that the Parent Body Organisation submitted as part of its Final Tender which describes the consolidation activities that the Contractor plans to undertake during the Consolidation Phase, including development of the LTP Performance Plan;

"Consolidation Report" has the meaning given to it in Paragraph 7.2 (*Consolidation Report*) of Appendix B (*Development of the LTP Performance Plan*) of Schedule 2 (*Change Control Procedure*);

"Construction Industry Scheme Regulations" or **"CISR"** means the Income Tax (Construction Industry Scheme) Regulations 2005 (as amended);

"Contamination" means the presence of substances in areas other than originally intended or the presence of residue resulting from the historic presence of materials which have subsequently been removed and "Uncontaminated" shall be construed accordingly;

"Continuing Nominated Staff" has the meaning given to it in Clause 7.13.1 (*Continuing Nominated Staff*) of the Parent Body Agreement;

"Contract Baseline" means the document bearing that name and set out in Appendix H (*Contract Baseline*) of Schedule 6 (*Finance*) (as may be changed from time to time in accordance with the Change Control Procedure);

"Contract Baseline BCWS" means the estimated aggregate of all Allowable Costs (including Associated Allocable Costs) which were provided for in the Final Tender (as amended by any Category 0 Changes from time to time) in respect of activities to be undertaken pursuant to this Agreement;

"Contract Documents" means this Agreement, the Parent Body Agreement, the Nuclear Indemnity, the Parent Company Guarantees, the Transition Agreement, the Property Leases and the documents referred to in them or required to give effect to them;

"Contract Management Plan" means the document(s) providing guidance on the approach to management of this Agreement and the Parent Body Agreement as agreed

by the Authority, the Parent Body Organisation and the Contractor (and as may be amended by agreement of those parties from time to time), which:

- (a) contain an overview of material information about how this Agreement and the Parent Body Agreement will be managed; and
- (b) outline certain systems and processes to aid the Authority, the Parent Body Organisation and the Contractor in delivering the desired performance and outcomes of this Agreement and the Parent Body Agreement during the Term;

"Contract Price" has the meaning given in Paragraph 1 (*Total Remuneration*) of Part 1 (*General*) of Schedule 6 (*Finance*);

"Contract Quarter" means each successive period of three Months throughout the Term, provided that:

- (a) the first Contract Quarter shall be the period of four Months starting on the Commencement Date; and
- (b) on termination or expiry of this Agreement in accordance with its terms, the final Contract Quarter shall be the period between the end of the previous Contract Quarter and the date of termination or expiry;

"Contract Year" means a period of twelve (12) Months starting on 1 April and ending on 31 March first occurring thereafter, except for:

- (a) the first Contract Year of this Agreement, which shall commence on the Commencement Date and end on 31 March first occurring thereafter; and
- (b) the final Contract Year of this Agreement, which shall commence on 1 April and end at the expiry of this Agreement (or the Parent Body Agreement (as applicable));

"Contractor" has the meaning given to it in Clause 1.2.21 (*Interpretation*);

"Contractor Customer Contract" means any agreement between the Contractor and a Third Party relating to the provision of Commercial Operations Tasks by the Contractor to a Third Party;

"Contractor Default" means any of:

- (a) the events described at Clauses 11.13.2, 11.14 and 11.18.5 (*Defective Performance and Remediation*);

- (b) the Authority being entitled to terminate the Parent Body Agreement for Contractor Default and/or PBO Default (as defined in the Parent Body Agreement);
- (c) a material breach by the Contractor of its obligations under this Agreement, applicable Legislation or Regulatory Requirements;
- (d) a material breach by the Contractor of Security Requirements;
- (e) a material breach by the Contractor of its supply obligations under the Customer Contracts; or
- (f) any other events or situations expressly described in this Agreement as a Contractor Default;
- (g) [Not used]

"Contractor Historical Costs" means Costs incurred:

- (a) during the period prior to (and excluding) the Commencement Date; or
- (b) on or after the Commencement Date as a result of events occurring during the period prior to (and excluding) the Commencement Date,

which are properly attributable to the Contractor, and any Cost which has been or is transferred to the Contractor by a Transfer Scheme;

"Contractor Information Asset Register" has the meaning given in Clause 14.4 (*Information Asset Register*);

"Contractor Records" has the meaning given in Clause 14.2.4 (*Ownership of Records*);

"Contractor Related Party" means the Contractor, the Parent Body Organisation, each Affiliate, their Subcontractors, their Sub-Subcontractors, and the employees and agents of each of these;

"Contractor Required IP" has the meaning given to it in Paragraph 2.2 (*Authority Ownership of Subcontractor Created Developed IP*) of Part B (*Guidance on the choice of IP Ts&Cs in Subcontracts*) of Schedule 8 (*Intellectual Property*);

"Contractor's Commercial Department" means the department responsible for managing the Contractor's Commercial activities;

"Contractor's Internal Change Control Procedure" means the internal procedure established by the Contractor for the Approval of a Proposed Change not requiring Authority Approval in accordance with the Change Control Procedure, provided that

such internal procedure shall be compliant with the provisions of Paragraph 1.6 (*Contractor Conduct and Contractor Change Control Procedure*) of Schedule 2 (*Change Control Procedure*);

"Contractor's IP Database" has the meaning given to it in Paragraph 5.1 (*Register of Contractual IP Rights*) of Schedule 8 (*Intellectual Property*);

"Contractor's Payments Account" means the Magnox Contractor's Payments Account; or the RSRL Contractor's Payments Account, as appropriate;

"Contractors' Receipts Accounts" means the Magnox Contractor's Receipt Account and the RSRL Contractor's Receipt Account;

"Control" means:

- (a) the power (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, agreement or otherwise) to appoint and/or remove all or such of the members of the board of directors or other governing body of a person as are able to cast a majority of the votes capable of being cast by the members of that board or body on all, or substantially all, matters, or otherwise to control or have the power to control the policies and affairs of that person (and for the purposes of determining whether the power to appoint or remove directors exists the provisions of section 1159 of the Companies Act 2006 shall apply); and/or
- (b) the holding and/or possession of the beneficial interest in and/or the ability to exercise the voting rights applicable to shares or other securities in any person (whether directly or by means of holding such interests in one or more other persons) which confer in aggregate on the holders thereof thirty per cent (30%) or more of the total voting rights exercisable at general meetings of that person on all, or substantially all, matters provided that any acquisition of any shares of the ultimate holding company of any party which is listed on a recognised stock exchange which exercises Control shall not constitute a Change in Control;

"COP 10" means the Code of Practice 10 Submission comprising the letter of 1 March 2005 sent to HMRC by Herbert Smith on behalf of the Authority and subsequent correspondence;

"Corrective Action" means action which the Contractor needs to take in response to the Authority's audit findings where such audit identifies failure by the Contractor to comply with its obligations under this Agreement;

"Correspondence Process" means the electronic communications and correspondence process agreed by the Parties and the Parent Body Organisation as the means of delivering, recording and referencing all formal correspondence between the Parties in connection with this Agreement and the Parent Body Agreement;

"Cost" means any sum of money that the Contractor is legally obliged to pay and that (with the exception of the Licence Fee and any rents and other sums payable under the Property Leases) is payable to a person other than the Authority;

"CRC Allowances" means tradable allowances under the CRC Scheme which are issued pursuant to the CRC Order;

"CRC Group" shall have the same meaning as "group" as defined in the CRC Order;

"CRC Order" means the CRC Energy Efficiency Scheme Order 2013 (SI 2013/1119);

"CRC Scheme" means the trading scheme established by the CRC Order;

"Critical Site IT Systems" means those IT Systems that are required for the safe operation of any Site and effective delivery of the Client Specification and which comprise the Magnox Critical Site IT Systems and the RSRL Critical Site IT Systems;

"Cross Estate Initiatives" means the strategies, policies, procedures, and Collaborative Procurements developed in respect of activities performed by or in relation to, or relevant to, more than one SLC (or one or more SLCs and subsidiaries of the Authority) by the governance boards (comprising the SLCs and subsidiaries of the Authority) established by the Authority;

"Currency Hedging Agreement" means an agreement to hedge foreign currency risk;

"Currency Hedging Strategy" means the strategy for hedging currency which on the Commencement Date is in use by the Contractor as the same may be amended with the agreement of the Authority from time to time;

"Current Budget" means, in respect of each Annual Site Funding Limit, that proportion of the Annual Site Funding Limit which is allocated to Costs which are not Capital Costs;

"Current Costs" means all Costs incurred by the Contractor other than Capital Costs;

"Customer" means any party or former or prospective party to a Customer Contract;

"Customer Contract" means the Contractor Customer Contracts and/or the Authority Customer Contracts;

"Customer Group" means any group or trade organisation of parties or former or prospective parties to Customer Contracts;

"Data" means facilities, information, books of account, Authority Records, Contractor Records or other documentation (including any stored in electronic form);

"Decommission" means the final phase in the life cycle of a nuclear installation covering all activities from shutdown and removal of fissile material to environmental restoration of a Site through to its agreed Interim State or Interim End State, as applicable, and Decommissioning shall be construed accordingly;

"Deed of Participation" means the Deed of Participation for the Combined Nuclear Pension Plan entered into between the Authority and the Magnox Contractor dated 28 March 2012 or the Deed of Participation for the Combined Nuclear Pension Plan entered into between the Authority and the RSRL Contractor dated 23 October 2009 (as applicable), or such subsequent deed or deeds of participation which the Authority requires the Contractor to enter into from time to time;

"Defective Performance" has the meaning given to it in Clause 11 (*Defective Performance and Remediation*);

"Defective Performance Notice" has the meaning given to it in Clause 11.2 (*Defective Performance and Remediation*);

"Delegation of Authority" means the written authorisation issued from time to time by the Authority and copied to the Contractor in respect of certain of the Authority's staff members or the written authorisation issued from time to time by the Contractor and copied to the Authority in respect of certain of the Contractor's staff members in accordance with Clause 37.2 (*Representatives and Delegation of Authority to Act*);

"Delivered Parent IP" has the meaning given in Clause 29.3.1.1 (*IP Contributed by Parent Body Organisation – Licence to Authority and Contractor*);

"Dependency Event" means:

- (a) where the Authority does not respond within a relevant period for the purposes of Clause 5.3.1 (*Authority Responses*), and there is an impact on the cost or Schedule of the Tasks as a result of such Authority delay;
- (b) a failure by the Authority to provide the Authority Deliverables or any of them;
- (c) where, as a result of any Authority or National Audit Office inspection or audit, the Contractor is prevented from performing its obligations under this Agreement, despite having used reasonable endeavours to so perform; and

(d) any other event expressly referred to in this Agreement as a Dependency Event;

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

"Detailed Project Plans" means all the documentation produced by the Contractor underlying the LTP Performance Plan and setting out how Tasks will be undertaken and to what standard;

"Determination Date" has the meaning given to it in Paragraph 1.13 (*Phase 1 True Cost Variance and Projected Cost Variance adjustments*) or Paragraph 1.28 (*Phase 2 True Cost Variance and Projected Cost Variance adjustments*) of Part 4B (*Calculation of Target Fee*) of Schedule 6 (*Finance*) (as applicable);

"Developed IP" means IP created or developed by or on behalf of the Contractor and/or by Subcontractors during the performance of this Agreement;

"Disaggregated CRC Costs" means those costs, liabilities, losses and expenses that arise directly or indirectly in connection with the CRC Scheme that would be properly attributable and/or allocable to the Contractor as if the Contractor had been disaggregated from its CRC Group for the purposes of the CRC Scheme and treated as a separate CRC participant;

"Disallowable Cost" has the meaning given in Paragraph 4 (*Disallowable Costs*) Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) and **"Disallowable"** shall be construed accordingly;

"Disposal" means the process by which Waste, particularly controlled, Contaminated or radioactive Waste is placed in a safe condition, with no intent to retrieve and Dispose shall be construed accordingly;

"Disposal Authority" means the Radioactive Waste Management Directorate (RWMD) responsible for authorising the Disposal of waste forms or any successor body whose role is to carry out the same or materially similar services to that of the RWMD;

"Dispute" has the meaning given to it in the Dispute Resolution Procedure;

"Dispute or Claim Negotiation" means any Third Party claim brought against the Contractor where there is reasonable expectation that the financial value of any settlement may exceed the sum of five hundred thousand pounds sterling (£500,000);

"Disputed Amount" has the meaning given to it in Paragraph 3.6 (*Disputed Amounts*) of Part 2B (*Payment of Allowable Costs*) of Schedule 6 (*Finance*);

"Dispute Resolution Procedure" means the dispute resolution procedure set out in Schedule 12 (*Dispute Resolution Procedure*);

"Dividend Payment Policy" has the meaning given to it in Clause 16.11.10.5 (*Payments to Parent*);

"Dounreay Site Resoration Limited" or **"DSRL"** means the contractor to whom the ONR has granted a Nuclear Site Licence in respect of the Authority owned site located at Dounreay in Caithness, Scotland;

"DPA" means the Data Protection Act 1998;

"Dungeness A Site" means the site at Dungeness demised by a Magnox Property Lease as the same may be varied pursuant to the terms of such Magnox Property Lease from time to time;

"EA" means the Environment Agency or its successor body from time to time;

"EDF Energy" means EDF Energy plc whose registered office is at 40 Grosvenor Place, Victoria, London, SW1X 7EN a company incorporated under the laws of England and Wales with registered number 02366852;

"EGG 02" means the Guidance Note for Assessment of Asset Care Requirements for Inclusion in Life Time Plans Rev 1 as may be amended or updated by the Authority from time to time;

"e-Government Metadata Standard (e-GMS)" means the e-GMS Standard Version 3.1: 29th August 2006 as updated from time to time;

"EIR" means the Environmental Information Regulations 2004 (as amended);

"Emergency Action" means an action taken by the Contractor pursuant to the Contractor's genuine belief that risk to life, limb or the Environment requires immediate action. It includes assistance to the Authority or to another SLC in respect of an emergency on another nuclear site or in response to an urgent request from a Third Party to assist in a radiological incident not on a nuclear site. Emergency Action includes urgent requests for assistance from the National Radiological Protection Board and urgent assistance required in accordance with the RADS SAFE Emergency Plan;

"Emergency Change" means any Change directly resulting from an Emergency Action;

"Employees" means the Magnox Employees and the RSRL Employees;

"EMU" means European Economic and Monetary Union;

"End State" means the Interim State or Interim End State, as applicable, for each Site;

"Energy Act" means the Energy Act 2004;

"Environment" means any and all living organisms, ecosystems, air, water, land and property, whether natural or man-made and wherever occurring or situated, and **"Environmental"** shall be construed accordingly;

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

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

"Estimate at Completion" means the Estimate at Phase 1 Completion or the Estimate at Phase 2 Completion, as applicable;

"Estimate at Phase 1 Completion" means:

- (a) as at the Commencement Date, an amount equalling the Phase 1 Target Cost;
or
- (b) following the end of each Contract Quarter throughout Phase 1, the most recent estimate of the Allowable Costs to be incurred by the Contractor in Achieving Phase 1 Completion calculated in accordance with Paragraphs 1.14 and 1.15 (*Calculation of Estimate at Phase 1 Completion*) of Part 4B (*Calculation of Target Fee*) of Schedule 6 (*Finance*),

provided that the Estimate at Phase 1 Completion shall not include any estimated Allowable Costs included within the Estimate at Phase 2 Completion;

"Estimate at Phase 2 Completion" means:

- (a) as at the Commencement Date, an amount equalling the Phase 2 Target Cost;
or
- (b) following the end of each Contract Quarter throughout the Term, the most recent estimate of the Allowable Costs to be incurred by the Contractor in Achieving Phase 2 Completion calculated in accordance with Paragraphs 1.29 and 1.30 (*Calculation of Estimate at Phase 2 Completion*) of Part 4B (*Calculation of Target Fee*) of Schedule 6 (*Finance*),

provided that the Estimate at Phase 2 Completion shall not include any estimated Allowable Costs included within the Estimate at Phase 1 Completion;

"Estimated Phase 1 Inflation" has the meaning given to it in Paragraph 3.3 (*Adjustment of the Phase 2 Target Fee*) of Part 8 (*Indexation*) of Schedule 6 (*Finance*);

"Estimated Phase 2 Inflation" has the meaning given to it in Paragraph 3.3 (*Adjustment of the Phase 2 Target Fee*) of Part 8 (*Indexation*) of Schedule 6 (*Finance*);

"EU Procurement Rules" means Directives 2004/18/EC, 2004/17/EC and 2007/66/EC of the European Parliament and Council and all applicable Treaty principles and other EU measures adopted from time to time in relation to public procurement, together with the Public Contracts Regulations 2006, the Utilities Contracts Regulations 2006 and any other UK implementing measures;

"EURATOM Treaty" means the treaty establishing the European Atomic Energy Community;

"Exceptional Item" has the meaning given to it in Paragraph 4.2 (*Exceptional Items*) of Part 2B (*Payment of Allowable Costs*) of Schedule 6 (*Finance*);

"Exceptional Item Information" has the meaning given to it in Paragraph 4.3 (*Exceptional Items*) of Part 2B (*Payment of Allowable Costs*) of Schedule 6 (*Finance*);

"Exceptional Item Threshold" has the meaning given to it in Paragraph 4.1 (*Exceptional Items*) of Part 2B (*Payment of Allowable Costs*) of Schedule 6 (*Finance*);

"Existing Agreements" means all the agreements that are legally binding on the Contractor and were entered into prior to the Commencement Date, including those listed in Schedule 5 to the Magnox Property Leases, but excluding any Secondment Agreements entered into in relation to the Former Secondees;

"Expiry Date" means, subject to any variation of such date in accordance with the terms of this Agreement and, without prejudice to the validity of any earlier termination of this Agreement in accordance with its terms, the date on which the Client Specification Completion State is achieved in accordance with the provisions of this Agreement;

"Extravagant Outlays" means, in relation to any Cost (which would otherwise be an Allowable Cost) which, in the Authority's reasonable opinion, is materially in excess of any value obtained in relation to the LTP Performance Plan, that part of the Cost which is in excess of the value that the Contractor ought reasonably to have expected to have obtained;

"Fall Due" means become payable in accordance with the legal terms governing the relevant obligation to make payment;

"FCA" means the Financial Conduct Authority;

"**Fee**" means the aggregate of the PBI Fee, the Target Fee (as adjusted by the Shareline) and any further category of fee that may be agreed between the Parties in accordance with this Agreement;

"**Fee Reconciliation Report**" has the meaning given to it in Paragraph 2.1 (*Fee Reconciliation*) of Part 4C (*Payment of PBI Fee and Target Fee*) of Schedule 6 (*Finance*);

"**Final Reconciliation of Allowable Costs**" has the meaning given to it in Paragraph 10.1 (*Final Reconciliation of Allowable Costs*) of Part 2B (*Payment of Allowable Costs*) Schedule 6 (*Finance*);

"**Final Tender**" means the PBO's response to the Invitation to Submit Final Tender;

"**FOIA**" means the Freedom of Information Act 2000 as amended;

"**FNP-01**" means the document highlighting the accounting policies and procedures adopted by the Authority for Owner Books as amended from time to time;

"**FNP-02**" means the document setting out the standards that the Contractor is required to maintain over the Authority's books of accounts and the reports required;

"**Force Majeure Event**" means any act, event or occurrence affecting any Party's performance of its obligations under this Agreement, the cause of which is not of such Party's making nor within that Party's reasonable control (provided that, in the case of the Contractor, for this purpose the Contractor shall not be deemed to have caused or had control of matters occurring prior to the Commencement Date), and which is not attributable to any act not in accordance with Good Industry Practice after the Commencement Date nor any failure to take preventative action in accordance with Good Industry Practice after the Commencement Date including (to the extent not of that Party's making nor within that Party's reasonable control) but not limited to:

- (a) war, hostilities (whether or not war has been declared), terrorist acts, or acts of any civil or military authority;
- (b) riot, insurrection, civil commotion, public demonstration, sabotage, or acts of vandalism;
- (c) fire, flood, earthquake, extreme weather conditions (when compared with meteorological conditions that characteristically prevail in the relevant locale) epidemic, or explosion;
- (d) impact from Third Party aircraft or things falling from Third Party aircraft;

- (e) any strike, lock-out or trade dispute not involving solely the employees or Subcontractors of that Party and not originating with that Party's employees or Subcontractors or (in the case of the Contractor) the employees or Subcontractors of the Parent Body Organisation or an Affiliate;
- (f) acts of God;
- (g) delay in transport or communications;
- (h) structural shift or subsidence;

but expressly excluding:

- (A) any unlawful act of a Third Party who has gained entry to any Site due to a failure of the Contractor to comply with the Security Plan or other failure to comply with its obligations under Clause 4 (*Contractor's Obligations*) of this Agreement;
- (B) any unauthorised release of ionising radiation from, or Contamination by radioactivity from an occurrence involving nuclear matter on any Site or from materials in the course of transportation to or from a Site save to the extent that such unauthorised release or Contamination is caused by any of the events listed in (a) to (d) or (f) of this definition; and
- (C) any radioactive, chemical or biological Contamination on any Site or emanating from any Site or matter in the course of transportation to or from any Site save to the extent that such Contamination is caused by any of the events listed in (a) to (d) or (f) of this definition;

"Foreign Exchange Accounts" means any bank accounts held in currencies other than sterling used for the purposes of the Currency Hedging Agreements or otherwise;

"Former Seconded" has the meaning given to it in Clause 17.4.1 (*TUPE*) of the Parent Body Agreement;

"Funding Limit" means each Annual Site Funding Limit, each Current Budget and each Capital Budget;

"Future Transfer Scheme" means a nuclear transfer scheme made after the Commencement Date under section 40(2) of the Energy Act;

"GAAP" means Generally Accepted Accounting Practice;

"GAD Certified Pension Scheme" has the meaning given to it in Paragraph 11.1.1 (*Transfer of Employees*) of Schedule 5 (*Subcontracting and Procurement*);

"**Gated Process**" has the meaning given to it in Paragraph 2.1 (*Contractor's Gated Process*) of Schedule 3 (*Financial Sanction and Validation*);

"**General Change in Law**" means a Change in Law which is not a Specific Change in Law or Material General Change in Law;

"**Good Industry Practice**" means the exercise of the reasonable degree of skill, care, diligence, prudence and foresight which would (taking into account all the factors relating to the Sites) ordinarily be expected from a skilled and experienced contractor engaged (in any jurisdiction of the European Union, United States of America or Canada where there is experience of nuclear operations and/or decommissioning activities which have at least equivalent standards to those of the United Kingdom and any other standards generally adopted in the United Kingdom) in activities of a similar scope and complexity to those that are the subject of this Agreement and under the same or similar circumstances, where such contractor is seeking to comply with contractual, legal and regulatory obligations which are analogous to those obligations which are incumbent on the Contractor;

"**Government**" means the government of the United Kingdom;

"**Government Payment Obligations**" means the guidance contained in Annex 4.6 of *Managing Public Money 2007*;

"**Harwell Site**" means the site at Harwell demised by an RSRL Property Lease as the same may be varied pursuant to the terms of such RSRL Property Lease from time to time;

"**Hinkley Point A Site**" means the site at Hinkley Point demised by a Magnox Property Lease as the same may be varied pursuant to the terms of such Magnox Property Lease from time to time;

"**Historical Costs**" means Contractor Historical Costs and Non-Contractor Historical Costs;

"**HMRC**" HM Revenue & Customs and any successor to such organisation;

"**HR Internal Procedures**" means the Contractor's Internal Procedures referred to in Clause 31.11 (*Terms and Conditions of Employment*);

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

"**HSSSE Obligations**" means the obligations on the Contractor to manage the Sites so as to minimise any material risk to health, safety, security, safeguards and the environment;

"HSSSE Internal Procedures" means the Contractor's Internal Procedures in relation to health, safety, security, safeguards and the environment, including the HSSSE Trend and Issues Log;

"HSSSE Trend and Issues Log" means a log of trend data and issues updated and maintained by the Contractor containing details of incidents, issues and trends (including in relation to Regulatory compliance) relating to health, safety, security, safeguards and the environment at the Sites in accordance with the provisions of Paragraph 2.1.4 of Schedule 15 (*Minimum Performance Standards*);

"Hunterston A Site" means the site at Hunterston demised by a Magnox Property Lease as the same may be varied pursuant to the terms of such Magnox Property Lease from time to time;

"Impartiality Undertaking" means an undertaking in the form set out in Part 5 (Pro Forma Impartiality Undertaking) of Schedule 7 (*Employment*);

"Incoming Parent" means the organisation that successfully bids or is appointed to replace the Parent Body Organisation in relation to the Sites, or any other organisation that successfully bids in response to any other arrangement as determined by the Authority to replace the current organisational structure on the Sites;

"Index" means the index published monthly by the Office for National Statistics in Table CPI under the title "Consumer Prices Index (all items)", or failing such publication, or in the event of a fundamental change to the nature of the Index, such other index or adjustments to the Index as the Parties may, each acting reasonably, agree from time to time (in each case with the intention of putting the Parties in no better and no worse a position than they would have been had the Index not ceased to be published or the relevant fundamental change not been made) or, in the event that no such agreement is reached, as may be determined in accordance with the Dispute Resolution Procedure;

"Indexation Adjustment Date" means each anniversary of the Commencement Date;

"Indexed" means that on each Indexation Adjustment Date an amount referred to in this Agreement shall be increased by the application of the indexation factor set out in Clause 1.2.15 (*Interpretation*);

"Information" has the meaning given in Clause 25.3 (*Disclosure by the Authority*);

"Information Asset Register" means a register holding metadata to the e-GMS standard about the information holdings for the Contractor as defined by and agreed with the Authority;

"Information Governance" means an amalgamation of the following disciplines: information management, information risk management, knowledge management, information and communication technology and intellectual property put in place by the Authority to fulfil the requirements of the Authority's Information Governance Strategy in order to meet its statutory and regulatory obligations;

"Information Governance Compliance Programme" means the Authority's high level programme to achieve information management compliance across the SLCs for which it has responsibility under the Energy Act;

"Information Governance Strategy" means the Authority strategy to implement its policy on Information Governance;

"Insolvency Event" means the occurrence of any of the following:

- (a) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed;
- (b) commencing negotiations with all or any class of creditors with a view to rescheduling any debts, or making a proposal for or entering into any compromise or arrangement with creditors (other than for the purposes of a solvent reconstruction or amalgamation);
- (c) the presentation of a petition for a winding up order;
- (d) the passing of a resolution for winding up (other than for the purposes of a solvent reconstruction or amalgamation);
- (e) the court making an order for winding up (other than for the purposes of a solvent reconstruction or amalgamation);
- (f) the appointment of, or a person with a right to appoint becoming entitled to appoint, a receiver or manager or administrative receiver;
- (g) being unable to pay debts as they fall due or being deemed unable to pay debts within the meaning of section 123 of the Insolvency Act 1986; and
- (h) any event occurs, or proceeding is taken, in any jurisdiction which has an effect equivalent or similar to any of the events mentioned above unless, in the case of the events set out in limbs (a), (c) and (f) above, the proceedings to which they relate are frivolous or vexatious and are dismissed, stayed or discharged within twenty one (21) Calendar Days of their commencement;"

"Insurance Premium Contribution" means, in respect of an Authority Insurance listed in Appendix 4 (*Insurance Premium Contributions*) of Schedule 10 (*Insurance*), the applicable amount specified in the column headed "Insurance Premium Contribution" in the table in that Appendix;

"Insurance Proceeds" amounts received by way of payment of benefits due under an Authority Insurance policy and/or any insurance policy taken out by the Contractor in accordance with Clause 18.1.3 (*Authority Insurances*) but excluding any amount which is received in respect of the costs of the Authority or the Contractor (as applicable) of pursuing such claim or in respect of any delay in the settlement of such claim;

"Integrated Assurance and Approvals Plan" means the "*Integrated Assurance and Approvals Plan*" as referred to and contained in Appendix C of PCP-17 (*Sanction*);

"Integrated Management System" means a management system which combines all of a business' processes and policies (including but not limited to those processes and policies relating to quality, health and safety, environment, personnel, finance and security) in a single system, which enables the business to achieve its objectives;

"Inter SLC Service Contracts" means the Inter SLC services contracts entered into in accordance with Clause 23 (*Inter SLC Service Contracts*);

"Interim End State" means the physical state of the Winfrith Site achieved by completion of the Contractor's obligations set out in the Client Specification;

"Interim State" means the physical state of the Magnox Sites and the Harwell Site achieved by completion of the Contractor's obligations set out in the Client Specification;

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

- (a) constitutes a mandatory internal guideline, standard, procedure or policy;
- (b) relates directly or indirectly to the Contractor's structure, operation and management; and
- (c) relates materially and directly to the duties imposed on the Contractor in accordance with Clause 4.2 (*Nature of Contractor's Obligations*) and/or the manner in which the Contractor chooses to fulfil its Contractual, legal and regulatory obligations therein and includes HR Internal Procedures and HSSSE Internal Procedures,

and **"Internal Procedure"** shall be construed accordingly;

"Invitation to Submit Final Tender" or "ITSFT" means the Invitation to Submit Final Tender issued by the Authority on 2 October 2013;

"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;

"IP Schedule" means the Authority's policy and strategy document setting out the Authority's requirements in relation to the management and ownership of IP set out in Schedule 8 (*Intellectual Property*) as may be supplemented by any Commercial Guidance 02;

"IT Agreement" means any agreement under which any services are provided or Software is licensed to the Contractor for the purposes of any Site IT Systems;

"IT System" means any communications and/or information technology system including:

- (a) all hardware, including servers, desktop and laptop PCs and other terminal equipment, printers, scanners and other peripherals;
- (b) networks and network equipment;
- (c) Software; and
- (d) data comprised or used therein;

"IT/Telecoms Projects" means a unique set of information technology related tasks and activities, planned and executed in a structured manner to achieve a specific business requirement to a defined duration, or any Subcontracts;

"Joint Fee Account" means the bank account jointly held in the names of the Magnox Contractor and the RSRL Contractor for the receipt of Fee under this Agreement;

"Joint Nominated Staff" means the individuals identified as such in the Nominated Staff Plan and, in the case of the members of Joint Nominated Staff whose appointments are planned as at the Commencement Date, listed in Part 2A (*Joint Nominated Staff*) of Schedule 7 (*Employment*);

"Key Personnel" means the Magnox Key Personnel and the RSRL Key Personnel;

"Legal Proceedings" means any litigation, arbitration, adjudication, defence, dispute, claim, mediation, negotiation, other alternative dispute resolution procedure, compromise, appeal or investigations before an Ombudsman or tribunal;

"Legislation" means:

- (a) any Act of Parliament or subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of Section 2 of the European Communities Act 1972;
- (b) codes of practice, policy, guidance issued by any Regulator, the Government or (to the extent applicable in the United Kingdom) the legislative bodies of the European Union; and
- (c) any judgment of a relevant court of law,

in each case enforceable in the United Kingdom;

"Licence Fee" has the meaning given to it in Clause 29.1.1 (*Licence of Authority IP to the Contractor*);

"Licensees" has the meaning given to it in the Nuclear Installations Act;

"LLW Repository Limited" or **"LLWR"** means the contractor to whom the ONR has granted a Nuclear Site Licence in respect of the UK low level waste disposal facility located at Drigg in Cumbria;

"LTP Performance Plan" means the overarching lifetime plan or combination of plans describing the totality of activities required to take the Sites from their current states to their respective final end states, and which:

- (a) as at the Commencement Date is constituted by the Magnox Commencement Date LTP and the RSRL Commencement Date LTP together;
- (b) during the Consolidation Phase is the most recent version of the lifetime plan developed by the Contractor in accordance with Appendix B (*Development of the LTP Performance Plan*) of Schedule 2 (*Change Control Procedure*); and
- (c) following completion of the Consolidation Phase, is the lifetime plan approved by the Authority pursuant to Paragraph 7.5 (*Approval of the LTP Performance Plan and Contract Baseline*) of Appendix B (*Development of the LTP Performance Plan*) of Schedule 2 (*Change Control Procedure*) as may be subsequently changed and updated by the Contractor in accordance with

Paragraph 1.5 (*LTP Performance Plan*) of Schedule 2 (*Change Control Procedure*);

"Maentwrog Power Station" means the hydroelectric power station at Blaenau Ffestiniog, Gwynedd, LL41 4HY;

"Magnox A Share" means the one (1) A ordinary share of one pound sterling (£1) in the Magnox Contractor;

"Magnox A Shareholder" means the holder of the Magnox A Share for the time being;

"Magnox B Share" means the one (1) B share of one pound sterling (£1) in the Magnox Contractor;

"Magnox B Share Dividend" means such dividend or dividends as are paid or payable to the Magnox B Shareholder in relation to the Magnox B Share from time to time;

"Magnox B Shareholder" means the holder of the Magnox B Share for the time being;

"Magnox Commencement Date LTP" means the Magnox LTP as at the Commencement Date;

"Magnox Contractor's Payments Account" means the bank account of the Magnox Contractor which the Magnox Contractor nominates to the Authority into which drawings made under an Approved Working Capital Facility are paid and which is separate from the Magnox Contractor's Receipts Account;

"Magnox Contractor's Receipts Account" means the bank account of the Magnox Contractor which the Magnox Contractor nominates as such to the Authority;

"Magnox Contractor's Representative" means the person identified as the Magnox Contractor's Representative in Clause 37.7.3 (*Notices*) or any successor appointed to that role in accordance with Clause 37.2.4 (*Change in Representative*);

"Magnox Critical Site IT Systems" means the IT Systems listed in Part A (*Magnox Critical Site IT Systems*) of Schedule 9 (*Information Technology*);

"Magnox Employees" means all persons, whether part-time or full-time, employed or engaged by the Magnox Contractor in the performance of the Tasks and/or the Contractor's other obligations under this Agreement from time to time (but excluding Nominated Staff) and **"Magnox Employee"** shall be construed accordingly;

"Magnox Final Incentive Fee" means the "Final Incentive Fee" as defined in the Magnox Management and Operations Contract;

"Magnox Group" means the Magnox Group of the Electricity Supply Pension Scheme (ESPS);

"Magnox Key Personnel" means the individuals, whether Nominated Staff or Employees, who from time to time are appointed to roles identified by the Authority as key personnel roles in accordance with Clause 31.3 (*Magnox Key Personnel*) and listed in Part 1 (*Magnox*) of Schedule 7 (*Employment*) as amended from time to time;

"Magnox LTP" means the overarching lifetime plan describing the totality of activities required to take the Magnox Sites from their current states to their respective final end states that is in place (as amended from time to time) prior to the Commencement Date and comprises the documents specified in PCP-07 (*Baseline Management*);

"Magnox Management and Operations Contract" means the site management and operations contract between the Authority and Magnox Limited dated 4 October 2011;

"Magnox M&O Contractor's Fee Account" means the bank account nominated as such by the Contractor;

"Magnox Nominated Staff" means the individuals identified as such in the Nominated Staff Plan and, in the case of the members of Magnox Nominated Staff whose appointments are planned as at the Commencement Date, listed in Part 1 (*Magnox*) of Schedule 7 (*Employment*);

"Magnox OPG Receipts Account" means the account which the Authority nominates to the Magnox Contractor as such;

"Magnox Property Leases" means the leases of part or parts of the Magnox Sites (except in relation to the Sixth Site) subject to the terms of this Agreement entered into on the same date as this Agreement and **"Magnox Property Lease"** means any of them;

"Magnox Records Agreement" means the records agreement dated 1 April 2005 between the Nuclear Decommissioning Authority and British Nuclear Group Sellafield Limited and the deed of adherence of the same date entered into by Magnox Limited;

"Magnox Shareholder" means the holder of shares of any class of the Magnox Contractor from time to time;

"Magnox Sites" means the Berkeley Site, the Bradwell Site, the Chapelcross Site, the Dungeness A Site, the Hinkley Point A Site, the Hunterston A Site, Maentwrog Power Station, the Oldbury Site, the Sixth Site, the Sizewell A Site, the Trawsfynydd Site and the Wylfa Site;

"Magnox Year End Sum" means the "Year End Sum" as defined in the Magnox Management and Operations Contract;

"Mandatory Services" means:

- (a) undertaking Emergency Action in accordance with this Agreement;
- (b) any other works and/or services which a Contractor performing its duties under this Agreement in accordance with Good Industry Practice would have to perform in order to:
 - (i) comply with all applicable Legislation;
 - (ii) comply with any applicable Regulatory Requirements;
 - (iii) comply with the Security Requirements; or
 - (iv) comply with HSSSE Obligations,

even if the performance of such works and/or services is outside the scope specified in any of the following:

- (a) LTP Performance Plan;
- (b) Detailed Project Plans; or
- (c) Permitted Activities,

or would otherwise put the Contractor in breach of this Agreement;

“Material Adverse Effect” means:

- (a) an increase or decrease in the Allowable Costs incurred by the Contractor of more than twenty five thousand pounds sterling (£25,000) (Indexed);
- (b) a material delay in the achievement of an Interim End State or Interim State (as applicable) or an Authority Milestone (as against the Milestone Delivery Date);
- (c) a material adverse effect on the ability of the Contractor to achieve an agreed PBI Level; or
- (d) a material adverse effect on the ability of the Contractor to perform its obligations under this Agreement,

to the extent that such effect could not have been mitigated or avoided by the Contractor acting in accordance with Good Industry Practice;

“Material General Change in Law” means a Change in Law that is not a Specific Change in Law but that results in an increase or decrease (as the case may be) in Allowable Cost by one hundred thousand pounds sterling (£100,000) (Indexed) or more;

"Material Radioactive Waste Variance" has the meaning given to it in Paragraph 2 (*Annual adjustment for variance in Radioactive Waste volumes*) of Appendix C (*Adjustments for Radioactive Waste Volumes*) of Schedule 6 (*Finance*);

"Milestone Delivery Date" means, for each Target Fee Payment Milestone, the date specified in the column headed "Milestone Delivery Date" in the relevant table set out in in Appendix K (*Target Fee Payment Milestones*) to Schedule 6 (*Finance*) and shown in the Contract Baseline;

"Minimum Performance Standard" means Minimum Performance Standards as defined in Schedule 15 (*Minimum Performance Standards*);

"Minimum Secondment Period" means:

- (a) for each member of Nominated Staff whose appointment is planned as at the Commencement Date, the applicable period specified in the column headed "Appointment Duration" in the tables set out in Part 1 (*Magnox*) and Part 2 (*RSRL*) of Schedule 7 (*Employment*); and
- (b) in the case of any member of Nominated Staff whose appointment is not planned as at the Commencement Date, the applicable period specified in the Nominated Staff Plan (provided that the Contractor shall obtain the approval of the Authority in advance where any such period is proposed to be less than three (3) years in duration (such approval not to be unreasonably withheld or delayed));

"Month" means a calendar month (and **"Monthly"** shall be construed accordingly);

"Monthly Reconciliation Report" has the meaning given to it in Paragraph 7.1 (*Monthly Reporting*) of Part 2B (*Payment of Allowable Costs*) of Schedule 6 (*Finance*);

"National Insurance Contributions" means contributions and sums payable to HMRC under the PAYE system in respect of emoluments and benefits paid or payable by the Contractor, taking into account all deductions and retentions which should be made in accordance with the applicable Legislation;

"Necessary Consents" means all permits, licences, permissions, consents, approvals, certificates and authorisations (whether statutory or otherwise) which are required for the performance of any of the Contractor's obligations under this Agreement, whether required in order to comply with Legislation or as a result of the rights of any third party;

"Negotiation Mandate" means any contract or matter proposed by the Contractor that is within the Schedule of Delegated Authority or that falls within any approval by the Authority pursuant to PCP-17 (*Sanction*);

"New Assets" means any assets, whether new or second-hand, acquired by the Contractor in accordance with Clause 6.9 (*New Assets*) on or after the Commencement Date, excluding any Subcontracts and Customer Contracts;

"New Customer Contract" has the meaning given in Clause 20.1 (*Amendments to Customer Contracts and New Customer Contracts*);

"NISR" means the Nuclear Industries Security Regulations 2003, as amended from time to time;

"Nominated Staff" means the Magnox Nominated Staff, the RSRL Nominated Staff and the Joint Nominated Staff;

"Nominated Staff Demobilisation Costs" has the meaning given to it in the Parent Body Agreement;

"Nominated Staff Plan" means the plan relating to the provision of Nominated Staff that the Parent Body Organisation submitted as part of its Final Tender and which, as at the Commencement Date, is the plan set out at Part 5 (*Nominated Staff Plan*) of Schedule 7 (*Employment*), as revised from time to time in accordance with the Change Control Procedure;

"Non-Contractor Historical Costs" means Costs incurred:

- (a) during the period prior to (and excluding) the Commencement Date; or
- (b) on or after the Commencement Date as a result of events occurring during the period prior to (and excluding) the Commencement Date,

which are properly attributable to anyone other than the Contractor, and any financial liability which has been or is transferred from the Contractor by way of a Transfer Scheme;

"Non-Funded Activities" means the business activities which do not relate to the Contractor's performance of this Contract but which involves the use of the Sites, the Authority's Assets and/or the Employees as approved by the Authority pursuant to Clause 4.2.2.7 (*Nature of Contractor's Obligations*) and such approval and the conditions relating thereto notified by the Authority to the Contractor prior to the Contractor carrying out such business activities;

"NORMS" means the National Objectives, Requirements and Model Standards for the Protective Security of Civil Licensed Nuclear Sites, other Nuclear Premises and Nuclear Material in Transit, issued by ONR;

"Notice" has the meaning given in Clause 37.7.1 (*Notices*);

"Novel, Contentious or Repercussive" means, in respect of any Proposed Change, Change or Work Activity, that the Authority, acting reasonably, considers the Proposed Change, Change or Work Activity in question to be novel, contentious or repercussive as defined in PCP-17 (*Sanction*);

"NS Support Month" means a period that is nominally 80% of a full time equivalent (calculated after subtracting pro rata thirty five (35) Working Days of annual leave plus all public holidays) working in support of the activities of the Contractor or otherwise in support of the activities required to complete the Contractor's obligations set out in the Client Specification, undertaken by a member of Nominated Staff within a Month;

"Nuclear Decommissioning Authority" or **"NDA"** has the same meaning as "Authority";

"Nuclear Fuel" means uranium or plutonium which has been fabricated into pins, assemblies, plates, or other such similar form for the purposes of fuelling a nuclear reactor;

"Nuclear Indemnity" means either:

- (a) the indemnity granted by the Authority in favour of the PBO, the Contractor and the other Indemnified Parties (as defined therein) on the Commencement Date in the form attached at Schedule 8 (*Nuclear Indemnity*) of the Parent Body Agreement; or
- (b) the indemnity granted by the Authority in favour of the PBO, the Contractor and the other Indemnified Parties (as defined therein) in the form attached at the Annex to Schedule 8 (*Nuclear Indemnity*) of the Parent Body Agreement,

to the extent that each is applicable at the relevant time (or applicable to the relevant Nuclear Incident) in accordance with the terms thereof;

"Nuclear Liabilities" has the meaning given to it in the Nuclear Indemnity;

"Nuclear Site Licence" means a nuclear site licence granted to the Contractor pursuant to Section I of the Nuclear Installations Act 1965 (as amended);

"Objection Notice" has the meaning given in Paragraph 3.2 (*Authority's Instructions*) of Part 2 (*Customer Contracts*) of Schedule 4 (*Commercial*);

"Office for Nuclear Regulation" or "ONR" means the Office for Nuclear Regulation or any body having responsibility for regulation of the nuclear industry in the United Kingdom which substantially replaces the same from time to time;

"Oldbury Site" means the site at Oldbury demised by a Magnox Property Lease as the same may be varied pursuant to the terms of such Magnox Property Lease from time to time;

"ONR-CNS" means ONR's Civil Nuclear Security Programme responsible for approving security arrangements within the civil nuclear industry and enforcing compliance to prevent the theft or sabotage of nuclear or other radioactive materials, the sabotage of nuclear facilities, and to protect Sensitive Nuclear Information, or any body having that responsibility within ONR which substantially replaces the same from time to time;

"ONR Security Policy Framework" means the HMG Security Policy Framework issued by the Cabinet Office in April 2014, as may be revised from time to time, together with any requirements, directives, procedures or guidelines for implementation of the HMG Security Policy Framework that are issued from time to time by ONR-CNS;

"Operating Procedures" means all documented procedures, processes or prescribed practices in use at each Site from time to time (including without limitation operating procedures and maintenance procedures) which apply to the performance by:

- (a) the Contractor of its obligations under this Agreement;
- (b) any Subcontractor of its obligations under a Subcontract; and
- (c) any Sub-Subcontractor of its obligations under a Sub-Subcontract;

"Outgoing Parent" means:

- (a) in the context of the commencement of this Agreement and the transition in of the Parent Body Organisation, either:
 - (i) EnergySolutions EU Limited, a company incorporated in England and Wales with registered number 05613520; or
 - (ii) UKAEA Limited, a company incorporated in England and Wales with registered number 05597709; and
- (b) in the context of the expiry or termination of this Agreement and the transition in of the Incoming Parent, the outgoing Parent Body Organisation;

"Outgoing Parent Affiliate" means any entity that would satisfy the definition of the term Affiliate above if the references to the Parent Body Organisation in that term were references to the entities specified in paragraphs (a)(i) and (ii) in the definition of Outgoing Parent and the references to the Contractor in (d), (e), (f) and (g) of that term were omitted;

"Output" has the meaning given in Clause 29.4.7 (*Access to and use of information by the Authority*);

"Out Years" means those years in the LTP Performance Plan beyond the then current Contract Year;

"Overarching Cost Management Agreement" or **"OCMA"** means the UKAEA Restructuring Overarching Costs Management Agreement dated 1 April 2008 between the Authority, the Contractor and others;

"Overpayment Notice" has the meaning given to it in Clause 16.8.3 (*Magnox Category II Revenue*) and Clause 16.9.3 (*RSRL Category II Revenue*);

"Owner Books" means the books of account prepared and maintained by the Contractor for the benefit of the Authority in accordance with its instructions;

"Parent Body Agreement" means the agreement of that name entered into between the Authority, the Contractors and the Parent Body Organisation on the date of this Agreement;

"Parent Body Organisation" or **"PBO"** means Cavendish Fluor Partnership Limited, a company incorporated in England and Wales with registered number 08980374;

"Parent IP" has the meaning given in Clause 29.3.1 (*IP Contributed by Parent Body Organisation – Licence to Authority and Contractor*);

"Parent IP Register" has the meaning given to it in Paragraph 8.2 (*Process for Importing and Tracking Introduced Parent Body Organisation IP*) of Schedule 8 (*Intellectual Property*);

"PBI Fee" means an amount of performance-based incentive fee payable in respect of achievement of PBI Levels, and which is subject to the maximum amounts (to be apportioned across all PBI Levels for the Contract Year in question) set out in Paragraph 3.4 (*PBI Fee*) of Part 4A (*Calculation of PBI Fee*) of Schedule 6 (*Finance*);

"PBI Level" has the meaning given to it in Paragraph 1.2 of Part 4A (*Calculation of PBI Fee*) of Schedule 6 (*Finance*);

"PBO Affiliate" means any entity that would satisfy the definition of the term Affiliate above if the references to the Contractor in (d), (e), (f) and (g) of that term were omitted;

"PBO Requirements" or **"Parent Body Requirements"** means each of the obligations set out in the column headed "Contractual obligation" in Table 1 of Part 1 (*Parent Body Requirements*) of Schedule 1 (*Client Specification*);

"**PCP-01 (Work Breakdown Structures) and PCP-01-01 (Work Breakdown Structure Dictionary and Guidelines)**" means the Authority's work breakdown structure programme controls procedure as listed within the Authority's Policies and Procedures;

"**PCP-02 (Electronic Data Submissions)**" means the Authority's electronic data submissions programme controls procedure as listed within the Authority's Policies and Procedures;

"**PCP-04 (Charging Practice)**" means the Authority's charging practice programme controls procedure as listed within the Authority's Policies and Procedures;

"**PCP-05 (Change Control)**" means the Authority's change control programme controls procedure as listed within the Authority's Policies and Procedures;

"**PCP-07 (Baseline Management)**" means the Authority's baseline management programme controls procedure as listed within the Authority's Policies and Procedures;

"**PCP-09 (Cost Estimating)**" means the Authority's cost estimating programme controls procedure as listed within the Authority's Policies and Procedures;

"**PCP-10 (Risk Management)**" means the Authority's risk and opportunity management programme controls procedure as listed within the Authority's Policies and Procedures;

"**PCP-11 (Scheduling)**" means the Authority's scheduling programme controls procedure as listed within the Authority's Policies and Procedures;

"**PCP-13 (Progress Reporting and Reviews)**" means the Authority's progress reporting and reviews programme controls procedure as listed within the Authority's Policies and Procedures;

"**PCP-17 (Sanction)**" means the Authority's sanction and validation programme controls procedure as listed within the Authority's Policies and Procedures;

"**PCP-M**" means the Authority's programme controls procedures manual as listed within the Authority's Policies and Procedures and "**PCP**" means a single programme controls procedure within that manual;

"**PCP-M Contractor Annexe**" means the Annexe to PCP-M in relation to this Agreement as listed within the Authority's Policies and Procedures and as set out at Appendix C (*PCP-M Contractor Annexe*) to Schedule 2 (*Change Control Procedure*);

"**Pension Costs**" means any pension contributions for which the Contractor (or any subsidiary of the Contractor) is liable including, for the avoidance of doubt pensions deficit contributions;

"Percentage Underspend" has the meaning given to it in Paragraph 1.9 (*Calculation of Phase 1 Shareline*) or 1.24 (*Calculation of Phase 2 Shareline*) of Part 4B (*Calculation of Target Fee*) of Schedule 6 (*Finance*) (as applicable);

"Performance Agreement Form" or **"PAF"** has the meaning given to it in Paragraph 1.1 (*Performance Agreement Form*) of Section A (*Performance Agreement Forms for PBI Levels*) or Paragraph 1.2 (*Performance Agreement Form*) of Section B (*Performance Agreement Forms for Target Fee Payment Milestones*) (as applicable) of Part 5 (*Performance Agreement Form*) of Schedule 6 (*Finance*);

"Permitted Activities" means those activities listed in Part 1 (*Permitted Activities*) of Schedule 4 (*Commercial*) as may be amended from time to time on the instruction or with the agreement of the Authority in accordance with Clause 21 (*Permitted Activities*) or the Permitted Activities Request Procedure;

"Permitted Activities Request" means a request to add, amend or update a Permitted Activity made in accordance with the Permitted Activities Request Procedure;

"Permitted Activities Request Procedure" means the procedure described in Paragraph 2 (*Content of Permitted Activities Request*) of Part 1 (*Permitted Activities*) of Schedule 4 (*Commercial*);

"Permitted Financial Indebtedness" means any indebtedness for or in respect of:

- (a) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (b) any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- (c) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value shall be taken into account);
- (d) any other financial instrument which the Authority, in its absolute discretion, approves of as incurring Permitted Financial Indebtedness;
- (e) (without double counting) any guarantee, indemnity or similar assurance against financial loss, in respect of the liabilities of any person falling within (a) to (d) above (inclusive) all as previously approved by the Authority in writing.

"Permitted Use" means, in relation to each Site, the Permitted Use as defined in the relevant Property Lease;

"Persistent Breach" means repeated or similar breaches by the Contractor of the same, or a similar, Operating Procedure (whether or not such Operating Procedure was designed by the Contractor after the Commencement Date) after the Commencement Date which has or could have (directly or indirectly) a material adverse impact on the accomplishment of any part of the Client Specification (or any activity necessarily ancillary thereto) or on the provision of the Mandatory Services, provided that any breach by the Contractor of an Operating Procedure which would otherwise contribute to a Persistent Breach but which occurs within four (4) Months of the Commencement Date shall contribute to such Persistent Breach only if:

- (a) such breach is on the part of one or more members of Nominated Staff;
- (b) previous breaches of the same, or similar, Operating Procedure have been notified to the Nominated Staff; or
- (c) the Nominated Staff otherwise have had a reasonable opportunity to identify, address and avoid such breach;

"Phase 1" means any and all Tasks undertaken by the Contractor during the Term to achieve Phase 1 Completion;

"Phase 1 %Complete" means the extent of completion of Phase 1 at any given time, expressed as a percentage of the total amount of activities required to Achieve Phase 1 Completion as set out in the LTP Performance Plan (in each case from the Commencement Date) as quantified and assessed by the Contractor acting reasonably and in accordance with Good Industry Practice and any applicable Authority Policies and Procedures;

"Phase 1 Actual Cost of Work Performed" means the aggregate of all Allowable Costs incurred in undertaking activities allocated to Phase 1 in the LTP Performance Plan or otherwise incurred in Achieving Phase 1 Completion (but excluding Costs included within the Phase 2 Actual Cost of Work Performed);

"Phase 1 Completion" has the meaning given to it in Appendix L (*Phase 1 Completion and Phase 2 Completion*) of Schedule 6 (*Finance*);

"Phase 1 Final True Cost Variance" means the Phase 1 Target Cost minus the Phase 1 Actual Cost of Work Performed as calculated on Achievement of Phase 1 Completion, as further adjusted pursuant to Paragraph 1.11 (*Phase 1 True Cost Variance and Projected Cost Variance adjustments*) of Part 4B (*Calculation of Target Fee*) of Schedule 6 (*Finance*);

"Phase 1 Interim Projected Cost Variance" has the meaning given to it in Paragraph 1.6(b) (*Calculation of Phase 1 Shareline*) of Part 4B (*Calculation of Target Fee*) of Schedule 6 (*Finance*);

"Phase 1 Interim True Cost Variance" has the meaning given to it in Paragraph 1.6(a) (*Calculation of Phase 1 Shareline*) of Part 4B (*Calculation of Target Fee*) of Schedule 6 (*Finance*);

"Phase 1 Projected Completion Date" means the date specified in the LTP Performance Plan (as may be changed from time to time in accordance with the Change Control Procedure) on which Phase 1 Completion is projected to be Achieved;

"Phase 1 Scheduled Completion Date" means the date specified in the Contract Baseline (as may be changed from time to time in accordance with the Change Control Procedure) on which Phase 1 Completion is scheduled to be Achieved;

"Phase 1 Shareline" means a positive or negative adjustment to the amount of Phase 1 Target Fee payable to the Contractor, reflecting the amount of underspend or overspend that is achieved against:

- (a) in the context of Phase 1 Interim True Cost Variance, the Phase 1 Target Cost of Work Performed as at the relevant time; and
- (b) in the context of Phase 1 Final True Cost Variance, the Phase 1 Target Cost,

and calculated in each case in accordance with Paragraphs 1.7 to 1.10 (*Calculation of Phase 1 Shareline*) of Part 4B (*Calculation of Target Fee*) of Schedule 6 (*Finance*);

"Phase 1 Target Cost" means the target sum of Allowable Costs to be incurred by the Contractor in Achieving Phase 1 Completion, as specified in Part 3 (*Target Costs*) of Schedule 6 (*Finance*) (as may be adjusted in accordance with paragraph 2 (*Adjustments to the Phase 1 Target Cost and Phase 2 Target Cost*) of Part 3 (*Target Costs*) of Schedule 6 (*Finance*) or otherwise adjusted in accordance with the Change Control Procedure), and as further set out in the Contract Baseline;

"Phase 1 Target Cost of Work Performed" or **"Phase 1 TCWP"** means the Phase 1 Target Cost multiplied by the Phase 1 %Complete;

"Phase 1 Target Fee" means the sum of one hundred and five million one hundred and ninety three thousand two hundred and twenty eight pounds sterling (£105,193,228) or, as the context permits, any element of such sum which is paid or payable in accordance with the express provisions of this Agreement, as adjusted (where relevant) by the application of the Phase 1 Shareline;

"Phase 2" means any and all Tasks undertaken by the Contractor to achieve Phase 2 Completion (to the extent that such Tasks are not included within Phase 1);

"Phase 2 %Complete" means the extent of completion of Phase 2 at any given time, expressed as a percentage of the total amount of activities required to Achieve Phase 2 Completion as set out in the LTP Performance Plan (in each case from the Phase 2 Commencement Date and excluding any activities required to Achieve Phase 1 Completion as set out in the LTP Performance Plan) as quantified and assessed by the Contractor acting reasonably and in accordance with Good Industry Practice and any applicable Authority Policies and Procedures;

"Phase 2 Actual Cost of Work Performed" means the aggregate of all Allowable Costs incurred in undertaking activities allocated to Phase 2 in the LTP Performance Plan or otherwise incurred in Achieving Phase 2 Completion (but excluding Costs included within the Phase 1 Actual Cost of Work Performed);

"Phase 2 Commencement Date" means the date on which the Contractor first commences carrying out activities allocated to Phase 2 in the LTP Performance Plan;

"Phase 2 Completion" has the meaning given to it in Appendix L (*Phase 1 Completion and Phase 2 Completion*) of Schedule 6 (*Finance*);

"Phase 2 Cost Profile" has the meaning given to it in Paragraph 1 (*Approval of the Estimate at Phase 2 Completion and Phase 2 Cost Profile*) of Appendix G (*Special adjustment to the Phase 2 Target Cost*) to Schedule 6 (*Finance*);

"Phase 2 Final True Cost Variance" means the Phase 2 Target Cost minus the Phase 2 Actual Cost of Work Performed as calculated on Achievement of Phase 2 Completion, as further adjusted pursuant to Paragraph 1.26 (*Phase 2 True Cost Variance and Projected Cost Variance adjustments*) of Part 4B (*Calculation of Target Fee*) of Schedule 6 (*Finance*);

"Phase 2 Interim Projected Cost Variance" has the meaning given to it Paragraph 1.22(b) (*Calculation of Phase 2 Shareline*) of Part 4B (*Calculation of Target Fee*) of Schedule 6 (*Finance*);

"Phase 2 Interim True Cost Variance" has the meaning given to it Paragraph 1.22(a) (*Calculation of Phase 2 Shareline*) of Part 4B (*Calculation of Target Fee*) of Schedule 6 (*Finance*);

"Phase 2 Projected Commencement Date" means the date specified in the LTP Performance Plan (as may be changed from time to time in accordance with the Change Control Procedure) on which it is projected that the Contractor will commence the activities allocated to Phase 2 in the LTP Performance Plan;

"Phase 2 Projected Completion Date" means the date specified in the LTP Performance Plan (as may be changed from time to time in accordance with the Change Control Procedure) on which Phase 2 Completion is projected to be Achieved;

"Phase 2 Scheduled Completion Date" means the date specified in the Contract Baseline (as may be changed from time to time in accordance with the Change Control Procedure) on which Phase 2 Completion is scheduled to be Achieved;

"Phase 2 Shareline" means a positive or negative adjustment to the amount of Phase 2 Target Fee payable to the Contractor, reflecting the amount of underspend or overspend that is achieved against:

- (a) in the context of Phase 2 Interim True Cost Variance, the Phase 2 Target Cost of Work Performed as at the relevant time; and
- (b) in the context of Phase 2 Final True Cost Variance, the Phase 2 Target Cost,

and calculated in each case in accordance with Paragraphs 1.23 to 1.25 (*Calculation of Phase 2 Shareline*) of Part 4B (*Calculation of Target Fee*) of Schedule 6 (*Finance*);

"Phase 2 Target Cost" means the target sum of Allowable Costs to be incurred by the Contractor in Achieving Phase 2 Completion, as specified in Part 3 (*Target Costs*) of Schedule 6 (*Finance*) (as may be adjusted in accordance with paragraph 2 (*Adjustments to the Phase 1 Target Cost and Phase 2 Target Cost*) of Part 3 (*Target Costs*) of Schedule 6 (*Finance*) or otherwise adjusted in accordance with the Change Control Procedure), and as further set out in the Contract Baseline;

"Phase 2 Target Cost of Work Performed" or **"Phase 2 TCWP"** means the Phase 2 Target Cost multiplied by the Phase 2 %Complete;

"Phase 2 Target Fee" means the sum of fifty four million eight hundred and eight thousand and eighty one pounds sterling (£54,808,081) (as may be adjusted in accordance with Paragraph 3 (*Adjustment of the Phase 2 Target Fee*) of Part 8 (*Indexation*) of Schedule 6 (*Finance*) or, as the context permits, any element of such sum which is paid or payable in accordance with the express provisions of this Agreement, as adjusted (where relevant) by the application of the Phase 2 Shareline;

"Phases" mean both Phase 1 and Phase 2;

"Planned Termination Date" has the meaning given to it in Paragraph 1 (*Agreement of Termination State for each Site*) of Part 4D (*Arrangements on Termination for Convenience*) of Schedule 6 (*Finance*);

"Post Investment Appraisal" has the meaning given to it in Paragraph 3.2.3 (*Gated Process for Sanction and Validation of Work Activities*) of Schedule 3 (*Financial Sanction and Validation*);

"Principal Employer" means in relation to the Applicable Schemes, the body in which is vested special powers or duties, such as the appointment of trustees under such schemes or the power of amendment under such schemes;

"Programme" means a co-ordinated portfolio of Projects designed to achieve a set of specified outcomes and benefits;

"Prohibited Acts" means:

- (a) offering, promising or giving another person any financial or other advantage, whether offered, promised or given directly or indirectly, as an inducement or reward:
 - (i) for improperly doing or not doing (or for improperly having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Authority; or
 - (ii) for improperly showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Authority;
- (b) requesting, agreeing to receive or accepting from another person any financial or other advantage, whether requested, agreed to receive or accepted directly or indirectly, as an inducement or reward:
 - (i) for improperly doing or not doing (or for improperly having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Authority; or
 - (ii) for improperly showing or not showing favour or disfavour to any person in relation to this Agreement or any other agreement with the Authority;
- (c) entering into this Agreement or any other agreement with the Authority in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless, before the relevant contract is entered into, particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Authority;
- (d) committing any offence:
 - (i) under the Bribery Act 2010;

- (ii) under any applicable Legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Authority; or
- (e) defrauding or attempting to defraud or conspiring to defraud the Authority;

"Project" means a unique set of co-ordinated activities by the Contractor intended to meet certain of the Contractor's business objectives, which has precise starting and finishing points and is undertaken by one or more persons to meet specific business objectives within defined time, cost and performance parameters set out in the Contractor's relevant Business Case. A Project may be contracted to the Contractor, be delivered by the Authority internally, or may include IT/Telecoms Projects and must, as a minimum, comprise:

- (a) a finite and defined lifespan;
- (b) defined and measurable business deliverables and/or outcomes which meet the specific business objectives of the Contractor together with the corresponding activities to achieve such deliverables and/or outcomes;
- (c) a defined amount of all resources required; and
- (d) a management structure to manage the Project with defined responsibilities allocated to each individual involved;

"Property Leases" means the Magnox Property Leases and the RSRL Property Leases;

"Proposed ASFL" has the meaning given to it in Paragraph 1(b) (*Approval of the Estimate at Phase 2 Completion and Phase 2 Cost Profile*) of Appendix G (*Special adjustment to the Phase 2 Target Cost*) of Schedule 6 (*Finance*);

"Proposed Change" means a proposal for a Change which is initiated by either the Contractor or the Authority but not yet Approved (or deemed to be Approved) in accordance with the provisions of the Change Control Procedure.

"Proposed Working Capital Facility" means a loan facility into which the Contractor proposes to enter or into which the Authority proposes that the Contractor should enter;

"Protected Employees" means those employees who benefit from pension protection pursuant to the Energy Act 2004;

"PSWBS" means in respect of each Site, the Programme Summary Work Breakdown Structure within the Magnox LTP or RSRL LTP, as applicable, which is the structure

defined and used by the Authority to subdivide the Magnox LTP or RSRL LTP, as applicable, to individual levels where Tasks can be planned, controlled, executed and performance-measured in accordance with the requirements of this Agreement;

"Radioactive Waste" has the meaning given to it in the Client Specification;

"Radioactive Waste Management Directorate (RWMD)" means the body responsible for authorising Disposal sites or Disposal Waste forms;

"Raw Radioactive Waste" means Radioactive Waste in the form and volume that such Radioactive Waste subsists at the point of retrieval, prior to any treatment, conditioning or packaging;

"Recent Existing Agreements" has the meaning given to it at Clause 4.5.2 (*Assumption of Existing Agreements*);

"Records" means the Authority Records and the Contractor Records;

"Recovered Costs" has the meaning given to it in Paragraph 4.1B (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*);

"Redundancy" has the meaning given in section 195 of the Trade Union and Labour Relations (Consolidation) Act 1992;

"Regulator Meetings" means meetings between the Contractor and any Regulator(s) (whether or not other persons are invited to attend) in relation to matters having a material or substantial impact on the Contractor's performance of this Agreement, but (unless specifically requested by the Authority) shall not include informal or periodic meetings in relation to minor or administrative matters;

"Regulators" means the Health and Safety Executive, the Department of Energy and Climate Change, the Department for Environment, Food and Rural Affairs, the EA, the Natural Resources Wales, the SEPA, the ONR, EURATOM, OFGEM, the Scottish Government, the Welsh Government, the FCA, the Pensions Regulator, the Pension Protection Fund, any relevant Local Authorities, and any other Government departments (or, to the extent applicable in the United Kingdom, departments of the legislative bodies of the European Union) and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise are entitled to regulate matters relating to the Contractor's obligations under this Agreement, as applicable in the relevant jurisdiction (including in relation to international waters) where the Contractor's obligations under this Agreement are carried out and **"Regulator"** shall mean each or any one of them;

"Regulatory Delay" means a delay or failure by a Regulator to provide an authorisation, consent, response, approval, notification or agreement required by the Contractor in connection with a Regulatory Process, where:

- (a) the Contractor has complied with Good Industry Practice, all applicable Legislation and its obligations under its Nuclear Site Licence in seeking such authorisation, consent, response, approval, notification or agreement;
- (b) the Contractor has engaged with the Regulator in a transparent and co-operative manner (including where required in accordance with Good Industry Practice the provision to the Regulator of advance notice of the Contractor's future requirement for such authorisation, consent, response, approval, notification or agreement, compliance in a timely manner with any reasonable request or requirement of the Regulator, and ensuring the accuracy and completeness of submissions to the Regulator);
- (c) the period from the Contractor's application, notification or other request (as the case may be) to a Regulator for the authorisation, response, consent, approval, notification or agreement in question has exceeded:
 - (i) where the Regulatory Process is identified in the table set out in the definition of Regulatory Process below, the applicable time period specified in the column headed "Nominal response time (Working Days)" in that table;
 - (ii) where the Regulatory Process is not identified in that table:
 - (A) any applicable statutory time period plus an additional period equivalent to 50% of the applicable statutory time period; or
 - (B) in the absence of any statutory time period, any period suggested by applicable guidance or policy by or in respect of the relevant Regulator plus 50% of the period suggested by such guidance or policy; or
 - (iii) where neither (i) nor (ii) applies, within a period that is the equivalent of 150% of the average time in which similar authorisations, responses, consents, approvals, notifications or agreements are normally granted in a similar situation by that Regulator, taking account of all relevant circumstances;
- (d) such failure or inability on the part of the Regulator to respond or provide its authorisation, response, consent, approval, notification or agreement has not

arisen due to any act or omission on the part of the Contractor that is inconsistent with (a) or (b) above;

"Regulatory Process" means a process relating to the subject matter described under the heading "Regulatory Process" in the table below, provided that, in the case of applications relating to SEPA, EA and Natural Resources Wales (each an **"Environmental Regulator"**):

- (a) where an Environmental Regulator, acting reasonably, determines that there is insufficient information provided by the Contractor to determine the authorisation, consent, response, approval, notification or agreement, it shall be entitled to request additional information, and in such circumstances:
 - (i) the relevant time period set out in the table below shall be suspended until such time as the additional information has been received by the Environmental Regulator; and
 - (ii) where additional information is requested in connection with an application for a non RSR environmental permit or Waste Management Licence or EURATOM (European Atomic Energy Community) Treaty Article 37 application, the time period shall re-commence from the point in time such additional information is received by the Environmental Regulator, as if such application is being made ab initio;
- (b) in the case of a non RSR environmental permit pollution prevention and control applications, the "Nominal response time" excludes time required by an Environmental Regulator to:
 - (i) receive information required by serving a notice; or
 - (ii) determine if a commercial confidentiality or national security request is valid; and
- (c) where an application is advertised, the period during which such advertisement is being made is not counted for the purposes of calculating the time taken by the Environmental Regulator to determine the application;

Regulator	Regulatory Process	Category	Nominal response time (Working Days)
ONR	Safety Case	A	72
		B	30
	Licence Condition 36 change	A	72
		B	20
	Environmental Impact Assessment for (Decommissioning) Regulations 1999	Regulation 13 change	60

	Transportation safety case	Approval	90
EA/Natural Resources Wales	Radioactive Substance Regulation (RSR) Environmental Permit under EPR 2010	New permit	500
		Variation to current permit	125
	EURATOM (European Atomic Energy Community) Treaty Article 37	Submission to DECC or Welsh Assembly Government (including EC)	150
		Opinion from EC	150
	Applications for non RSR Environmental Permit under EPR 2010	New permit	90
		Variation to current permit	45
SEPA	Radioactive Substances Act 1993	New authorisation	500
		Variation to authorisation	125
	Pollution prevention and control	New authorisation	135
		Variation to authorisation	135
	EURATOM (European Atomic Energy Community) Treaty Article 37	Submission to Scottish Executive (including EC)	150
		Opinion from EC	150
	Controlled Activity Regulations	Application for registration	30
		Application for a new licence or variation to a licence	90
	Waste Management Licences	Application for a new licence	90
		Application for a variation to a licence	45

		Application for the transfer of licence	45
Disposal Authority	Letter of Compliance	Initial	125
		Interim	125
		Final	125
Relevant Local Authority, Waste Authority or Planning Authority	Planning process	Environmental Impact Assessment scoping	30
		Environmental Impact Assessment Planning Application	250
		Planning Application – non-Environmental Impact Assessment	75
	Demolition process		30
	Waste licence		30
EA/Natural Resources Wales/SEPA	Transfrontier Shipment of Radioactive Waste	Authorisation to Export	60

"Regulatory Requirements" means any legally enforceable requirement of any Regulator;

"Relevant Partnering Arrangement" means any agreement, other than one which in the Authority's reasonable opinion is entered into in the ordinary course of the Contractor's business, under which any person would, in the reasonable opinion of the Authority, acquire significant influence over either the Contractor's or the Parent Body Organisation's performance of its obligations under this Agreement and/or the Parent Body Agreement;

"Relevant Policies" means the ministry of justice guidance in respect of anti-bribery published in March 2011;

"Relevant Requirements" means all applicable Legislation and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;

"Relevant Variance" has the meaning given to it Paragraph 1.6 (*Calculation of Phase 1 Shareline*) or Paragraph 1.22 (*Calculation of Phase 2 Shareline*) (as applicable) of Part 4B (*Calculation of Target Fee*) of Schedule 6 (*Finance*);

"Relief" means:

- (a) any relief, loss, allowance, exemption, set-off or credit in respect of Tax (including, for the avoidance of doubt, in respect of any research and development expenditure, and any payment by a Taxation Authority in respect thereof);
- (b) any deduction or other relief available in relation to Tax or in the computation of income, profits or gains for the purposes of Taxation; and
- (c) any right to the repayment of Tax, including any repayment supplement and interest;

"Remediation Plan" means a detailed proposal to be prepared by the Contractor in response to a Remediation Notice, setting out how the Contractor will remedy the failure giving rise to the Remediation Notice such that the Authority is, where practicable, placed in no worse a position than that in which it would otherwise have been had such failure not occurred, and how recurrences of such failure will be avoided in future, and such proposal shall include the times by which each step within it shall be achieved;

"Reports" means the reports required by Clause 14.1.2 (*Performance Management, Performance Assurance and Records*);

"Representative" means the Authority's Representative, the Magnox Contractor's Representative or the RSRL Contractor's Representative;

"Required Change Event" has the meaning given in Paragraph 4.4 (*Proposed Change Categorisation*) of Schedule 2 (*Change Control Procedure*);

"Required Parent IP" has the meaning given in Clause 29.3.1.2 (*IP Contributed by Parent Body Organisation – Licence to Authority and Contractor*);

"Requirement" means a particular Authority requirement set out in the Client Specification set out in Schedule 1 (*Client Specification*);

"Re-Sanction" and **"Re-Sanction Submission"** means the obtaining of further Sanction as set out in the Change Control Procedure and PCP-17 (*Sanction*);

"Re-Sanction" has the meaning given to it in Paragraph 7.1.1 (*Re-Sanction*) of Schedule 3 (*Financial Sanction and Validation*);

"Re-Sanction Submission" has the meaning given to it in Paragraph 7.1.2 (*Re-Sanction*) of Schedule 3 (*Financial Sanction and Validation*);

"Residual Scope" has the meaning given to it in Paragraph 1 (*Agreement of Termination State for each Site*) of Part 4D (*Arrangements on Termination for Convenience*) of Schedule 6 (*Finance*);

"Residual Scope %Complete" means, in respect of a Site, the extent of completion of the Residual Scope as at the date of termination, expressed as a percentage of the total amount of activities within the Residual Scope required to Achieve the Termination State at that Site as set out in the LTP Performance Plan, as quantified and assessed by the Contractor acting reasonably and in accordance with Good Industry Practice and any applicable Authority Policies and Procedures;

"Retention Balance" means the balance of any amounts of Target Fee payable to the Contractor pursuant to the Authority's right to withhold and obligation to release such amounts set out in Paragraphs 1.11 and 1.12 (*Retention of Target Fee pending Achievement of Site Completion Dates*) of Part 4C (*Payment of PBI Fee and Target Fee*) of Schedule 6 (*Finance*), as calculated in accordance with Paragraphs 2.8 to 2.10 (*Calculation of the Retention Balance*) of Part 4B (*Calculation of Target Fee*) of Schedule 6 (*Finance*);

"RSRL A Share" means the one (1) A ordinary share of one pound sterling (£1) in the RSRL Contractor;

"RSRL A Shareholder" means the holder of the RSRL A Share for the time being;

"RSRL B Share" means the one (1) B share of one pound sterling (£1) in the RSRL Contractor;

"RSRL B Share Dividend" means such dividend or dividends as are paid or payable to the RSRL B Shareholder in relation to the RSRL B Share from time to time;

"RSRL B Shareholder" means the holder of the RSRL B Share for the time being;

"RSRL Commencement Date LTP" means the RSRL LTP as at the Commencement Date;

"RSRL Contractor's Payments Account" means the bank account of the RSRL Contractor which the RSRL Contractor nominates to the Authority into which drawings made under an Approved Working Capital Facility are paid and which is separate from the RSRL Contractor's Receipts Account;

"RSRL Contractor's Receipt Account" means the bank account of the RSRL Contractor which the RSRL Contractor nominates as such to the Authority;

"RSRL Contractor's Representative" means the person identified as the RSRL Contractor's Representative in Clause 37.7.3 (*Notices*) or any successor appointed to that role in accordance with Clause 37.2.4 (*Change in Representative*);

"RSRL Critical Site IT Systems" means the IT Systems listed in Part B (*RSRL Critical Site IT Systems*) of Schedule 9 (*Information Technology*);

"RSRL Employees" means all persons, whether part-time or full-time, employed or engaged by the RSRL Contractor in the performance of the Tasks and/or the Contractor's other obligations under this Agreement from time to time (but excluding Nominated Staff) and **"RSRL Employee"** shall be construed accordingly;

"RSRL Final Incentive Fee" means the "Final Incentive Fee" as defined in the RSRL Management and Operations Contract;

"RSRL Key Personnel" means the individuals, whether Nominated Staff or Employees, who from time to time are appointed to roles identified by the Authority as key personnel roles in accordance with Clause 31.4 (*RSRL Key Personnel*) and listed in Part 2 (*RSRL*) of Schedule 7 (*Employment*) as amended from time to time;

"RSRL LTP" means the overarching lifetime plan describing the totality of activities required to take the RSRL Sites from their current states to their respective final end states that is in place from time to time prior to the Commencement Date and comprises the documents specified in PCP-07 (*Baseline Management*);

"RSRL Management and Operations Contract" means the site management and operations contract between the Authority and Research Sites Restoration Limited dated 2 February 2009;

"RSRL M&O Contractor's Fee Account" means the bank account nominated as such by the Contractor;

"RSRL Nominated Staff" means the individuals identified as such in the Nominated Staff Plan and, in the case of the members of RSRL Nominated Staff whose appointments are planned as at the Commencement Date, listed in Part 2 (*RSRL*) of Schedule 7 (*Employment*);

"RSRL OPG Receipts Account" means the account which the Authority nominates to the RSRL Contractor as such;

"RSRL Property Deeds of Variation" means the Deeds of Variation to the RSRL Property Leases entered into by the Authority and the RSRL Contractor on or around the Commencement Date for the purpose of addressing consequential variations arising from the expiry of the RSRL Management and Operations Contract and the entry into this Agreement;

"RSRL Property Leases" means the leases of the Winfrith Site and the Harwell Site dated 2 February 2009 and made between the Authority and the RSRL Contractor;

"RSRL Shareholder" means the holder of shares of any class of the Magnox Contractor from time to time;

"RSRL Sites" means the Harwell Site and the Winfrith Site;

"RSRL Year End Sum" means the "Year End Sum" as defined in the RSRL Management and Operations Contract;

"RSS" has the meaning given to it in Paragraph 9.1 (*Schedule of Work Activity Sanctions*) of Schedule 3 (*Financial Sanction and Validation*);

"R&D Relief" means any Relief (including, for the avoidance of doubt, any payment from HMRC) in respect of research and development expenditure, including for the avoidance of doubt any R&D tax relief under Part 13 Corporation Tax Act 2009 or any R&D expenditure credits under Chapter 6A Part 3 Corporation Tax Act 2009;

"Safety Case" means a document to be produced by the Contractor in accordance with the Regulators' requirements which demonstrates (among other things) that the operations of a particular plant or facility have been considered in normal operations and fault conditions and demonstrates that any resulting risk is tolerable;

"Sanction" has the meaning given to it in Paragraph 3.2.4.2 (*Gated Process for Sanction and Validation of Work Activities*) of Schedule 3 (*Financial Sanction and Validation*);

"Sanction Submission" has the meaning given to it in Paragraph 6.1.1 (*Sanction*) of Schedule 3 (*Financial Sanction and Validation*);

"SaV" has the meaning given to it in Paragraph 1 of Schedule 3 (*Financial Sanction and Validation*);

"SaV Procedure" means the sanction and validation procedure as set out in PCP-17 (*Sanction*);

"Schedule of Delegated Authority" means the levels of financial delegated authority against specific Work Activity thresholds specified at Paragraph 16 (*Schedule of Delegated Authority*) of Schedule 3 (*Financial Sanction and Validation*);

"Seconding Employer" means a PBO Affiliate which provides Nominated Staff to the Contractor by means of a Secondment Agreement;

"Secondment Agreement" means an agreement entered into or to be entered into by the Parent Body Organisation, a member of Nominated Staff, the Authority, the Contractor and (if the member of Nominated Staff is not employed by the Parent Body Organisation) the Seconding Employer, in the form attached at:

- (a) Part 3 (*Pro Forma Secondment Agreement*) of Schedule 7 (*Employment*) (where the member of Nominated Staff is seconded to the Magnox Contractor or the RSRL Contractor only); or
- (b) Part 4 (*Pro Forma Joint Secondment Agreement*) of Schedule 7 (*Employment*) (where the member of Nominated Staff is seconded jointly to both the Magnox Contractor and the RSRL Contractor);

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

"Security Plan" means the security plan approved for each Site in accordance with NISR;

"Security Requirements" means all security requirements relating to each Site including those required by the Security Plan and all other security requirements to which a competent manager of a nuclear site would reasonably be expected to adhere;

"Sellafield" means the Authority owned site located near Calderbridge in Cumbria;

"Sellafield Ltd" means the contractor to whom the ONR has granted a Nuclear Site Licence in respect of Sellafield;

"Sensitive Nuclear Information" has the meaning set out in the NISR;

"SEPA" means the Scottish Environment Protection Agency or its successor body from time to time;

"Series of Subcontracts" means more than one Agreement for the procurement of the same or substantially similar goods or services between the Contractor and the same supplier or Subcontractor;

"Shared Service Alliance" means the collaborative procurement initiative of that name established by the Authority and SLCs in 2008/2009 in relation to the sharing of support costs and aggregation of purchasing power and assets across SLCs;

"Shareholders" means the Magnox Shareholder and the RSRL Shareholder;

"Shareline" means the Phase 1 Shareline or Phase 2 Shareline (as applicable);

"Simplified Import VAT Accounting" means the HM Revenue and Customs scheme of that name providing for a facility to traders to reduce the level of financial guarantee required to operate a duty deferment account for VAT purposes;

"Sites" means the Magnox Sites and the RSRL Sites;

"Site Completion Date" means:

- (a) the date on which a Site has achieved its Interim State or Interim End State, as applicable; or
- (b) where the Authority has notified the Contractor that this Agreement will terminate pursuant to Clause 33.1.4 (*Termination by the Authority*) or has notified the Parent Body Organisation that the Parent Body Agreement will terminate pursuant to Clause 19.8 (*Termination for Convenience*) of the Parent Body Agreement, the earlier of:
 - (i) the date on which a Site has achieved its Interim State or Interim End State, as applicable; and
 - (ii) the date on which a Site has achieved its Termination State;

"Site Completion Release" has the meaning given to it in Paragraph 2.8 (*Calculation of Retention Balance*) of Part 4B (*Calculation of Target Fee*) of Schedule 6 (*Finance*);

"Site IT Systems" means IT Systems, including the Critical Site IT Systems, on any Sites or used by or on behalf of the Contractor in respect of such Site(s);

"Site Maintenance Schedule" means, in respect of each Site, a schedule of the planned maintenance of the Site and the planned maintenance, servicing and repair of Authority Assets on the Site to be carried out in accordance with Clause 6.5.2 (*Maintenance of Site and Authority Assets*);

"Site Manager" means the person appointed from time to time by the Contractor pursuant to the terms of Clause 6.5.5 (*Maintenance of Site and Authority Assets*);

"Site Retention" has the meaning given to it in Paragraph 4 (*Release of retention for incomplete Sites*) of Part 4D (*Arrangements on Termination for Convenience*) of Schedule 6 (*Finance*);

"Site Strategic Specification" has the meaning given to it in the Client Specification;

"Site Substantial Completion Date" means:

- (a) in the case of the Trawsfynydd Site, the date on which Authority Milestone reference M93 has been achieved;
- (b) in the case of the Chapelcross Site, the date on which Authority Milestone reference M111 has been achieved;

"Sixth Site" means the notional site having PSWBS category number 36 and 39 in the Magnox LTP;

"Sizewell A Site" means the site at Sizewell demised by a Magnox Property Lease as the same may be varied pursuant to the terms of such Magnox Property Lease from time to time;

"SLC" or **"Site Licence Company"** means a contractor to whom the HSE has granted a Nuclear Site Licence in respect of a site or sites within the NDA estate;

"SLC Meetings" means all meetings held or to be held by the Contractor on any Site (or, in respect of the Commercial Operations Tasks at any other locations which the Contractor uses in its performance of the Commercial Operations Tasks) with or without Third Parties present (and excluding Regulator Meetings if applicable) which are agreed by the Parties prior to each Contract Year;

"SLC Performance Report" means the monthly combination of reports described by that name in Schedule 13 (*Reporting*);

"SLCA Contractor's Fee Account" means the bank account jointly held in the names of the Magnox Contractor and the RSRL Contractor for the receipt of the amounts payable to the Contractor pursuant to Clause 16.11.4.1 (*SLCA Contractor's Fee Account*);

"Socio-Economic Development Plan" means the document to be provided to the Authority by the Contractor pursuant to Clause 9 (*Socio-Economic Development*), provided that for the purposes of the first Contract Year the Socio-Economic Development Plan means the socio-economic development plans for the Sites approved for the year commencing 1 April 2014 pursuant to the Magnox Management and Operations Contract and the RSRL Management and Operations Contract (subject to any changes to those documents agreed by the Parties);

"Socio-Economic Policy" means the Authority's Socio-Economic Policy;

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

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

"Special Parent IP" has the meaning given to it in Clause 29.3.6 (*IP Contributed by Parent Body Organisation*);

"Specification" means the technical data forming the subject matter of each Subcontract or Series of Subcontracts (including benchmarking, performance requirements, procurement of materials (including material component flow) and labour, method statements, deliverability, access requirements, restrictions and limitations, impact and risk assessments, quality management, hours of working, programmes and policies relating to fire safety, safety, training and industrial relations);

"Specific Change in Law" means any Change in Law which falls into one or more of the following categories:

- (a) a Change in Law which relates to the Tasks being carried out at one or more of the Sites and not to similar tasks being carried out at any sites other than the Sites;
- (b) a Change in Law which relates to the Contractor and/or Parent Body Organisation and not to other persons;
- (c) a Change in Law which relates to SLCs, contractors or others that undertake decommissioning activities at nuclear installations and cleaning up operations at or in the vicinity of nuclear sites and/or transportation, storage and/or disposal of nuclear materials (including waste) and not to other persons;
- (d) a Change in Law which relates to the holding of shares in SLCs and not other types of company;
- (e) a Change in Law which relates to the nuclear industry and not to other industries; or
- (f) a Change in Law which relates to Security Requirements.

"Standalone Procurement" means an individual procurement by the Contractor or framework agreement for supply of goods or services, including extensions, amendments or renewals which is not part of a Project, Programme or Customer Contract;

"State Aid Decision" means the European Commission State Aid Decision attached at Schedule 18 (State Aid Decision);

"Strategic Interest" means technologies, processes and systems which are considered by the Authority to be of strategic interest to the Authority, as set out at Annex 1 to Schedule 8 (*Intellectual Property*);

"Strategy Development Support" means support provided by the Contractor to the Authority in accordance with Part 2 - Section 3 (*Strategy Development Support*) of Schedule 1 (*Client Specification*) in relation to the development of strategies and approaches for delivering the Interim States or Interim End State (as appropriate) at the Sites and/or the Authority's longer-term objectives in relation the Sites;

"Subcontract" means any agreement entered into by the Contractor for works goods and/or services required by the Contractor in connection with the performance of its obligations under this Agreement, including Asset Purchases;

"Subcontractor" means any person who has entered into a Subcontract with the Contractor in connection with the performance of the Contractor's obligations under this Agreement;

"Subcontract Strategy" means the detailed strategy for procurement of an individual product or service;

"Sub-Licence" means a sub-licence and/or sub-sub-licence at any tier;

"Sub-Subcontract" means any agreement entered into by any Subcontractor with any Sub-Subcontractor or by any Sub-Subcontractor with any other Sub-Subcontractor relating to the performance of the Contractor's obligations under this Agreement;

"Sub-Subcontractor" means any Contractor not being the Contractor or a Subcontractor entering into any Sub-Subcontract at any level in the supply chain in connection with the services to be provided by the Contractor under this Agreement;

"Supply Chain Strategic Plan" means the plan relating to supply chain management that the Parent Body Organisation submitted as part of its Final Tender and which, as at the Commencement Date, is the plan set out at Appendix 3 of Schedule 5 (*Subcontracting and Procurement*), as revised from time to time in accordance with the Change Control Procedure;

"Target Cost" means the Phase 1 Target Cost or the Phase 2 Target Cost (as applicable);

"Target Fee" means the Phase 1 Target Fee or the Phase 2 Target Fee, as applicable;

"Target Fee Payment Milestone" means a milestone (including any Interim State or Interim End State) set out in Paragraph 2 (*Target Fee Payment Milestones*) of Part 4B (*Calculation of Target Fee*) and in Appendix K (*Target Fee Payment Milestones*) to this Schedule 6 (*Finance*), Achievement of which demonstrates progress towards completion of the Contractor's obligations set out in the Client Specification and will

(subject to the provisions of Part 4B (*Calculation of Target Fee*) of Schedule 6 (*Finance*)) result in a payment of an amount of Target Fee;

"Tasks" means the services, operations, Projects and activities undertaken by the Contractor in the discharge of its obligations under this Agreement;

"Taxation" or "Tax" means all forms of tax, duty, rate, levy, charge or other imposition or withholding whenever and by whatever authority imposed and whether of the United Kingdom or elsewhere, including (without limitation) any tax on gross or net income profit or gains, income tax (including income tax required to be deducted or withheld from or accounted for in respect of any payment), corporation tax, advance corporation tax, capital gains tax, capital transfer tax, inheritance tax, wealth taxes, development land tax, petroleum revenue tax, value added tax, customs duties, excise duties, turnover taxes, bank levy, aggregate tax, landfill tax, climate change levy, construction industry scheme deductions, lottery duty, air passenger duty, insurance premium tax, rates (including the uniform business rate), stamp duty, capital duty, stamp duty reserve tax, stamp duty land tax, annual tax on enveloped dwellings, PAYE, national insurance and other similar contributions, and any other taxes, duties, rates, levies, charges, imposts or withholdings corresponding to, similar to, in the nature of, replaced by or replacing any of them, together with any interest, penalty or fine in connection with any of the foregoing, and regardless of whether any such taxes, duties, rates, levies, charges, imposts, withholdings, interest, penalties or fines are chargeable directly or primarily against or attributable directly or primarily to the Contractor, a subsidiary or any other person and of whether any amount in respect of any of them is recoverable from any other person;

"Taxation Authority" means any local municipal, governmental, state, federal or other fiscal, customs or excise authority, body or official anywhere in the world with responsibility for, and competent to impose, collect or administer, any form of Taxation;

"Term" means the period between (a) the Commencement Date and (b) the Expiry Date or the date on which any earlier termination of this Agreement or the PBA takes effect;

"Termination State" has the meaning given to it in Paragraph 1 (*Agreement of Termination State for each Site*) of Part 4D (*Arrangements on Termination for Convenience*) of Schedule 6 (*Finance*);

"Third Party" means any person other than the Parties, the Parent Body Organisation and Affiliates;

"Third Party IP" has the meaning given in Clause 29.6 (*Third Party IP*);

"Trading Contract" means the trading contract entered into by the Authority and EDF Energy on 31 March 2011 or any trading contract which supersedes the same, under

which the Authority appoints EDF Energy as its contractor and agent to trade electricity, natural gas and other energy commodities;

"Transfer Scheme" means any nuclear transfer scheme made under section 38 of the Energy Act;

"Transfer Scheme Losses" means Costs paid or payable by the Contractor to Third Parties in respect of compensation under Paragraph 11 of Schedule 5 of the Energy Act;

"Transferee Employer" has the meaning given to it in Paragraph 11.1 (*Transfer of Employees*) of Schedule 5 (*Subcontracting and Procurement*);

"Transferor Employer" has the meaning given to it in Paragraph 11.1 (*Transfer of Employees*) of Schedule 5 (*Subcontracting and Procurement*);

"Transition Agreement" means the transition agreement entered into between (1) the Parent Body Organisation and (2) the Authority;

"Transition In Plan" means the plan of the Incoming Parent to enable it (when it is preparing to hold the shares in each Contractor or when it is first holding the shares in each Contractor) to:

- (a) prepare to manage and hold the shares in each Contractor;
- (b) enable each Contractor to continue to comply with Legislation and Regulatory Requirements; and
- (c) enable the Incoming Parent to comply with Legislation and Regulatory Requirements;

"Transition Out" means the period at or before the expiry of the Term referred to in Clauses 34 (*Transition Out*) and 35 (*Transition on Expiry or Termination*);

"Transition Out Plan" means the plan of the Parent Body Organisation to enable it and each Contractor, to continue to comply with Legislation and Regulatory Requirements and to facilitate the Transition In Plan of the Incoming Parent;

"Trawsfynydd Site" means the site at Trawsfynydd demised by a Magnox Property Lease as the same may be varied pursuant to the terms of such Magnox Property Lease from time to time;

"Treaty" means the Treaty establishing the European Community, as amended by the Treaty on European Union;

"**Trend Log**" means a log of trend data undertaken in accordance with the provisions of PCP-05 (*Change Control*);

"**UKAEA**" or "**UKAEA NDPB**" means the United Kingdom Atomic Energy Authority;

"**UKAEA Combined Pension Scheme**" means an unfunded Government backed pension scheme restricted to members of the public sector which is maintained by UKAEA under paragraph 7(2)(b) of Schedule 1 of the Atomic Energy Authority Act 1954;

"**UKAEA Limited**" means UKAEA Limited a company incorporated into England and Wales (Company Registration Number 5597709) whose registered office is at The Manor Court, Chilton, Didcot, Oxfordshire OX11 0RN;

"**UKAEA Restructuring Records Agreement**" means the agreement of that name dated 1 April 2008 between the Nuclear Decommissioning Authority, the United Kingdom Atomic Energy Authority, UKAEA Limited and Sellafield Limited and the deed of adherence dated 2 February 2009 entered into by RSRL Limited;

"**Value for Money**" means the optimum combination of quality and whole life costs (which for the purposes of this definition shall be deemed to include re-procurement and replacement costs at the end of any service provision or the end of any asset's useful life), in order to meet:

- (a) the objectives of any applicable Authority Policies and Procedures;
- (b) the Authority's statutory obligations to the extent relevant to the Sites; and
- (c) the terms and conditions of this Agreement,

but taking into account the entitlement of the Contractor to earn Fee and the risks assumed by the Contractor pursuant to this Agreement;

"**VAT**" means Value Added Tax imposed under the Value Added Tax Act 1994 or any similar tax imposed in addition thereto or in substitution therefore;

"**VATA**" means Value Added Tax Act 1994;

"**Vitiated Insurance Liability**" means any Cost or liability of the Contractor which is or ought to be insured under the Authority Insurances (or an insurance policy taken out by the Contractor in accordance with Clause 18.1.3 (*Authority Insurances*)) from time to time but in respect of which the Authority or the Contractor (as applicable) is either:

- (a) unable to recover under the relevant insurance as a result of any failure by the Contractor to comply with its obligations under this Agreement which renders

the relevant insurance void, voidable, unenforceable, suspended or impaired in whole or in part; or

- (b) required to repay to the insurer under the relevant insurance as a result of any failure by the Contractor to comply with its obligations under this Agreement;

"Waste" means any substance or object which the holder discards or intends or is required to discard;

"Waste Management Licence" has the meaning given to it by the Waste Management Licensing (Scotland) Regulations 2011 or the Environmental Permitting (England and Wales) Regulations 2010 (as applicable to the relevant Site);

"Waste Variance Cost Impact" has the meaning given to it in Paragraph 5 (*Annual adjustment for variance in Radioactive Waste volumes*) of Appendix C (*Adjustments for Radioactive Waste Volumes*) to Schedule 6 (*Finance*);

"Wilful Default" means, in respect of an act or omission, that the person committing such act or omission knows that such act or omission would breach this Agreement and/or the Parent Body Agreement and such person intentionally and freely commits such act or omission (but shall not include any breach of this Agreement committed in the course of Emergency Action that could not reasonably have been avoided);

"Winfrith Site" means the site at Winfrith demised by an RSRL Property Lease as the same may be varied pursuant to the terms of such RSRL Property Lease from time to time;

"Work Activity" means any Task carried out by the Contractor, in-house or procured, which has been identified by the Authority or by the Contractor as requiring Contractor sanctioning (and/or subsequent Authority approval) under Schedule 3 (*Financial Sanction and Validation*) and PCP-17 (*Sanction*).

"Working Capital Costs" means interest and other bank charges incurred by the Contractor in accordance with an Approved Working Capital Facility;

"Working Day" means Monday to Friday except any day which is generally recognised as a public holiday in England and/or in Scotland; and

"Wylfa Site" means the site at Wylfa demised by a Magnox Property Lease as the same may be varied pursuant to the terms of such Magnox Property Lease from time to time.

1.2 Interpretation

Save to the extent that the context or the express provisions of this Agreement otherwise require:

- 1.2.1 in the event of any conflict between the Clauses contained in this Agreement and the Schedules, the Clauses shall take precedence over the Schedules, in the event of any conflict between the Clauses and Schedules and the Authority Policies and Procedures, the Clauses and Schedules take precedence over the Authority Policies and Procedures, in the event of any conflict between the Schedules, Schedule 1 (*Client Specification*) and Schedule 6 (*Finance*) shall take precedence over the remaining Schedules, in the event of any conflict between the Overarching Cost Management Agreement and this Agreement, this Agreement shall take precedence over the Overarching Cost Management Agreement, and if there is any further conflict, this Agreement shall first be read and construed as a whole and any conflict then remaining shall be dealt with under Clause 36 (*Disputes*);
- 1.2.2 in the event of any conflict between the Definitions contained in this Agreement and the definitions contained in the Authority's Policies and Procedures, the Definitions in this Agreement shall take precedence over those contained in the Authority's Policies and Procedures;
- 1.2.3 in the event of any conflict, inconsistency or incompatibility between the body of the PCP-M and the PCP-M Contractor Annexe, the PCP-M Contractor Annexe shall take precedence;
- 1.2.4 headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;
- 1.2.5 all references to Clauses and Schedules are references to clauses of and the schedules to this Agreement and all references to Paragraphs and Parts are references to paragraphs and parts contained in the Schedules;
- 1.2.6 the Schedules (including any appendices to such Schedules) are an integral part of this Agreement and reference to this Agreement includes reference to the Schedules;
- 1.2.7 all references to agreements, procedures, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time;

- 1.2.8 any reference to any statute shall include references to the same as it may have been, or may from time to time be amended, consolidated or re-enacted and to any regulation, instrument or other subordinate legislation made under it (or under such an amendment, consolidation or re-enactment);
- 1.2.9 words importing the singular include the plural and vice versa;
- 1.2.10 words importing a particular gender include all genders;
- 1.2.11 "**person**" includes any individual, partnership, firm, trust, body corporate, government department, corporation sole, governmental body, authority, agency or unincorporated body of persons or association;
- 1.2.12 any reference to a public sector organisation shall be deemed to include a reference to any successor to such public sector organisation or any organisation or entity which has taken over the functions or responsibilities of such public sector organisation;
- 1.2.13 references to "**Party**" and "**Parties**" means a Party or the Parties to this Agreement as applicable;
- 1.2.14 all monetary amounts are expressed in pounds sterling;
- 1.2.15 references in this Agreement to amounts expressed to be Indexed are references to such amounts as they stood at the previous Indexation Adjustment Date (following Indexation pursuant to this Clause), multiplied on each Indexation Adjustment Date by:

Index at date B

Index at date A

where:

Index at date A is the value of the Index published for the September before the previous Indexation Adjustment Date or for the first indexation review, the Index published for the September before the Commencement Date; and

Index at date B is the value of the Index published for the September before the current Indexation Adjustment Date;

- 1.2.16 a reference to a balance sheet or profit and loss account includes a reference to any note forming part of or attached to it;
- 1.2.17 references to the word "**includes**" or "**including**" are to be construed without limitation;

- 1.2.18 references to a document being "**in the agreed form**" means a copy of such document initialled for the purposes of identification by the Parties as of the date hereof;
- 1.2.19 any reference to a Party providing its consent or approval shall be deemed to be a reference to prior written consent or approval;
- 1.2.20 a reference to any "**Site**" shall include any part of that Site;
- 1.2.21 any reference to "**the Contractor**" shall be construed as a reference to the Magnox Contractor and the RSRL Contractor together, and the liability of the Magnox Contractor and the RSRL Contractor under or in relation to this Agreement shall be joint and several; and
- 1.2.22 all references to a time of day are references to UK time.

PART 2: Term and Transition

2 COMMENCEMENT AND DURATION

- 2.1 This Agreement shall commence on the Commencement Date and shall (subject to any earlier termination in accordance with its terms, and subject to any Clauses of this Agreement that survive such termination pursuant to Clause 37.20 (*Continuing Obligations*)) remain in full force and effect until the Expiry Date.

PART 3: Core Obligations

3 WARRANTIES

- 3.1 Without prejudice to any warranties or conditions either express or implied by any applicable Legislation, the Contractor warrants and undertakes that as at the Commencement Date it is duly incorporated under the laws of England and Wales and each of the Contractor and the Authority warrants and undertakes to the other that as at the Commencement Date:
 - 3.1.1 it has the legal right and requisite power and authority to enter into and exercise its rights and perform its obligations under this Agreement and any other related documents which, when executed, will constitute valid and binding obligations on it in accordance with its terms; and
 - 3.1.2 it has taken all necessary action to authorise the execution and the performance of its obligations under this Agreement and any other related documents.
- 3.2 Each of the Contractor and the Authority confirms to the other that:

- 3.2.1 in entering into this Agreement it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out in this Agreement, the Transition Agreement, the Parent Body Agreement, the Parent Company Guarantees or Alternative Credit Support (as appropriate), the Nuclear Indemnity, the Magnox Property Leases or the RSRL Property Deeds of Variation; and
- 3.2.2 in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, its only rights or remedies in relation to any breach, representation, warranty, assurance, covenant, indemnity, guarantee undertaking or commitment given or action taken, omission or default arising out of or in connection with, or termination of this Agreement, the Transition Agreement, the Parent Body Agreement, the Parent Company Guarantees or Alternative Credit Support (as appropriate), the Nuclear Indemnity, the Magnox Property Leases or the RSRL Property Deeds of Variation or the documents referred to in them are those available under (including for breach of) this Agreement, the Transition Agreement, the Parent Body Agreement, the Parent Company Guarantees or Alternative Credit Support (as appropriate), the Nuclear Indemnity, the Magnox Property Leases or the RSRL Property Deeds of Variation or the documents referred to in them, and for the avoidance of doubt and without limitation, each of the Contractor and the Authority has no other right or remedy, whether by way of a claim for contribution or otherwise, in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in, this Agreement) or otherwise howsoever.
- 3.3 On entering into this Agreement, the Contractor shall be deemed to have:
- 3.3.1 satisfied itself as to the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Agreement; and
- 3.3.2 gathered all information necessary to perform its obligations under this Agreement.
- 3.4 Without prejudice to the Contractor's rights under the Change Control Procedure in the event of a change to or inaccuracy in the position identified in an Authority Assumption, the Contractor shall not be relieved from any obligation under this Agreement nor shall it be entitled to claim against the Authority on grounds that any information, whether obtained from the Authority or otherwise (including information made available by the Authority) is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

4 CONTRACTOR'S OBLIGATIONS

4.1 Standard of Performance

The Contractor shall at all times act and perform its obligations under this Agreement (including compliance with the requirements of the Client Specification):

- 4.1.1 in a safe, secure, efficient and cost-effective manner;
- 4.1.2 in accordance with Good Industry Practice;
- 4.1.3 in accordance with all applicable Legislation and with the Contractor's obligations under its Nuclear Site Licence;
- 4.1.4 in a transparent and co-operative manner with both the Authority and the Regulators;
- 4.1.5 in relation to all aspects of any works, Tasks, services or undertakings in accordance with the requirements of this Agreement;
- 4.1.6 in a manner that will facilitate the fulfilment by the Authority of its statutory functions and duties and does not place the Authority in breach of such functions and duties;
- 4.1.7 in a manner that would reasonably be expected not to lower the reputation of the Authority in the eyes of any Third Party, provided that no action taken by the Contractor pursuant to and in accordance with Clause 36 (*Disputes*) shall amount to a breach of this Clause 4.1.7 (*Contractor's Obligations*);
- 4.1.8 with integrity, impartiality, objectivity and confidentiality, and avoiding conflicts of interest (and for the avoidance of doubt, notifying the Authority promptly of any potential for conflict of interest which arises);
- 4.1.9 in accordance with the Authority Policies and Procedures; and
- 4.1.10 having due regard to the Contract Management Plan (provided that the Contract Management Plan is not intended to impose additional obligations on the Parties nor limit the obligations of the Parties under this Agreement).

4.2 Nature of Contractor's Obligations

- 4.2.1 The Contractor shall perform the Mandatory Services.
- 4.2.2 The Contractor shall, subject to Clause 4.2.1 (*Nature of Contractor's Obligations*) and to any Authority Directions or the exercise of any right expressly reserved to the Authority in this Agreement:

- 4.2.2.1 deliver the Client Specification Completion State;
- 4.2.2.2 be responsible for obtaining and maintaining all Necessary Consents required for the performance of its obligations under this Agreement and for implementing each Necessary Consent within the period of its validity in accordance with its terms and relevant Legislation;
- 4.2.2.3 obtain the relevant approvals from the Authority in a timely manner in accordance with the provisions of this Agreement;
- 4.2.2.4 at the request of the Authority (where such request would not place the Contractor in breach of the terms of any Subcontract entered into in accordance with this Agreement) and subject to Clauses 26 (*Freedom of Information*) and 29 (*Intellectual Property*), share (including with the Authority, the SLCs and any subsidiaries of the Authority) information in possession of the Contractor in relation to processes, knowledge, experience and know-how and participate in initiatives made by the Authority in relation to such sharing and shall co-operate with the Authority or its nominee to facilitate such sharing (provided that this Clause 4.2.2.4 (*Nature of Contractor's Obligations*) shall not require the Contractor to disclose commercially sensitive Information relating to the Parent Body Organisation or any PBO Affiliates (other than in their capacity as Subcontractors or Sub-Subcontractors));
- 4.2.2.5 maintain its membership of the Compensation Scheme for Radiation-Linked Diseases ("**CSRLD**") and provide administrative facilities in relation to the CSRLD the same as or similar to those provided at the Commencement Date, provided that:
 - 4.2.2.5.1 the Contractor will reimburse costs reasonably incurred by either the Parent Body Organisation or a Seconding Employer in complying with their respective obligations under Secondment Agreements to take all reasonable steps to provide a secondee who is a member of the Nominated Staff with access to the CSRLD; and
 - 4.2.2.5.2 for the avoidance of doubt, costs reimbursed by the Contractor in accordance with Clause 4.2.2.5.1 above, shall be Costs as defined in this Agreement and treated accordingly;

- 4.2.2.6 not use any Site for any purpose other than the Permitted Use ("**Non-Specification Activities**") without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed), and any such Non-Specification Activities to which the Authority consents shall be carried out by the Contractor in accordance with any conditions contained in such Authority's consent;
 - 4.2.2.7 not use any Site for the purposes of carrying out Non-Funded Activities without the prior written consent of the Authority and any Non-Funded Activities to which the Authority consents shall be carried out by the Contractor in accordance with the terms and conditions contained in the Authority's consent, such consent not to be unreasonably withheld or delayed. The Authority may take into consideration Authority Policies and Procedures when determining whether or not to withhold consent. Non-Funded Activities undertaken pursuant to an Existing Agreement shall not be a breach of this Clause 4.2.2.7 (*Nature of Contractor's obligations*);
 - 4.2.2.8 comply with the Contractor Customer Contracts in accordance with their terms; and
 - 4.2.2.9 hereby acknowledge that the Authority is bound by the State Aid Decision and the Contractor shall co-operate with the Authority and provide such information and assistance as the Authority may require to enable the Authority to fulfil its obligations to the European Commission pursuant to the State Aid Decision.
- 4.2.3 During the Consolidation Phase the Contractor will comply with the obligations set out in Paragraph 1.4 (*LTP Performance Plan*) of Schedule 2 (*Change Control Procedure*).
- 4.2.4 The Contractor shall give the Authority no less than twelve (12) Months' (or such other period as may be agreed by the Parties acting reasonably) notice of the date on which it proposes to commence the activities allocated in the LTP Performance Plan to Phase 2, and shall not:
- 4.2.4.1 commence the activities allocated to Phase 2 in the LTP Performance Plan without the prior written approval of the Authority;
 - 4.2.4.2 incur or invoice Costs allocated to Phase 2 in the LTP Performance Plan without first obtaining either the prior written approval of the

Authority pursuant to Clause 4.2.4.1 (*Nature of Contractor's Obligations*) above or an Advance Agreement in respect of such Costs.

4.3 **Co-operation**

4.3.1 The Contractor shall co-operate with the Authority and provide such reasonable assistance to the Authority as the Authority requests from time to time in relation to this Agreement and/or the Authority's statutory duties and functions.

4.3.2 The Magnox Contractor shall provide all assistance and information reasonably requested by the Authority to enable the Authority to calculate the Magnox Final Incentive Fee and/or Magnox Year End Sum in accordance with the Magnox Management and Operations Contract.

4.3.3 The RSRL Contractor shall provide all assistance and information reasonably requested by the Authority to enable the Authority to calculate the RSRL Final Incentive Fee and/or RSRL Year End Sum in accordance with the RSRL Management and Operations Contract.

4.4 **Prohibited Acts**

Contractor Warranty and Undertaking

4.4.1 The Contractor warrants that:

4.4.1.1 in entering into this Agreement it has not committed any Prohibited Act;

4.4.1.2 it shall comply with and shall not contravene the Relevant Requirements;

4.4.1.3 it has and will throughout the duration of this Agreement have in place adequate procedures (as referred to in section 7 (2) of the Bribery Act 2010) designed to prevent persons associated with the Contractor from bribing any person with the intention of obtaining or retaining business for the Contractor or with the intention of obtaining or retaining advantage in the conduct of business for the Contractor;

4.4.1.4 it shall not do, or omit to do, any act that will cause or lead the Authority to be in breach of any of the Relevant Requirements;

- 4.4.1.5 so far as any of the Nominated Staff are aware, except to the extent notified to the Authority in writing prior to the Commencement Date, neither the Contractor nor the Parent Body Organisation nor any Affiliate or Subcontractor (or anyone employed by or acting on behalf of any of them) or any of their affiliates or agents or shareholders has been (in the three (3) years prior to the Commencement Date) or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Relevant Requirements; and
 - 4.4.1.6 if requested, it shall provide the Authority with any reasonable assistance to enable the Authority to perform any activity required by any relevant government agency in any relevant jurisdiction for the purpose of compliance with the Relevant Requirements relating to or required in connection with this Agreement.
- 4.4.2 To the extent permitted by law, the Contractor shall immediately notify the Authority if, at any time during the term of this Agreement, it concludes that it or the Parent Body Organisation or any Affiliate, Subcontractor or Sub-Subcontractor (or anyone employed by or acting on behalf of any of them) or any of its or their affiliates or agents or shareholders who are performing services or providing goods in connection with this Agreement:
- 4.4.2.1 engages in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - 4.4.2.2 has been or is listed by any government agency in the European Union or United States of America as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts; or
 - 4.4.2.3 has committed any offence relating to a Relevant Requirement.
- 4.4.3 The Contractor shall not, and shall use reasonable endeavours to procure that the Parent Body Organisation, any Subcontractor or Sub-Subcontractor (or anyone employed by or acting on behalf of any of them) or any Affiliates (or Subcontractors' or Sub-Subcontractors' affiliates) shall not, commit a Prohibited Act.

4.5 **Assumption of Existing Agreements**

- 4.5.1 Subject to Clause 4.5.2, all extant rights and obligations under all Existing Agreements shall continue in full effect in accordance with the terms of those agreements.
- 4.5.2 Within ninety (90) Calendar Days of the Commencement Date, or such later date as the Authority may determine and notify to the Contractor, the Authority shall review the provisions of all Existing Agreements with the Outgoing Parents or the Outgoing Parent Affiliates entered into between the date of the Transition Agreement and the Commencement Date (“**Recent Existing Agreements**”).
- 4.5.3 If any Recent Existing Agreement with an Outgoing Parent or Outgoing Parent Affiliate does not comply with the requirements of Paragraph 16 (*Flowdown of Contractual Provisions*) of Schedule 5 (*Subcontracting and Procurement*), or, in the Authority's reasonable opinion, has terms relating to price which do not provide value for money, the Authority will require that the Contractor provides written justification for the non-compliant terms and/or the terms relating to price. The Authority may require the Contractor to renegotiate any non-compliant terms or terms relating to price so that the Recent Existing Agreement is fully compliant with Clause 16 (*Flowdown of Contractual Provisions*) of Schedule 5 (*Subcontracting and Procurement*) and/or provides, in the Authority's reasonable opinion, value for money (having regard to the cost of such renegotiation) and the Contractor shall provide evidence to the Authority within a timeframe determined by the Authority (acting reasonably) of such full compliance.
- 4.5.4 If, in the reasonable opinion of the Authority, a Recent Existing Agreement with an Outgoing Parent or Outgoing Parent Affiliate is not necessary to the Contractor's performance of its obligations under this Contract it shall require that the Contractor exercise its rights to terminate such Recent Existing Agreement for convenience within a timeframe determined by the Authority acting reasonably.

4.6 **Magnox Property Leases and RSRL Property Leases**

- 4.6.1 On the later of (i) the date on which the ONR grants consent to the same and (ii) the Commencement Date, the Authority shall grant and the Magnox Contractor shall accept the Magnox Property Leases, which shall be substantially in the form set out in Part B (*Template Magnox Property Leases*) of Schedule 16 (*Property*). Subject to any rents and other charges payable in accordance with the terms of the Magnox Property Leases, no purchase price

or deposit is payable in connection with the grant of the Magnox Property Leases.

4.6.2 The Authority and the Magnox Contractor confirm that:

4.6.2.1 The Authority served a notice in respect of each Magnox Property Lease on the Magnox Contractor, as required by section 38A(3)(a) of the Landlord and Tenant Act 1954 and which apply to each tenancy to be created by the Magnox Property Leases, before this agreement was entered into; and

4.6.2.2 Inderjit Parmar, who was duly authorised by the Magnox Contractor to do so, made a statutory declaration dated 8 April 2014 in accordance with the requirements of section 38A(3)(b) of the Landlord and Tenant Act 1954.

4.6.3 The Authority will grant the Magnox Property Leases to the Magnox Contractor free from encumbrances other than:

4.6.3.1 any matters, other than financial charges, contained or referred to in the entries or records made in registers maintained by HM Land Registry;

4.6.3.2 [Not used]

4.6.3.3 [Not used]

4.6.3.4 [Not used]

4.6.3.5 [Not used]

4.6.3.6 [Not used]

4.6.3.7 any matters which are, or would be (where applicable), unregistered interests which override first registration under Schedule 1 to the Land Registration Act 2002;

4.6.3.8 rights for any part of the Sites to be used from time to time as a public highway and/or public footpath and/or public cycleway;

4.6.3.9 all other covenants, easements, restrictions or other matters which affect the Sites.

4.6.4 Where the Magnox Property Leases and/or the RSRL Property Deeds of Variation have not been entered into prior to the Commencement Date, the Authority shall use all reasonable endeavours to procure that prior to the entry

into the Magnox Property Leases and/or the RSRL Property Deeds of Variation, the Magnox Contractor or RSRL Contractor (as appropriate) is provided with everything required by HM Land Registry or the Keeper of the Land Register of Scotland (as applicable) to register the Magnox Property Leases and/or the RSRL Property Deeds of Variation at HM Land Registry or the Keeper of the Land Register of Scotland (as applicable), including (without limitation):

4.6.4.1 any certificates or other confirmations required to comply with restrictions on HM Land Registry or Keeper of the Land Register of Scotland (as applicable) title to the Authority's interest in the Sites (subject to the Magnox Contractor and/or the RSRL Contractor (as applicable) first complying with any underlying obligations on its own part in respect of the same; and

4.6.4.2 signed forms to remove any redundant restrictions on HM Land Registry or Keeper of the Land Register of Scotland (as applicable) title to the Authority's interest in the Sites (where the Authority deems applicable).

4.6.5 The Authority shall use all reasonable endeavours to assist with responses to requisitions raised by HM Land Registry or the Keeper of the Land Register of Scotland (as applicable) in relation to the registration of the Magnox Property Leases and/or the RSRL Property Deeds of Variation.

4.7 Provision of Call-Off Support to the Authority

4.7.1 If during the Term the Authority requires additional support of the type referred to in Schedule 20 (*Call-Off Support*) from the Contractor, the Contractor shall comply with the obligation in Schedule 20 (*Call-Off Support*).

4.8 Property Obligations

4.8.1 The Contractor shall attend meetings and tribunals with the Authority if requested and give such support as the Authority reasonably requires in relation to ensuring Sites' rating liabilities are mitigated to the extent reasonably practicable.

4.8.2 Before applying for planning permission, the Contractor shall agree with the Authority a strategy for communicating with the local community and the Contractor shall consult with the Authority regarding any conditions imposed by any planning consents.

- 4.8.3 If requested by the Authority, the Contractor shall negotiate the heads of terms for the new occupation of any part of the Sites by a third party with a view to achieving the open market rack rental value in the circumstances and taking professional advice from a firm of chartered surveyors, unless inconsistent with the Contractor's obligations under this Agreement and provided always that the Contractor shall not be required to seek an open market rack rental value where the proposed third party occupier is a contractor or subcontractor of the Contractor and will occupy part of the Site solely to discharge its contractual duties to the Contractor.
- 4.8.4 The Contractor shall attend quarterly (or such other frequency as the Authority may determine) property management meetings with the Authority's property manager (or such other person nominated by the Authority).
- 4.8.5 The Contractor shall provide to the Authority information reasonably required by the Authority in relation to valuation(s) of the Sites undertaken by or on behalf of the Authority for insurance purposes in the form and by the dates notified by the Authority.

5 RIGHTS AND OBLIGATIONS OF AUTHORITY

5.1 Authority Directions

- 5.1.1 Nothing in this Clause 5.1 (*Authority Directions*) shall, or is intended to:
- 5.1.1.1 bind the Authority as to the particular manner in which any statutory power is exercised in the future; and/or
 - 5.1.1.2 otherwise act as a fetter on the future discretion of the Authority in exercising its rights or acting in accordance with its obligations under public law.
- 5.1.2 Without prejudice to Clause 5.1.1 (*Authority Directions*) above, the Contractor shall be relieved from the duty to comply with any Authority Direction and shall have no liability resulting from any such Authority Direction unless:
- 5.1.2.1 a Contractor Default has occurred;
 - 5.1.2.2 the Authority has issued a termination notice in accordance with Clause 33.1 (*Termination by the Authority*);
 - 5.1.2.3 at any time the Authority believes, in its sole opinion, that in view of the national interest, the requirements of national security, the occurrence of a state of war or other emergency (whether or not involving hostilities), the occurrence or possible occurrence of a

major accident, crisis or national disaster, it is necessary or desirable for the Authority to exercise its powers under section 18 of the Energy Act; and/or

5.1.2.4 at any time the Authority believes, in its sole opinion, that a grievous risk to life or limb of any person or a serious risk to property, the Environment or the security of any Site or national security exists.

5.1.3 For the avoidance of doubt, in the event of the occurrence of any one or more of the circumstances specified in Clauses 5.1.2.1 to 5.1.2.4 (*Authority Directions*) above, notwithstanding any other provision of this Agreement, the Authority shall notify the Contractor that such circumstances exist, and:

5.1.3.1 the Contractor shall comply with any relevant Authority Direction (and shall be subject to its statutory duty to do so under section 18 of the Energy Act);

5.1.3.2 the Contractor shall be relieved of its duty to perform its obligations under this Agreement, to the extent that compliance with the terms of such Authority Direction is inconsistent with the performance of any of such obligations (but the Contractor shall continue to perform its remaining obligations under this Agreement save as otherwise specified in the relevant Authority Direction); and

5.1.3.3 the Authority shall, when giving any Authority Direction, act in accordance with its powers under the Energy Act.

5.1.4 Anything done by the Contractor in response to any Authority Direction shall be deemed to be a Task and (save to the extent the provisions of this Agreement are inconsistent with such Authority Direction) the provisions of this Agreement shall apply notwithstanding the Contractor's statutory obligation to comply with such Authority Direction pursuant to the Energy Act.

5.1.5 The Authority shall not be entitled to issue an Authority Direction that places the Contractor in breach of any Legislation or a Nuclear Site Licence.

5.2 **Not wilfully impede performance of the Tasks**

5.2.1 Without prejudice to Clause 5.1 (*Authority Directions*), and its rights under this Agreement, the Authority shall not wilfully or recklessly impede the Contractor in performing its obligations under this Agreement, and shall not unreasonably withhold or delay any consent in its capacity as landlord under any Property

Lease that would impede the Contractor in performing its obligations under this Agreement.

5.3 Authority Responses

5.3.1 Unless otherwise expressly specified in this Agreement or agreed between the Parties (each acting reasonably) where the Authority is required to respond in writing to the Contractor on any matter, the Authority shall use reasonable endeavours to do so within twenty (20) Working Days, or such other default period as the Parties may (acting reasonably) agree, of receipt of such a request.

5.3.2 Where the Authority does not respond:

5.3.2.1 within a period expressly specified in this Agreement or agreed between the Parties (each acting reasonably); or

5.3.2.2 where no such period is so specified or agreed, within twenty (20) Working Days, or such other default period as the Parties may (acting reasonably) agree,

and there is a material impact on the cost or schedule of the Tasks as a result of such Authority delay, this shall constitute a Dependency Event.

5.4 Electricity Interface Obligations

5.4.1 The Authority shall fulfil its obligations and shall procure that EDF Energy and/or Sellafield Ltd fulfils its obligations as set out in Part 1 (*Allocation of Responsibilities under Industry Documents*) and Part 2 (*EDF Interfaces*) of Schedule 17 (*Electricity Interface Obligations*).

5.4.2 The Contractor shall fulfil its obligations as set out in Part 1 (*Allocation of Responsibilities under Industry Documents*) and Part 2 (*EDF Interfaces*) of Schedule 17 (*Electricity Interface Obligations*).

5.4.3 To the extent that the Contractor is aware or ought reasonably to have been aware that any of the obligations set out in Part 1 (*Allocation of Responsibilities under Industry Documents*) and Part 2 (*EDF Interfaces*) of Schedule 17 (*Electricity Interface Obligations*) are inaccurate or incomplete, it shall notify the Authority as soon as reasonably practicable.

5.4.4 The Authority shall be relieved from its obligations, and from procuring that EDF Energy and/or Sellafield Ltd fulfils its obligations, as set out in Part 1 (*Allocation of Responsibilities under Industry Documents*) and Part 2 (*EDF Interfaces*) of Schedule 17 (*Electricity Interface Obligations*), or part thereof, to

the extent that the Authority and/or EDF Energy and/or Sellafield Ltd is unable to fulfil those obligations as a result of the Contractor's failure to fulfil its obligations in Part 1 (*Allocation of Responsibilities under Industry Documents*) and Part 2 (*EDF Interfaces*) of Schedule 17 (*Electricity Interface Obligations*).

5.4.5 The Contractor shall be relieved from its obligations as set out in Part 1 (*Allocation of Responsibilities under Industry Documents*) and Part 2 (*EDF Interfaces*) of Schedule 17 (*Electricity Interface Obligations*), or part thereof, and shall not have any other liability to the Authority under this Agreement in respect of any breach of those obligations, in each case to the extent that the Contractor is unable to fulfil its obligations under this Agreement as a result of the Authority's failure to fulfil its obligations and/or the Authority's failure to procure the fulfilment by EDF Energy and/or Sellafield Ltd of its obligations in Part 1 (*Allocation of Responsibilities under Industry Documents*) and Part 2 (*EDF Interfaces*) of Schedule 17 (*Electricity Interface Obligations*).

5.4.6 The Authority shall be responsible for and release and indemnify the Contractor on demand from and against all liability for all third party actions, claims and demands and associated costs, charges and expenses (including legal expenses) which may arise out of, or in consequence of, or otherwise as a result of the Authority's failure to fulfil in whole or in part its obligations and/or to procure fulfilment by EDF Energy and/or Sellafield Ltd in whole or in part their respective obligations set out in Part 1 (*Allocation of Responsibilities under Industry Documents*) and Part 2 (*EDF Interfaces*) of Schedule 17 (*Electricity Interface Obligations*), except to the extent that such liabilities arise out of, or in consequence of, a failure by the Contractor to comply with its obligations under Clause 5.4.2 (*Electricity Interface Obligations*) above.

5.4.7 The Contractor's liability to the Authority in relation to any failure by the Contractor to comply with the Contractor's obligation set out at paragraph 5.1 of Schedule 1 (*Client Specification*) to maximise output of electricity generation from the Authority's operational power stations shall be limited to the loss by the Contractor of the whole or part of any PBI Fee associated with such electricity generation that might otherwise have been payable by the Authority to the Contractor.

5.5 **The Authority's Right to Instruct**

5.5.1 The Authority shall be entitled to amend the Parties' obligations as set out in Part 1 (*Allocation of Responsibilities under Industry Documents*) and Part 2 (*EDF Interfaces*) of Schedule 17 (*Electricity Interface Obligations*) where, in the Authority's reasonable opinion, such amendment:

- 5.5.1.1 is required to reflect the Authority's obligations and/or EDF Energy's obligations under the Trading Contract;
 - 5.5.1.2 would materially enhance the Contractor's and/or the Authority's and/or EDF Energy's ability to fulfil its obligations as set out in Part 1 (*Allocation of Responsibilities under Industry Documents*) and Part 2 (*EDF Interfaces*) of Schedule 17 (*Electricity Interface Obligations*); or
 - 5.5.1.3 would materially enhance the Authority's ability to fulfil its obligations to any other SLC.
- 5.5.2 The Authority (acting reasonably) shall submit its instructions in respect of an amendment to Part 1 (*Allocation of responsibilities under Industry Documents*) and Part 2 (*EDF Interfaces*) of Schedule 17 (*Electricity Interface Obligations*) to the Contractor setting out:
- 5.5.2.1 the grounds upon which the instruction is given; and
 - 5.5.2.2 the amendments required.
- The instructions of the Authority in respect of such an amendment shall take into account the obligations and duties placed on the Contractor by applicable Law and Regulatory Requirements (including applicable requirements under the Industry Documents (as defined in Schedule 17 (*Electricity Interface Obligations*)) to which the Contractor is a party), in order to avoid conflict between such instructions and those obligations and duties.
- 5.5.3 The Authority shall be entitled at any time during the Term to:
- 5.5.3.1 notify the Contractor of its intention to remove the Maentwrog hydro-electric power station from the scope of this Agreement; and/or
 - 5.5.3.2 instruct the Contractor to cease electricity generation at the Wylfa nuclear power station.
- 5.5.4 The Contractor shall co-operate with the Authority and provide the Authority with all reasonable assistance requested by or on behalf of the Authority to support any due diligence activities, access for third parties and the provision of all reasonable information to support any alternative arrangements that the Authority wishes to effect in relation to the Maentwrog hydro-electric power station.

5.5.5 Any instruction issued by the Authority pursuant to Clause 5.5.3 (*The Authority's Right to Instruct*) shall be deemed to be a Proposed Change initiated by the Authority pursuant to Paragraph 4.2 (*Initiation of a Proposed Change*) of Schedule 2 (*Change Control Procedure*) and shall be subject to the following:

5.5.5.1 where such instruction or notification relates to Clause 5.5.3, the Authority shall pursuant to paragraph 4.2 of Schedule 2 (*Change Control Procedure*) provide the Contractor with at least 6 (six) months' prior notice;

5.5.5.2 the Contractor shall not be entitled to any adjustment to the ASFL;

5.5.5.3 the Contractor shall not be entitled to any increase to the Phase 1 Target Cost or Phase 2 Target Cost pursuant to paragraph 6.2(a) of Schedule 2 (*Change Control Procedure*);

5.5.5.4 the Contractor shall not be entitled to any amount or adjustment in respect of any loss of anticipated PBI Fee relating to electricity generation; and

5.5.5.5 such Proposed Change shall entail such appropriate change(s) to Schedule 17 (*Electricity Interface Obligations*) and the Client Specification as may be required to reflect the removal of the Maentwrog hydro-electric power station and/or electricity generation at the Wylfa nuclear power station from the scope of this Agreement.

5.6 Electricity Generated

5.6.1 The Authority shall hold all rights and benefits arising from all electricity generated at the Sites and such electricity shall be and become an Authority Asset (provided that Clause 6 (*Asset Management*) below shall not apply to such Authority Asset).

PART 4: Ancillary Obligations

6 ASSET MANAGEMENT

6.1 Right to deal with Authority Assets

6.1.1 From the Commencement Date and for the Term, the Authority licences the Contractor to use the Authority Assets (insofar as the same are not demised by the Magnox Property Leases or the RSRL Property Leases) to enable the Contractor to:

6.1.1.1 perform the Tasks; and

6.1.1.2 discharge its obligations pursuant to Nuclear Site Licences and all other relevant Regulatory Requirements,

but, save where expressly authorised by this Agreement, the Contractor may not sell, dispose, let or otherwise part with the possession of Authority Assets without the prior written consent of the Authority.

6.1.2 The licence granted to the Contractor by Clause 6.1.1 (*Right to deal with Authority Assets*) above is personal to the Contractor and shall not be capable of being assigned or in any way otherwise dealt with or disposed of.

6.1.3 The Contractor shall not by virtue of the licence granted by Clause 6.1.1 (*Right to deal with Authority Assets*) above (or otherwise) claim to be or become entitled to any estate right or interest in or exclusive possession of the Authority Assets.

6.2 **Objects of Antiquity or Value**

The Contractor shall notify the Authority of all objects of antiquity or value discovered in the course of the performance of this Agreement. All such objects shall belong to and be at the disposal of the Authority.

6.3 **Condition of Authority Assets**

The Authority does not give any warranty as to the condition of the Authority Assets.

6.4 **Use of Authority Assets**

6.4.1 The Contractor shall not, without the prior written consent of the Authority, use the Authority Assets other than in fulfilment of its obligations under this Agreement, applicable Legislation and/or Regulatory Requirements.

6.4.2 The Authority shall be entitled to require that:

6.4.2.1 any movable Authority Asset be redeployed for use on behalf of the Authority at any place outside the Sites, provided that such redeployment will not impede or prevent the Contractor from performing its obligations under this Agreement; and/or

6.4.2.2 the Contractor utilises any other movable asset deployed to any Site by the Authority in the Contractor's performance of its obligations under this Agreement,

provided that any such requirement shall be subject to the provisions of the Change Control Procedure where relevant.

6.4.3 The care and maintenance of any Authority Asset redeployed pursuant to Clause 6.4.2.1 (*Use of Authority Assets*) above shall not be the responsibility of the Contractor until such time as the Authority Asset is returned to the relevant Site. The care and maintenance of any other movable asset deployed to the relevant Site pursuant to Clause 6.4.2.2 (*Use of Authority Assets*) above shall be the responsibility of the Contractor until such movable asset is removed from the Site with the Authority's consent.

6.5 **Maintenance of Sites and Authority Assets**

6.5.1 The Contractor shall maintain the Sites (or shall procure that the Sites are maintained) in accordance with the Contractor's obligations set out in the Client Specification and shall maintain, service and repair the Authority Assets (or shall procure that the Authority Assets are maintained, serviced and repaired) in accordance with its Internal Procedure relating to asset management and Good Industry Practice.

6.5.2 The Contractor shall maintain a current and accurate Site Maintenance Schedule for each Site and supply a copy of that schedule to the Authority as soon as reasonably practicable upon request.

6.5.3 [Not used]

6.5.4 The Contractor shall maintain the Asset Register throughout the Term as current and accurate and shall allow the Authority to inspect the Asset Register at any time upon reasonable notice.

6.5.5 [Not used]

6.5.6 [Not used]

6.6 **Efficient Use of Authority Assets**

The Contractor shall use its reasonable endeavours to assist the Authority in the efficient use of Authority Assets in the delivery of the Client Specification Completion State such that where it represents Value for Money, the Contractor shall use Authority Assets that are available to the Contractor from Authority sites other than the Sites rather than procuring New Assets.

6.7 **Disposal of Authority Assets**

6.7.1 Where the Contractor no longer requires any Authority Asset to deliver the Interim State or Interim End State of a particular Site, the Contractor shall, acting reasonably, determine whether or not such Authority Asset may be reused or redeployed at another Site for the purposes of delivering the Client Specification Completion State and shall, to the extent reasonably practicable, reuse or redeploy such Authority Assets in accordance with such determination. Where the Contractor no longer requires a particular Authority Asset to deliver the Client Specification Completion State, the Contractor shall, acting reasonably, determine whether or not such Authority Asset may be used (directly or indirectly) for the benefit of the Authority by another SLC for the purposes of delivering services to the Authority provided that:

6.7.1.1 the Contractor shall not be required to take into account any potential benefit to another SLC or the Authority of the potential onward sale or transfer of such Authority Asset to any Third Party (including the potential scrap value to such SLC or the Authority relating to such Authority Asset);

6.7.1.2 the likely benefit to the Authority or another SLC of using such Authority Asset (when compared to procuring a New Asset) shall be greater than nominally five thousand pounds sterling (£5,000) (net of any costs of transit, storage or sale of such Authority Asset).

6.7.1A The Contractor's obligation under Clause 6.7.1 (*Disposal of Authority Assets*) above to determine whether or not Authority Assets may be used for the benefit of the Authority by another SLC shall not apply to Authority Assets resulting from the demolition of infrastructure on the Sites that prior to such demolition may reasonably have been considered to form an integral part of the fabric of such infrastructure. Six (6) months prior to the demolition of any such infrastructure or such other period as the Parties may agree, the Contractor shall notify the Authority as to the categories of materials that it reasonably considers form an integral part of the fabric of such infrastructure. Such categories of material shall include or be similar in nature to steelwork and ferrous metalwork, 240V-440V cabling, secondary cabling (such as lighting and alarm systems), services pipe work (such as domestic water and heating) and miscellaneous fixtures and fittings. The Authority shall have twenty (20) Working Days from the receipt of such notification to object to the Contractor's categorisation of material in relation to such Authority Asset provided that the Authority shall only be entitled to object on the grounds that it would not be reasonable to consider that such categories of materials do form an integral part of the fabric of such infrastructure. In the event that no such objection is issued to the Contractor within the twenty (20) Working Day

period, ownership in such Authority Asset shall transfer to the Contractor on demolition and the Contractor may sell or dispose of such Authority Assets to a Third Party at an open market value.

- 6.7.2 If the Contractor determines in accordance with Clause 6.7.1 (*Disposal of Authority Assets*) above that another SLC could use an Authority Asset for the direct or indirect benefit of the Authority, it shall notify the Authority as soon as reasonably practicable that such Authority Asset is available.
- 6.7.3 Within sixty (60) Working Days of receipt by the Authority of the notification made pursuant to Clause 6.7.2 the Authority shall confirm in writing either that it does or does not require the Contractor to make such Authority Asset available to it or another SLC and the provisions of Clause 6.7.4 (*Disposal of Authority Assets*) below shall apply. Where the Authority confirms that it does not require such Authority Asset (or the Authority fails to respond within the sixty (60) Working Day period), the Contractor shall be entitled to dispose of or sell such Authority Asset on behalf of the Authority in accordance with Clause 6.7.5 (*Disposal of Authority Assets*) below.
- 6.7.4 If the Authority confirms that it requires the Contractor to make an Authority Asset available in accordance with Clause 6.7.3 (*Disposal of Authority Assets*) above, the Contractor shall use its reasonable endeavours to agree arrangements for the transfer of such Authority Asset with the Authority, or if the Authority directs, with the relevant SLC provided that the recipient or the Authority shall be liable for the reasonable Costs of storage, shipment and/or any insurance incurred by the Contractor in so doing. Unless the Parties agree otherwise, the transfer of such Authority Asset shall be undertaken within sixty (60) Working Days of the Authority Asset becoming available and shipment and all associated matters (including insurance in transit) shall be arranged and paid for by the Authority or such other SLC.
- 6.7.5 If the Authority does not respond to a notification made by the Contractor pursuant to Clause 6.7.2 in accordance with Clause 6.7.3, the Contractor shall be entitled to dispose of or sell the Authority Asset on behalf of the Authority and shall use its reasonable endeavours to dispose of or sell the Authority Asset on behalf of the Authority at an open market value.
- 6.7.6 If the Contractor disposes of or sells an Authority Asset pursuant to Clause 6.7.5 (*Disposal of Authority Assets*) the net proceeds of such sale or disposal will be accounted for as Category II Revenue. The Authority shall direct within twenty (20) Working Days (or such other period as the Parties may agree, acting reasonably) of such disposal or sale whether or not such net proceeds

will supplement the ASFL for the relevant Contract Year, provided that the decision whether or not such net proceeds will supplement the ASFL will be at the Authority's absolute discretion.

6.7.7 The Contractor shall:

6.7.7.1 identify the proceeds of sale or disposal (or if applicable, the amount of off-set) in respect of each Authority Asset in its financial accounts; and

6.7.7.2 provide the Authority with a written report detailing the sale or disposal within ten (10) Working Days of the sale or disposal of each Authority Asset and including sufficient supporting evidence to demonstrate, to the reasonable satisfaction of the Authority, that the Authority Asset has been disposed of or sold at an open market value.

6.8 **Necessary Consents**

6.8.1 The Contractor shall provide to the Authority a copy of any application for a Necessary Consent (with a copy of all accompanying drawings and other documents) and a copy of any Necessary Consent obtained and any associated legal agreement.

6.8.2 The Contractor shall comply with the conditions attached to any Necessary Consent and the terms of any associated legal agreement and procure that no Necessary Consent or associated legal agreement is breached by it or any Contractor Related Party, and shall use all reasonable endeavours to:

6.8.2.1 preserve all Necessary Consents; and

6.8.2.2 procure that no Necessary Consent is revoked or quashed and that all Necessary Consents continue in full force and effect for such time as is necessary for the Contractor to carry out the Tasks.

6.8.3 The Contractor shall not (and shall use all reasonable endeavours to procure that any Contractor Related Party shall not) without the prior consent of the Authority (which consent shall not be unreasonably withheld or delayed) apply for or agree to any change, relaxation or waiver of any Necessary Consent (whether obtained before or after the Commencement Date) or of any condition attached to it but, subject to the compliance by the Contractor with its obligations under this Clause, references in this Agreement to Necessary Consents shall be construed as referring to the Necessary Consents as from time to time varied, relaxed or waived.

6.8.4 [Not used]

6.9 New Assets

6.9.1 New Assets acquired by the Contractor in performing this Agreement shall be acquired in the name of the Authority and shall pass into the immediate ownership of the Authority and become Authority Assets.

6.9.2 Upon acquiring any New Assets, the Contractor shall promptly and accurately record such acquisition(s) on the Asset Register.

6.9.3 Any New Assets must be purchased in accordance with the requirements of Schedule 5 (*Subcontracting and Procurement*).

6.10 Customer Contracts

6.10.1 Without prejudice to Clause 20.2 (*Obligation to Consult the Authority*) and Clause 6.1.3 (*Right to deal with Authority Assets*), if, at the Commencement Date:

6.10.1.1 the terms of any Customer Contract provide to the Customer (and/or an agent of the Customer) rights of access to and use of the Authority Assets; and

6.10.1.2 if the Customer (and/or an agent of the Customer) wishes to exercise such rights,

the Authority shall allow the Contractor to fulfil its obligations under such Customer Contract by, upon notice from the Contractor to the Authority, permitting the Customer (and/or an agent of the Customer) such access and such use required under the terms of the relevant Customer Contract subject always to applicable Legislation and Regulatory Requirements.

7 SECURITY

7.1 The Contractor shall (and shall procure that all Subcontractors and Sub-Subcontractors shall where it is appropriate in relation to the risk and relevant in the context of the services being provided to the Contractor by such Subcontractors and/or Sub-Subcontractors under this Agreement) at all times comply with the obligations, restrictions or directions imposed on the Contractor by:

7.1.1 the NISR;

7.1.2 the NORMS;

7.1.3 the ONR Security Policy Framework;

- 7.1.4 any amendments or documents which are successors or supplements to the above referenced documents; and
- 7.1.5 any other applicable Legislation or regulations relevant to physical, personnel or information security.
- 7.2 Where any inconsistency exists between the requirements specified in Clause 7.1 (*Security*) above the Contractor shall comply with the most onerous requirement therein.
- 7.3 The Contractor shall, if requested by the Authority, promptly provide to the Authority all information necessary to demonstrate compliance in relation to performance by the Contractor of its obligations under this Clause 7 (*Security*).
- 7.4 The Contractor shall promptly notify the Authority in the event that the Contractor becomes aware of:
 - 7.4.1 any breach of this Clause 7 (*Security*); or
 - 7.4.2 any notice received by the Contractor alleging a breach or a possible breach of the matters referred to in this Clause 7 (*Security*),and the Contractor shall provide to the Authority all such information in relation thereto as the Authority reasonably requests.

8 INTEGRATED MANAGEMENT SYSTEM

- 8.1 The Contractor shall procure that all material aspects of its performance under this Agreement are undertaken in compliance with its Integrated Management System. The Contractor shall operate its Integrated Management System in accordance with Good Industry Practice and shall maintain appropriate third party certification (against an internationally accepted standard) that it requires under its Integrated Management System.
- 8.2 The Contractor shall ensure that its Integrated Management System incorporates all such Internal Procedures as are necessary:
 - 8.2.1 to comply with its legal obligations;
 - 8.2.2 to ensure that it is able to operate safely, securely and efficiently; and
 - 8.2.3 to comply with all Authority Policies and Procedures.
- 8.3 The Contractor shall:

- 8.3.1 upon the Authority's request, supply a detailed list of all existing and applicable Internal Procedures together with such copies of any Internal Procedures as may be required by the Authority;
- 8.3.2 notify the Authority immediately of any change to an Internal Procedure (and, in the case of HR Internal Procedures, in advance of a proposed change) which materially impacts upon the Authority, including a potential impact to the Cost of or risks to the completion of the Contractor's obligations set out in the Client Specification and/or the achievement of the Client Specification Completion State;
- 8.3.3 provide to the Authority on a monthly basis a log reporting all significant changes to all Internal Procedures; and
- 8.3.4 report to the Authority any material breaches of any Internal Procedures.
- 8.4 When requested by the Authority to do so, the Contractor shall provide to the Authority the basis and rationale for the creation or modification of any Internal Procedure and an explanation of how this reflects Good Industry Practice.
- 8.5 The Contractor shall, within the time reasonably specified by the Authority, prepare and submit for the Authority's approval any further Internal Procedures and modifications to existing Internal Procedures reasonably identified as being required by the Authority.
- 8.6 When responding to any Contractor request for the Authority's approval of changes to the Contractor's Internal Procedures, the Authority shall not unreasonably withhold its approval and shall:
 - 8.6.1 respond in writing within thirty (30) Calendar Days (or such other period as the Parties may, acting reasonably, agree) of receipt of such request; and
 - 8.6.2 where the Authority does not approve of such changes, provide reasons for any determination that the Contractor's proposed changes to its Internal Procedures are unsuitable.
- 8.7 For the avoidance of doubt, where Authority Customer Contracts or Contractor Customer Contracts place specific obligations on the Contractor in relation to its Integrated Management System, the Contractor shall bring these obligations to the Authority's attention and the Authority shall have due regard to such obligations in reaching its determination pursuant to Clauses 8.5 and 8.6 above.
- 8.8 [Not used]
- 8.9 Within twelve (12) months of the Commencement Date, the Contractor shall develop a set of metrics related to the performance assessment of its Integrated Management

System. The performance metrics should be appropriate for measuring key aspects of the Contractor's Integrated Management System and are to be reported to the Authority on an annual basis in accordance with Schedule 13 (*Reporting*).

- 8.10 The Contractor shall provide reasonable support to the Authority and participate at the Authority's written request in both industry-wide and Authority-led initiatives which are aimed at improving performance and/ or the sharing of knowledge and learning.

9 SOCIO-ECONOMIC DEVELOPMENT

- 9.1 The Contractor shall give encouragement and support to activities which benefit the social and/or economic life of communities living near each Site or that produce Environmental benefits for such communities, subject to the Authority allocating a sum from the ASFL in each Contract Year (which shall be used by the Contractor for such purposes). In providing this encouragement and support, the Contractor is to have regard to the Authority's socio-economic requirements detailed within Schedule 1 (*Client Specification*) and is to use best endeavours to implement and meet them, provided always that the Contractor is not obliged to incur any costs in providing any such encouragement or support in excess of the sum allocated by the Authority pursuant to this clause.

- 9.2 No later than forty five (45) Calendar Days after 1 April each year the Contractor shall submit to the Authority a Socio-Economic Development Plan which shall provide details of:

9.2.1 the events, activities or functions which the Contractor intends to fund pursuant to its obligations under Clause 9.1 above;

9.2.2 the costs of these intended events, activities or functions;

9.2.3 the reasons for the selection of these events by the Contractor; and

9.2.4 the ways in which social or economic benefits are intended to be conferred on the relevant communities as a result,

in a form that is satisfactory to the Authority (acting reasonably).

- 9.3 Within thirty (30) Calendar Days (or such other period as the Parties may, acting reasonably, agree) of submission by the Contractor, the Authority shall review the Contractor's Socio-Economic Development Plan for that Contract Year and may require changes to be made. In so doing, the Authority shall:

9.3.1 respond in writing;

- 9.3.2 provide reasons for any determination that the Contractor's proposed events, activities or functions are unsuitable; and
 - 9.3.3 not wilfully impede the Contractor from being able to comply with any agreed Schedule set out in such Socio-Economic Development Plan.
- 9.4 Once approved, the Contractor shall comply with the terms of its Socio-Economic Development Plan as changed (if at all) in accordance with Clause 9.3 (*Socio-Economic Development*) above and use the funding allocated to this by the Authority for the events, activities or functions as specified therein.

10 CDM REGULATIONS

- 10.1 In this Clause 10 (*CDM Regulations*) "**client**" and "**projects**" have the same meanings as in the CDM Regulations.
- 10.2 The Magnox Contractor hereby elects and the Authority consents to the Magnox Contractor being treated as the only client in relation to the projects to be carried out under this Agreement at the Magnox Sites for all the purposes of the CDM Regulations. The Magnox Contractor shall not and shall not seek to withdraw, terminate or in any manner derogate from its election that it will be treated as, and its acceptance of its responsibilities as, the only client at the Magnox Sites for all the purposes of the CDM Regulations.
- 10.3 The RSRL Contractor hereby elects and the Authority consents to the RSRL Contractor being treated as the only client in relation to the projects to be carried out under this Agreement at the RSRL Sites for all the purposes of the CDM Regulations. The RSRL Contractor shall not and shall not seek to withdraw, terminate or in any manner derogate from its election that it will be treated as, and its acceptance of its responsibilities as, the only client at the RSRL Sites for all the purposes of the CDM Regulations.
- 10.4 Subject to Clauses 10.2 and 10.3, the Contractor shall observe, perform and discharge and shall procure the observance, performance and discharge of:
- 10.4.1 all the obligations, requirements and duties arising under the CDM Regulations;
 - 10.4.2 any code of practice for the time being approved by the Health and Safety Commission pursuant to the Health and Safety at Work etc. Act 1974 in connection with the CDM Regulations.

- 10.5 The Contractor warrants to the Authority that it is and shall continue to be competent and appropriately resourced to perform the duties imposed on it by the CDM Regulations.

PART 5: Performance and Monitoring

11 DEFECTIVE PERFORMANCE AND REMEDIATION

- 11.1 Subject to Clause 11.1A (*Defective Performance and Remediation*) below, for the purposes of this Agreement, "**Defective Performance**" means a failure by the Contractor:

11.1.1 to undertake any Task(s) in accordance with Good Industry Practice that:

11.1.1.1 materially increases the Authority's costs or liabilities; or

11.1.1.2 has a material adverse effect on the performance of the Contractor's obligations set out in the Client Specification or otherwise on the performance of the Contractor's obligations under this Agreement,

11.1.2 [Not used]

provided that any failure by the Contractor to carry out its obligations under this Agreement as a direct result of a Force Majeure Event or a Dependency Event shall not constitute Defective Performance.

- 11.1A A failure by the Contractor to comply with Clause 11.1 (*Defective Performance and Remediation*) above occurring within nine (9) Months after the Commencement Date shall not entitle the Authority to terminate this Agreement for Contractor Default pursuant to Clause 11.14.3.2 (*Defective Performance and Remediation*), and the relevant Costs incurred by the Contractor shall not constitute Disallowable Costs pursuant to Paragraph 4.1(dd) (*Disallowable Costs*) or Paragraph 4.1(mm) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), unless:

11.1A.1 the failure to comply with Clause 11.1 (*Defective Performance and Remediation*) was a failure on the part of:

11.1A.1.1 one or more members of Nominated Staff; or

11.1A.1.2 the Parent Body Organisation or a PBO Affiliate acting in connection with the performance of its obligations under a Subcontract or Sub-Subcontract; or

- 11.1A.2 the failure to comply with Clause 11.1 (*Defective Performance and Remediation*) was not a failure on the part of a person or persons specified in Clause 11.1A.1 (*Defective Performance and Remediation*) and the Nominated Staff had a reasonable opportunity to identify, address and avoid such failure.
- 11.2 Upon becoming aware of any Defective Performance, the Authority shall be entitled to serve a written notice on the Contractor (a "**Defective Performance Notice**"), giving reasonable details of the same and requiring the Contractor to remedy such Defective Performance.
- 11.3 If the Authority serves a Defective Performance Notice on the Contractor, the Contractor may:
- 11.3.1 dispute the validity of the issue of the Defective Performance Notice and/or the existence of the Defective Performance in question in accordance with the Dispute Resolution Procedure;
 - 11.3.2 accept the validity of the issue of the Defective Performance Notice and the existence of the Defective Performance; or
 - 11.3.3 accept the validity of the issue of the Defective Performance Notice but dispute the existence of part of the Defective Performance in question in accordance with the Dispute Resolution Procedure, whilst accepting the existence of the remainder of the Defective Performance in question.
- 11.4 The Contractor shall acknowledge receipt of the Defective Performance Notice within five (5) Working Days of its receipt (or, if earlier, its deemed receipt) and shall respond to the Defective Performance Notice in accordance with Clause 11.3 (*Defective Performance and Remediation*) within ten (10) Working Days (or such other period as may be agreed between the Parties, acting reasonably) of its receipt (or, if earlier, its deemed receipt). If the Contractor fails to acknowledge receipt of or respond to the Defective Performance Notice within such time periods, the Authority shall be entitled to refer the matter (including the validity of the issue of the Defective Performance Notice and/or the existence of the Defective Performance in question) for determination in accordance with the Dispute Resolution Procedure.
- 11.5 To the extent that the Contractor accepts or it is otherwise determined that a Defective Performance Notice is valid and the Defective Performance in question exists, the Contractor shall, without undue delay, remedy such Defective Performance.
- 11.6 If either:
- 11.6.1 the Contractor fails to remedy any Defective Performance as required by Clause 11.5 (*Defective Performance and Remediation*) above; or

11.6.2 the Contractor fails to achieve a Minimum Performance Standard, then the Authority shall be entitled to serve a written notice on the Contractor (a "**Remediation Notice**"), giving reasonable details of the same and requiring the Contractor to submit a Remediation Plan.

- 11.7 If the Authority serves a Remediation Notice on the Contractor, the Contractor may:
- 11.7.1 dispute the validity of the issue and/or the content of the Remediation Notice in accordance with the Dispute Resolution Procedure;
 - 11.7.2 accept the validity of the issue and the content of the Remediation Notice; or
 - 11.7.3 accept the validity of the issue of the Remediation Notice but dispute part of its content in accordance with the Dispute Resolution Procedure, whilst accepting the remainder of its content.
- 11.8 The Contractor shall acknowledge receipt of the Remediation Notice within five (5) Working Days of its receipt (or, if earlier, its deemed receipt) and shall respond to the Remediation Notice in accordance with Clause 11.7 (*Defective Performance and Remediation*) within ten (10) Working Days (or such other period as may be agreed between the Parties, acting reasonably) of its receipt (or, if earlier, its deemed receipt). If the Contractor fails to acknowledge receipt of or respond to the Remediation Notice within such time periods, the Authority shall be entitled to refer the matter (including the validity of the issue and the content of the Remediation Notice) for determination in accordance with the Dispute Resolution Procedure.
- 11.9 If the Contractor accepts or it is otherwise determined that a Remediation Notice is valid and the subject of the Remediation Notice in question exists, the Contractor shall within twenty (20) Working Days (or such other period as the Parties may, each acting reasonably, agree) of such acceptance or determination either:
- 11.9.1 submit to the Authority a Remediation Plan aimed at addressing the subject matter of the Remediation Notice in question; or
 - 11.9.2 acting reasonably accept that the subject matter of such Remediation Notice is incapable of remediation,

provided that:

- 11.9.3 the Contractor shall act reasonably when determining whether or not it accepts that the subject matter of the Remediation Notice in question is incapable of remediation; and

- 11.9.4 if the Contactor fails to submit a Remediation Plan within the period stipulated in this Clause 11.9 the Authority shall be entitled to refer the matter (including the issue of whether the subject matter of the Remediation Notice is incapable of remediation) for determination in accordance with the Dispute Resolution Procedure.
- 11.10 The Authority shall, within twenty (20) Working Days (or such other period as the Parties may, each acting reasonably, agree) of receipt of the Contractor's Remediation Plan, acting reasonably, either:
- 11.10.1 accept such Remediation Plan; or
- 11.10.2 reject such Remediation Plan, providing its reasons for such rejection and, to the extent reasonably practicable, proposing such amendments to such Remediation Plan as would render it acceptable to the Authority.
- 11.11 Where Clause 11.10.2 (*Defective Performance and Remediation*) above applies, the Contractor shall, within five (5) Working Days (or such other period as the Parties may, each acting reasonably, agree) of receipt of the Authority's response:
- 11.11.1 where relevant, accept the Authority's proposed amendments in full; or
- 11.11.2 submit an amended Remediation Plan to the Authority, aimed at addressing the Authority's reasons for rejecting the previous version of such Remediation Plan.
- 11.12 Where Clause 11.11.2 (*Defective Performance and Remediation*) above applies, the Authority shall, within five (5) Working Days (or such other period as the Parties may, each acting reasonably, agree) of receipt of the Contractor's amended Remediation Plan:
- 11.12.1 accept such Remediation Plan;
- 11.12.2 reject such Remediation Plan and refer the matter for determination under the Dispute Resolution Procedure.
- 11.13 Where any of Clauses 11.10.1, 11.11.1 or 11.12.1 (*Defective Performance and Remediation*) above applies, or where the content of a Remediation Plan is determined pursuant to the Dispute Resolution Procedure, the Contractor shall forthwith implement such Remediation Plan in accordance with its terms (as agreed or determined), provided that:
- 11.13.1 pending any such agreement or determination of a Remediation Plan the Contractor shall at all times use its best endeavours to mitigate any adverse consequences of the subject matter of any Remediation Notice; and

11.13.2 if the Contractor fails to implement any such agreed or determined Remediation Plan so as to remedy the Defective Performance or failure to achieve a Minimum Performance Standard giving rise to such Remediation Plan in accordance with its terms this shall constitute a Contractor Default.

11.14 If either:

11.14.1 the Contractor accepts or it is otherwise determined that the subject matter of any Remediation Notice is incapable of remediation; or

11.14.2 an agreed or determined Remediation Plan is implemented in accordance with its terms but this does not have the effect of remedying the subject matter of the Remediation Notice giving rise to such Remediation Plan; or

11.14.3 the Authority, acting reasonably, believes that a material adverse finding by a Regulator is incapable of remediation,

then the Authority shall, at its absolute discretion, be entitled to either:

11.14.3.1 require the Contractor to submit a new Remediation Plan (in which case the provisions of Clauses 11.9 (*Defective Performance and Remediation*) (with the removal of Clause 11.9.2 (*Defective Performance and Remediation*)) as an option for the Contractor) to 11.13 (*Defective Performance and Remediation*) above shall apply), provided that the Authority shall not be entitled to exercise its rights under this Clause 11.14.3.1 (*Defective Performance and Remediation*) more than once where Clause 11.9.2 (*Defective Performance and Remediation*) above applies; or

11.14.3.2 terminate this Agreement for Contractor Default.

11.15 For the purposes of Clause 11.14 (*Defective Performance and Remediation*) and Clause 11.9.2 (*Defective Performance and Remediation*) above, unless otherwise agreed by the Parties, a matter will be incapable of remediation if remediation could not (in the reasonable opinion of the Authority) take place before the Expiry Date and could not take place without:

11.15.1 resulting in a material adverse impact on compliance with the Contractor's obligations set out in Client Specification; or

11.15.2 necessitating a Category 0 Change.

11.16 The provisions of Clauses 11.1 (*Defective Performance and Remediation*) to 11.15 (*Defective Performance*) above shall not apply in respect of any Prohibited Act (to which

Clauses 11.18 (*Defective Performance and Remediation*) to 11.20 (*Defective Performance and Remediation*) below shall apply instead).

Obligation to Notify

11.17 Without prejudice to the provision of Clauses 4.1 (*Standard of Performance*) and 4.2.2 (*Nature of Contractor's Obligations*), which shall continue to apply following any notification under this Clause 11 (*Defective Performance and Remediation*), if at any time:

11.17.1 the Contractor believes it will not be able to carry out and/or complete all or any material part of a Task; or

11.17.2 the Contractor becomes aware of any Defective Performance,

it shall notify the Authority of the same as soon as reasonably practicable and provide details of the act, event or circumstances and any impact such act, event or circumstances will have on the Contractor's performance of its other obligations under this Agreement.

Prohibited Acts

11.18 If the Contractor, the Parent Body Organisation, any Subcontractor or Sub-Subcontractor (or anyone employed by or acting on behalf of any of them) or any Affiliates (or Subcontractors' or Sub-Subcontractors' affiliates) commit any Prohibited Act, the Authority shall be entitled to act in accordance with Clauses 11.18.1 to 11.18.5 (*Prohibited Acts*) below:

11.18.1 if the Prohibited Act is committed by an Employee or any member of Nominated Staff, the Authority may give Notice to the Contractor requiring the Contractor within thirty (30) Calendar Days of receipt of such Notice to procure the performance of the Tasks in which that Employee or member of Nominated Staff was engaged by another suitably qualified, experienced and appropriate person;

11.18.2 if the Prohibited Act is committed by a Subcontractor or Sub-Subcontractor or by an employee of either of them not acting independently, the Authority may give Notice to the Contractor requiring the Contractor within thirty (30) Calendar Days of receipt of such Notice to terminate the relevant Subcontract or Sub-Subcontract or require the Subcontractor to terminate the relevant Sub-Subcontract and procure the performance of the Tasks in which that Subcontract and Sub-Subcontractor was engaged by another suitably experienced and appropriate person;

- 11.18.3 if the Prohibited Act is committed by an employee of a Subcontractor or Sub-Subcontractor acting independently of them, the Authority may give Notice to the Contractor requiring the Contractor within thirty (30) Calendar Days of receipt of such Notice to procure that the Subcontractor or Sub-Subcontractor (as the case may be) procures the performance of the Tasks in which that employee was engaged by another suitably experienced and appropriate person;
- 11.18.4 if the Prohibited Act is committed by a person not falling within Clauses 11.18.1 to 11.18.3 (*Prohibited Acts*) above, the Authority may give Notice to the Contractor requiring the Contractor within thirty (30) Calendar Days of receipt of such Notice to procure the termination of such person's involvement in the Tasks and (if necessary) procure the performance of the Tasks in which that person was engaged by another suitably experienced and appropriate person; and
- 11.18.5 if the Prohibited Act is committed by the Contractor, the Parent Body Organisation or any Affiliate in each case acting as a company, or the Contractor fails to comply with a Notice given pursuant to Clauses 11.18.1 to 11.18.4 (*Prohibited Acts*) above, this shall constitute a Contractor Default.
- 11.19 Any Notice given under Clause 4.4.2 or Clause 11.18 (*Prohibited Acts*) above shall specify:
- 11.19.1 the nature of the Prohibited Act; and
- 11.19.2 the identity of the person whom the Authority believes has committed the Prohibited Act.
- 11.20 In Clause 11.18 above, "**acting independently**" shall mean where a person does not act under the authority of or with the knowledge of a director or other management of a Subcontractor or Sub-Subcontractor and "**not acting independently**" shall be construed accordingly.

12 DEPENDENCY EVENTS

- 12.1 The Authority shall provide the Authority Deliverables and any failure by the Authority to do so shall be a Dependency Event and shall be dealt with under this Clause 12 and Schedule 2 (*Change Control Procedure*) (which the Contractor acknowledges and accepts contains its sole remedies in respect of any such failure).
- 12.2 If and to the extent that, as a direct result of the occurrence of a Dependency Event, the Contractor is unable to undertake a Task, or perform any of its other obligations under this Agreement, then the Contractor is entitled to apply for relief from those obligations,

except where the Dependency Event has been caused by any act or omission of the Contractor, any Subcontractor, any Sub-Subcontractor or any other person for whom the Contractor is responsible. If the Contractor (or any Subcontractor, any Sub-Subcontractor or any other person for whom the Contractor is responsible) has contributed to the Dependency Event, the Contractor's entitlement to relief shall be reduced by an amount proportional to such contribution to the Dependency Event.

12.3 To obtain relief pursuant to Clause 12.2 (*Dependency Events*) above the Contractor shall:

12.3.1 as soon as practicable, and in any event not later than twenty (20) Working Days (or such other period as may be agreed by the Parties acting reasonably) after it became aware that the Dependency Event has adversely affected or is likely to adversely affect the ability of the Contractor to perform its obligations, give to the Authority full details (including supporting evidence) of its claim for:

12.3.1.1 relief from any loss of entitlement to PBI Fee or Target Fee arising as a direct result of the occurrence of the Dependency Event as appropriate; and/or

12.3.1.2 relief from its obligations under this Agreement; and

12.3.2 demonstrate to the reasonable satisfaction of the Authority that, having acted in accordance with the provisions of this Agreement:

12.3.2.1 the relief from the performance of any of its other obligations under this Agreement claimed could not reasonably be expected to be mitigated by the Contractor acting in accordance with Good Industry Practice; and

12.3.2.2 the Contractor is using reasonable endeavours to continue to perform its obligations under this Agreement.

12.4 If and to the extent that the Contractor has complied with its obligations under Clause 12.3 above, then:

12.4.1 the Authority shall not be entitled to exercise its rights to terminate the Agreement under Clause 11 (*Defective Performance and Remediation*) to the extent that such rights arise (but for this Clause 12.4.1) as a result of the Dependency Event; and

- 12.4.2 the Contractor shall be entitled to any PBI Fee or Target Fee that (but for this Clause 12) it would not have been entitled to as a direct result of the occurrence of the Dependency Event.
- 12.5 If the information referred to in Clause 12.3 (*Dependency Events*) above is provided after the date referred to in that Clause, then the Contractor shall not be entitled to any relief in respect of the period for which the information is delayed.
- 12.6 The Parties acknowledge that the occurrence of a Dependency Event and/or the operation of Clause 12.4 (*Dependency Events*) above may give rise to a need for a Change to address the impact of the same, and accordingly and subject to the provisions of Schedule 2 (*Change Control Procedure*) the Authority shall act reasonably when deciding whether or not to Approve any Proposed Change pursuant to the Change Control Procedure, to the extent that such Proposed Change is required to address such impact.

13 FORCE MAJEURE

Performance of Obligations

- 13.1 Subject to Clauses 13.1A, 13.2 and 13.3 (*Notification and Mitigation*) below, if a Party (the "**Affected Party**") is materially hindered, prevented or delayed from performing any of its obligations under this Agreement by reason of a Force Majeure Event, such obligations shall be suspended (to the extent affected) for a period at least equal to the duration of the Force Majeure Event together with a reasonable period for re-mobilisation,
- 13.1A The Contractor shall not be excused from the due and punctual performance of any of its obligations under this Agreement by reason of a Force Majeure Event to the extent that:
- 13.1.1 during the four (4) month period after the Commencement Date, the impact of such circumstances on the Contractor's ability so to perform its obligations could have been reasonably avoided or mitigated by the maintenance of business continuity and disaster recovery plans and the Nominated Staff had a reasonable opportunity to identify and address the cause of such failure to mitigate; or
- 13.1.2 thereafter, the impact of such circumstances on the Contractor's ability so to perform its obligations could have been reasonably avoided or mitigated by the maintenance of business continuity and disaster recovery plans.

Notification and Mitigation

- 13.2 The Affected Party shall, as soon as it becomes aware of a Force Majeure Event, notify the other Party in writing of:
- 13.2.1 the nature of the Force Majeure Event relied on;
 - 13.2.2 the estimated effect of the Force Majeure Event on the Affected Party's ability to perform its obligations under this Agreement;
 - 13.2.3 the period for which it is estimated the Force Majeure Event will continue; and
 - 13.2.4 the period (if any) by which it is estimated that any Site Completion Date(s) will be delayed.
- 13.3 Without prejudice to Clause 13.6 (*Instigation of a Proposed Change*) below, the Affected Party shall:
- 13.3.1 use all reasonable endeavours to mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement;
 - 13.3.2 where the Affected Party is the Contractor, inform and consult the Authority as soon as is practicable as to the actions undertaken or proposed in order to mitigate the effects of the Force Majeure Event and (without prejudice to the Contractor's responsibilities under Clause 13.3.1 (*Notification and Mitigation*) above) take the Authority's reasonable views and advice into account;
 - 13.3.3 where the Affected Party is the Contractor, provide written reports as often as the Authority reasonably requires in the circumstances of the Contractor's progress in mitigating the effects of the Force Majeure Event and indicating the costs of such mitigation and when it is estimated that performance of the affected obligations will resume;
 - 13.3.4 where the Affected Party is the Authority, provide updates to the Contractor as often as the Contractor reasonably requires in the circumstances of the Authority's progress in mitigating the effects of the Force Majeure Event and indicating when it is estimated that performance of the affected obligations will resume;
 - 13.3.5 so far as reasonably practicable, provide any information relating to the Force Majeure Event and its effects as the other Party may reasonably request; and
 - 13.3.6 (subject to any applicable Legislation and/or Regulatory Requirement) make any alternative arrangements for resuming the performance of its obligations as may be practicable without incurring material additional expense (provided that, where the Affected Party is the Contractor, if the incurring of such expense is appropriate in all the circumstances, the Contractor shall (and shall

be entitled to) incur such expense subject to having first sought and obtained the Authority's express prior written approval of the same (such approval not to be unreasonably withheld or delayed).

- 13.4 As soon as the effect (of the type described in Clause 13.1 (*Performance of Obligation*) above) of the Force Majeure Event on the Affected Party's ability to perform its obligations under this Agreement has ended, the Affected Party shall notify the other Party in writing that the Force Majeure Event has ended, and it shall resume the full performance of its obligations under this Agreement. When any Proposed Change instigated under Clause 13.6 (*Instigation of a Proposed Change*) below has been approved (subject to any applicable Legislation and/or Regulatory Requirement) the Affected Party's full performance of its obligations under this Agreement will continue in accordance with the approved Change.
- 13.5 Save to the extent stipulated in this Clause 13 (*Force Majeure*), neither Party shall be released from any of its obligations under this Agreement as a result of a Force Majeure Event.

Instigation of a Proposed Change

- 13.6 In the case of a Force Majeure Event the Contractor shall be entitled to submit a Proposed Change. Such a Proposed Change shall:
- 13.6.1 be prepared by the Contractor in accordance with the provisions of the Change Control Procedure;
 - 13.6.2 have as its objective the mitigation of the effects of the Force Majeure Event and the resolution of any issues arising in relation thereto; and
 - 13.6.3 not entail any adjustment to Target Fee or PBI Fee.
- 13.7 If the Contractor submits a Proposed Change in accordance with Clause 13.6 (*Instigation of a Proposed Change*) above, the Authority shall either (in each case acting reasonably):
- 13.7.1 accept such submission (provided that it does not breach any applicable Legislation and/or Regulatory Requirements); or
 - 13.7.2 instruct the Contractor to adopt an alternative Proposed Change (in which case the Contractor shall comply with such instruction).

The Authority shall in any event respond to such submission as soon as reasonably practicable.

13.8 Any submissions prepared and submitted by the Contractor in accordance with Clause 13.6 above shall be submitted:

13.8.1 as soon as reasonably practicable after the relevant Force Majeure Event commences; and

13.8.2 before any Change specified in the submission is implemented.

14 PERFORMANCE MANAGEMENT, PERFORMANCE ASSURANCE AND RECORDS

14.1 Reporting and Reviewing

Reporting and Reviewing Programme

14.1.1 The Contractor shall implement systems and processes for a performance reporting and reviewing programme in a manner which the Authority (acting reasonably) considers satisfactory.

Required Reports

14.1.2 The Contractor shall submit to the Authority:

14.1.2.1 the reports specified in Schedule 13 (*Reporting*) in accordance with that Schedule;

14.1.2.2 such other reports as are required by Schedule 6 (*Finance*) or the other provisions of this Agreement;

14.1.2.3 such other reports as may reasonably be requested by the Authority in connection with its statutory functions and duties from time to time in writing; and

14.1.2.4 such other reports as may be agreed between the Authority and the Contractor (acting reasonably) from time to time.

Objections to Reports

14.1.3 If the Authority considers (acting reasonably) that any Report either has not been compiled in accordance with the requirements of this Agreement or has been based on erroneous information, it may serve a notice to that effect on the Contractor within thirty (30) Calendar Days of receipt of the Report, setting out its grounds of objection, and the Parties shall endeavour to agree any consequent amendments to the Report in light of the Authority's objections.

14.1.4 If any such objection has not been resolved by agreement between the Authority and the Contractor within sixty (60) Calendar Days after service of

such notice, the matter shall be resolved in accordance with Clause 36 (*Disputes*).

- 14.1.5 If, following the submission of any Report, but prior to any objection being raised by the Authority pursuant to Clause 14.1.3 (*Objection to Reports*) above, the Contractor considers that such Report contains a material error, the Contractor shall notify the Authority immediately of such error and shall reflect and clearly identify the required correction(s) in the relevant subsequent Report where applicable (for example the next Monthly report of the same type). If there will be no subsequent Report submitted to the Authority (for example because the original report was not of a type regularly required), the Contractor shall forthwith correct the relevant original Report and re-submit it to the Authority.

Revisions to Reports

- 14.1.6 If:

14.1.6.1 the resolution (whether by agreement or determination in accordance with Clause 36 (*Disputes*) of any objection made pursuant to Clause 14.1.3 (*Objections to Reports*) above; or

14.1.6.2 the correction of any calculation pursuant to any provision of this Agreement

in either case requires corrections to be made to any Report submitted by the Contractor pursuant to Clause 14.1.2 (*Required Reports*) above, the Contractor shall reflect and clearly identify the required corrections in the relevant subsequent Report (for example the next Monthly report of the same type) where applicable. If there will be no subsequent Report submitted to the Authority (for example because the original report was not of a type regularly required), the Contractor shall correct the relevant original Report and re-submit to the Authority and the provisions of Clauses 14.1.3 (*Objection to Reports*) and 14.1.4 (*Objection to Reports*) above and this Clause 14.1.6 (*Revisions to Reports*) shall apply in respect of the re-submitted Report.

Obligation to Report

- 14.1.7 Without prejudice to any other obligation on the Contractor under this Agreement to report and notwithstanding the Contractor's right to carry out Permitted Activities, the Contractor shall, as often as reasonably necessary to keep the Authority properly and fully informed and on a regular basis, notify the Authority in as much detail as practicable of any matters of which the Contractor becomes aware, any issue which has affected or which may affect

the Commercial Operations Tasks and/or the Customer Contracts and/or the performance by the Contractor of any Tasks relating to any Customer Contract and about which the Authority may reasonably be expected to wish to be informed, including (and without prejudice to the generality of this Clause 14.1.7):

- 14.1.7.1 any breach or impending breach by the Contractor (and/or its counterparty thereto) of any Customer Contract;
- 14.1.7.2 any impending event that will require the Authority's consent under Clause 20 (*Authority Rights in Respect of Customer Contracts*);
- 14.1.7.3 any exercise of the Contractor's Permitted Activities;
- 14.1.7.4 any material change in the financial position of a counterparty to a Customer Contract;
- 14.1.7.5 any change or impending change in the business strategy of a counterparty to a Customer Contract;
- 14.1.7.6 any Change in Control of a counterparty to a Customer Contract particularly where such Change in Control will or is likely to adversely affect the counterparty's financial position or future performance under the Customer Contract(s) to which it is a party;
- 14.1.7.7 any change to the key management personnel with whom the Contractor liaises which might reasonably be expected to adversely affect the future business relationship with the counterparty to the Customer Contract;
- 14.1.7.8 any actual or threatened labour disputes affecting the counterparty to the Customer Contracts;
- 14.1.7.9 any change in the policy of other public authorities including, in particular, public authorities outside the United Kingdom, which might reasonably be expected to adversely affect the performance of the Customer Contracts, the performance by the Contractor of any Tasks relating to any Customer Contracts or the Contractor's relationships with counterparties to the Customer Contracts; and
- 14.1.7.10 any issue which affects or may reasonably be expected to affect the supply chain relating to any Subcontract or Series of Subcontracts which relate(s) to the Customer Contracts and/or the

performance by the Contractor of any Tasks relating to any Customer Contracts.

14.1.8 The Contractor shall also forthwith report to the Authority any exercise of its right:

14.1.8.1 to challenge any threatened or actual revocation of a Nuclear Site Licence or any other regulatory permit or consent which is essential to the Contractor's ability to operate the Sites or carry out the Commercial Operations Tasks and/or any Tasks relating to any Customer Contracts in accordance with Legislation; or

14.1.8.2 to apply for, or resist, or join into an injunction which the Contractor, acting reasonably, considers urgent and necessary to the Contractor's performance of its obligations to the Authority.

14.2 **Records**

Records Agreement

14.2.1 The Magnox Contractor shall comply with the Magnox Records Agreement and will co-operate with the Authority in relation to any review or amendment of any such agreement proposed by the Authority, including (without limitation) any review relating to easier access to and exchange of information, standards of record keeping, maintenance of records and contributions to the Information Asset Register.

14.2.2 The RSRL Contractor shall comply with the UKAEA Restructuring Records Agreement and will co-operate with the Authority in relation to any review or amendment of any such agreement proposed by the Authority, including (without limitation) any review relating to easier access to and exchange of information, standards of record keeping, maintenance of records and contributions to the Information Asset Register.

Ownership of Records

14.2.3 Subject to Clause 14.2.4 (*Ownership of Records*) below, all records generated or acquired by the Contractor in the performance of this Agreement shall immediately pass into the ownership of the Authority (the "**Authority Records**").

14.2.4 Notwithstanding Clause 14.2.3 (*Ownership of Records*) above, ownership in all records generated or acquired by the Contractor in the performance of this Agreement which the Contractor is required to own by Legislation or to meet

Regulatory Requirements shall be retained by the Contractor (the "**Contractor Records**").

- 14.2.5 If the Contractor is no longer required to own a Contractor Record to comply with Legislation or meet Regulatory Requirements, such Contractor Record shall immediately transfer into the ownership of the Authority and become an Authority Record.

Indemnity for Fraudulent Records

- 14.2.6 Subject to Clauses 14.2.6A and 14.2.6B (*Indemnity for Fraudulent Records*) below, the Contractor shall indemnify the Authority for all expenses, liabilities, losses, demands, costs, damages and Legal Proceedings incurred or suffered by the Authority as a result of any of the Authority Records being completed, kept or maintained fraudulently by anyone engaged by the Contractor.

- 14.2.6A As soon as reasonably practicable, and in any event within four (4) Months after the Commencement Date, the Contractor shall conduct and complete a review (overseen by one or more members of Nominated Staff) of its Internal Procedures and practices for the maintenance of Authority Records to reasonably satisfy itself that no Authority Records are being completed, kept or maintained fraudulently by anyone engaged by the Contractor.

- 14.2.6B The indemnity at Clause 14.2.6 (*Indemnity for Fraudulent Records*) shall not apply in relation to expenses, liabilities, losses, demands, costs, damages and Legal Proceedings incurred or suffered by the Authority as a result of:

14.2.6B.1 an Authority Record being completed, kept or maintained fraudulently prior to the Commencement Date; or

14.2.6B.2 an Authority Record which is revealed to be completed, kept or maintained fraudulently by the review conducted pursuant to Clause 14.2.6A (*Indemnity for Fraudulent Records*) above unless:

14.2.6B.2.1 the relevant fraud is on the part of (i) any one or more of the Nominated Staff or (ii) the Parent Body Organisation or a PBO Affiliate acting in connection with the performance of its obligations under a Subcontract or Sub-Subcontract; or

14.2.6B.2.2 prior to the completion of the review the Nominated Staff had had a reasonable opportunity to identify, address and prevent such fraud.

Use of Authority Records

14.2.7 The Contractor shall be entitled to use the Authority Records in the performance of this Agreement and to meet applicable Legislation and Regulatory Requirements.

Custody of Records

14.2.8 The Contractor shall retain physical control of all Authority Records until such time as physical control of Authority Records is transferred to the Authority or to the Authority's nominee in accordance with the Authority's instructions.

14.2.9 Except in the case of an emergency (where the Authority shall be entitled to and the Contractor shall allow the Authority immediate access), provided the Authority has given the Contractor reasonable notice, the Contractor shall allow the Authority access to the Authority Records at any time during business hours on a Working Day.

14.2.10 The Contractor shall manage all Authority and Contractor Records in accordance with:

14.2.10.1 the Guidelines on Managing Information;

14.2.10.2 the ONR Security Policy Framework, subject to Clause 7.1.3 (*Security*);

14.2.10.3 guidelines issued by any Regulator;

14.2.10.4 the Public Records Act 1958, without prejudice to Clause 4.1.3;

14.2.10.5 BS ISO 15489-1:2001 (or its equivalent);

14.2.10.6 BS 10008;

14.2.10.7 BS 10012; and

14.2.10.8 BS 5454.

All records will be treated as public records for the purposes of the Public Records Act.

Contractor Records

14.2.11 The Contractor shall make Contractor Records available to the Authority in accordance with open access, inspection and audit rights set out Clause 15 (*Inspection and Audit*) ("**Open Book System**") in such condition, format and

detail as is adequate for their intended purpose and as required by the Authority.

14.3 **Books of Account and Other Information**

Books of Account

14.3.1 The Magnox Contractor and the RSRL Contractor shall each maintain, on a current and accurate basis, books of account relating to their respective activities under this Agreement in accordance with:

14.3.1.1 either:

14.3.1.1.1 the UK Accounting Standards, comprising all extant Statements of Standard Accounting Practice (SSAPs), Financial Reporting Standards (FRSs), Urgent Issues Task Force Abstracts and any relevant industry-specific authoritative guidance; or

14.3.1.1.2 international generally accepted accounting practice, comprising to the extent adopted by the European Commission, all extant International Financial Reporting Standards (IFRSs), International Accounting Standards (IASs), interpretations of the International Financial Reporting Interpretations Committee and its predecessor body, and other relevant industry-specific authoritative guidance;

14.3.1.2 the Companies Act 1985 and Companies Act 2006;

14.3.1.3 Schedule 6 (*Finance*); and

14.3.1.4 an Open Book System.

Further Information

14.3.2 In addition to information provided by the Contractor to the Authority pursuant to the express provisions of this Agreement, the Contractor shall provide to the Authority such further information as the Authority may at any time reasonably request on reasonable notice.

Financial Information

14.3.3 Without prejudice to the generality of Clause 14.3.2 (*Further Information*) above, the Contractor shall furnish to the Authority as soon as they become publicly available and, in any event, not later than sixty (60) Calendar Days

after the close of its statutory accounting period, a copy of the audited financial statements of the Contractor, prepared in accordance with the Accounting Standards for such period, including in each case a balance sheet prepared as at the end of such accounting period, a profit and loss account, cash flow statement in respect of such accounting period and a reconciliation of total Allowable Costs claimed within such accounting period.

Authority Accounts

14.3.4 The Contractor shall maintain, in accordance with the Authority's reasonable instructions from time to time, including as to its then current accounting policies, on a current and accurate basis books of account recording the Authority's interest in the Authority Assets and the Sites and any associated liabilities.

14.4 Information Asset Register

14.4.1 The Contractor shall create and maintain an accurate information asset register (the "**Contractor Information Asset Register**") in accordance with the Authority's Information Governance Compliance Programme, as notified to the Contractor from time to time.

14.4.2 The Contractor shall promptly contribute all the metadata for all Authority Records to the Contractor Information Asset Register. The Contractor shall ensure that such metadata conforms to the e-Government Metadata Standards (e-GMS).

14.5 Transfer of Metadata

14.5.1 The Contractor shall contribute metadata from the Contractor Information Asset Register via electronic transfer to the Authority Information Asset Register at such intervals as are notified to the Contractor by the Authority, acting reasonably. The Contractor shall ensure that such metadata conforms to the e-Government Metadata Standards (e-GMS).

15 INSPECTION AND AUDIT

15.1 Subject to compliance with applicable Legislation and Regulatory Requirements and the Contractor's Internal Procedures relating to safety and Site security, the Authority, acting by itself or by its duly authorised representatives (including auditors, advisers, consultants, and agents on behalf of the Authority) ("**Authority Agents**") shall have the right, whether required by the National Audit Office or otherwise, to enter at all times onto all parts of the Sites and their respective facilities, installations, structures and outbuildings and, in respect of the Commercial Operations Tasks, any other areas and

locations which the Contractor uses in its performance of such Commercial Operations Tasks.

15.2 Subject to Clause 15.3 (*Inspection and Audit*) below, the Authority and any Authority Agent, acting reasonably, and subject to compliance with all applicable Legislation and Regulatory Requirements and the Contractor's Internal Procedures, relating to safety and Site security, shall be entitled to carry out for the purpose of fulfilling the Authority's statutory functions and duties and contractual rights pursuant to this Agreement:

15.2.1 any audit, inspection, review, periodic monitoring and spot checks of any of the Contractor's activities in connection with this Agreement and any aspect of the Contractor's performance of this Agreement as required by the Authority or where the same shall have been requested by the National Audit Office or otherwise;

15.2.2 audits, inspections, reviews, periodic monitoring and spot checks of all information required to be kept by the Contractor;

15.2.3 audits of the Contractor's compliance with its Inter SLC Service Contract, Internal Procedures, quality management systems, procedures required by Regulatory Requirements and any Operating Procedures, policies or standards ancillary to, or used in connection or accordance with, the same;

15.2.4 inspections and tests to determine the quality of any of the Tasks performed or procured;

15.2.5 interviews with any employees, secondees or other personnel of the Contractor and with the counterparties to the Customer Contracts and any officers, employees or personnel of such counterparties; and

15.2.6 the copying and collation of any information held in electronic or paper form.

15.3 The Authority (acting by itself or by any Authority Agents) shall be entitled to carry out the matters referred to in Clauses 15.1 and 15.2 (*Inspection and Audit*) above at any time or frequency, provided always that the Authority or Authority Agents as applicable shall:

15.3.1 act reasonably at all times; and

15.3.2 use all reasonable endeavours to minimise any disruption to the provision of the Tasks by the Contractor, a Subcontractor, or a Sub-Subcontractor as applicable.

15.4 For the purposes of Clauses 15.1 and 15.2 (*Inspection and Audit*) above, the Contractor shall provide all reasonable co-operation including:

- 15.4.1 granting, or procuring the grant of timely access to any equipment (including all computer hardware and software and databases) used in the performance of this Agreement, wherever situated, provided that, to the extent that such access is required to equipment which does not belong to the Contractor or access is not within the Contractor's control, the Contractor shall (and shall only be obliged to) use all reasonable efforts to procure such access;
 - 15.4.2 granting timely access to any data dictionary and the fields and records within it to enable data to be downloaded from any computer systems operated by the Contractor; and
 - 15.4.3 ensuring that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration of information during the audit.
- 15.5 The Contractor agrees that the Comptroller and Auditor General, and for the purposes of Clause 15.1 (*Inspection and Audit*) above, the Authority and any Authority Agents, shall have access to such of the Contractor's personnel and Data as they reasonably consider necessary for the performance of their duties.
- 15.6 The Authority (acting by itself or by any Authority Agent) shall at any time be entitled to request and receive a reasonable number of copies of any Data on demand, whether for the purposes of this Agreement or for any other reasonable purpose, including, but not limited to, inviting tenders as part of a competition for the right to manage and operate any or all of the Sites and carry out the Commercial Operation Tasks or as part of a competition for appointment as a parent body organisation.
- 15.7 The Authority Agents shall be suitably qualified Third Parties entitled to have the access rights and/or undertake any of the inspections or audits referred to in this Clause 15 on the Authority's behalf. Such Authority Agents shall report their findings directly to the Authority.
- 15.8 The Contractor shall:
- 15.8.1 fully co-operate in relation to the subject matter and implementation of the provisions of this Clause 15 (*Inspection and Audit*);
 - 15.8.2 provide the Authority or any Authority Agent with all information reasonably required in connection with the exercise of the Authority's rights under this Clause 15 (*Inspection and Audit*);
 - 15.8.3 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 Authority or by any Authority Agent;

15.8.4 make such records available for inspection by the Authority or any Authority Agent at all reasonable times; and

15.8.5 at the Authority's or any Authority Agent's request, make available to the Authority or Authority Agent as applicable any software necessary to review such records.

15.9 The Authority shall:

15.9.1 implement and maintain procedures for notifying all Authority Agents visiting any Site of the Contractor's Internal Procedures relating to safety and Site security;

15.9.2 ensure that all Authority Agents comply with relevant rules and requirements;

15.9.3 notify the Contractor that an Authority Agent acting on behalf of the Authority in accordance with this Clause 15 (*Inspection and Audit*) is duly authorised; and

15.9.4 procure that the Authority Agent has, in the Authority's reasonable opinion, insurance that is adequate and suitable to accord with the rights of access, audit and inspection that the Authority may grant to such Authority Agent under this Clause 15 (*Inspection and Audit*).

Provision of Facilities

15.10 Subject to compliance with Regulatory Requirements, during any inspection or audit of a Site (pursuant to this Clause 15 (*Inspection and Audit*), the Contractor shall (on request by the Authority or the Authority Agent) make available such suitable office accommodation on the Site (or, in respect of the Commercial Operations Tasks, at any other locations which the Contractor uses in its performance of such Commercial Operations Tasks) and such other facilities as the Authority or Authority Agent may reasonably require for the purposes of exercising the Authority's rights of access, inspection and audit pursuant to this Clause 15 (*Inspection and Audit*).

15.11 All accommodation provided shall be adequately furnished, lit, heated and ventilated and shall include suitable access to cloakrooms and IT and communication facilities.

Co-operation with Regulators

15.12 The Contractor shall inform the Authority of any Regulators' audit and inspection dates as soon as reasonably practicable after the Contractor becomes aware of such dates

and the Authority undertakes to the Contractor that it will co-operate with the Regulators in exercising its rights under this Agreement and will use reasonable endeavours to synchronise the Authority's audits and inspections with those of the Regulators where reasonably practicable.

Examination by National Audit Office

15.13 For the purposes of:

15.13.1 the examination and certification of the accounts of the Authority; or

15.13.2 any examination pursuant to Section 6(1) of the National Audit Act 1983, or any re-enactment thereof, of the economy, efficiency and effectiveness with which the Authority has used its resources

the Comptroller and Auditor General may examine such documents relating to expenditure and income as he may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor and the Contractor shall comply with any such request to produce such oral or written explanations as he considers necessary.

Audit Findings and Corrective Action

15.14 The Contractor shall be entitled to receive a copy of the Authority's audit findings once completed in relation to any audit carried out in accordance with this Clause 15, subject to any redaction reasonably requested by an Authority Agent.

15.15 Within thirty (30) Calendar Days of the Contractor's receipt of the audit findings, the Parties shall hold an Audit Close-Out Meeting.

15.16 At the Audit Close-Out Meeting, and where applicable, the Contractor shall have the opportunity to demonstrate to the satisfaction of the Authority that some or all of the relevant audit findings are incorrect.

15.17 If, at the Audit Close-Out Meeting, Corrective Action is required, the Contractor shall within thirty (30) Calendar Days of the Audit Close-Out Meeting (or such other date as agreed between the Parties) either:

15.17.1 carry out the Corrective Action; or

15.17.2 propose to the Authority, and obtain the Authority's approval for, a plan for carrying out the Corrective Action.

15.18 Where the Contractor proposes a plan for the Corrective Action in accordance with Clause 15.17.1 (*Audit Findings and Corrective Action*) above, the Authority shall have thirty (30) Calendar Days to notify the Contractor whether it accepts such proposed plan

for the Corrective Action (such acceptance not to be unreasonably withheld or delayed). Failure of the Authority to provide such notification within the above period shall constitute deemed acceptance by the Authority. Where the Authority accepts or is deemed to accept the Contractor's plan, the Contractor shall (upon such acceptance or deemed acceptance) implement the plan for the Corrective Action. Where the Authority notifies the Contractor that it does not accept the plan for the Corrective Action, the Parties shall endeavour within the following thirty (30) Calendar Days to agree any necessary amendments to the plan for the Corrective Action. In the absence of agreement within such thirty (30) Calendar Day period, the question of whether or not the Authority's withholding of acceptance is reasonable may be referred by either Party to be resolved in accordance with Clause 36 (*Disputes*).

Books of Audit Findings

15.19 The Contractor shall maintain books containing the findings of audits carried out pursuant to this Clause 15 (*Inspection and Audit*) together with any relevant correction reports setting out the Corrective Action taken as a result of such audit findings in accordance with Clause 15.17.1 or Clause 15.18 (*Audit Findings and Corrective Action*) above.

Best Practice

15.20 Subject to the obligations set out in Clause 25 (*Confidentiality and Compliance with Legislation*), Clause 27 (*Data Protection*) and Clause 29 (*Intellectual Property*), the Authority shall be entitled to use any best practice identified during any inspection or audit carried out pursuant to this Clause 15 and/or at any Audit Close-Out Meeting, including the right to promulgate such good practice across all nuclear sites designated under section 3 of the Energy Act, provided that such use would not place the Contractor in breach of the terms of any Subcontract entered into in accordance with this Agreement.

Records relating to the Authority's Property

15.21 Without prejudice to the generality of this Clause 15, the Contractor shall provide the Authority, any Authority Agent, the Comptroller and the Auditor General (and any of its authorised representatives) with full access to, the right of inspection of, and extraction from all records whether manual or on computer that relate to the Authority's property (both real and personal) leased to or otherwise made available to the Contractor. All such records shall be retained by the Contractor for the period specified in Clause 14 (*Performance Management, Performance Assurance and Records*).

Contractor's Obligations Persist

15.22 The Contractor shall not be excused from performance of any aspect of its obligations under this Agreement for any period of time during which the Authority and/or the Comptroller and Auditor General are exercising their respective rights in accordance with this Clause 15. If, as a result of any Authority or National Audit Office inspection or audit, the Contractor is prevented from performing its obligations under this Agreement, despite having used reasonable endeavours to so perform, this shall constitute a Dependency Event.

Confidentiality

15.23 The Parties' obligations under this Clause 15 shall be subject to the obligations set out in Clause 25 (*Confidentiality and Compliance with Legislation*).

PART 6: Financial Matters and Liability

16 FINANCE

16.1 Funding Limits

16.1.1 The Contractor shall:

16.1.1.1 fulfil its obligation to perform the Tasks and its other obligations under this Agreement; and

16.1.1.2 manage expenditure within the ASFL, Current Budget, Capital Budget and in accordance with Good Industry Practice, taking into account funding of Shareline from the ASFL in accordance with Schedule 6 (*Finance*),

such that the relevant Costs incurred within any Contract Year in respect of the Sites, together with any such Shareline, do not exceed the relevant ASFL, and (where applicable) Current Budget and the Capital Budget. Neither Target Fee nor PBI Fee shall be taken into account in assessing expenditure against the ASFL.

16.2 Determination of Funding Limits and Compliance with Funding Limits

16.2.1 Prior to each Contract Year, the Authority shall confirm to the Contractor the ASFL, the Current Budget and Capital Budget for that Contract Year as established in accordance with Schedule 6 (*Finance*).

16.2.2 The Contractor shall notify the Authority as soon as reasonably practicable after the Contractor becomes aware that it has incurred Allowable Costs in any Contract Year which in aggregate exceed seventy five per cent (75%) of the ASFL for that Contract Year.

16.2.3 Any notice of the type referred to in Clause 16.2.2 above, shall include details of the relevant Allowable Costs incurred to the date of the notice and the Contractor's best estimate of the level of such Allowable Costs which are likely to be incurred during the remainder of the Contract Year.

16.3 Financial Restrictions

16.3.1 After the Commencement Date, the Contractor shall not without the prior written consent of the Authority:

16.3.1.1 dispose, let or otherwise part with the possession of the whole of or any part of any Site (save as permitted pursuant to the relevant Property Lease) or any business, undertaking or asset of the Contractor (including any asset subject to a finance or operating lease) nor purport to do any of the foregoing;

16.3.1.2 make any change to its accounting reference date;

16.3.1.3 make any change to GAAP or the Accounting Policies and Procedures save as required by applicable Legislation and Accounting Standards;

16.3.1.4 give any form of guarantee or other security;

16.3.1.5 create or permit to subsist any Security Interest over any Authority Assets or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than as permitted by this Agreement;

16.3.1.6 save for borrowings under an Approved Working Capital Facility, borrow (including intra-group) or make any payment under any intra-group borrowings;

16.3.1.7 create or acquire any subsidiary or dispose of any shareholding in a subsidiary or make or have any investment in any other entity, except for the deposit of cash in the Joint Fee Account, the Magnox Contractor's Payment Account or the RSRL Contractor's Payment Account;

16.3.1.8 commence any litigation, arbitration or adjudication other than:

16.3.1.8.1 for the purposes of satisfying Clause 6.8 (*Necessary Consents*), Clause 29 (*Intellectual Property*) or Clause 17 (*Claims Handling*);

- 16.3.1.8.2 in accordance with the Dispute Resolution Procedure;
- 16.3.1.8.3 in any attempt to commence judicial review proceedings against the Authority in connection with this Agreement;
- 16.3.1.8.4 to challenge any threatened or actual refusal to grant, non-renewal or revocation of a Nuclear Site Licence or any other regulatory permit or consent which is required by the Contractor to operate the Sites or carry out the Commercial Operations Tasks in accordance with Legislation; or
- 16.3.1.8.5 to the extent that the Contractor, acting reasonably, considers such commencement is urgent and necessary to the Contractor's performance of its obligations to the Authority

and provided always that the Contractor shall notify the Authority as soon as reasonably practicable, and in any event prior to any such litigation or arbitration being commenced against a Regulator(s);

- 16.3.1.9 incur any liability or financial indebtedness except pursuant to an Approved Working Capital Facility or any Permitted Financial Indebtedness or as permitted by this Agreement;
- 16.3.1.10 make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than the deposit of cash with a financial institution approved in writing by the Authority or Office of the Paymaster General as permitted by this Agreement);
- 16.3.1.11 enter into any finance or operating leases (other than leases for vehicles and other mobile equipment);
- 16.3.1.12 notwithstanding the Permitted Activities, enter into any Customer Contract or Subcontract where a material liability or Cost is likely to crystallise after the expiry of:
 - 16.3.1.12.1 any termination notice (which has been issued in accordance with Clause 33 (*Termination*) and Clause 37.7 (*Notices*)) to terminate this Agreement; and/or

- 16.3.1.12.2 the expiry or termination of the Parent Body Agreement;
- 16.3.1.13 save as set out in Clause 16.11.10 (*Payments to Parent*) below, make any payments to the Parent Body Organisation or to any Affiliates which:
 - 16.3.1.13.1 are not provided for and made in accordance with Subcontracts specifically approved by the Authority pursuant to Clause 22 (*Subcontracting/ Procurement*); or
 - 16.3.1.13.2 have not been agreed to under an Advance Agreement;
- 16.3.1.14 undertake hedging activities (except in accordance with the Currency Hedging Strategy);
- 16.3.1.15 enter into any agreement or arrangement the terms of which are not on arm's-length terms or which gives rise to less value for money for the Contractor and/or the Authority because of any direct or indirect benefit or advantage which accrues to the Parent Body Organisation or to any Affiliate or to any Subcontractor;
- 16.3.1.16 [Not used]
- 16.3.1.17 make any change to or waive any rights under any Approved Working Capital Facilities where such change or waiver is prejudicial to the interests of the Authority and/or outside the usual course of administering a working capital facility; nor
- 16.3.1.18 open any bank, building society or similar account.
- 16.3.2 For the purposes of Clause 16.3.1 (*Financial Restrictions*) above, other than where the Authority has expressly withheld its consent in writing, the Contractor shall be deemed to have the prior written consent of the Authority to carry out any of the activities in Clauses 16.3.1.11 (*Financial Restrictions*) to 16.3.1.18 (*Financial Restrictions*) above to the extent the relevant activity is:
 - 16.3.2.1 necessary for (or necessarily ancillary to) the delivery of the Client Specification Completion State;
 - 16.3.2.2 expressly contained in a Subcontract or Customer Contract which is specifically approved by the Authority, provided that, for the avoidance of doubt and notwithstanding any other provision of this

Agreement, any Subcontract or Customer Contract which enables the Contractor to do any of the matters set out in this Clause 16.3 (*Financial Restrictions*) requires the approval of the Authority notwithstanding the Permitted Activities;

16.3.2.3 expressly contained in an Internal Procedure approved by the Authority in accordance with this Agreement;

16.3.2.4 save in the case of Clause 16.3.1.11 (*Financial Restrictions*) above, a Permitted Activity or otherwise approved by the Authority following the Contractor's compliance with Clause 20.2 (*Obligation to consult the Authority*);

16.3.2.5 in the case of Clause 16.3.1.1 (*Financial Restrictions*) above, expressly permitted by Clause 6.1 (*Right to Deal with Authority Assets*);

16.3.2.6 expressly permitted pursuant to Schedule 6 (*Finance*); or

16.3.2.7 required as a term of an Approved Working Capital Facility.

16.3.3 For the purposes of Clause 16.3.1 (*Financial Restrictions*) above, the Authority may not unreasonably withhold or delay its consent.

16.4 **Benchmarking – Working Capital Facilities**

16.4.1 Subject to Clause 16.4.2 (*Benchmarking – Working Capital Facilities*) below, the Authority shall have the right in each Contract Year to establish the best terms and conditions on which facilities (similar to any then Approved Working Capital Facility and/or any Proposed Working Capital Facilities) are being offered on the market, having particular regard to interest and charges (the "**Benchmark**").

16.4.2 In assessing the Benchmark (the "**Benchmark Assessment**") the Authority shall:

16.4.2.1 act reasonably;

16.4.2.2 take into account any interest and charges which providers of identical or substantially similar working capital facilities are offering at or around that time to organisations of a similar size and nature to the Contractor and (in so far as practicable) would be prepared to offer to the Contractor; and

- 16.4.2.3 take into account the size of the working capital facility and the purpose for which it will be used.
- 16.4.3 The Authority shall notify the Contractor of the outcome of its Benchmark Assessment as soon as reasonably practicable after such Benchmark Assessment has been completed.
- 16.4.4 The Authority may in its absolute discretion require the Contractor in each Contract Year to undertake the Benchmark Assessment on behalf of the Authority. If so requested, the Contractor shall:
- 16.4.4.1 comply with the rules set out in Clause 16.4.2 (*Benchmarking – Working Capital Facilities*) above as if it were the Authority; and
- 16.4.4.2 deliver the report of the Benchmark Assessment to the Authority as soon as reasonably practicable after such Benchmark Assessment has been completed.
- 16.4.5 When either Party notifies the other Party of the outcome of a Benchmark Assessment (either pursuant to Clause 16.4.3 or Clause 16.4.4 (*Benchmarking – Working Capital Facilities*) above), the Party receiving notice of the Benchmark Assessment has the right to contest the Benchmark Assessment provided that in doing so it complies with the Dispute Resolution Procedure.
- 16.4.6 If:
- 16.4.6.1 a Proposed Working Capital Facility is offered; and/or
- 16.4.6.2 any then Approved Working Capital Facility is
- on terms and conditions which (from the Authority's perspective, as the body obliged (subject to the provisions of Schedule 6 (*Finance*)) to reimburse the Costs of the Approved Working Capital Facilities) are neither equal to nor better than the Benchmark, then the Contractor shall:
- 16.4.6.2.1 (in the case of a Proposed Working Capital Facility) not enter into such Proposed Working Capital Facility without the Authority's prior written consent (such consent to be given or withheld within thirty (30) Calendar Days of the date on which the outcome of the relevant Benchmark Assessment has been given to the Authority or, if later, within thirty (30) Calendar Days of the date on which the Authority is provided

with full details of the terms of the relevant Proposed Working Capital Facility); and

- 16.4.6.2.2 (in the case of an Approved Working Capital Facility) procure that such facility is replaced as soon as reasonably practicable with a new Approved Working Capital Facility on terms which are at least as favourable to the Authority as the Benchmark.

16.5 Historical Costs

- 16.5.1 The Contractor shall determine whether any cost, claim or liability of either the Magnox Contractor or the RSRL Contractor which relates to the period prior to the Commencement Date and which has been satisfied by the Contractor after the Commencement Date falls within the definition of a Contractor Historical Cost or a Non-Contractor Historical Cost. Where relevant, the Contractor shall apply the terms of the relevant Overarching Costs Management Agreement when deciding whether such a Cost, claim or liability is a Contractor Historical Cost or a Non-Contractor Historical Cost.
- 16.5.2 The Contractor shall mitigate, to the extent reasonably possible, all Contractor Historical Costs and meet such Contractor Historical Costs subject, where relevant, to the provisions of Clause 17 (*Claims Handling*).
- 16.5.3 Where the Contractor has paid a Non-Contractor Historical Cost to which an Overarching Cost Management Agreement relates, the Contractor shall use reasonable endeavours to reclaim such Non-Contractor Historical Cost from the person to whom it is properly attributable in accordance with the terms of the relevant Overarching Cost Management Agreement. The Contractor shall pay any amounts reclaimed pursuant to this Clause 16.5.3 (*Historical Costs*) to the Authority as Category II Revenue.

16.6 Cashflow

- 16.6.1 Costs and Capital
- 16.6.1.1 The Contractor shall ensure that it maintains a working capital facility to enable it to meet its obligations under this Agreement on the basis that the Authority makes payments under this Agreement as and when such payments fall due.
- 16.6.1.2 The Contractor shall make payments, which are to be made out of the Magnox Contractor's Payments Account or the RSRL Contractor's Payments Account, to creditors as they Fall Due and

in accordance with the Government Payment Obligations (save as otherwise agreed by the Authority in writing).

16.6.1.3 Unless the Authority approves otherwise in writing, the working capital facility required under Clause 16.6.1.1 (*Costs and Capital*) above shall be provided by the Contractor entering into one or more Approved Working Capital Facilities.

16.6.1.4 All drawings under an Approved Working Capital Facility shall be transferred only into the Magnox Contractor's Payments Account or the RSRL Contractor's Payments Account. The Contractor shall only pay creditors out of the Magnox Contractor's Payments Account or the RSRL Contractor's Payments Account including, without limitation, Working Capital Costs.

16.6.1.5 The provisions of Clause 16.6.1.2 (*Working Capital*) above shall not apply to the extent that the relevant creditor is to be satisfied as an Exceptional Item which the Authority has failed to pay to the Contractor in accordance with Part 2B (*Payment of Allowable Costs*) of Schedule 6 (*Finance*).

16.6.2 Cashflow Forecasting

The Contractor shall regularly submit to the Authority a cashflow forecast in a form and at a frequency to be determined by the Authority, acting reasonably, and notified to the Contractor from time to time in accordance with FNP-02.

16.7 **Determination of Revenue Category**

16.7.1 The Authority shall be entitled, acting reasonably and in consultation with the Contractor, to:

16.7.1.1 [Not used]

16.7.1.2 amend categories of revenue within, delete categories of revenue from and add new categories of revenue.

16.7.2 [Not used]

16.7.3 [Not used]

16.8 **Magnox Category II Revenue**

16.8.1 Unless specifically instructed in writing by the Authority, the Magnox Contractor shall pay all Category II Revenue into the Magnox Contractor's Receipts Accounts on receipt of such revenue and shall transfer the entire

balance of the Magnox Contractor's Receipts Accounts on a daily basis to the Magnox OPG Receipts Account.

- 16.8.2 The Magnox Contractor will hold the entire balance standing to the credit of the Magnox Contractor's Receipts Accounts in trust for the Authority from the moment of receipt of funds into the Magnox Contractor's Receipts Accounts until the day of receipt of the balance by the Authority.
- 16.8.3 If the Magnox Contractor becomes aware that an amount so transferred to the Magnox OPG Receipts Account was paid into the Magnox Contractor's Receipts Account in error and therefore should not have been so transferred, then the Magnox Contractor shall reclaim the amount paid in error by informing the Authority of the amount, the date of transfer and the reason for the error (an "**Overpayment Notice**"). The Magnox Contractor will use all reasonable endeavours to make such claim within twenty one (21) Calendar Days following the end of the Accounting Month in which a receipt has been transferred by the Magnox Contractor to the Magnox OPG Receipts Account under Clause 16.8.1 (*Magnox Category II Revenue*) above. In the event that, exercising such reasonable endeavours, the Magnox Contractor is unable to make such claim as aforesaid, the Magnox Contractor shall make such claim as soon as reasonably practicable after the expiry of twenty one (21) Calendar Days following the end of the Accounting Month in which a receipt has been transferred by the Magnox Contractor to the Magnox OPG Receipts Account under Clause 16.8.1 (*Magnox Category II Revenue*) above.
- 16.8.4 The Magnox Contractor will provide along with the Overpayment Notice or as soon as reasonably practicable following the Authority's receipt of an Overpayment Notice all relevant supporting documents and information (and in such a form) as the Authority may reasonably require in order to satisfy itself that the payment into the Magnox Contractor's Receipts Account was made in error. If the Parties cannot agree whether an amount was paid into the Magnox Contractor's Receipts Account in error or if there is any disagreement regarding the amount paid in error the matter shall be resolved in accordance with Clause 36 (*Disputes*).
- 16.8.5 If it shall be decided or determined that the Magnox Contractor transferred all or part of the amount referred to in the Overpayment Notice to the Magnox OPG Receipts Account in error, then as soon as reasonably practicable following such agreement or determination the Authority will repay the relevant amount to the Magnox Contractor's Receipts Account.

16.9 **RSRL Category II Revenue**

- 16.9.1 Unless specifically instructed in writing by the Authority, the RSRL Contractor shall pay all Category II Revenue into the RSRL Contractor's Receipts Accounts on receipt of such revenue and shall transfer the entire balance of the RSRL Contractor's Receipts Accounts on a daily basis to the RSRL OPG Receipts Account.
- 16.9.2 The RSRL Contractor will hold the entire balance standing to the credit of the RSRL Contractor's Receipts Accounts in trust for the Authority from the moment of receipt of funds into the RSRL Contractor's Receipts Accounts until the day of receipt of the balance by the Authority.
- 16.9.3 If the RSRL Contractor becomes aware that an amount so transferred to the RSRL OPG Receipts Account was paid into the RSRL Contractor's Receipts Account in error and therefore should not have been so transferred, then the RSRL Contractor shall reclaim the amount paid in error by informing the Authority of the amount, the date of transfer and the reason for the error (an "**Overpayment Notice**"). The RSRL Contractor will use all reasonable endeavours to make such claim within twenty one (21) Calendar Days following the end of the Accounting Month in which a receipt has been transferred by the RSRL Contractor to the RSRL OPG Receipts Account under Clause 16.9.1 (*RSRL Category II Revenue*) above. In the event that, exercising such reasonable endeavours, the RSRL Contractor is unable to make such claim as aforesaid, the RSRL Contractor shall make such claim as soon as reasonably practicable after the expiry of twenty one (21) Calendar Days following the end of the Accounting Month in which a receipt has been transferred by the RSRL Contractor to the RSRL OPG Receipts Account under Clause 16.9.1 (*RSRL Category II Revenue*) above.
- 16.9.4 The RSRL Contractor will provide along with the Overpayment Notice or as soon as reasonably practicable following the Authority's receipt of an Overpayment Notice all relevant supporting documents and information (and in such a form) as the Authority may reasonably require in order to satisfy itself that the payment into the RSRL Contractor's Receipts Account was made in error. If the Parties cannot agree whether an amount was paid into the RSRL Contractor's Receipts Account in error or if there is any disagreement regarding the amount paid in error the matter shall be resolved in accordance with Clause 36 (*Disputes*).
- 16.9.5 If it shall be decided or determined that the RSRL Contractor transferred all or part of the amount referred to in the Overpayment Notice to the RSRL OPG Receipts Account in error, then as soon as reasonably practicable following

such agreement or determination the Authority will repay the relevant amount to the RSRL Contractor's Receipts Account.

16.10 Invoicing and Payment

16.10.1 The Contractor shall be paid for the provision of the services under this Agreement in accordance with the provisions of Schedule 6 (*Finance*).

16.11 Operation of Accounts

16.11.1 Joint Fee Account

16.11.1.1 The Magnox Contractor and the RSRL Contractor shall maintain the Joint Fee Account as a designated account for the receipt of Fee.

16.11.1.2 Funds may only be drawn from the Joint Fee Account in order and to the extent necessary to:

16.11.1.2.1 pay Costs and discharge any liabilities which are not Allowable Costs;

16.11.1.2.2 reimburse the Magnox Contractor's Payments Account or the RSRL Contractor's Payments Account for any Costs previously treated as Allowable Costs and which are subsequently determined to be Disallowable Costs; or

16.11.1.2.3 make payments to the Parent Body Organisation which are not Allowable Costs and which are permitted by this Agreement and the Parent Body Agreement.

16.11.1.3 Any interest which accrues on the Joint Fee Account shall be for the benefit of the Magnox Contractor and the RSRL Contractor only.

16.11.2 Magnox M&O Contractor's Fee Account

16.11.2.1 As soon as reasonably practicable following the Commencement Date, the Magnox Contractor shall open and maintain the Magnox M&O Contractor's Fee Account as a designated account with a reputable bank of good standing for the receipt of:

- 16.11.2.1.1 sums identified by the Authority as comprising the Magnox Year End Sum paid pursuant to the Magnox Management and Operations Contract; and
 - 16.11.2.1.2 any amounts to be applied to the Magnox M&O Contractor's Fee Account pursuant to Clause 16.15.10 (*Pre Commencement Reliefs*).
 - 16.11.2.2 The Magnox Contractor may only draw funds from the Magnox M&O Contractor's Fee Account in order and to the extent necessary to make dividend payments to the Magnox B Shareholder in accordance with the instructions of the Authority, to make any adjustments required by Clauses 16.15.10.8 or 16.15.11, or to satisfy any increased Tax liability of the Magnox Contractor in connection with the receipt of any amounts referred to in 16.11.2.1 above or otherwise by reason of inclusion of such amounts in the calculation of the Magnox Contractor's profits.
 - 16.11.2.3 Any interest which accrues on the Magnox M&O Contractor's Fee Account shall be for the benefit of the Magnox B Shareholder.
 - 16.11.2.4 The Magnox M&O Contractor's Fee Account may not be closed without the consent of the Authority.
- 16.11.3 RSRL M&O Contractor's Fee Account
 - 16.11.3.1 As soon as reasonably practicable following the Commencement Date, the RSRL Contractor shall open and maintain the RSRL M&O Contractor's Fee Account as a designated account with a reputable bank of good standing for the receipt of:
 - 16.11.3.1.1 sums identified by the Authority as comprising the RSRL Year End Sum paid pursuant to the RSRL Management and Operations Contract; and
 - 16.11.3.1.2 any amounts to be applied to the RSRL M&O Contractor's Fee Account pursuant to Clause 16.15.10 (*Pre Commencement Reliefs*).
 - 16.11.3.2 The RSRL Contractor may only draw funds from the RSRL M&O Contractor's Fee Account in order and to the extent necessary to make dividend payments to the Magnox B Shareholder in accordance with the instructions of the Authority, to make any adjustments required by Clauses 16.15.10.8 or 16.15.11, or to

satisfy any increased Tax liability of the RSRL Contractor in connection with the receipt of any amounts referred to in Clause 16.11.3.1 above or otherwise by reason of inclusion of such amounts in the calculation of the RSRL Contractor's profits.

16.11.3.3 Any interest which accrues on the RSRL M&O Contractor's Fee Account shall be for the benefit of the Magnox B Shareholder.

16.11.3.4 The RSRL M&O Contractor's Fee Account may not be closed without the consent of the Authority.

16.11.4 SLCA Contractor's Fee Account

16.11.4.1 On expiry or termination of this Agreement, the Contractor shall open and maintain the SLCA Contractor's Fee Account as a designated account with a reputable bank of good standing for the receipt of any:

16.11.4.1.1 Target Fee and/or PBI Fee payable to the Contractor pursuant to Schedule 6 (*Finance*) which is paid after termination or expiry;

16.11.4.1.2 sums payable to the Contractor pursuant to Paragraph 10 (*Final Reconciliation of Allowable Costs*) of Part 2B (*Payment of Allowable Costs*) of Schedule 6 (*Finance*), and, if applicable, any subsequently incurred Nominated Staff Demobilisation Costs or Allowable Costs in respect of Continuing Nominated Staff;

16.11.4.1.2A sums (if any) payable to the Contractor on termination in accordance with Clause 19 of the Parent Body Agreement; and/or

16.11.4.1.3 other sums (if any) payable to the Contractor under this Agreement in respect of or referable to delivery of the Client Specification Completion State, or otherwise relating to the Term.

If any such sums are not paid directly into the SLCA Contractor's Fee Account by the Authority, the Contractor shall immediately on receipt pay such sums into the SLCA Contractor's Fee Account.

16.11.4.2 The Contractor may only draw funds from the SLCA Contractor's Fee Account in order and to the extent necessary to make dividend payments to the Magnox B Shareholder and the RSRL B Shareholder or to satisfy any increased Tax liability of the Contractor in connection with the receipt of any amounts referred to in Clause 16.11.4.1 above or otherwise by reason of inclusion of such amounts in the calculation of the Contractor's profits.

16.11.4.3 Any interest which accrues on the SLCA Contractor's Fee Account shall be for the benefit of the Magnox B Shareholder and the RSRL B Shareholder.

16.11.4.4 The SLCA Contractor's Fee Account may not be closed without the consent of the Authority.

16.11.5 Magnox Contractor's Payments Account

16.11.5.1 The Magnox Contractor shall maintain the Magnox Contractor's Payments Account as a designated account for the making of payments of Allowable Costs and the receipt of payments from the Authority in respect of Allowable Costs incurred by the Magnox Contractor.

16.11.5.2 The Magnox Contractor shall use any interest which accrues on credit balances in the Magnox Contractor's Payments Account as follows:

16.11.5.2.1 any such credit interest shall first be used to reduce the amount of the charges which arise under the Approved Working Capital Facility and which would otherwise be chargeable to the Authority as Allowable Costs; and

16.11.5.2.2 if on an annual basis the credit interest (together with the credit interest on the RSRL Contractor's Payments Account) exceeds the charges which arise under the Approved Working Capital Facility, then the excess shall be payable to the Authority as Category II Revenue within five (5) Working Days of the relevant annual reconciliation.

16.11.5.3 The Magnox Contractor shall have available a daily cashflow analysis of the Magnox Contractor's Payments Account which justifies the Agreed Payment Profile adopted for the reimbursement

of Allowable Costs. The Contractor shall supply the Authority with a copy of such daily cashflow analysis of the Contractor's Payment Account on request by the Authority and in line with Paragraphs 7.2(j) and 8.1, Part 2B (*Payment of Allowable Costs*) of Schedule 6 (*Finance*).

16.11.5.4 The Magnox Contractor may only transfer funds from the Magnox Contractor's Payments Account to fund foreign currency hedging if:

16.11.5.4.1 such payments are in accordance with the Currency Hedging Strategy; or

16.11.5.4.2 the Authority has given its prior written consent to such payments.

16.11.6 RSRL Contractor's Payments Account

16.11.6.1 The RSRL Contractor shall maintain the RSRL Contractor's Payments Account as a designated account for the making of payments of Allowable Costs and the receipt of payments from the Authority in respect of Allowable Costs incurred by the RSRL Contractor.

16.11.6.2 The RSRL Contractor shall use any interest which accrues on credit balances in the RSRL Contractor's Payments Account as follows:

16.11.6.2.1 any such credit interest shall first be used to reduce the amount of the charges which arise under the Approved Working Capital Facility and which would otherwise be chargeable to the Authority as Allowable Costs; and

16.11.6.2.2 if on an annual basis the credit interest (together with the credit interest on the Magnox Contractor's Payments Account) exceeds the charges which arise under the Approved Working Capital Facility, then the excess shall be payable to the Authority as Category II Revenue within five (5) Working Days of the relevant annual reconciliation.

16.11.6.3 The RSRL Contractor shall have available a daily cashflow analysis of the RSRL Contractor's Payments Account which justifies the Agreed Payment Profile adopted for the reimbursement of

Allowable Costs incurred by the RSRL Contractor. The RSRL Contractor shall supply the Authority with a copy of such daily cashflow analysis of the RSRL Contractor's Payment Account on request by the Authority and in line with Paragraphs 7.2(j) and 8.1, Part 2B (*Payment of Allowable Costs*) of Schedule 6 (*Finance*).

16.11.6.4 The RSRL Contractor may only transfer funds from the RSRL Contractor's Payments Account to fund foreign currency hedging if:

16.11.6.4.1 such payments are in accordance with the Currency Hedging Strategy; or

16.11.6.4.2 the Authority has given its prior written consent to such payments.

16.11.7 Magnox Contractor's Receipts Account

16.11.7.1 The Magnox Contractor shall maintain the Magnox Contractor's Receipts Account as a designated account for the receipt of payment from Customers and the passing over of such payments to the Authority under Clause 16.8 (*Magnox Category II Revenue*) above.

16.11.7.2 Any interest which accrues on credit balances in the Magnox Contractor's Receipts Account shall be payable by the Magnox Contractor to the Authority as Category II Revenue in accordance with Clause 16.8.1 (*Magnox Category II Revenue*) above.

16.11.7.3 Payments shall only be made from the Magnox Contractor's Receipts Account in accordance with Clause 16.8 (*Magnox Category II Revenue*) above.

16.11.8 RSRL Contractor's Receipts Account

16.11.8.1 The RSRL Contractor shall maintain the RSRL Contractor's Receipts Account as a designated account for the receipt of payment from Customers and the passing over of such payments to the Authority under Clause 16.9 (*RSRL Category II Revenue*) above.

16.11.8.2 Any interest which accrues on credit balances in the RSRL Contractor's Receipts Account shall be payable by the RSRL Contractor to the Authority as Category II Revenue in accordance with Clause 16.9.1 (*RSRL Category II Revenue*) above.

16.11.8.3 Payments shall only be made from the RSRL Contractor's Receipts Account in accordance with Clause 16.9 (*RSRL Category II Revenue*) above.

16.11.9 Foreign Exchange Accounts

16.11.9.1 The Contractor shall not maintain any Foreign Exchange Accounts without the prior written consent of the Authority.

16.11.9.2 The Contractor may only transfer funds into the Foreign Exchange Accounts to fund any foreign currency hedging activities if:

16.11.9.2.1 such transfer of funds is carried out in accordance with the Currency Hedging Strategy;

16.11.9.2.2 the Authority has given its prior written consent to such transfer of funds; and

16.11.9.2.3 such transfer of funds is required to make payments to creditors as they Fall Due and in accordance with Government Payment Obligations (save as otherwise agreed by the Authority in writing).

16.11.9.3 The Contractor shall accurately record such transfers of funds into the Foreign Exchange Accounts and associated payments to creditors in its accounting records.

16.11.9.4 Interest on credit balances in Foreign Exchange Accounts shall be payable by the Contractor to the Authority as Category II Revenue on a daily basis unless the value is equal to or less than one thousand pounds sterling (£1,000) when it is to be transferred to the Authority no later than one month following receipt.

16.11.9.5 Other Accounts

16.11.9.5.1 Save with the approval of the Authority (not to be unreasonably withheld or delayed), the Contractor shall not have and/or operate any bank or similar accounts other than the Contractor's Fee Account, Payments Account, Contractor's Receipts Account and the Foreign Exchange Accounts.

16.11.10 Payments to Parent

16.11.10.1 Save as set out in the following provisions of this Clause 16.11.10, neither the Magnox Contractor nor the RSRL Contractor shall without the prior written consent of the Authority make any payment to the Parent Body Organisation.

16.11.10.2 Notwithstanding Clause 16.3.1.13 (*Financial Restrictions*) above but subject to the Contractor's obligations under Clause 16.11.10.5 (*Payments to Parent*), the Contractor may make payments to the Parent Body Organisation where such payments are made by way of dividend and do not exceed the amount of the profits available for distribution (as defined in section 830 Companies Act 2006) of the Contractor earned by the Contractor during the period from and including the Commencement Date to the date of the payment of the relevant dividend. The amount available to distribute as dividend can never be greater than Fee earned and associated interest less Disallowable Costs less corporation tax at the effective tax rate.

16.11.10.3 For the purposes of calculating such distributable profits the Contractor will be required to apply the Accounting Policies and Procedures.

16.11.10.4 When calculating its profits available for distribution after the Commencement Date, the Contractor shall exclude income earned and expenditure incurred prior to the Commencement Date but which is, for whatever reason, only recognised in the accounts of the Contractor after the Commencement Date.

16.11.10.5 Following the Commencement Date and before the Contractor is able to make any payments to the Parent Body Organisation under Clause 16.11.10.2 (*Payment to Parent*), the Contractor shall prepare and supply to the Authority a written policy paper which shall:

16.11.10.5.1 clearly define the process for how profits available for distribution shall be determined;

16.11.10.5.2 set out the process which the Contractor will undertake to satisfy the Authority that any dividend which the Contractor pays is made in accordance with Clause 16.11.10.3 (*Payments to Parent*) above; and

16.11.10.5.3 state that the Contractor shall require the approval of the Authority before paying any dividends provided that any payment of dividend in respect of sums that have been or should have been received or paid into the SLCA Contractor's Fee Account shall be made only in accordance with the written instructions of the Authority.

Once approved by the Authority such policy shall become the "**Dividend Payment Policy**". Any dividend paid by the Contractor shall only be paid in accordance with the approved Dividend Payment Policy.

16.11.10.6 For the purposes of agreeing the financial position of the Contractor on the Commencement Date, the Magnox Contractor and the RSRL Contractor shall each prepare and provide to the Authority within three (3) months of the Commencement Date a balance sheet as at the Commencement Date, and a profit and loss account for the period from the start of the financial year up to but excluding the Commencement Date (together the "**Commencement Accounts**"). Such Commencement Accounts shall be prepared:

16.11.10.6.1 in accordance with the Accounting Policies and Procedures; and

16.11.10.6.2 subject thereto, on the basis that any discretions available to the management of the Magnox Contractor or the RSRL Contractor in the application of any specific policy or procedure are exercised in the same way as in the previous statutory accounts of the Magnox Contractor or the RSRL Contractor (as applicable).

16.11.10.7 The Annual Reconciliation Report and audited financial statements of the Contractor produced under Paragraphs 8 (*Annual Reconciliation of Allowable Costs*) and 10 (*Final Reconciliation of Allowable Costs*) of Part 2B (*Payment of Allowable Costs*) of Schedule 6 (*Finance*) will be used to agree the financial position of the Contractor at the end of each Contract Year, the termination or expiry of the Parent Body Agreement and on termination of this Agreement. These shall be prepared on the same basis as the

Commencement Accounts. If this shows that dividends have been paid in breach of Clause 16.11.10.2 (*Payments to Parent*) above, then the Parent Body Organisation will be required to procure repayment of the excess to the Authority or Contractor (as the Authority may direct).

16.11.10.8 The Contractor shall be entitled to make payment to the Parent Body Organisation in respect of Allowable Costs for the provision of Nominated Staff including, for the avoidance of doubt, the Costs recovered from the Authority in accordance with Appendix F (*Nominated Staff Recoverable Costs*) to Schedule 6 (*Finance*).

16.11.10.9 The Contractor shall be entitled to make payment to the Parent Body Organisation in respect of interests and capital repayments made in accordance with an Approved Working Capital Facility provided by the Parent Body Organisation.

16.11.10.10 The Contractor shall be entitled to make payments to the Parent Body Organisation pursuant to Clause 6.7 (*Insurance*) and Clause 12.9 (*Contribution for Third Party Claims*) of the Parent Body Agreement.

16.11.11 Save as may be expressly permitted by the terms of this Agreement the Contractor (whether acting under a successor contract entered into with the Authority or otherwise) shall not act or omit to act in any manner that may frustrate or prejudice the ability of the Contractor to pay to the Magnox B Shareholder by way of dividend on the Magnox B Share and the RSRL B Shareholder by way of dividend on the RSRL B Share any sum that in accordance with this Agreement is required to have been received or paid into the SLCA Contractor's Fee Account, in each case at the time and in the manner required by this Agreement, or that may reduce the quantum of any such payment.

16.12 **Payments to Magnox B Shareholder following Commencement Date**

16.12.1 Provided that:

16.12.1.1 the Magnox Contractor has sufficient funds available for distribution;

16.12.1.2 the Magnox Contractor has sufficient funds available in the Magnox M&O Contractor's Fee Account to cover such payment in full after deduction of any amounts that the Magnox Contractor is or will be

permitted to withdraw from the Magnox M&O Contractor's Fee Account in accordance with Clause 16.11.2.2 above; and

16.12.1.3 the Magnox Contractor is otherwise lawfully able to do so,

the Magnox Contractor shall on receipt of the Authority's written instruction declare a dividend to the Magnox B Shareholder in the amount instructed by the Authority.

16.13 Payments to RSRL B Shareholder following Commencement Date

16.13.1 Provided that:

16.13.1.1 the RSRL Contractor has sufficient funds available for distribution;

16.13.1.2 the RSRL Contractor has sufficient funds available in the RSRL M&O Contractor's Fee Account to cover such payment in full after deduction of any amounts that the RSRL Contractor is or will be permitted to withdraw from the RSRL M&O Contractor's Fee Account in accordance with Clause 16.11.3.2 above; and

16.13.1.3 the RSRL Contractor is otherwise lawfully able to do so,

the RSRL Contractor shall on receipt of the Authority's written instruction declare a dividend to the RSRL B Shareholder in the amount instructed by the Authority.

16.14 Transparency and Auditing

16.14.1 At any time, the Authority may choose to exercise the rights set out in Clause 15 (*Inspection and Audit*) to audit the Contractor's determination of Costs as Allowable Costs or Disallowable Costs, the Contractor's claims for reimbursement of Allowable Costs, the reconciliation between payments made and accruals, the satisfaction of Target Fee Payment Milestones and the Contractor's calculations of Fee.

16.14.2 The Contractor shall adopt a system of transparency and open book accounting which provides for all income, expenditure and other matters relating to the financial management and performance of the Contractor. The Contractor shall, at the request of the Authority, make such of its records available to the Authority as are necessary for the Authority to verify that such a system has been and is being adopted. The Contractor shall ensure that its Subcontractors also comply with such transparency and reporting provisions by including in its Subcontracts such drafting as is necessary to give the Authority equivalent rights in respect of such Subcontracts as it has in respect

of this Agreement under Clause 15 (*Inspection and Audit*) and this Clause 16.14 (*Transparency and Auditing*). The Authority shall have a right of access to the build up and calculations for each and every item of Cost that is used in the formulation of the prices and sums under this Agreement. The Contractor shall procure that the Authority shall have the right to audit the Subcontractors and such Subcontractors' affiliates (to the extent that they have any involvement with the performance of the Contractor's obligations under this Agreement) on the same basis.

16.15 Taxation

16.15.1 Tax - General

16.15.1.1 The Contractor shall take all reasonable actions to meet its Taxation compliance obligations, and in particular to assist in the reduction or elimination of any irrecoverable Taxation.

16.15.1.2 The Contractor shall not act in any way inconsistently with the Tax principles set out in this Agreement.

16.15.2 Corporation Tax

The Contractor:

16.15.2.1 agrees to prepare and submit to HMRC corporation tax computations on the basis of the principles agreed between HMRC and the Authority in the Code of Practice 10 Submission (the "**COP 10**");

16.15.2.2 undertakes not to seek agreement from HMRC to a treatment of any item in the corporation tax computations which is inconsistent with the COP 10, unless the Authority expressly consents in writing; and

16.15.2.3 shall produce a tax pack in respect of the accounting records maintained by the Contractor on behalf of the Authority in the form and to the frequency and timescales required by the Authority and respond to any queries on a timely basis such that the Authority is able to meet its Taxation obligations.

16.15.3 VAT

16.15.3.1 The Contractor shall charge VAT, issue VAT invoices and comply with VAT compliance obligations on the following basis. The Contractor:

- 16.15.3.1.1 shall maintain its registration for the purposes of the VATA;
 - 16.15.3.1.2 agrees properly to charge VAT and issue VAT invoices in respect of supplies made to Third Party customers;
 - 16.15.3.1.3 agrees properly to charge VAT and issue VAT invoices, in accordance with Schedule 6 (*Finance*), in respect of the reimbursement of Allowable Costs by the Authority;
 - 16.15.3.1.4 agrees properly to charge VAT and issue VAT invoices and credit notes as appropriate in respect of the Contract Price;
 - 16.15.3.1.5 agrees properly to prepare and submit VAT returns on a timely basis to HMRC and to seek recovery as far as possible of VAT incurred in respect of goods and services supplied (or deemed supplied) to the Contractor;
 - 16.15.3.1.6 the Contractor shall be responsible for ensuring that it recovers all VAT and all foreign equivalents of VAT from the relevant Taxation Authority on all Costs on the relevant return form covering the period in which relevant invoices are issued to the Contractor by Third Parties regardless of when those invoices are posted to the Contractor's accounting system;
 - 16.15.3.1.7 agrees not to act inconsistently with the principles set out in this Agreement; and
 - 16.15.3.1.8 agrees to apply to the relevant Taxation Authority within thirty (30) Calendar Days of the Commencement Date for an import VAT and duty deferment guarantee under the Simplified Import VAT Accounting regime and to liaise with the Authority to ensure that the application is processed as quickly as possible.
- 16.15.3.2 The Authority shall charge VAT in respect of the payments under the Property Leases and shall properly issue VAT invoices in respect thereof.

16.15.3.3 The Authority warrants that it has exercised the option to tax for purposes in accordance with the provisions of Paragraph 2 of Schedule 10 to VATA in respect of the Sites.

16.15.4 Withholding Taxes

16.15.4.1 Any payment made by the Authority or the Contractor under, or pursuant to the terms of, this Agreement shall be made free and clear of all Taxation whatsoever save only for any deductions or withholdings required by applicable Legislation and any VAT payable in accordance with the terms of this Agreement.

16.15.4.2 The Authority warrants that it is a company resident in the United Kingdom for the purposes of Part 15 of the Income Tax Act 2007.

16.15.4.3 The Contractor warrants that it is a company resident in the United Kingdom for the purposes of Part 15 of the Income Tax Act 2007.

16.15.4.4 Where the Contractor is or will be required to account under this Agreement to the Authority in respect of any receipt from a Third Party, and such receipt is or may be subject to deductions or withholdings in respect of Taxation, the Contractor is required to take reasonable action necessary to obtain the payment without such deduction or withholding, or to recover all or part of the deduction or withholding (including by way of Relief, with such recovery treated as part of the receipt from the Third Party).

16.15.5 Employee Taxes

The Contractor undertakes properly to account for all National Insurance Contributions and sums payable to HMRC under the PAYE system in respect of emoluments and benefits paid or payable, and to make all deductions and retentions as should be made in accordance with the applicable Legislation.

16.15.6 Tax Returns

The Authority may request to review the Contractor's Tax returns and Tax correspondence prior to their submission to the relevant Taxation Authority. The Contractor will take into account the Authority's reasonable comments provided that the timing of the provision of such comments takes into account any deadline for the relevant submission of which the Authority is aware and provided that the Tax return or Tax correspondence relates to a matter for which the Authority has a financial responsibility or interest.

16.15.7 Income Tax - Construction Industry Scheme Regulations

The Contractor shall comply with the obligations imposed on it by the CISR and the obligation of the Authority to make any payment under this Agreement is subject to the provisions of the CISR.

16.15.8 R&D Relief

16.15.8.1 The Contractor is obliged to take all actions reasonably necessary to obtain and maximise any R&D Relief (including, for the avoidance of doubt, any payment from HMRC) that is or becomes available to it or a Subcontractor. In particular, the Contractor shall ensure that:

16.15.8.1.1 where research and development activity is undertaken by the Contractor which qualifies for R&D Relief, the Contractor records in sufficient detail all costs and expenditure relevant to the Relief so as to allow and maximise a valid claim to HMRC in relation to the full amount of the expenditure;

16.15.8.1.2 where research and development activity is carried out by a Subcontractor on behalf of the Contractor, or by a Sub-Subcontractor, the pricing of the relevant Subcontract and (where relevant) Sub-Subcontract reflects any R&D Relief available to the Subcontractor and (where relevant) Sub-Subcontractor;

16.15.8.1.3 the Contractor makes a claim for the R&D Relief at the same time as or as soon as practicable after submitting its corporation tax return in respect of the period in which the Relief may be claimed, and submits such return within the requisite timescale to avoid any interest or penalty.

16.15.8.2 The Contractor is obliged to inform the Authority of any benefit anticipated or received as a result of R&D Reliefs. Further:

16.15.8.2.1 in the case of research and development activity undertaken by the Contractor which qualifies for R&D Relief, the Contractor shall:

16.15.8.2.1.1 calculate the anticipated benefits when it prepares estimates and revised

estimates of corporation tax liability (or if applicable any other Tax liability) for the relevant year in order to determine the level of the payments which it is to make to HMRC on account of corporation tax (or such other Tax); and

16.15.8.2.1.2 notify the Authority of the level of such benefits each time that such estimates are made and also as and when the relevant return is submitted to HMRC;

16.15.8.2.2 notwithstanding the provisions of Schedule 6 (*Finance*) the amount of the Allowable Costs which are reimbursed by the Authority shall be reduced by fifty per cent (50%) of the amount of the Tax saved (and of the amount of any payment from a Taxation Authority) as a result of R&D Relief anticipated or shown in the Contractor's estimate of its corporation tax liability (or if applicable any other Tax liability) or within its submitted returns (including, for the avoidance of doubt, in respect of any envisaged surrender by the Contractor of such R&D Relief); this reduction shall be effected by the Contractor issuing to the Authority a credit note;

16.15.8.2.3 as and when the Contractor's claim for R&D Relief (including any right to a payment of any amount) (or any surrender thereof) is agreed by HMRC, the amount of the R&D Relief shall be compared to the amount claimed in the relevant return; if the R&D Relief (including any right to any payment) in the relevant estimate or return differs from that agreed by HMRC, then within thirty (30) Calendar Days of the agreement with HMRC an adjustment shall be effected by way of credit or debit note or notes to ensure that the Authority has received or will receive fifty per cent (50%) of:

16.15.8.2.3.1 the Tax saved as a result of the use or set-off of the said relief (or which would have been saved but for any other

claim made by or on behalf of the Contractor); and

16.15.8.2.3.2 any sum which will be received from HMRC in respect of the R&D Relief (or which would have been received on making a claim but for it being used or set-off),

and should the claim to HMRC be adjusted after this event, a further credit or debit note or notes will be issued to take the adjustment into account.

16.15.8.3 For the purposes of this Clause, Tax shall not be treated as having been "saved":

16.15.8.3.1 (to the extent that the R&D Relief is not a right to a payment), until the last date upon which the Contractor or any person to whom the Contractor may surrender Tax losses (or other amounts in respect of R&D Relief) would have been obliged to make an actual payment of Tax (which it would otherwise have had to pay but for this Relief or any other claim made by it or on its behalf) in order to avoid incurring any fine, penalty or interest in respect of unpaid Tax; and

16.15.8.3.2 (to the extent that the R&D Relief is a right to a payment), until the date on which the Contractor receives or would but for any other event have received cleared funds in respect of such payment had a claim been made.

16.15.8.4 For the purposes of this Clause 16.15.8 (*R&D Relief*), the Contractor shall be deemed to use any available R&D Relief in advance of all other tax reliefs (other than Pre Commencement Reliefs) available to it. Further, to the extent that the Contractor surrenders Tax losses (or other amounts in respect of R&D Relief) to any person, the losses (or other amounts) surrendered shall be deemed to include any unutilised R&D Relief and shall be considered to be utilised at the time that the recipient is next obliged to make an actual payment of Tax (which it would otherwise have had to pay but for the surrender, or deemed

surrender, of the Tax losses or other amounts) in order to avoid incurring any fine, penalty or interest in respect of unpaid Tax.

16.15.8.5 Where the Authority receives any credit note under this Clause 16.15.8 (*R&D Relief*), the Authority shall be entitled to set the amount of the credit note off against any amount payable by the Authority to the Contractor under this Agreement or to demand repayment of the amount the subject of the credit note within thirty (30) Calendar Days of the relevant demand.

16.15.8.6 Where the Contractor issues a debit note under this Clause 16.15.8 (*R&D Relief*), the Authority shall:

16.15.8.6.1 if its cash flow position reasonably allows, settle the note within thirty (30) Calendar Days of its receipt by the Authority;

16.15.8.6.2 if its cash flow position does not reasonably allow the Authority to make the payment under Clause 16.15.8.6.1 (*R&D Relief*) above, settle the note as soon as reasonably practicable.

16.15.8.7 Unless otherwise agreed in writing, this Clause 16.15.8 (*R&D Relief*) shall continue to apply for up to a period of six (6) years following the termination of this Agreement but only to the extent that it relates to R&D Relief which the Contractor claims or is entitled to claim in respect of expenditure incurred prior to the date of termination of this Agreement.

16.15.9 Tax Returns for periods up to 31 March 2015

16.15.9.1 The Magnox Contractor and the RSRL Contractor (as applicable) shall procure that, without prejudice to the Authority's rights under Clause 16.15.6 (*Tax Returns*):

16.15.9.1.1 the Magnox B Shareholder (in respect of the Magnox Contractor) and the RSRL B Shareholder (in respect of the RSRL Contractor) shall be given reasonable opportunity to prepare the corporation tax computations and returns for the Magnox Contractor and the RSRL Contractor respectively (including related correspondence with the Taxation Authority in respect thereof) for all periods up to and including the period ended 31 March 2014 (provided such

computations, returns and correspondence are consistent with the principles set out in this Agreement);

16.15.9.1.2 the Magnox Contractor and the RSRL Contractor shall not claim R&D Relief under Chapter 6A Corporation Tax Act 2009 ("**ATL R&D Relief**") in respect of any period up to and including the period ended 31 March 2014 unless and to the extent that:

16.15.9.1.2.1 the Magnox B Shareholder (in respect of the Magnox Contractor) and/or the RSRL B Shareholder (in respect of the RSRL Contractor) has, prior to the Commencement Date, notified the Authority in writing of its intention for the Magnox Contractor or the RSRL Contractor (as applicable) to make a claim for ATL R&D Relief in respect of the period ended 31 March 2014; and

16.15.9.1.2.2 such a claim has been made in the corporation tax return referred to in Clause 16.15.9.1.1;

16.15.9.1.3 where no claim for ATL R&D Relief has been made for any period up to and including the period ended 31 March 2014, the Magnox Contractor and/or the RSRL Contractor (as applicable) shall only claim R&D Relief under Chapter 6A Corporation Tax Act 2009 in respect of any period commencing after 31 March 2014 (and in respect of which the rules in Chapter 6A Corporation Tax Act 2009 would not apply in the absence of such a claim) if the PBO notifies the Magnox Contractor and/or the RSRL Contractor (as applicable) in writing and in sufficient time for such a claim to be made (with a copy of such notice to be provided to the Authority);

16.15.9.1.4 the Magnox Contractor and the RSRL Contractor (as applicable) shall provide a draft of the corporation tax computation and return it proposes to submit for the

period ended 31 March 2015 to, respectively, the Magnox B Shareholder (in respect of the Magnox Contractor) and the RSRL B Shareholder (in respect of the RSRL Contractor) for review at least two (2) months prior to the relevant filing date; the Magnox Contractor and the RSRL Contractor shall take into account reasonable comments provided by the Magnox B Shareholder (in respect of the Magnox Contractor) and the RSRL B Shareholder (in respect of the RSRL Contractor) respectively, provided such comments are provided in reasonable time (having regard to the nature of the comments and any deadline for the relevant submission) and in any event no fewer than twenty one (21) Calendar Days prior to the deadline for the relevant submission.

16.15.9.2 For the avoidance of doubt:

16.15.9.2.1 nothing in Clause 16.15.8.1 or in Clause 16.15.10.13.2 shall require the Contractor to make an election for the ATL R&D Relief regime to apply for any period, otherwise than in accordance with this Clause 16.15.9 and subject to applicable law; and

16.15.9.2.2 nothing in Clause 16.15.9.1.4 shall require the Contractor to make an election for the ATL R&D Relief regime to apply for the period ended 31 March 2015 (unless a claim for ATL R&D Relief has been made for any period up to and including the period ended 31 March 2014).

16.15.10 **Pre Commencement Reliefs**

16.15.10.1 The Contractor is obliged to inform the Authority of any benefit anticipated or received by the Contractor in respect of:

16.15.10.1.1 any R&D Relief against corporation tax on profits for any period prior to the Commencement Date under Part 13 of Corporation Tax Act 2009 or (if applicable) Chapter 6A Part 3 Corporation Tax Act 2009, to the extent such R&D Relief is by way of a payment of cash from HMRC;

16.15.10.1.2 any repayment of corporation tax on profits for any period prior to the Commencement Date by way of a payment of cash in respect of any R&D Relief under Part 13 Corporation Tax Act 2009 or (if applicable) Chapter 6A Part 3 Corporation Tax Act 2009; and

16.15.10.1.3 any R&D Relief under Part 13 of Corporation Tax Act 2009 or (if applicable) Chapter 6A Part 3 Corporation Tax Act 2009 applied to or in respect of any period prior to the Commencement Date but recovered by the Contractor by way of set off against its liability to corporation tax arising after the Commencement Date but for the avoidance of doubt, excluding any Losses (as defined below)

in each case in relation to claims prepared by or on behalf of the Magnox B Shareholder and the RSRL B Shareholder or the Contractor and submitted by the Contractor in respect of any period (or part period) prior to the Commencement Date; and

16.15.10.1.4 any repayment of corporation tax (by way of a payment of cash or by way of set off against the Contractor's liability to corporation tax) claimed by or on behalf of the Magnox B Shareholder or the Contractor and/or the RSRL B Shareholder in respect of any overpayment of corporation tax made by the Contractor for any period prior to the Commencement Date (save where such claim relates to R&D Relief under Part 13 Corporation Tax Act 2009 or Chapter 6A Part 3 Corporation Tax Act 2009); and

16.15.10.1.5 any brought forward corporation tax losses (including those arising from or comprising R&D Relief) available under Part 4 Corporation Tax Act 2010 as at the Commencement Date ("**Losses**"),

together ("**Pre Commencement Reliefs**").

16.15.10.2 In respect of the amount of any benefit received by the Magnox Contractor pursuant to Clause 16.15.10.1.1, 16.15.10.1.2 or 16.15.10.1.3 above, the Magnox Contractor shall apply one hundred per cent (100%) of such amount to the Magnox M&O Contractor's Fee Account.

16.15.10.3 In respect of the amount of any benefit received by the RSRL Contractor pursuant to Clause 16.15.10.1.1, 16.15.10.1.2 or 16.15.10.1.3 above, the RSRL Contractor shall:

16.15.10.3.1 apply fifty per cent (50%) of such amount to the RSRL M&O Contractor's Fee Account as applicable; and

16.15.10.3.2 notwithstanding the provisions of Schedule 6 (*Finance*), issue a credit note in respect of Allowable Costs that are due and payable by the Authority to the Contractor in respect of the remaining fifty per cent (50%).

16.15.10.4 In respect of the amount of any benefit received by the Contractor pursuant to Clause 16.15.10.1.4 above, the Contractor shall apply one hundred per cent (100%) of such amount to the Magnox M&O Contractor's Fee Account and/or the RSRL M&O Contractor's Fee Account as applicable.

16.15.10.5 In respect of the amount of any benefit received by the Contractor in relation to any Losses under Clause 16.15.10.1.5 above, the Contractor shall:

16.15.10.5.1 not retain the benefit of the amount of Tax saved by the Contractor as a result of the use of the Losses; and

16.15.10.5.2 notwithstanding the provisions of Schedule 6 (*Finance*), issue a credit note to the Authority in respect of Allowable Costs that are due and payable by the Authority to the Contractor in respect of one hundred per cent (100%) of any such amounts.

16.15.10.6 Where the benefit received under the preceding Clauses of this Clause 16.15.9.10 (*Pre Commencement Reliefs*) is in the form of a payment of cash, any amounts of such benefit to be applied to the Magnox M&O Contractor's Fee Account and/or the RSRL M&O Contractor's Fee Account or credited to the Authority (as appropriate) in accordance with the preceding Clauses shall be so applied or credited on receipt of that cash.

16.15.10.7 Where the benefit received under the preceding Clauses of this Clause 16.15.9.10 (*Pre Commencement Reliefs*) is in the form of a set off against the Contractor's liability to corporation tax, any

amounts of such benefit to be applied to the Magnox M&O Contractor's Fee Account and/or the RSRL M&O Contractor's Fee Account or credited to the Authority (as appropriate) in accordance with the preceding Clauses shall be so applied or credited at the same time that the Contractor is next obliged to make an actual payment of Tax (which it would have otherwise had to pay but for the benefit) in order to avoid incurring any fine, penalty or interest in respect of unpaid Tax.

16.15.10.8 If the amount of the relevant benefit applied under Clauses 16.15.10.6 or 16.15.10.7 differs from that subsequently agreed by HMRC an adjustment will, to the extent possible, be effected within a thirty (30) Calendar Day period so that the Authority or the Magnox B Shareholder and the RSRL B Shareholder has received or will receive the correct amount under Clause 16.15.10.2, 16.15.10.3, or 16.15.10.4 (as appropriate). Such adjustment will be made by an adjustment to the Magnox M&O Contractor's Fee Account and/or the RSRL M&O Contractor's Fee Account or by the issue of a credit or debit note to the Authority, as appropriate. Should the claim to HMRC be adjusted after this event, a further credit or debit note or notes will be issued, or adjustment to the Magnox M&O Contractor's Fee Account and/or the RSRL M&O Contractor's Fee Account shall be made to take the adjustment into account and shall be subject to the same time periods as those set out in this Clause.

16.15.10.9 For the purposes of this Clause 16.15.9 (*Pre Commencement Reliefs*):

16.15.10.9.1 the Contractor shall be deemed to use any available Pre Commencement Reliefs in advance of all other Reliefs available to it;

16.15.10.9.2 to the extent that the Contractor surrenders Reliefs to any person, the Reliefs surrendered shall be deemed to include any Pre Commencement Reliefs and shall be considered to be utilised at a time when the recipient is next obliged to make an actual payment of Tax (which it would have otherwise had to pay but for the surrender of the Reliefs) in order to avoid incurring any fine, penalty or interest in respect of unpaid Tax.

16.15.10.10 For the avoidance of doubt, the Contractor shall have no obligation to the Magnox B Shareholder or the RSRL B Shareholder in respect of entitlement to any benefit or any other consideration (by way of dividend or otherwise) in respect of:

16.15.10.10.1 the Losses; or

16.15.10.10.2 any claims that relate to activities undertaken by the Contractor during the Term and which are prepared by or on behalf of the PBO or the Contractor after the Commencement Date and submitted by the Contractor.

16.15.10.11 For the avoidance of doubt, in determining the benefit of any Losses to any party, no account shall be taken of any Tax that may be paid or payable in any other jurisdiction or by any other party other than the Contractor in respect of the Contractor's profits.

16.15.10.12 For the avoidance of doubt, the Authority makes no representation as to the existence or otherwise of any Losses or other Pre Commencement Reliefs.

16.15.10.13 The Contractor shall:

16.15.10.13.1 act diligently and in good faith in respect of the matters dealt with in this Clause 16.15.10 (*Pre Commencement Reliefs*); and

16.15.10.13.2 cooperate with the Authority and (as applicable) the Magnox B Shareholder and the RSRL B Shareholder in respect thereto, including provide all reasonable assistance (including all relevant information and computations) as the Authority shall require, including in making all claims for any R&D Relief or other Relief and for any repayment of overpaid corporation tax for the purposes of the preceding Clauses.

16.15.10.14 In the event of any disagreement between, on the one hand, the Magnox B Shareholder and/or the RSRL B Shareholder and, on the other hand, the Magnox Contractor and/or the RSRL Contractor and/or the PBO in respect of any matters in this Clause 16.15.10 (*Pre Commencement Reliefs*), including for the avoidance

of doubt, as to the tax treatment of any items in the corporation tax computations and returns referred to in Clause 16.15.9.1:

16.15.10.14.1 the Authority may appoint an independent expert to determine the matter (acting as an expert not an arbitrator) and whose decision shall be final and binding (in the absence of manifest error);

16.15.10.14.2 the costs of the independent expert shall be borne equally by: (a) in the case of the Magnox Contractor's tax affairs, the Magnox B Shareholder and the PBO; and (b) in the case of the RSRL Contractor's tax affairs, the RSRL B Shareholder and the PBO;

16.15.10.15 Where the Authority receives any credit note under this Clause 16.15.10 (*Pre Commencement Reliefs*), the Authority shall be entitled to set the amount of the credit note off against any amount payable by the Authority to the Contractor under this Agreement or to demand repayment of the amount the subject of the credit note within thirty (30) Calendar Days of the relevant demand.

16.15.10.16 Where the Contractor issues a debit note under this Clause 16.15.10 (*Pre Commencement Reliefs*), the Authority shall:

16.15.10.16.1 if its cash flow position reasonably allows, settle the note within thirty (30) Calendar Days of its receipt by the Authority;

16.15.10.16.2 if its cash flow position does not reasonably allow the Authority to make the payment under Clause 16.15.10.16.1 above, settle the note as soon as reasonably practicable.

16.15.10.17 Unless otherwise agreed in writing, this Clause 16.15.10 (*Pre Commencement Reliefs*) shall cease to apply (if necessary following termination of this Agreement):

16.15.10.17.1 in the case of the Magnox Contractor, upon the later of: (a) the date all payments referred to in Clauses 16.15.10.1.1, 16.15.10.1.2, 16.15.10.1.3 or 16.15.10.1.4 have been received (or set-off made) by the Magnox Contractor; or (b) the date any relevant claim or other matter affecting any such payment or

set-off has been agreed by HMRC (which, if HMRC has not opened an enquiry in respect of any relevant claim shall be deemed to be the case when the period for HMRC to open an enquiry has ended);

16.15.10.17.2 in the case of the RSRL Contractor, upon the later of: (a) the date all payments referred to in Clauses 16.15.10.1.1, 16.15.10.1.2, 16.15.10.1.3 or 16.15.10.1.4 have been received (or set-off made) by the RSRL Contractor; or (b) the date any relevant claim or other matter affecting such payment or set-off has been agreed by HMRC (which, if HMRC has not opened an enquiry in respect of any relevant claim shall be deemed to be the case when the period for HMRC to open an enquiry has ended),

save to the extent necessary to enable the Magnox B Shareholder and/or the RSRL B Shareholder to receive the benefit of any such payment or set-off in accordance with this Agreement, and provided that this Clause 16.15.10.17 shall be without prejudice to the Authority's rights under this Clause 16.15.10 (*Pre Commencement Reliefs*) including for the avoidance of doubt under Clause 16.14.10.5.

16.15.11 **Pre Commencement Tax Liabilities**

16.15.11.1 The Authority, the Contractor and the PBO intend that the Magnox B Shareholder and the RSRL B Shareholder (as applicable) will be responsible for any liability to corporation tax (and any other Tax which would be treated as a Disallowable Cost under the relevant agreement with that B Shareholder) in respect of the period up to the Commencement Date (together with interest and penalties thereon, but excluding any interest or penalty accruing as a result of late filing of the corporation tax return for the period ended 31 March 2015) which has not been discharged prior to the Commencement Date ("**Pre Commencement Tax**") and the Contractor shall co-operate with the Authority in order to achieve this, including if applicable (subject to agreement with the Authority):

16.15.11.1.1 (i) by applying fees paid to the Contractor by the Authority after the Commencement Date that relate to

activities that take place prior to the Commencement Date to settle any liability to Pre-Commencement Tax that is intended to be the responsibility of the relevant B Shareholder; and/or

(ii) to the extent the relevant B Shareholder has not otherwise ensured, to the Authority's satisfaction, that sufficient funds are and remain available to the Contractor as at the Commencement Date (and are clearly earmarked) for the purposes of discharging such Pre-Commencement Tax) reducing the amount of any B Share dividend payable to the relevant B Shareholder as necessary to meet any such liability;

16.15.11.1.2 for the avoidance of doubt, not applying an amount to the Magnox M&O Contractor's Fee Account or the RSRL M&O Contractor's Fee account pursuant to Clause 16.15.10.2 or 16.15.10.3.1 (as applicable) in respect of a benefit arising pursuant to Clauses 16.15.10.1.3 or 16.15.10.1.4 where the set off is against a liability to any Pre Commencement Tax (in which case Clauses 16.15.10.2 or 16.15.10.3.1 shall not apply to that extent).

16.15.11.2 For the avoidance of doubt, to the extent that the Contractor incurs any liability for Pre Commencement Tax that has not been borne by the B Shareholder as envisaged by Clause 16.15.11.1, such liability shall be treated as an Historical Cost. The provisions of Clause 16.15.11.1 are without prejudice to the Authority's rights to recover any amount in respect thereof from the relevant B Shareholder, save that notwithstanding the provisions of Schedule 6 (*Finance*), if the cost of the Pre Commencement Tax has been borne by the B Shareholder as envisaged by Clause 16.15.11.1, no further payment will be required to be made to the Contractor in respect of such Pre Commencement Tax.

16.15.12 **Other Matters**

16.15.12.1 For the purposes of Clauses 16.15.8.2, Clause 16.15.10 (*Pre Commencement Reliefs*) and Clause 16.15.11 (*Pre Commencement Tax Liabilities*), in determining an appropriate apportionment of any Reliefs or liability to Taxation of the

Contractor, the Commencement Date shall be treated as the start of a new accounting period of the Contractor (if that would not otherwise be the case).

16.15.12.2 For the avoidance of doubt, where any Relief is received by the Contractor in relation to any Taxes (including for the avoidance of doubt VAT, PAYE and National Insurance contributions) the amount of which has been paid by the Authority as an Allowable Cost, the amount by which such Taxes are reduced by reason of application of that Relief (or where the Relief is in the form of a payment or repayment, the amount of such payment or repayment) shall be repaid to the Authority as Category II Revenue.

Division between Capital Budget and Current Budget

16.16 Notwithstanding the definition of the term "Capital Costs", for the purposes of this Agreement unless the Authority directs otherwise all Costs are deemed to constitute Capital Cost. If the Authority directs that any Costs are to constitute Current Costs, the Authority shall also direct that a portion of the funding provided to the Contractor equal in amount to such Costs be designated as Current Budget.

17 CLAIMS HANDLING

17.1 The provisions of Clause 12 (*Claims Handling*) of the Parent Body Agreement shall apply to this Agreement.

18 INSURANCE

18.1 Authority Insurances

18.1.1 Without prejudice to the Contractor's obligations and liabilities to the Authority under this Agreement and subject to Clause 18.1.3 (*Authority Insurances*) below, the Authority shall take out and maintain the Authority Insurances (which shall not include directors' and officers' liability insurance in respect of the Contractor or the Parent Body Organisation, which shall be the responsibility of the Parent Body Organisation) for the Term and for such period after the end of the Term in which the Parent Body Organisation has continuing liability under the PBO Guarantee in accordance with Clauses 5.4.1 and 5.4.2 (*Continuing Guarantee*) of the Parent Body Agreement.

18.1.2 The insured parties under the Authority Insurances shall be as set out in the Magnox Register of Insurances and the RSRL Register of Insurances at Schedule 10 (*Insurance*).

18.1.3 If and to the extent that:

18.1.3.1 the Authority Insurances become unavailable (including where rendered void, voidable, unenforceable, suspended or impaired in whole or in part) or the protection or cover or reasonableness of the terms available to the Contractor or the Parent Body Organisation under the Authority Insurances diminishes in cover, scope or amount (save where such unavailability or diminution in cover, scope or amount is caused by a breach of Clause 18.2.2 (*Acknowledgement by Contractor*) below by the Contractor or any act of neglect, fraud, misrepresentation, non-disclosure or material breach of any warranty or condition of the relevant Authority Insurance, committed by the Contractor); or

18.1.3.2 the Authority decides, in its sole discretion, to seek, provide and maintain alternative funding for the risks which would have been covered by the Authority Insurances,

then, without prejudice to the application of the Change Control Procedure in respect of any Dependency Event, the Authority shall ensure that the Contractor has no greater financial exposure due to the occurrence of such circumstances than as at the date immediately prior to the occurrence of such circumstances. If and to the extent that the Authority fails to comply with its obligations under this Clause 18.1.3 (*Authority Insurances*) (or any action the Authority proposes to take pursuant to Clause 18.1.3A (*Authority Insurances*) below would fail to comply with this Clause 18.1.3 (*Authority Insurances*)) the Contractor shall be entitled to take out and maintain such insurances as are required to ensure that it has no greater financial exposure due to the occurrence of the circumstances described in 18.1.3.1 and 18.1.3.2 above than as at the date immediately prior to the occurrence of such circumstances.

18.1.3A Without prejudice to the application of the Change Control Procedure in respect of any Dependency Event, the Authority shall notify the Contractor of the occurrence of the circumstances described in Sub-Clauses 18.1.3.1 and 18.1.3.2 above as soon as reasonably practicable after becoming aware of the same, and shall consult with the Contractor on the action the Authority proposes to take, provided that, without prejudice to the Authority's obligation under Clause 18.1.3 (*Authority Insurances*) above to ensure the Contractor has no greater financial exposure due to the occurrence of any such circumstances, the Authority shall not be required to notify or consult with the Contractor in relation to minor or immaterial variations to the cover, scope or amount of the protection or the terms available under the Authority Insurances

agreed by the Authority in the normal course of procuring and maintaining the Authority Insurances.

18.1.4 If there is any extension and/or increase of the liability and/or obligation of the Contractor to any person pursuant to any amendments made to the provisions of the Nuclear Installations Act 1965, the Authority shall ensure that adequate mechanisms are made available to the Contractor to ensure that there is in place such provision (either by insurance or by other financial instruments) for sufficient funds to be available as required by, and that, by funding means, the Contractor is able to meet any such liabilities or obligations pursuant to the Nuclear Installations Act 1965 as amended.

18.2 **Acknowledgement by Contractor**

18.2.1 The Authority shall provide to the Contractor policy terms and requirements of the insurers with whom the Authority Insurances are placed and the Contractor shall comply with such requirements. The Contractor will notify the Authority of any act, occurrence or failure which may:

18.2.1.1 lead to any claim being made under the Authority Insurances; or

18.2.1.2 render any of the Authority Insurances void, voidable, unenforceable, suspended or impaired in whole or in part or which may otherwise render any sum paid out under any of the Authority Insurances repayable in whole or in part.

18.2.2 The Contractor shall not and shall procure that its Subcontractors shall not take any action or fail to take any reasonable action or (insofar as it is reasonably within its power) permit or allow others to take or fail to take any action (in either case including failure to disclose any fact) as a result of which any of the Authority Insurances may be rendered void, voidable, unenforceable, suspended or impaired in whole or in part or which may otherwise render any sum paid out under any of the Authority Insurances repayable in whole or in part.

18.2.3 The Contractor shall ensure that provisions having similar effect to the provisions of Paragraph 4.1(dd), (ff) (except to the extent that the Contractor cannot by law contract out of such liability) and (hh) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) are incorporated into each and every Subcontract in which the Contractor is required to include the contractual provisions referred to in paragraph 16.1 (*Flowdown of Contractual Provisions*) of Schedule 5 (*Subcontracting and Procurement*).

18.2A Claims under Authority Insurances

18.2A.1 Where the Contractor has notified the Authority pursuant to Clause 18.2.1.1 (*Acknowledgement by Contractor*) and the Contractor is entitled to recover Insurance Proceeds as an insured party under an Authority Insurance but does not have a right to claim directly from the insurer under such Authority Insurance, or where the Contractor does have such a right but it is agreed by the Parties, acting reasonably, that the Authority shall have conduct of the insurance claim:

18.2.3.1 the Authority shall take all reasonable steps to pursue such claim;

18.2.3.2 the Contractor shall give to the Authority such assistance as may reasonably be required in pursuing such claim; and

18.2.3.3 the Authority shall pay to the Contractor any Insurance Proceeds recovered under such claim in respect of insured losses suffered by the Contractor.

18.3 Insurance Premium Contributions

18.3.1 Each and every time a claim is made by the Contractor (and Insurance Proceeds are recovered by the Authority and/or Contractor in respect of such claim) under one of the Authority Insurances listed in Appendix 4 (*Insurance Premium Contributions*) of Schedule 10 (*Insurance*) (or any equivalent policies of insurance taken out and maintained by the Authority) the Contractor shall pay to the Authority the applicable Insurance Premium Contribution.

18.3.2 The Parties acknowledge that the Insurance Premium Contributions payable under Clause 18.3.1 (*Insurance Premium Contributions*) are payable having regard to and in consideration of the obligation of the Authority to take out and maintain the Authority Insurances at its own cost. Such amounts are not liquidated or unliquidated damages and are payable in accordance with Clause 18.3.1 (*Insurance Premium Contributions*) whether or not the Contractor has complied or failed to comply with its obligations under this Agreement in respect of such claims.

19 LIABILITIES AND INDEMNITIES

Contractor's Indemnities

19.1 Subject to Clause 19.6 (*Expiry of remedies*), the Authority's obligations under the Nuclear Indemnity and the Authority's obligations under Clause 5.4.6 (*Electricity Interface Obligations*), the Contractor shall be responsible for, and shall release and

indemnify the Authority, its employees, agents and its other contractors on demand from and against liabilities (other than Nuclear Liabilities) associated with any Third Party Claims made against the Authority, its employees, agents and its other contractors (including costs and expenses incurred in the defence of any relevant Legal Proceedings, amounts payable under any finding or ruling made against the Authority, and/or amounts payable under any out of court settlement) to the extent that such liabilities arise out of, or in consequence of, a failure by the Contractor to comply with its obligations during the Term or a breach of warranty by the Contractor under this Agreement during the Term, except to the extent that such amounts are recovered by the Authority (or any of the Authority's employees, agents or other contractors who is an insured party under the Authority Insurances) under the Authority Insurances.

- 19.2 Subject to Clause 5.10.1A (*Liability Caps*) of the Parent Body Agreement, the Contractor hereby indemnifies the Authority against all Disallowable Costs paid by the Authority.

Excluded Losses

- 19.3 Subject to Clause 19.4 (*Non-excluded Liability*) and the Authority's obligations under the Nuclear Indemnity, and without prejudice to any express right of either Party under this Agreement to receive payment of an amount specified in or calculated in accordance with the terms of this Agreement, neither Party shall be liable to the other Party for:

19.3.1 any indirect, special or consequential loss or damage; or

19.3.2 any loss of profits, turnover, revenue, business opportunities, or savings or damage to goodwill, in each case whether direct or indirect or whether actual or anticipated,

arising out of or in connection with this Agreement and/or the Parent Body Agreement whether arising in contract (including under any indemnity or guarantee), tort (including negligence or misrepresentation), strict liability or otherwise.

Non-excluded liability

- 19.4 Without prejudice to the Authority's obligations under the Nuclear Indemnity, nothing in this Agreement shall limit or exclude the Contractor's liability for:

19.4.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or Subcontractors (as applicable) to the extent it would be unlawful for the Contractor to exclude or restrict such liability;

19.4.2 fraud or fraudulent misrepresentation or Wilful Default of any Nominated Staff;
or

19.4.3 any other matter to the extent it would be unlawful for the Contractor to exclude or restrict liability.

Expiry of remedies

- 19.5 Where this Agreement or the Parent Body Agreement expressly provides that any obligation of the Contractor to make any payment to the Authority under or in connection with this Agreement or the Parent Body Agreement, or any right of the Authority to claim such payment, is limited by a specified time period, the Contractor shall have no obligation to pay or provide any equitable remedy (including specific performance or injunction), and the Authority shall have no right to claim payment or such equitable remedy, after such time period has elapsed, regardless of whether (but for this Clause 19.5 (*Expiry of remedies*)) such obligation or right would arise in contract (including under any indemnity or guarantee), tort (including negligence or misrepresentation), strict liability or otherwise.
- 19.6 On the expiry of three (3) years after the end of the Term (or, in respect of any claim which was commenced before three (3) years after the end of the Term, after such time as that claim has been settled or withdrawn), the Contractor shall have no obligation to make any payment (or to provide any equitable remedy (including specific performance or injunction)) to the Authority in connection with this Agreement or the Parent Body Agreement, and the Authority shall have no right to claim such payment or equitable remedy, regardless of whether (but for this Clause 19.6 (*Expiry of remedies*)) such obligation would arise in contract (including under any indemnity or guarantee), tort (including negligence or misrepresentation), strict liability or otherwise.

PART 7: Contracting and Inter SLC Activities

20 AUTHORITY RIGHTS IN RESPECT OF CUSTOMER CONTRACTS

Amendments to Customer Contracts and New Customer Contracts

- 20.1 Subject to the Authority's rights under Clause 20.3 (*Authority's Right to Instruct*) below, the Contractor shall not enter into a new Customer Contract (a "**New Customer Contract**") nor amend any existing Customer Contract (or suggest any amendment to the counterparty other than on a without prejudice basis) (an "**Amendment**") unless the Contractor has complied fully with Clause 20.2 (*Obligation to consult the Authority*) and Part 2 (*Customer Contracts*) of Schedule 4 (*Commercial*) in relation to such New Customer Contract or Amendment and the Authority has given its prior written consent in accordance with Part 2 (*Customer Contracts*) of Schedule 4 (*Commercial*).

Obligation to consult the Authority

20.2 Subject to Schedule 4 (*Commercial*), the Contractor shall consult the Authority in respect of any proposed changes to the Customer Contracts.

Authority's right to instruct

20.3 Notwithstanding the Permitted Activities under Clause 21 (*Permitted Activities*), the Authority shall be entitled to instruct the Contractor to exercise or not exercise its rights, or perform or not perform its obligations, or otherwise act, in a specified manner in relation to any of the Customer Contracts in accordance with Schedule 4 (*Commercial*).

20.4 If the Authority wishes to issue instructions to the Contractor pursuant to Clause 20.3 (*Authority's Right to Instruct*) above, the Authority shall act in accordance with Schedule 4 (*Commercial*), and where practicable, initially discuss the relevant issue with the Contractor and the Contractor shall assist the Authority in obtaining any information that the Authority may reasonably require. During such discussion, the Contractor shall (having regard to the preliminary nature of the Authority's wish to issue instructions) inform the Authority of any impact of which the Contractor is aware that the relevant issue may have upon the Authority, the Contractor, any Subcontract or Series of Subcontracts, the performance of or terms of this Agreement or the Customer Contracts.

21 PERMITTED ACTIVITIES

21.1 The Permitted Activities shall be without prejudice to the Contractor's obligations to seek Authority approval and/or consult the Authority in accordance with any provision of this Agreement, subject to Clause 21.2 (*Permitted Activities*) below.

21.2 Subject to Clause 20.1 (*Amendments to Customer Contracts and New Customer Contracts*) and 21.3 to 21.5 (*Permitted Activities*), the Contractor shall be entitled to take such action in relation to new or existing Customer Contracts as is permitted by the Permitted Activities without seeking the consent of or consulting with the Authority in accordance with Schedule 4 (*Commercial*) provided that, unless the Authority agrees otherwise, the Contractor shall ensure that any such New Customer Contract or Amendment complies with the requirements contained in Schedule 4 (*Commercial*).

21.3 In undertaking its Permitted Activities, the Contractor shall have due regard to any current strategy for Customer Contracts of the Authority as notified to the Contractor by the Authority from time to time.

21.4 If the Contractor is uncertain whether any of its activities in respect of the Customer Contracts (including any proposed exercise of a discretion under a Customer Contract, entry into a New Customer Contract or Amendment to an existing Customer Contract) falls within its Permitted Activities, it shall consult with the Authority to obtain

confirmation of whether the proposed activity is a Permitted Activity or whether the Contractor is obliged to obtain the Authority's consent to carry out the activity.

- 21.5 The Authority shall be entitled, acting reasonably, at any time to amend, add or withdraw any Permitted Activity by serving a notice in writing on the Contractor setting out the relevant amendment, addition or withdrawal.
- 21.6 Subject to Clauses 21.5 above and Clause 21.7 (*Permitted Activities*) below, the amendment, addition or withdrawal of any Permitted Activity shall be effective seven (7) Calendar Days after the receipt of the Authority's written notice and the Contractor shall as soon as practicable amend the Permitted Activities to reflect the amendment, addition or withdrawal set out in the Authority's written notice.
- 21.7 If the Contractor reasonably considers, given the nature of the Permitted Activity and the circumstances in which it is used, that it is inappropriate for the relevant Permitted Activity to be amended, added or withdrawn, the Authority (acting reasonably) shall consider any representations made to it by the Contractor (including in respect of altering the time period in which the amendment, addition or withdrawal of the relevant Permitted Activity becomes effective).

Customer Contract Log

- 21.8 Except to the extent that the Contractor is carrying out Permitted Activities pursuant to this Clause 21, the Contractor shall keep a record (a "**Customer Contract Log**") which sets out the progress of:

21.8.1 any New Customer Contract;

21.8.2 any Amendment;

21.8.3 any exercise of the Contractor's discretion under a Customer Contract; and

21.8.4 any exercise of the Authority's right to instruct pursuant to Clause 20.2 (*Obligation to consult the Authority*) above

from the initiation of the issue or matter until such issue or matter is executed, carried out, rejected, abandoned or resolved (as the case may be) in each case recording the date of any relevant issue or matter and the Contractor's, Authority's and/or counterparty's action, inaction or response as applicable.

22 SUBCONTRACTING / PROCUREMENT

- 22.1 The Contractor shall:

- 22.1.1 (save to the extent otherwise agreed in writing with the Authority), comply with the provisions of Schedule 5 (*Subcontracting and Procurement*) (as applicable);
 - 22.1.2 use its reasonable endeavours to ensure that no Subcontract or Sub-Subcontract contains any provisions the effect of which is to prevent the Authority being able to use best practice pursuant to Clause 15.20 (*Best Practice*); and
 - 22.1.3 ensure that the requirements to comply with Good Industry Practice and cost transparency are incorporated into any Subcontract or Sub-Subcontract.
- 22.2 The Contractor shall be responsible for the work executed or services performed under any Subcontract or Sub-Subcontract as if such work were executed or services were delivered by the Contractor itself.
- 22.3 Subject to Clause 22.4 (*Subcontracting/Procurement*) below, the Contractor shall use all reasonable endeavours to procure that any Subcontracts or Sub-Subcontracts which are entered into on or after the Commencement Date contain provisions obliging Subcontractors or Sub-Subcontractors, as the case may be, to enter into deeds of collateral warranty in favour of the Contractor with the Sub-Subcontractor:
- 22.3.1 where the subject matter of the Sub-Subcontract includes design or professional services an obligation on the Subcontractor or Sub-Subcontractor to take out or maintain, as appropriate, professional indemnity insurance at a level commensurate with the value of the obligations performed by the Sub-Subcontractor, for a period starting with the commencement date of the Sub-Subcontract and ending on a minimum of six (6) years after completion of the works performed or services provided under the Sub-Subcontract;
 - 22.3.2 warranties from the Sub-Subcontractor in favour of the Contractor that the Sub-Subcontractor will:
 - 22.3.2.1 exercise the level of reasonable skill, care and diligence which would be expected of a Sub-Subcontractor holding itself out as competent in performing the works or providing the services in relation to schemes of similar nature, scope and size to the services and/or works which are the subject matter of the Sub-Subcontract; and
 - 22.3.2.2 comply in all material respects with the terms of the Sub-Subcontract

provided that the Sub-Subcontractor shall owe no greater duty or liability to the Contractor than it would have owed to the Sub-Subcontract counterparty under the terms of the Sub-Subcontract; and

22.3.3 Contractor "step-in rights", such that the Sub-Subcontractor shall not be permitted to terminate the Sub-Subcontract as a result of a breach of contract by the Sub-Subcontract counterparty without first giving the Contractor the option to step in and adopt the counterparty's rights and undertake to perform the counterparty's obligations under the Sub-Subcontract.

22.4 The Contractor shall not be required to comply with Clause 22.3 (*Subcontracting/Procurement*) above to the extent that either:

22.4.1 it is able to obtain suitable alternative contractual protection; or

22.4.2 it reasonably believes that, taking into account:

22.4.2.1 the nature and value of the Sub-Subcontract;

22.4.2.2 the importance of the Sub-Subcontract in terms of performing the Contractor's obligations set out in the Client Specification and/or achieving the Client Specification Completion State; and

22.4.2.3 the commercial consequences of obtaining a deed of collateral warranty from the Sub-Subcontractor

it would not represent the best value for money to require the Sub-Subcontractor to enter into a deed of collateral warranty in favour of the Contractor containing some or all of the provisions specified in Clause 22.3 (*Subcontracting/Procurement*) above and it has provided the Authority with no less than five (5) Working Days prior written notice of such belief (and its reasons for holding such belief) and obtained the Authority's written consent (such consent not to be unreasonably withheld or delayed) to not impose such requirement before entering into such Sub-Subcontract.

23 INTER SLC SERVICE CONTRACTS

23.1 To govern each operational inter-relationship between the Contractor and other SLCs, each of which shall take effect under both this Agreement and the Site Management and Operations Contracts between the Authority and such other SLCs, the Contractor shall enter into Inter SLC Service Contracts with the SLCs in accordance with the pro forma template included at Appendix 2 (*Inter-SLC Service Contract Pro Forma*) of Schedule 5 (*Subcontracting and Procurement*) (or, in the case of any Inter SLC Service Contract with LLW Repository Limited in relation to the organisation of consignment and

storage of low level waste, such industry-wide standard form contract for the consignment and storage of low level waste as may be approved by the Authority from time to time) and:

23.1.1 where the Contractor, either on its own behalf, or on behalf of another SLC, wishes to make a material deviation from the pro forma template in Appendix 2 (*Inter-SLC Service Contract Pro Forma*) of Schedule 5 (*Subcontracting and Procurement*) it shall seek the Authority's prior written approval; and

23.1.2 where the scope of the operational inter-relationship is to be subject to competition and where such competition will include contractors external to other SLCs then the Contractor may use its standard terms and conditions for both the competition and any ensuing contract.

23.2 Each Inter SLC Service Contract shall set out the goods and/or services to be provided (and such goods and/or services shall be provided at cost) by or to the Contractor, and the associated operational responsibilities of the Contractor and the relevant SLC in respect of the supply of such goods and/or services, including any payment obligations, a specification of the goods and/or services to be supplied, the performance standard required of the supplier and the actions required of the person to whom the goods and/or services are supplied in order to facilitate their supply.

Compliance

23.3 The Contractor shall:

23.3.1 perform its responsibilities as set out in the Inter SLC Service Contracts;

23.3.2 ensure that such Inter SLC Service Contracts are up-to-date to enable the Contractor to perform its obligations under this Agreement and comply with applicable Legislation or Regulatory Requirements;

23.3.3 co-operate with the counterparty to the Inter SLC Service Contracts; and

23.3.4 if it enters into an Inter SLC Service Contract with LLW Repository Limited in relation to the organisation of consignment and storage of low level waste and LLW Repository Limited proposes changes to such Inter SLC Service Contract and the Authority agrees to the proposed changes and instructs the Contractor under Paragraph 18.1.2 (*Authority's Right to Instruct*) of Schedule 5 (*Subcontracting and Procurement*) to amend the Inter SLC Service Contract, comply accordingly.

Review of the Inter SLC Service Contracts

- 23.4 On an annual basis, on each anniversary of the Commencement Date, the Contractor shall provide to the Authority a schedule of Inter SLC Service Contracts and also an updated schedule each time Inter SLC Service Contracts are amended or created.
- 23.5 On request by the Authority, the Contractor shall provide for the Authority's review copies of the Inter SLC Service Contracts (regardless of the manner in which they are held, stored or collated).
- 23.6 The Authority may request changes to any Inter SLC Service Contract, on the grounds that, in the Authority's reasonable opinion:
- 23.6.1 the required changes to the Inter SLC Service Contract would materially enhance the Contractor's ability to perform its obligations under this Agreement;
- 23.6.2 the required changes to the Inter SLC Service Contract would enhance the ability of the relevant SLC to perform its obligations under its Site Management and Operations Contract; and/or
- 23.6.3 the Inter SLC Service Contract is contrary to applicable Legislation or Regulatory Requirements or is otherwise incompatible or inconsistent with the Authority's statutory powers and/or function.
- 23.7 The Authority (acting reasonably) shall submit to the Contractor its request for a change to the Inter SLC Service Contract pursuant to Clause 23.6 (*Review of the Inter SLC Service Contracts*) above in writing as soon as practicable, specifying:
- 23.7.1 the grounds upon which the change is requested;
- 23.7.2 the nature of the change requested and to whose responsibilities; and
- 23.7.3 the reasonable period of time within which the Contractor shall be required to submit the revised Inter SLC Service Contract for Authority review,
- and, at the same time, the Authority shall serve the same notification on the other relevant SLC in accordance with its rights under its Site Management and Operations Contract with the relevant SLC requiring that SLC to revise the relevant Inter SLC Service Contract in the same manner.
- 23.8 Upon receipt of the Authority's written notification pursuant to Clause 23.7 (*Review of the Inter SLC Service Contracts*) above, the Contractor shall work together with the relevant SLC to revise the Inter SLC Service Contract in accordance with the Authority's notification and shall submit to the Authority the revised Inter SLC Service Contract in accordance with the time period specified pursuant to Clause 23.7.3 (*Review of the Inter SLC Service Contracts*) above.

23.9 In any review of Inter SLC Service Contracts, the Authority will consider the obligations and duties placed on the Contractor by applicable Legislation and Regulatory Requirements, in order to avoid conflict between the relevant Inter SLC Service Contracts and those obligations and duties.

Confirmation by Authority

23.10 If, within thirty (30) Calendar Days of receipt of a Inter SLC Service Contract submitted to the Authority by the Contractor for review in accordance with Clause 23.5 (*Review of the Inter SLC Service Contracts*) above, the Authority has not responded, whether to request further changes or to confirm that no changes are required or to specify a further time period, the Authority shall be deemed to have confirmed its acceptance of the relevant Inter SLC Service Contract in the form submitted to it by the Contractor. The provisions of the existing Inter SLC Service Contract (if any) shall prevail until such time as the Authority has responded or is deemed to have responded in accordance with this Clause 23.10.

23.11 [Not used]

24 CROSS ESTATE INITIATIVES

24.1 The Contractor acknowledges that the Authority is developing a variety of Cross Estate Initiatives. For the purposes of the implementation of the Cross Estate Initiatives, the Authority and the Contractor agree the following:

24.1.1 the Contractor agrees to use its reasonable endeavours to assist the Authority with the development and the implementation of the Cross Estate Initiatives;

24.1.2 the Contractor acknowledges that the Authority may require changes to the LTP Performance Plan in accordance with the Change Control Procedure in order to implement the Cross Estate Initiatives;

24.1.3 if the Authority requires the Contractor to implement any Cross Estate Initiative and the Contractor believes that implementation will reduce the cost of delivery of the Client Specification Completion State, there will be no adjustment to the Phase 1 Target Cost or the Phase 2 Target Cost;

24.1.4 if the Contractor believes that an alternative method of fully achieving the objectives of the Authority relating to the Cross Estate Initiatives (other than the implementation of the Cross Estate Initiatives) would be more advantageous to the Authority, the Contractor may submit a Notice to the Authority setting out its belief and proposal for the alternative method, provided that:

- 24.1.4.1 the Authority shall consider such notice and respond in writing within one (1) Month (or such other period as the Parties may, acting reasonably, agree) of receipt of the Contractor's Notice; and
 - 24.1.4.2 if the Authority agrees (in its sole discretion) that the proposed alternative method is more advantageous to it, the Authority shall direct the Contractor to carry out such alternative method; and
 - 24.1.4.3 if the Authority requires the Contractor to implement any Cross Estate Initiative (including Collaborative Procurement) the provisions of Paragraph 6.8 (*Meeting the "No Better No Worse" objective – Required Change Events*) 6.14 (*Authority Acceptance and Implementation of the Proposed Change*) of Schedule 2 (*Change Control Procedure*) shall apply.
- 24.2 Section 40(2) of the Energy Act provides that a Future Transfer Scheme which would operate to transfer property, rights and liabilities to a publically owned company (as defined in the Energy Act) or the Authority from the Contractor can be carried out only if the Contractor consents to that Future Transfer Scheme.
- 24.3 Subject to Clause 24.1.4 (*Cross Estate Initiatives*), for the Future Transfer Schemes which meet the requirements set down in Clause 24.4 (*Cross Estate Initiatives*), the Contractor hereby agrees that whenever during the term of this Agreement, any Future Transfer Scheme has been proposed by the Secretary of State, under which property, rights or liabilities are proposed to be transferred from the Contractor by virtue of section 40(2) of the Energy Act, the Contractor will consent to their transfer in accordance with such Future Transfer Scheme(s) (and such consent will constitute 'consent in accordance with a nuclear transfer scheme') for the purposes of section 40 of the Energy Act.
- 24.4 Clause 24.3 (*Cross Estate Initiatives*) is subject to the following intentions of the Parties:
 - 24.4.1 the Future Transfer Scheme(s) will facilitate the Cross Estate Initiatives;
 - 24.4.2 the Future Transfer Scheme(s) will not operate to transfer rights or liabilities in relation to any Nominated Staff or employment contract related to Nominated Staff (including but not limited to Secondment Agreements); and
 - 24.4.3 the Future Transfer Scheme(s) will not operate to alter the Parties to this Agreement or the Parent Body Agreement.
- 24.5 The provisions of this Clause 24.5 (*Cross Estate Initiatives*) confer rights and benefits on the Secretary of State which rights and benefits are intended to be enforceable by the Secretary of State under the Contracts (Rights of Third Parties) Act 1999.

PART 8: Information Governance

25 CONFIDENTIALITY AND COMPLIANCE WITH LEGISLATION

25.1 Confidential Information

25.1.1 Subject to Clause 25.3 (*Disclosure by the Authority*) to 25.6 (*National Audit Office*) below, each Party shall hold in confidence all documents, materials and other information, whether technical or commercial, supplied by or on behalf of the other Party (including all documents and information supplied in the course of Legal Proceedings commenced in accordance with this Agreement) and all documents, materials and other information of any nature relating to a third party which it may acquire or have access to directly or indirectly as a consequence of negotiating, entering into or operating this Agreement and shall not, except with the written authority of the other Party, publish or otherwise disclose the same otherwise than as expressly provided for in this Agreement unless or until the recipient Party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of this Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

25.1.2 The Contractor shall not make use of this Agreement or any information issued or provided by or on behalf of the Authority in connection with this Agreement otherwise than for the purpose of complying with its obligations under this Agreement and otherwise than as expressly provided for in this Agreement except with the written consent of the Authority.

25.2 Contractor Right to Request Confidentiality

25.2.1 The Contractor may at any time request in writing, stating reasons, that the Authority keeps particular information confidential and does not disclose it to Third Parties. The Contractor may further request in writing at any time that, where the Authority discloses Information pursuant to Clause 25.3 (*Disclosure by the Authority*) below, the Authority make representations to the recipient of such Information as to the desirability of keeping such Information confidential. Any such request by the Contractor shall be accompanied by a document setting out in writing the requested representations. The Authority shall consider whether to make such representations.

25.3 Disclosure by the Authority

25.3.1 The Authority, having reasonably considered any request made by the Contractor under Clause 25.2 (*Contractor Right to Request Confidentiality*) above may, save for information which is judged by ONR to be security

sensitive and marked as such (unless the recipient of information pursuant to this Clause 25.3 (*Disclosure by the Authority*) holds all relevant security clearances), disclose any and all information acquired by it under or pursuant to this Agreement (the "**Information**"):

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

25.3.1.2 to the Regulators;

25.3.1.3 to the extent required by applicable Legislation or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Procedure;

25.3.1.4 to bidders who have pre-qualified to participate in any relevant forthcoming tender process, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 25.1 (*Confidential Information*) above, provided that the Authority shall not disclose commercially sensitive Information pursuant to this Clause 25.3.1.4 (*Disclosure by the Authority*) relating to the Parent Body Organisation or any PBO Affiliates (other than in their capacity as Subcontractors or Sub-Subcontractors);

25.3.1.5 to insurers upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 25.1 (*Confidential Information*) above;

25.3.1.6 to professional advisers, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 25.1 (*Confidential Information*) above, for the purpose of:

25.3.1.6.1 the examination and certification of the Authority's or the Contractor's accounts; or

25.3.1.6.2 any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;

25.3.1.7 to the Authority's legal advisers;

25.3.1.8 to consultees under the Energy Act; and/or

25.3.1.9 to the National Audit Office.

25.3.2 So far as is practicable, the Authority shall give the Contractor reasonable notice of any proposed disclosure pursuant to this Clause 25.3 (*Disclosure by the Authority*).

25.3.3 Notwithstanding the provisions of Clause 25.1 (*Confidential Information*) above, the Authority may, with the consent of the Contractor, such consent not to be unreasonably withheld or delayed, further disclose the Information to persons not referred to in this Clause 25.3 (*Disclosure by the Authority*).

25.3.4 Any determination as to whether it is reasonable for the Contractor to withhold its consent to disclosure under Clause 25.3.3 (*Disclosure by the Authority*) above shall have regard to:

25.3.4.1 compliance with the Authority's statutory functions and duties, including in particular the promotion of effective competition and value for money;

25.3.4.2 relevant Government policy (or, to the extent applicable in the United Kingdom, relevant policy of the legislative bodies of the European Union);

25.3.4.3 the requirement to maintain security;

25.3.4.4 the public interest;

25.3.4.5 the requirement to maintain openness and transparency; and

25.3.4.6 the degree of commercial sensitivity of the information.

25.4 **Publication**

25.4.1 The Authority having considered any request made by the Contractor pursuant to Clause 25.2 (*Contractor Right to Request Confidentiality*) above may publish, in such form and at such times as it sees fit, the following:

25.4.1.1 amounts of payments to the Contractor and any deductions made from the Contractor under this Agreement;

25.4.1.2 performance statistics;

25.4.1.3 monitoring reports; and

25.4.1.4 such information as the Authority reasonably requires to publish having regard to the list of considerations set out in Clause 25.3.4 (*Disclosure by the Authority*) above, including information it includes in its annual report.

25.4.2 The Authority shall give the Contractor reasonable notice of any proposed publication that is likely to have a material impact on the Contractor's performance of this Agreement pursuant to this Clause 25.4 (*Publication*) but shall not be required to give notice of any day-to-day or routine publications or information included in its annual report.

25.5 **Disclosure by the Contractor**

25.5.1 For the purposes of performing its obligations under this Agreement or as required by any Parliamentary obligation, applicable Legislation, the Regulators or pursuant to an order of any court of competent jurisdiction and to the extent reasonably required to do so, the Contractor may disclose without the consent of the Authority, any and all information acquired by it under or pursuant to this Agreement save for information which is judged by ONR to be security sensitive and marked as such (unless the recipient of information pursuant to this Clause 25.4.2 (*Publication*) above holds all relevant security clearances) to:

25.5.1.1 the Regulators;

25.5.1.2 the extent required by any Parliamentary obligation, applicable Legislation or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Procedure;

25.5.1.3 insurers, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 25.1 (*Confidential Information*) above;

25.5.1.4 professional advisers including lenders, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 25.1 (*Confidential Information*) above;

25.5.1.5 Subcontractors, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 25.1 (*Confidential Information*) above;

25.5.1.6 any department, officer, agent, representative, employee, consultant or adviser of any of the entities referred to in Clauses 25.5.1.1 (*Disclosure by the Contractor*) to 25.5.1.5 (*Disclosure by the Contractor*) above subject, in any case where the entity in

question would be required to provide an undertaking of confidentiality equivalent to that contained in Clause 25.1 (*Confidential Information*) above, to obtaining such an undertaking of confidentiality; and

25.5.1.7 the Parent Body Organisation, the PBO Shareholders and the Parent Company Guarantors, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 25.1 (*Confidential Information*) above.

25.6 **National Audit Office**

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

25.7 **Publicity**

Adverse Publicity

25.7.1 Each Party shall notify the other Party as soon as reasonably practicable of any fact or occurrence of which the notifying Party is aware relating to the Authority, Contractor or the Parent Body Organisation which could in the reasonable opinion of the notifying Party be expected to cause adverse publicity to the Authority generally, or to the Contractor or the Parent Body Organisation in relation to this Agreement.

Announcements

25.7.2 Subject to the remaining provisions of this Clause, no Party shall release any announcement or despatch any announcement or circular, relating to this Agreement unless the form and content of such announcement or circular have been submitted to, and agreed by, the other Party.

25.7.3 Nothing in this Clause 25.7 (*Publicity*) shall prohibit any Party (or, in the case of the Contractor, the Parent Body Organisation or any of its Affiliates) from making any announcement or despatching any circular as required by Legislation or the rules or regulations of any stock exchange or regulatory authority having the force of law, or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned, in which case, to the extent not inconsistent with such legal obligations, rules or regulations, the announcement shall only be released or the circular despatched after consultation with the other Party and after taking into

account the reasonable requirements of the other Party as to the content of such announcement or circular.

25.8 Delivery Up

On termination of this Agreement or the Parent Body Agreement, the Contractor shall ensure or procure that the Nominated Staff return to the Contractor or the Authority (as applicable) all documents, materials or any information belonging to the Contractor or the Authority (as the case may be) and that, after such documents, materials and other information have been returned, to the extent reasonably practicable any electronic copies stored on IT Systems owned or accessible by the Parent Body Organisation or any PBO Affiliates (and not owned or accessible by the Contractor) are deleted.

25.9 Damages Not the Only Remedy

Without prejudice to any other rights or remedies that any Party may have, the Parties acknowledge and agree that damages alone would not be an adequate remedy for any breach by any Party of this Clause 25 (*Confidentiality and Compliance with Legislation*) and that the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Clause 25 (*Confidentiality and Compliance with Legislation*) by any Party shall also be appropriate remedies.

26 FREEDOM OF INFORMATION

26.1 Freedom of Information Act

26.1.1 This Clause 26 (*Freedom of Information Act*) is subject to the FOIA and EIR together with any guidance and/or codes of practice issued by the Ministry of Justice, Information Commissioner and the Lord Chancellor's Department. The Contractor's attention is drawn specifically to the Lord Chancellor's Code of Practice on Freedom of Information.

26.1.2 The Contractor shall assist and cooperate with the Authority to enable the Authority to comply with its disclosure obligations under the FOIA and the EIR. The Contractor shall also comply with the Protocol attached at Schedule 14 (*Freedom of Information*).

26.1.3 If the Authority is required to provide information as a result of a request made to it under the FOIA or EIR and such information is in the possession of the Contractor or any of its Subcontractors but not the Authority then the Contractor shall provide such information to the Authority as soon as reasonably practicable. The Contractor shall provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to

a Request for Information (as defined under the FOIA) within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the EIR.

- 26.1.4 Where the Contractor receives, or any of its Subcontractors receive, a Request for Information relating to information held by or on behalf of the Authority, the Contractor shall, and shall also procure that its Subcontractors shall, transfer to the Authority any such Request for Information received as soon as reasonably practicable.
- 26.1.5 The Contractor shall provide a nominated member of staff with sufficient authority to handle, co-ordinate and be responsible for the supply of information to the Authority for the purposes of compliance with this Clause 26.1 (*Freedom of Information Act*) and the Protocol contained in Schedule 14 (*Freedom of Information*).
- 26.1.6 The Authority shall have sole responsibility for determining at its absolute discretion whether any information provided to the Authority is exempt from disclosure in accordance with the FOIA or EIR or is to be disclosed in response to a Request for Information.
- 26.1.6A Subject to Clause 26.1.6 (*Freedom of Information Act*), for the avoidance of doubt the Authority shall in determining its response to any Request for Information, give due consideration to any representations made by the Contractor and/or the PBO concerning the need to preserve confidentiality of information and the availability of the absolute exemption in section 41 of FOIA and/or the qualifying exemption in section 43 of FOIA.
- 26.1.7 The Contractor acknowledges that the Authority may, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA or Regulation 16 of the EIR, be obliged under the FOIA or the EIR to disclose information concerning the Contractor, the Sites or this Agreement without consulting the Contractor, or following consultation with the Contractor and having taken its views into account.
- 26.1.8 The Contractor acknowledges that any lists or Schedules provided by it outlining confidential information or commercially sensitive information are of indicative value only and that the Authority may nevertheless be obliged to disclose such information in accordance with this Clause 26.1 (*Freedom of Information Act*).
- 26.1.9 In no event shall the Contractor respond to a Request for Information in relation to information that the Contractor is holding on the Authority's behalf unless expressly authorised to do so by the Authority.

27 DATA PROTECTION

27.1 Data Protection Act

- 27.1.1 Each Party to this Agreement shall ensure that it complies at all times with the DPA or such other equivalent data protection legislation as may be relevant to its performance of this Agreement in respect of all personal data processed by it.
- 27.1.2 In relation to data of which the Contractor is data controller, the Contractor shall at all times comply with the DPA as a data controller if necessary, including maintaining a valid up-to-date registration or notification under the DPA covering the data processing to be performed in connection with its obligations under this Agreement.
- 27.1.3 The Contractor shall, and shall procure that any Subcontractor shall, only undertake processing of personal data reasonably required in connection with the Contractor's obligations under this Agreement and shall not transfer any personal data to any country or territory outside the European Economic Area.
- 27.1.4 The Contractor shall not disclose personal data to any person other than to:
- 27.1.4.1 Employees, Nominated Staff and Subcontractors to whom such disclosure is reasonably necessary in order for the Contractor to carry out its obligations under this Agreement; or
- 27.1.4.2 the extent required by applicable Legislation or under a court order, provided that disclosure under Clause 27.1.4.1 (*Data Protection Act*) above is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Clause 27.1 (*Data Protection Act*) and that the Contractor shall give notice in writing to the Authority of any disclosure of personal data it or a Subcontractor is required to make under Clause 27.1.4.2 (*Data Protection Act*) above immediately it is aware of such a requirement.
- 27.1.5 The Contractor shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of personal data of which the Authority is data controller and accidental loss or destruction of, or damage to such personal data including but not limited to taking reasonable steps to ensure the reliability of Employees and Nominated Staff having access to the personal data and putting into place and maintaining relevant and appropriate systems and procedures.

27.1.6 The Authority may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Contractor and referred to in Clause 27.1.5 (*Data Protection Act*) above. Within thirty (30) Calendar Days of such a request, the Contractor shall supply written particulars of all such measures detailed to a reasonable level such that the Authority can determine whether or not, in connection with the personal data, it is compliant with the DPA.

27.1.7 For the purposes of this Clause 27.1 (*Data Protection Act*) the words "personal data", "data controller" and "processing" shall have the meanings given to these terms in the DPA.

28 KNOWLEDGE MANAGEMENT

28.1 The Contractor shall comply with the requirements set out at Requirement 6.7 of Schedule 1 (*Client Specification*).

PART 9: Intellectual Property and IT

29 INTELLECTUAL PROPERTY

29.1 Licence of Authority IP to Contractor

29.1.1 In consideration of a fee of one thousand pounds sterling (£1,000) per annum (the "**Licence Fee**"), the Authority hereby grants to the Contractor a non-transferable, non-exclusive licence (which is otherwise royalty-free) to use the Authority IP during the term of this Agreement for the purpose of fulfilling its obligations under this Agreement. The Contractor shall have the right to sub-license the Authority IP to its Subcontractors (including the right to sub-license) to use the Authority IP strictly in the performance of their Subcontracts only, (such Sub-Licence to be subject to the same limitations as are set out in this Agreement), but the Contractor shall have no other rights to sub-license the Authority IP without the prior written approval of the Authority.

29.1.2 The Contractor acknowledges that nothing in this Agreement shall constitute any representation or warranty by the Authority in respect of the Authority IP and, in particular, acknowledges that the Authority does not represent or warrant that any registered Authority IP is valid or that any application for registration or grant will proceed to registration or grant or will remain registered.

29.1.3 The Contractor acknowledges that nothing in this Agreement shall constitute any representation or warranty by the Authority that the Contractor's exercise

of rights granted under this Agreement shall not infringe any valid third party IP rights.

29.2 The Licence Fee

29.2.1 The Licence Fee is a VAT exclusive amount and is payable by the Contractor in advance by way of one payment on 1 April in each Contract Year (the first payment being due on the Commencement Date).

29.3 IP Contributed by Parent Body Organisation

Licence to Authority and Contractor

29.3.1 Save for Special Parent IP (as provided in Clause 29.3.6), in respect of IP that is owned by or licensed (with appropriate sub-license rights) to the Parent Body Organisation:

29.3.1.1 any such IP that is made available (whether at the Commencement Date or at any time during the term of this Agreement) by the Parent Body Organisation to the Contractor for the purpose of fulfilling its obligations under this Agreement or is used by the Contractor for the purposes of fulfilling its obligations in relation to the Sites under this Agreement, but excluding the Required Parent IP (the "**Delivered Parent IP**"); and

29.3.1.2 any such IP that is directly or indirectly required to enable the Authority or its licensees to use or exploit any Developed IP (the "**Required Parent IP**")

shall be, and is hereby, in consideration of the Authority's obligations under this Agreement, licensed (with the right to sublicense such rights as set out in Clauses 29.3.2 to 29.3.4 (*IP Contributed by Parent Body Organisation*) below) in perpetuity to the Authority (in its application as of the Commencement Date where applicable) for utilisation in the Authority Field of Use at or in relation to the Designated Sites or, in the case of Required Parent IP, limited to the extent required to enable the Authority or its licensee to use or exploit the relevant Developed IP, without payment of royalty fees (except to the extent otherwise agreed in writing between the Authority and the Parent Body Organisation). The Delivered Parent IP and the Required Parent IP shall together be referred to as the "**Parent IP**".

29.3.2 The Authority shall have the right to sub-license (on terms consistent with the Authority's licence (although the Sub-Licence may be narrower than the Authority's licence)) the Parent IP to the Contractor in perpetuity who in turn

shall be entitled to grant Sub-Licences to its subcontractors (with a right to sub-license) to use the Parent IP solely in the performance of their subcontracts in respect of the Sites, in each case without payment of royalty fees. Such Sub-Licence of Parent IP to the subcontractors shall contain terms that are materially similar to the terms contained in the Authority's licence from the Parent Body Organisation and the Contractor's follow-on licence from the Authority.

- 29.3.3 The Authority shall have the right to sub-license the Delivered Parent IP to other SLCs solely for use in relation to their activities falling within the Authority Field of Use on any Designated Sites (including the right for such SLCs to grant further Sub-Licences to their subcontractors, with a right to sub-license, in each case solely limited to such purpose) without payment of royalty fees provided always that such Sub-Licences are consistent with the Authority's licence of Delivered Parent IP (although the Sub-Licence may be narrower than the Authority's licence). The Authority's right to use and sub-license the Delivered Parent IP shall remain in force during the term of this Agreement and shall continue notwithstanding the termination or expiry of either or both of this Agreement and the Parent Body Agreement until the Authority reasonably determines that the Delivered Parent IP is no longer needed in relation to any Designated Sites for which the Authority has obtained the rights to use the Delivered Parent IP.
- 29.3.4 Except to the extent otherwise agreed in writing between the Authority and the Parent Body Organisation, the Authority shall have the right to use and sub-license to Third Parties, including other SLCs, the Required Parent IP where this is necessary to use or exploit the Developed IP without payment of royalty fees and who shall themselves be entitled to grant Sub-Licences to their subcontractors (with a right to sub-license) solely to use the Required Parent IP where necessary to enable the use or exploitation of Developed IP, without payment of royalty fees provided always that such Sub-Licences are consistent with the terms of the Authority's licence of the Required Parent IP (although the Sub-Licence may be narrower than the Authority's licence). The Authority's right to use and sub-license the Required Parent IP shall remain in force during the term of this Agreement and shall continue notwithstanding the termination or expiry of either or both of this Agreement and the Parent Body Agreement until the Authority reasonably determines that the Required Parent IP is no longer needed to enable the use of any Developed IP.
- 29.3.5 The Contractor shall implement procedures and systems to record and track Delivered Parent IP, Required Parent IP and any Special Parent IP that may be introduced at any time during the Term.

- 29.3.6 The Parent Body Organisation and/or any PBO Affiliates have now or may in the future have ownership of or licences to use further IP that the Parent Body Organisation may, with the Authority's agreement, wish to introduce to the Sites on terms different to those set out in this Clause 29 (*Intellectual Property*). Such IP is referred to in this Agreement as "**Special Parent IP**", and as at the Commencement Date such Special Parent IP is listed at Part C (*Special Parent IP*) of Schedule 8 (*Intellectual Property*).
- 29.3.7 Before the Parent Body Organisation or a PBO Affiliate allows any Special Parent IP to be introduced to the Sites the Authority and the Parent Body Organisation or relevant PBO Affiliate (as the case may be) will negotiate the terms of a perpetual or time limited royalty or non-royalty-bearing licence allowing the Authority to use (and to sub-license the Contractor to use) such Special Parent IP solely in respect of the Sites or as may otherwise be agreed and setting out any special provisions relating to confidentiality, which provisions will apply notwithstanding any contrary provisions in this Agreement. Such licence may make special provision for ownership and licensing of any Developed IP developed from such Special Parent IP. For the avoidance of doubt, if after making any Special Parent IP available such Special Parent IP becomes directly or indirectly required to enable the Authority or its licensees to use or exploit any Developed IP then notwithstanding Clause 29.3.4 (*IP Contributed by Parent Body Organisation*) such Special Parent IP shall not be treated as Required Parent IP.
- 29.3.8 With the exception only of Clauses 29.3.6, 29.3.7, 29.3.8, 29.3.9 and 29.3.10 (*IP Contributed by Parent Body Organisation*) the provisions of this Clause 29 (*Intellectual Property*) shall not apply in relation to any Special Parent IP.
- 29.3.9 Compliance with the Contractor's obligations under this Agreement is not conditional on introduction of any Special Parent IP and the Contractor is not entitled to any adjustment to the Target Cost or any schedule related obligation if the Authority declines to agree to the introduction of any Special Parent IP or terms for such introduction.
- 29.3.10 Without prejudice to Clause 29.3.1 and 29.3.5 (*IP Contributed by Parent Body Organisation*) above, the Contractor shall implement such procedures and systems as are reasonably required and agreed by the Authority (including without limitation under the IP Schedule) to identify and track any IP that is made available (whether at the Commencement Date or at any time during the term of this Agreement) by the Parent Body Organisation to which there are limitations on the Authority's ability to exploit, use or license such IP. Where such IP has not been so identified and tracked (and/or the Authority has not

been notified of such limitations) then the Authority may use, exploit and license such IP without further restrictions and the Contractor shall indemnify the Authority in full in respect of any third party claim or action that the Authority's (or its licensees') use, exploitation and/or licensing of such IP outside the scope of any identified restrictions infringes that third party's rights. Where the Authority intends to use, exploit or license such IP in a manner (or with a scope) which is materially different from the use made of it at the Sites, the Authority shall give to the Contractor thirty (30) Calendar Days' prior written notice detailing the IP. The Contractor shall have no liability under this indemnity to the extent that the relevant IP has been introduced by a previous parent body organisation and:

29.3.10.1 is used by or on behalf of the Contractor only at the Sites where it has been introduced by that parent body organisation; and

29.3.10.2 to the extent that restrictions on use of such IP were not identified by that parent body organisation before the date of this Agreement,

provided that, for the avoidance of doubt, this shall not release the Contractor from any obligation to (i) notify the Authority of restrictions on such IP of which it becomes aware, or (ii) track the use of such IP during this Agreement and, in each case, indemnify the Authority in respect of any failure to do so.

Infringement of Parent IP by Third Parties

29.3.11 In the case of any infringement or suspected infringement by any Third Party of Parent IP which is licensed to the Authority pursuant to this Clause 29.3 (*IP Contributed by Parent Body Organisation*), the Contractor, in consultation with the Authority, shall promptly notify the Parent Body Organisation and shall, at the Parent Body Organisation's cost and expense, take such reasonable direction as the Parent Body Organisation may provide for the purposes of the Parent Body Organisation's response to such infringement or suspected infringement.

29.4 Authority's Rights to IP developed by or on behalf of the Contractor and/or Subcontractors

The Contractor shall establish procedures (which shall be audited on reasonable notice by the Authority from time to time) for the identification, protection, exploitation, management and ownership of IP (save to the extent that such IP is both immaterial and operationally insignificant) in accordance with this Agreement (including the IP Schedule) including those needed for IP developed by the Contractor or its Subcontractors (whether or not owned by the Authority regardless of the date of

creation) (including Developed IP), together with rights secured to Subcontractor IP and Third Party IP (including IP licensed pursuant to Clause 29.6 (*Third Party IP*) below) whether in the name of Contractor or the Authority and regardless of the date such rights were secured. Subject to Clause 29.3.6 (*IP Contributed by Parent Body Organisation*), Developed IP shall be managed in accordance with the IP Schedule and, unless:

- 29.4.1 the IP Schedule expressly permits otherwise (including without limitation that written consent of the Authority is given where this is required in accordance with the IP Schedule) and full records are kept of the justification for that permission; or
- 29.4.2 otherwise agreed in writing by the Authority, acting reasonably and without unreasonable delay,

be owned in accordance with the following provisions:

Ownership by Authority of Developed IP created by the Contractor

- 29.4.3 Subject to any pre-existing rights of Third Parties and of the Parent Body Organisation and to Paragraph 2.2 of Part B of the IP Schedule:
 - 29.4.3.1 the Authority shall own any and all Developed IP created by the Contractor; and
 - 29.4.3.2 the Contractor hereby assigns to the Authority all its right, title and interest in any Developed IP created by it on or at any time after the date of this Agreement.

Ownership of Developed IP by the Authority

- 29.4.4 Without prejudice to Clause 29.4.3 (*Ownership by Authority of Developed IP created by the Contractor*) above the Authority shall own any Developed IP (whether or not created by the Contractor) which the Authority reasonably determines: (i) having regard to any views of ONR, raises or may raise security issues relating to the use of such Developed IP (including without limitation where the use or disclosure of such Developed IP could compromise the security of any Designated Site, facilities, equipment or materials relating to any Designated Site); and/or (ii) is of Strategic Interest to the Authority.
- 29.4.5 Subject to Clause 29.4.6 (*Ownership of Developed IP created by or on behalf of Subcontractors*) and without prejudice to Clause 29.4.3 (*Ownership by Authority of Developed IP created by the Contractor*) above, the Authority shall own any and all IP in all output (including information, results, test data, safety

cases and other reports) obtained by and arising from the application and use of any Authority-owned IP (including Authority-owned Developed IP). The Contractor hereby assigns to the Authority all right, title and interest in such IP (to the extent not already owned by the Authority or otherwise assigned under the provisions of this Clause 29 (*Intellectual Property*)) created on or at any time after the date of this Agreement.

Ownership of Developed IP created by or on behalf of Subcontractors

29.4.6 Save as expressly set out in this Clause 29.4.6 (*Ownership of Developed IP created by or on behalf of Subcontractor*):

29.4.6.1 Developed IP that is created by or on behalf of any Subcontractor under its Subcontract shall be owned by the Authority and the Contractor shall procure that the Subcontractor assigns to the Authority all right, title and interest in such Developed IP (to the extent not already owned by the Authority or otherwise assigned under the provisions of this Clause 29 (*Intellectual Property*)) created by the Subcontractor on or at any time after the date of this Agreement. However, the Authority acknowledges that it may be appropriate in certain circumstances described in the IP Schedule, for an alternative IP solution to be adopted and for such Developed IP that falls outside the provisions of Clause 29.4.4 (*Ownership of Developed IP by the Authority*) above to be owned by the Subcontractor. If permitted under the IP Schedule, the Contractor may allow the Subcontractor to retain ownership of such Developed IP, provided that (i) full records are kept, (ii) the written consent of the Authority is given when required by the IP Schedule, and (iii) such Developed IP is licensed to the Authority in accordance with Clause 29.4.11 (*Licence of Developed IP from Subcontractor to Authority*) below.

29.4.6.2 if, at the Commencement Date, the Contractor already has Sub-contracts which allow the Sub-contractor to own Developed IP, then such Sub-contracts may continue, provided that:

29.4.6.2.1 where Clause 29.4.4(i) or (ii) applies in respect of such Developed IP;

and in any event

29.4.6.2.2 on renewal of such Sub-contracts on their expiry or termination,

such Sub-Contracts shall be reviewed in accordance with the provisions of Clause 29.4.6.1 and the IP Schedule (including Commercial Guidance 02) to determine the appropriate party to own such Developed IP.

Access to and use of information by the Authority

29.4.7 Subject to the provisions of Clause 25 (*Confidentiality and Compliance with Legislation*), and without prejudice to the provisions of Clause 14 (*Performance Management, Performance Assurance and Records*) and Clause 15 (*Inspection and Audit*), the Contractor shall ensure that the Authority shall be entitled to access, use and disclose all and any information created, received or maintained by or on behalf of the Contractor, save to the extent prohibited by applicable Legislation or any obligation of confidence imposed on the Contractor by an agreement entered into by the Contractor in accordance with this Agreement or any obligation of confidence imposed on the Contractor by an agreement before the date of the this Agreement in respect of such information as was held by the Contractor before that date. Further, notwithstanding ownership of any Developed IP developed by any Subcontractor and without prejudice to the provisions of Clause 14 (*Performance Management, Performance Assurance and Records*) and Clause 15 (*Inspection and Audit*), the Contractor shall ensure that the Authority shall be entitled to access, use and disclose all and any information created, received or maintained by any Subcontractor during the course of carrying out obligations under the relevant Subcontract, that is part of the Developed IP created by the Subcontractor, or is reasonably necessary for the purpose of using, exploiting or licensing either Developed IP or any contract deliverable under the Subcontract including products, information, data, results and records ("**Output**"). For the avoidance of doubt information shall not be treated as having been received by the Contractor on the basis that it is known to or in the possession of any Nominated Staff unless such information is used by the Nominated Staff in relation to the Sites or this Agreement.

Further Assurance

29.4.8 In respect of any Developed IP owned by the Authority pursuant to Clauses 29.4.3 (*Ownership by Authority of Developed IP created by the Contractor*), 29.4.4 (*Ownership of Developed IP by the Authority*), 29.4.5 (*Ownership of Developed IP by the Authority*) and/or 29.4.6 (*Ownership of Developed IP created by or on behalf of Subcontractors*) above (and/or pursuant to the IP Schedule) the Contractor shall (and shall procure that any Subcontractor shall) execute such further documents and do such further acts as the Authority

reasonably requires to give full effect to the terms of this Clause 29 (*Intellectual Property*) and perfect the Authority's title to any such Developed IP.

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

29.4.9 The Contractor shall procure that each Subcontractor identifies and declares to the Contractor prior to entering into its Subcontract where it is reasonably practicable to do so, and in any event within thirty (30) Calendar Days, any material IP relevant to the performance of the Subcontract which the Subcontractor owns immediately prior to the commencement of the Subcontract which relates to the Subcontract deliverables and could be reasonably judged necessary for the Authority, the Contractor or any licensee of either the Authority or the Contractor to use, exploit or license any Output or Developed IP arising from the Subcontract. In respect of any such IP, the Contractor shall procure that the Subcontractor shall grant to the Authority a licence in accordance with Clause 29.4.12 (*Licence of Subcontractor-owned Background IP from Subcontractor to Authority*) below.

Licence to the Authority of IP licensed to the Subcontractor

29.4.10 A Subcontractor may at any point during the Subcontract have licensed to it IP which could be reasonably judged necessary for the Authority, the Contractor or any licensee of the Authority or the Contractor to use, exploit or license any Output or Developed IP arising from the Subcontract ("**Subcontractor-licensed Background IP**"). The Contractor shall procure that each Subcontractor:

29.4.10.1 identifies and declares to the Contractor prior to entering into its Subcontract (or, where such IP is licensed to it or becomes relevant later, then at the point such IP is licensed to the relevant Subcontractor or otherwise becomes relevant) any material Subcontractor-licensed Background IP that is licensed to that Subcontractor; and

29.4.10.2 shall use all reasonable endeavours to procure a licence for the Authority on reasonable terms which enables the Authority to use and exploit Subcontractor-licensed Background IP solely in order to use and exploit the relevant Output or Developed IP. This licence shall include the right to sub-license that Subcontractor-licensed Background IP to any third party (including any SLC):

29.4.10.2.1 solely as necessary for such use or exploitation of any Output or Developed IP;

29.4.10.2.2 without the consent of the licensor or Subcontractor;
and

29.4.10.2.3 permitting any SLC (and its sublicensees) to sub-license its rights under any such Sub-Licence to any of its subcontractors without the consent of the licensor or Subcontractor provided always that such Sub-Licences are consistent with the terms of the Authority's licence of Subcontractor licensed Background IP (although the Sub-Licence may be narrower than the Authority's licence).

Without prejudice to Clause 29.4.20 (*Introduction of IP*) below, where such rights cannot be procured the Contractor and the Authority, acting reasonably, shall determine whether the Subcontract should be entered into and if so its provisions.

Licence of Developed IP from Subcontractor to Authority

29.4.11 Subject to Clause 29.4.12 (*Licence of Subcontractor-owned Background IP from Subcontractor to Authority*) below, in the event that any Developed IP is owned by a Subcontractor, the Contractor shall procure that the Subcontractor shall grant to the Authority:

29.4.11.1 a non-exclusive, world-wide, perpetual, irrevocable, royalty-free licence to use such Developed IP together with the right to sub-license such Developed IP to any third party including any other SLC without the consent of the Subcontractor, and permitting any SLC (and its sublicensees) to sub-license its rights under any such Sub-Licence to any of its subcontractors without the consent of the Subcontractor provided always that such Sub-Licences are consistent with the terms of the Authority's licence of such Developed IP (although the Sub-Licence may be narrower than the Authority's licence); and

29.4.11.2 rights for the Authority to:

29.4.11.2.1 contribute to the drafting of any patents owned by the Subcontractor relating to Developed IP, where the Subcontractor should be required to use reasonable endeavours to incorporate changes reasonably

requested by the Authority into the patent application (provided that the Authority acts and responds promptly and does not cause any unreasonable delay to the filing of such patent application);

29.4.11.2.2 extend the territorial coverage of a patent relating to Developed IP, at the Authority's own cost;

29.4.11.2.3 assume ownership of any patent(s) or patent application(s) (or the rights to file such applications) relating to Developed IP which the Subcontractor wishes to abandon (or decides, in respect of particular territories, not to file). (For the avoidance of doubt this includes, without limitation, a decision not to seek grant of a European Patent relating to Developed IP in any of the UK, France or Germany or a Patent Co-operation Treaty patent relating to Developed IP in any of the UK, European Patent, UK, France or Germany).

Without prejudice to Clause 29.4.20 (*Introduction of IP*) below, where such rights cannot be procured or where the cost of procuring such rights is inconsistent with achievement of Value For Money, the Contractor and the Authority shall determine whether the Subcontract should be entered into and if so its provisions. The Contractor shall not obtain any lesser rights than outlined in this Clause 29.4.11 (*Licence of Developed IP from Subcontractor to Authority*) without the express prior written consent of the Authority, not to be unreasonably withheld or delayed.

Licence of Subcontractor-owned Background IP from Subcontractor to Authority

29.4.12 Without prejudice to Clause 29.4.20 (*Introduction of IP*) below, the Contractor shall review the IP Schedule and the Commercial Guidance 02 to identify the scope of rights needed from a Subcontractor and procure that either:

29.4.12.1 each Subcontractor shall grant to the Authority a non-exclusive, perpetual, irrevocable, royalty-free licence to use its Background IP solely in order to use, exploit and license the relevant Output and Developed IP within the Authority Field of Use and in relation to the Designated Sites. This licence shall include the right to sub-license such Background IP to any third party (including any SLC):

29.4.12.1.1 solely as necessary for such use or exploitation of any Output or Developed IP within the Authority Field of Use and in relation to the Designated Sites;

29.4.12.1.2 without the consent of the Subcontractor;

29.4.12.1.3 without payment of royalty fees; and

29.4.12.1.4 permitting any SLC (and its sublicensees) to sub-license its rights under any such Sub-Licence on terms consistent with the licence to the Authority to any of its subcontractors to enable their use or exploitation of any Output or Developed IP without the consent of the Subcontractor and without payment of royalty fees (although the Sub-Licence may be narrower than the Authority's licence); or

29.4.12.2 lesser rights are obtained in accordance with the provisions of the IP Schedule and/or the Commercial Guidance 02, in which case the minimum requirement is that each Subcontractor shall grant to the Authority a non-exclusive, perpetual, irrevocable and (unless the Authority expressly agrees otherwise) royalty-free licence to use its Background IP solely in order to use, exploit and license the relevant Output and Developed IP in respect of the Sites, with a right to sub-license to the relevant SLC (and its sublicensees) in respect of the Sites.

Contractor's Notification of Developed IP

29.4.13 The Contractor shall procure that any Subcontractor shall promptly notify the Contractor of any IP which is created and/or developed by the Subcontractor relevant to and during the performance of its Subcontract, in accordance with the requirements of the IP Schedule. The Contractor shall promptly notify the Authority of any such Developed IP and/or any Developed IP created by the Contractor itself, in accordance with the requirements of the IP Schedule.

Use of Developed IP by the Subcontractor

29.4.14 The Contractor may, if permitted by the provisions of the IP Schedule, grant a non-exclusive licence (with rights to sub-license) to a Subcontractor enabling the Subcontractor to exploit outside the Authority Field of Use any Developed IP developed by the Subcontractor or its sub-contractors. Where required by the IP Schedule, the Contractor shall include within the invitation to tender (and, if the Subcontractor is given ownership or a licence of Developed IP

created under the Subcontract, also in the final Subcontract) provision for the Authority to receive an appropriate (at market rate) royalty or other payment if such Developed IP is exploited or licensed by the Subcontractor.

Licence to Parent Body Organisation

29.4.15 At the Authority's sole discretion and subject to the reasonable terms of the Authority (which may include payment of reasonable royalties or fees), the Authority may grant to the Parent Body Organisation a world-wide licence (which is freely assignable or sub-licensable) to use for purposes other than activities falling within the Authority Field of Use any Developed IP which vests in the Authority pursuant to Clauses 29.4.3 (*Ownership by Authority of Developed IP created by the Contractor*), 29.4.5 (*Ownership of Developed IP by the Authority*) and/or 29.4.6 (*Ownership of Developed IP created by or on behalf of Subcontractors*) but not, for the avoidance of doubt, Clause 29.4.4 (*Ownership of Developed IP by the Authority*) above.

Exclusion of Parent IP from Developed IP

29.4.16 For the avoidance of doubt, Developed IP created by or on behalf of the Contractor (including Subcontractors) and which vests in the Authority pursuant to Clauses 29.4.3 (*Ownership by Authority of Developed IP created by the Contractor*), 29.4.4 (*Ownership of Developed IP by the Authority*), 29.4.5 (*Ownership of Developed IP by the Authority*) and 29.4.6 (*Ownership of Developed IP created by or on behalf of Subcontractors*) above shall exclude any Parent IP under Clause 29.3 (*IP contributed by Parent Body Organisation*) above or any Third Party IP under Clause 29.6 (*Third Party IP*) below that may form the basis or background of such Developed IP.

Protection of Developed IP

29.4.17 Where any Developed IP vests in the Authority pursuant to Clauses 29.4.3 (*Ownership by Authority of Developed IP created by the Contractor*), 29.4.4 (*Ownership of Developed IP by the Authority*), 29.4.5 (*Ownership of Developed IP by the Authority*) and/or 29.4.6 (*Ownership of Developed IP created by or on behalf of Subcontractors*) above, the Contractor shall (including without limitation in accordance with the IP Schedule) seek reasonable and necessary protection in respect of such Developed IP by way of patent applications or otherwise as the Authority may reasonably direct, at the Authority's costs to the extent Allowable in accordance with this Agreement, and shall use reasonable endeavours to procure that any relevant Subcontractor provides such support as the Contractor may reasonably require in respect of such protection. The Contractor shall keep the Authority

advised as to all material developments with respect to any such applications and assign the rights arising therefrom to the Authority.

Warranty

29.4.18 The Contractor warrants (and shall procure that any Subcontractor warrants, unless the Authority has provided approval in writing because it would be unreasonable to require the Subcontractor to give such a warranty) that the use and licensing of any Developed IP within the Authority Field of Use (and in accordance with the terms of any relevant licence granted pursuant to this Agreement) shall not infringe the IP rights of any Third Party. The Contractor further warrants that it shall take all reasonable steps that are necessary to ensure that it does not infringe the IP rights of any Third Party.

Register of IP

29.4.19 The Contractor shall (and shall procure that any Subcontractor shall) maintain an up to date register of the material details of all Developed IP (save to the extent that such Developed IP is both immaterial and operationally insignificant) in accordance with the IP Schedule including details of the owner of such Developed IP, and the terms on which any Developed IP is licensed by the Contractor (or Subcontractor, as the case may be) to the Authority and/or any third party.

Introduction of IP

29.4.20 The Contractor must not (unless it has the Authority's express prior written consent) allow IP to be introduced in relation to any of the Sites unless the Authority owns, or has been granted a licence to use that IP at least in relation to the relevant Sites where it is introduced.

29.5 Infringement of IP owned by the Authority

29.5.1 The Contractor shall immediately give notice in writing to the Authority if it becomes aware of any:

29.5.1.1 actual, suspected or threatened infringement of any of the IP owned by the Authority (including Developed IP which vests in the Authority pursuant to Clause 29.4 (*Authority's Rights to IP developed by or on behalf of the Contractor and/or Subcontractors*) above) ("**Authority Owned IP**") or of any Developed IP licensed to the Authority pursuant to this Agreement; or

29.5.1.2 allegation, complaint, or Legal Proceedings made, raised or threatened that Authority Owned IP or of any Developed IP licensed to the Authority pursuant to this Agreement infringes the rights of any third party.

29.5.2 In the case of any actual or threatened infringement or suspected infringement by any Third Party of Authority Owned IP or of any Developed IP licensed to the Authority pursuant to this Agreement of which the Contractor is aware or ought reasonably to be aware:

29.5.2.1 the Contractor shall, in consultation with the Authority, decide what action, if any, to take including the bringing of Legal Proceedings in the name of the Authority;

29.5.2.2 the Contractor shall, subject to the Authority's approval (not to be unreasonably withheld or delayed), have control over and conduct of any such Legal Proceedings;

29.5.2.3 the Contractor shall keep the Authority informed as to all material developments and steps taken by it or by any Third Party in relation to any infringement or suspected infringement;

29.5.2.4 the Contractor shall not knowingly make any admission (other than to the Authority or with the Authority's consent) and the Authority will provide the Contractor with all assistance as it may reasonably require and request in connection with the Contractor conduct of any Legal Proceedings. Such assistance may include the Authority at its cost, agreeing to be joined as a party in any such Legal Proceedings brought by the Contractor pursuant to Clause 29.5.2.2 (*Infringement of IP owned by the Authority*) above; and

29.5.2.5 any award of costs or damages or other compensation payment recovered in connection with any of the matters in this Clause 29.5 (*Infringement of IP owned by the Authority*) shall be for the account of the Authority as Category II Revenue.

29.6 **Third Party IP**

29.6.1 In the event that the Contractor wishes to use third party IP for the purpose of fulfilling its obligations in relation to the Sites under this Agreement ("**Third Party IP**") it shall (i) comply with Paragraph 3.3 of the Commercial Guidance 02 and (ii) discuss with the Authority whether the Authority wishes to (a) influence the terms or scope of the licence or (b) take responsibility for the negotiations. Unless so instructed by the Authority, the Contractor shall use

all reasonable endeavours to procure a licence for the Authority on reasonable terms which enable the Authority to use and to sub-license to the Contractor the Third Party IP. For the avoidance of doubt, this Clause 29.6.1 (*Third Party IP*) shall not apply to IP that is licensed by a Third Party to any Subcontractor to which the provisions of Clause 29.4.10 (*Licence to the Authority of IP Licensed to the Subcontractor*) above apply.

29.6.2 The Contractor shall (and shall procure that any Subcontractor shall) maintain an up to date register of the details and use of any Third Party IP licensed to the Contractor or the Subcontractor (as the case may be) for the purposes of this Agreement or any Subcontract relating thereto including the principal terms in respect thereof.

29.6.3 Without prejudice to Clause 29.4.20 (*Introduction of IP*) above, the Contractor shall be responsible for ensuring that where any Third Party IP is licensed to the Contractor or any Subcontractor the terms of such licence are not breached by the Contractor or the Subcontractor as the case may be.

29.7 **Contractor's obligation to protect IP**

The Contractor shall take all such commercially reasonable and necessary steps to protect Authority Owned IP and any Developed IP licensed to the Authority, in accordance with the IP Schedule. Among other things, the Contractor shall keep the Authority informed of all material matters relevant to the protection of the Authority Owned IP and any Developed IP licensed to the Authority and, if requested by the Authority in relation to Authority Owned IP, make applications for patents, diligently prosecute any patent applications, respond to oppositions filed by third parties, assign the patent rights to the Authority and maintain any patents (including the payment of renewal fees). The Authority, at its cost, will provide the Contractor with such instructions as the Contractor may reasonably require and request in the protection and maintenance of the Authority Owned IP. For the avoidance of doubt, the Contractor has no responsibility for the prosecution of patents filed prior to April 2005.

29.8 **Use and Sharing of Information and Know-How**

Subject to Clause 25 (*Confidentiality and Compliance with Legislation*), the Contractor shall, save to the extent prohibited by applicable Legislation or any obligation of confidence imposed on the Contractor by any Subcontract or other agreement entered into by the Contractor in accordance with this Agreement, share information and know-how relating to activities falling within the Authority's Field of Use with the Authority and with Third Parties as directed by the Authority. The Contractor shall be responsible for ensuring that all parties involved in such information sharing are aware of any IP

subsisting in such information and that, where appropriate, the parties to the information sharing agree adequate protections for such IP.

29.9 Back-up and Storage

The Contractor shall ensure the back-up of and storage in safe custody of all electronic data, material and documents required to be maintained and retained under this Agreement in accordance with its Internal Procedures relating to records and data management.

29.10 Documents and Other Materials

29.10.1 At the Authority's request the Contractor shall provide to the Authority any documents and other materials in any form and any other articles (including copies) in its possession or control bearing or embodying any of the Authority IP (save to the extent that such Authority IP is both immaterial and operationally insignificant) created on or after the Commencement Date subject to any pre-existing rights of third parties and the Parent Body Organisation.

29.10.2 In the event of expiry or termination of this Agreement, the Contractor shall preserve and shall deliver-up to the Authority all documents and other materials in any form and all other articles (including copies) in its possession or control bearing or embodying any of the Authority IP (save to the extent that such Authority IP is both immaterial and operationally insignificant) subject to any pre-existing rights of third parties and the Parent Body Organisation.

30 INFORMATION TECHNOLOGY

30.1 Site IT Systems

30.1.1 The Contractor warrants that during the Term:

30.1.1.1 it shall have in place such Site IT Systems in respect of each Site as are required for the full and efficient performance of its obligations under this Agreement, subject to the requirements of this Clause 30 (*Information Technology*);

30.1.1.2 it shall maintain in force and comply with the terms of all licences required for Software used by the Contractor and all other IT Agreements required in respect of the Site IT Systems.

30.2 Access to Authority IT Systems and the Site IT Systems

In the event that, with the agreement of the Authority, the Contractor has access to any Authority IT Systems, the Contractor shall comply with such reasonable requirements in relation to the security thereof as the Authority shall specify from time to time in writing. In the event that, pursuant to this Agreement or otherwise with the agreement of the Contractor, the Authority has access to any of the Site IT Systems, the Authority shall comply with such reasonable requirements in relation to the security thereof as the Contractor shall specify from time to time in writing.

30.3 Inspections

Without prejudice or limitation to the Contractor's obligations under Clause 15 (*Inspection and Audit*), the Contractor shall allow the Authority to co-ordinate any inspection by or on behalf of the Authority of the Site IT Systems with any inspection thereof being performed by or on behalf of the ONR, and shall permit the ONR to share with the Authority the results of any such inspection by or on behalf of the ONR.

30.4 Maintenance and Support and Business Continuity

30.4.1 Without prejudice to the Contractor's performance of its obligations set out in the Client Specification, the Contractor shall:

30.4.1.1 at all times ensure that the Critical Site IT Systems are maintained and supported in accordance with Good Industry Practice;

30.4.1.2 maintain an up to date Schedule of Critical Site IT Systems; and

30.4.1.3 at all times ensure that all material components of Critical Site IT Systems are of a version which is supported by the manufacturer or supplier thereof.

30.4.2 The Contractor shall at all times maintain and put into effect business continuity and disaster recovery plans consistent with:

30.4.2.1 Good Industry Practice;

30.4.2.2 BS25999 or equivalent standard; and

30.4.2.3 in respect of the Critical Site IT Systems, ISO/IEC 17799.

30.5 Changes to Site IT Systems

30.5.1 Subject to the Contractor's obligation to comply with the Regulatory Requirements in respect of the Site IT Systems and its ability to make emergency fixes to the Site IT Systems in accordance with the Contractor's

documented Internal Procedures (which procedures shall meet with the Authority's approval), the Contractor shall not without the Authority's prior written consent make any material alteration to any of the Critical Site IT Systems, including without limitation:

30.5.1.1 the introduction of any new data or voice circuits to or from the relevant Site or new or altered interfaces to external IT Systems;

30.5.1.2 the introduction of any new or altered Software which requires the reconfiguration of any application external to the relevant Site and not maintained by the Contractor; and

30.5.1.3 any alteration which has or may have a material impact on safety at the relevant Site and/or the security of a Critical Site IT System.

30.5.2 Subject to the Contractor's obligation to comply with the Regulatory Requirements in respect of the Site IT Systems and its ability to make emergency fixes to the Site IT Systems in accordance with the Contractor's documented Internal Procedures (which procedures shall meet with the Authority's approval), the Contractor shall not without the Authority's prior written consent make any material alteration to any of the Site IT Systems which would adversely affect the separability of the Site IT Systems from any IT Systems owned or operated by the Parent Body Organisation or an Affiliate or any IT Systems external to the relevant Site.

30.5.3 Any change to the hardware or Software comprised in a Site IT System shall be reflected in the Asset Register maintained pursuant to Clause 6.5 (*Maintenance of Site and Authority Assets*).

30.6 **Deposit of Source Code**

30.6.1 Subject to Clause 30.6.3 (*Deposit of Source Code*) below, the Contractor shall adhere to Good Industry Practice in relation to the deposit in escrow of the Source Code of Software packages comprised in the Site IT Systems, having regard to:

30.6.1.1 the materiality and criticality of the Software concerned;

30.6.1.2 the ease with which the same could be replaced; and

30.6.1.3 without prejudice to the Contractor's obligations under Clause 29 (*Intellectual Property*), the availability of Source Code to the Contractor.

Subject to the foregoing, the Contractor shall, if so requested in writing by the Authority, in respect of one or more such Software packages ensure that the Source Code thereof is deposited in escrow with the Escrow Agent for the benefit of the Contractor and the Authority on the Escrow Terms. The Contractor shall maintain a register of the Software packages deposited in escrow.

30.6.2 Subject to Clause 30.6.3 (*Deposit of Source Code*) below, the Contractor shall ensure that any deposit made in accordance with Clause 30.6.1 (*Deposit of Source Code*) above is at all times complete and up to date such that it accurately reflects the relevant Software as the same is installed and used by the Contractor from time to time.

30.6.3 A failure by the Contractor to comply with Clause 30.6.1 or 30.6.2 (*Deposit of Source Code*) above that occurs during the four (4) Month period after the Commencement Date shall not entitle the Authority to terminate this Agreement for Contractor Default pursuant to Clause 11.14.3.2 (*Defective Performance and Remediation*), and the relevant Costs incurred by the Contractor shall not constitute Disallowable Costs pursuant to Paragraph 4.1(dd) (*Disallowable Costs*) or Paragraph 4.1(mm) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), unless:

30.6.3.1 such failure is on the part of (i) any one or more of the Nominated Staff or (ii) the Parent Body Organisation or a PBO Affiliate acting in connection with the performance of its obligations under a Subcontract or Sub-Subcontract; or

30.6.3.2 the Nominated Staff had a reasonable opportunity to identify, address and prevent such failure;

30.7 **Release of Source Code**

In the event that any Source Code deposited pursuant to Clause 30.6 (*Deposit of Source Code*) above is released in accordance with the applicable escrow terms, the Contractor shall ensure that the licence referred to in Clause 29.6 (*Third Party IP*) shall include all IP subsisting in such Source Code.

30.8 **Transferability of Agreements**

30.8.1 The Contractor shall use all reasonable endeavours to ensure that, save to the extent otherwise agreed in writing by the Authority, each IT Agreement entered into on or after the Commencement Date shall provide that the rights and obligations (if any) of the Contractor there under which relate to the performance of the Contractor's obligations under this Agreement are capable

of being separately transferred to the Authority or its nominee without the consent of any counterparty to such IT Agreement or other Third Party and without incurring any payment obligation or other additional liability under such IT Agreement.

30.8.2 Where, having used all reasonable endeavours to do so, the Contractor is unable to procure the transferability of any IT Agreement referred to in Clause 30.8.1 (*Transferability of Agreements*) above, the Contractor shall consult with the Authority and give the Authority such information in relation thereto as the Authority reasonably requests. The Authority will not unreasonably withhold consent to the Contractor entering into such IT Agreement where the Contractor is able to demonstrate to the Authority's reasonable satisfaction that the proposed counterparty thereto will not agree to such transferability on commercially reasonable terms, and there is no acceptable alternative to such counterparty.

PART 10: Personnel Matters

31 EMPLOYEES AND NOMINATED STAFF

31.1 Magnox Nominated Staff

31.1.1 The Magnox Contractor shall, in respect of each of the Magnox Nominated Staff, enter into and comply with, and shall procure that any Seconding Employer and each person who is a member of the Magnox Nominated Staff enters into and complies with, a Secondment Agreement for the relevant Minimum Secondment Period, unless:

31.1.1.1 [Not used]

31.1.1.2 the member of the Magnox Nominated Staff dies or suffers from long-term illness or injury prior to the end of the relevant Minimum Secondment Period;

31.1.1.3 the member of the Magnox Nominated Staff has voluntarily resigned from the employment of the Parent Body Organisation or Seconding Employer prior to the end of relevant Minimum Secondment Period; or

31.1.1.4 otherwise agreed by the Authority.

31.1.2 The Magnox Contractor shall procure that none of the Magnox Nominated Staff is withdrawn from work at the Magnox Sites without first obtaining the prior written consent of the Authority (such consent not to be unreasonably

withheld or delayed), including such consent as to the handover process and period and suitability and adequacy of a replacement who must have a level of skills and experience and security clearance comparable to that of the Magnox Nominated Staff being withdrawn, or if more appropriate depending on the relevant job position, have the necessary skills and experience and security clearance required for that job position.

31.1.3 Where the withdrawal from work of Magnox Nominated Staff and/or appointment of a replacement for any Magnox Nominated Staff in accordance with this Clause 31.1 (*Magnox Nominated Staff*) requires the approval of any of the Regulators, the Magnox Contractor shall procure all such approvals as are necessary before making the withdrawal and/or replacement as applicable.

31.1.4 In the event that individual persons designated Magnox Nominated Staff are withdrawn and replaced in accordance with Clauses 31.1.1 (*Magnox Nominated Staff*) to 31.1.3 (*Magnox Nominated Staff*) above, then the Magnox Contractor shall enter, and shall procure that each Seconding Employer and each replacement shall enter into a Secondment Agreement prior to such replacement commencing work at the relevant Site(s) and such replacement shall be deemed to be a member of the Magnox Nominated Staff.

31.1.5 Reference to "withdrawal" of Magnox Nominated Staff or to any such persons being "withdrawn" in the above provisions and in Clause 31.5.2 (*Organisational Change*) below shall not include withdrawal due to long-term illness or voluntary resignation from the employment of the Parent Body Organisation or Seconding Employer, provided that the provisions above relating to the appointment of a replacement shall apply as if such member of the Magnox Nominated Staff had been withdrawn.

31.1.6 The Magnox Contractor shall procure that no person is appointed to:

31.1.6.1 a Magnox Nominated Staff role that was planned as part of the Final Tender and for which a different person (or no person) was identified as the proposed member of Magnox Nominated Staff in the Final Tender; or

31.1.6.2 a Magnox Nominated Staff role that was not planned as part of the Final Tender but which is subsequently planned at any time during the Term,

without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed) including such consent as to the suitability

and adequacy of such person who must have the necessary skills and experience required for the relevant job position.

31.2 **RSRL Nominated Staff**

31.2.1 The RSRL Contractor shall, in respect of each of the RSRL Nominated Staff, enter into and comply with, and shall procure that any Seconding Employer and each person who is a member of the RSRL Nominated Staff enters into and complies with, a Secondment Agreement for the relevant Minimum Secondment Period, unless:

31.2.1.1 [Not used]

31.2.1.2 the member of the RSRL Nominated Staff dies or suffers from long-term illness or injury prior to the end of the relevant Minimum Secondment Period;

31.2.1.3 the member of the RSRL Nominated Staff has voluntarily resigned from the employment of the Parent Body Organisation or Seconding Employer prior to the end of the relevant Minimum Secondment Period; or

31.2.1.4 otherwise agreed by the Authority.

31.2.2 The RSRL Contractor shall procure that none of the RSRL Nominated Staff is withdrawn from work at the Sites without first obtaining the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed), including such consent as to the handover process and period and suitability and adequacy of a replacement who must have a level of skills and experience and security clearance comparable to that of the RSRL Nominated Staff being withdrawn, or if more appropriate depending on the relevant job position, have the necessary skills and experience and security clearance required for that job position.

31.2.3 Where the withdrawal from work of RSRL Nominated Staff and/or appointment of a replacement for any RSRL Nominated Staff in accordance with this Clause 31.1 (*RSRL Nominated Staff*) requires the approval of any of the Regulators, the RSRL Contractor shall procure all such approvals as are necessary before making the withdrawal and/or replacement as applicable.

31.2.4 In the event that individual persons designated RSRL Nominated Staff are withdrawn and replaced in accordance with Clauses 31.2.1 (*RSRL Nominated Staff*) to 31.2.3 (*RSRL Nominated Staff*) above, then the RSRL Contractor shall enter, and shall procure that each Seconding Employer and each

replacement shall enter into a Secondment Agreement prior to such replacement commencing work at the Sites and such replacement shall be deemed to be a member of the RSRL Nominated Staff.

31.2.5 Reference to "withdrawal" of RSRL Nominated Staff or to any such persons being "withdrawn" in the above provisions and in Clause 31.5.2 (*Organisational Change*) below shall not include withdrawal due to long-term illness or voluntary resignation from the employment of the Parent Body Organisation or Seconding Employer, provided that the provisions above relating to the appointment of a replacement shall apply as if such member of the RSRL Nominated Staff had been withdrawn.

31.2.6 The RSRL Contractor shall procure that no person is appointed to:

31.2.6.1 an RSRL Nominated Staff role that was planned as part of the Final Tender and for which a different person (or no person) was identified as the proposed member of Magnox Nominated Staff in the Final Tender; or

31.2.6.2 an RSRL Nominated Staff role that was not planned as part of the Final Tender but which is subsequently planned at any time during the Term,

without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed) including such consent as to the suitability and adequacy of such person who must have the necessary skills and experience required for the relevant job position.

31.2A **Joint Nominated Staff**

31.2A.1 The Contractor shall, in respect of each of the Joint Nominated Staff, enter into and comply with, and shall procure that any Seconding Employer and each person who is a member of the Joint Nominated Staff enters into and complies with, a Secondment Agreement for the relevant Minimum Secondment Period, unless:

31.2A.1.1 [Not used]

31.2A.1.2 the member of the Joint Nominated Staff dies or suffers from long-term illness or injury prior to the end of the relevant Minimum Secondment Period;

31.2A.1.3 the member of the Joint Nominated Staff has voluntarily resigned from the employment of the Parent Body Organisation or

Seconding Employer prior to the end of relevant Minimum Secondment Period; or

31.2A.1.4 otherwise agreed by the Authority.

31.2A.2 The Contractor shall procure that none of the Joint Nominated Staff is withdrawn from work at the Sites without first obtaining the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed), including such consent as to the handover process and period and suitability and adequacy of a replacement who must have a level of skills and experience and security clearance comparable to that of the Joint Nominated Staff being withdrawn, or if more appropriate depending on the relevant job position, have the necessary skills and experience and security clearance required for that job position.

31.2A.3 Where the withdrawal from work of Joint Nominated Staff and/or appointment of a replacement for any Joint Nominated Staff in accordance with this Clause 31.2A (*Joint Nominated Staff*) requires the approval of any of the Regulators, the Contractor shall procure all such approvals as are necessary before making the withdrawal and/or replacement as applicable.

31.2A.4 In the event that individual persons designated Joint Nominated Staff are withdrawn and replaced in accordance with Clauses 31.2A.1 (*Joint Nominated Staff*) to 31.2A.3 (*Joint Nominated Staff*) above, then the Contractor shall enter, and shall procure that each Seconding Employer and each replacement shall enter into a Secondment Agreement prior to such replacement commencing work at the relevant Site(s) and such replacement shall be deemed to be a member of the Joint Nominated Staff.

31.2A.5 Reference to "withdrawal" of Joint Nominated Staff or to any such persons being "withdrawn" in the above provisions and in Clause 31.5.2 (*Organisational Change*) below shall not include withdrawal due to long-term illness or voluntary resignation from the employment of the Parent Body Organisation or Seconding Employer, provided that the provisions above relating to the appointment of a replacement shall apply as if such member of the Joint Nominated Staff had been withdrawn.

31.2A.6 The Contractor shall procure that no person is appointed to:

31.2A.6.1 a Joint Nominated Staff role that was planned as part of the Final Tender and for which a different person (or no person) was identified as the proposed member of Joint Nominated Staff in the Final Tender; or

31.2A.6.2 a Joint Nominated Staff role that was not planned as part of the Final Tender but which is subsequently planned at any time during the Term,

without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed) including such consent as to the suitability and adequacy of such person who must have the necessary skills and experience required for the relevant job position.

Nominated Staff Plan

31.3A.1 Subject to Clauses 31.3A.2 and 31.3A.3 (*Nominated Staff Plan*) below, the Contractor shall maintain the Nominated Staff Plan throughout the Term in accordance with the Change Control Procedure as an up-to-date, accurate and complete plan for the provision of Nominated Staff for the purposes of this Agreement during the current Contract Year and subsequent six (6) Contract Years, ensuring that the Nominated Staff Plan contains as a minimum:

31.3A.1.1 an organogram identifying all current Nominated Staff roles as at the date of the current version of the Nominated Staff Plan, including:

31.3A.1.1.1 Nominated Staff job titles; and

31.3A.1.1.2 whether or not each Nominated Staff role has been identified by the Authority as a Key Personnel role.

31.3A.1.2 an organogram(s) identifying all Nominated Staff roles following:

31.3A.1.2.1 any planned changes to the Contractor's organisational structure in accordance with Site Licence Condition 36 (*Organisational Capability*); and

31.3A.1.2.2 any other planned changes to the Nominated Staff roles during the period of three (3) years from the date of the current version of the Nominated Staff Plan,

including (in addition to the details specified at 31.3A.1.1.1 and 31.3A.1.1.2 above) descriptions of any proposed Nominated Staff roles which are novel as compared to existing Nominated Staff roles;

31.3A.1.3 in relation to the current and planned Nominated Staff roles identified pursuant to 31.3A.1.1 and 31.3A.1.2 above:

- 31.3A.1.3.1 a categorisation by level of each Nominated Staff role;
 - 31.3A.1.3.2 a high-level description of the functions and responsibilities pertaining to each Nominated Staff role;
 - 31.3A.1.3.3 a schedule showing the start date, expiry date and duration of any Nominated Staff roles; and
 - 31.3A.1.3.4 the total remuneration package for each Nominated Staff role (which may be expressed by a range of amounts and allocated to each level of Nominated Staff role) to the extent that such remuneration is or will be funded by the Authority as Allowable Costs, which shall include bonus structure (if applicable and to the extent known at the relevant time) and unless otherwise agreed by the Parties shall be in a format and level of detail consistent with the Nominated Staff Plan as at the Commencement Date;
- 31.3A.1.4 in relation to the Nominated Staff currently appointed or planned to be appointed at any time during the current Contract Year or subsequent three Contract Years:
- 31.3A.1.4.1 the name of each proposed Nominated Staff member; and
 - 31.3A.1.4.2 the secondment start date, end date and duration for each Nominated Staff member;
- 31.3A.1.5 details of how the Contractor, the Parent Body Organisation and/or any PBO Affiliates will identify and select proposed additional or replacement members of Nominated Staff for planned and emergency vacancies in accordance with Good Industry Practice and the Contractor's Internal Procedures, including:
- 31.3A.1.5.1 identifying roles and required competencies;
 - 31.3A.1.5.2 ensuring the best possible field of candidates relevant to the roles;
 - 31.3A.1.5.3 assessing the candidates' leadership, managerial and relevant technical competencies and behaviours; and
 - 31.3A.1.5.4 validating the candidates' CVs;

31.3A.1.6 details of how the Contractor will manage the transition between any outgoing and incoming members of Nominated Staff (including succession planning, debriefing and handover processes and periods for planned and emergency transitions) in accordance with Good Industry Practice and the Contractor's Internal Procedures; and

31.3A.1.7 details of how the Contractor's compliance with the Nominated Staff Plan is to be monitored, measured and reported to the Authority in accordance with Good Industry Practice and the Contractor's Internal Procedures.

31.3A.2 The Contractor shall not make any changes to the Nominated Staff Plan:

31.3A.2.1 that would result in the Authority paying any Costs for the provision of Nominated Staff in excess of the amounts calculated using the relevant agreed rates set out in Appendix F (*Nominated Staff Recoverable Costs*) of Schedule 6 (*Finance*) to the extent that such Costs have not previously been notified to the Authority pursuant to Paragraph 4.1(oo) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*); or

31.3A.2.2 in respect of any matter for which the Contractor is required to obtain the Authority's consent in accordance with Clause 31.1 (*Magnox Nominated Staff*), 31.2 (*RSRL Nominated Staff*) or 31.2A (*Joint Nominated Staff*) where such consent has not been obtained.

31.23A.3 Any Proposed Change to the Nominated Staff Plan that would require or entail a material change to:

31.3A.3.1 the current or planned Nominated Staff roles, including:

31.3A.3.1.1 the categorisation by level of the Nominated Staff roles; or

31.3A.3.1.2 the start date, expiry date or duration of any Nominated Staff roles; or

31.3A.3.2 the secondment start date, end date or duration for any current or planned members of Nominated Staff,

shall be a Category 0 Change.

31.3 **Magnox Key Personnel**

31.3.1 The Authority shall, provided that it acts reasonably, be entitled to identify any roles within the Magnox Contractor (being roles held either by Employees or by Magnox Nominated Staff or by Joint Nominated Staff) as key personnel roles from time to time. The roles so identified are listed in Part 1 (*Magnox*) of Schedule 7 (*Employment*). Such list may be amended from time to time by the Authority whether to take account of the replacement of any role or to add any role or to remove any role from such list.

31.3.2 Subject to Clause 31.5.2 (*Organisational Change*) and Clause 31.5.3 (*Organisational Change*) below, the Magnox Contractor shall not, and shall procure that the Parent Body Organisation and any Seconding Employer shall not without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):

31.3.2.1 dismiss (either summarily or on notice) any Magnox Key Personnel;

31.3.2.2 suspend for more than five (5) Calendar Days any Magnox Key Personnel;

31.3.2.3 change the job description of any Magnox Key Personnel;

31.3.2.4 subject to Clause 31.11.3 (*Terms and Conditions of Employment*) below, alter any material term or condition of the contract or terms of employment or engagement of any Magnox Key Personnel;

31.3.2.5 redeploy or reallocate to other services any Magnox Key Personnel; and/or

31.3.2.6 do anything (by act or omission) which is, or may be, a breach of the contract or terms of employment or engagement of any Magnox Key Personnel.

31.4 **RSRL Key Personnel**

31.4.1 The Authority shall, provided that it acts reasonably, be entitled to identify any roles within the RSRL Contractor (being roles held either by Employees or by RSRL Nominated Staff or by Joint Nominated Staff) as key personnel roles from time to time. The individuals so named by the Authority are listed in Part 2 (*RSRL*) of Schedule 7 (*Employment*). Such list may be amended from time to time by the Authority whether to take account of the replacement of any role or to add any role or to remove any role from such list.

31.4.2 Subject to Clause 31.5.2 (*Organisational Change*) and Clause 31.5.3 (*Organisational Change*) below, the RSRL Contractor shall not, and shall procure that the Parent Body Organisation and any Seconding Employer shall not without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):

31.4.2.1 dismiss (either summarily or on notice) any RSRL Key Personnel;

31.4.2.2 suspend for more than five (5) Calendar Days any RSRL Key Personnel;

31.4.2.3 change the job description of any RSRL Key Personnel;

31.4.2.4 subject to Clause 31.11.3 (*Terms and Conditions of Employment*) below, alter any material term or condition of the contract or terms of employment or engagement of any RSRL Key Personnel;

31.4.2.5 redeploy or reallocate to other services any RSRL Key Personnel; and/or

31.4.2.6 do anything (by act or omission) which is, or may be, a breach of the contract or terms of employment or engagement of any RSRL Key Personnel.

31.5 **Organisational Change**

31.5.1 Subject to Regulatory Requirements, the Contractor shall not make any significant changes to the management structure of the Contractor without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed).

31.5.2 Where either the Contractor or the Parent Body Organisation intends to withdraw any member of Key Personnel or Nominated Staff from employment or engagement at a Site, it must:

31.5.2.1 obtain the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed), including such consent as to the suitability and adequacy of a replacement who must have a level of skills and experience comparable to that of the member of Nominated Staff or Key Personnel being withdrawn, or if more appropriate depending on the relevant job position, have the necessary skills and experience required for that job position; and

31.5.2.2 where such withdrawal and/or appointment of a replacement member of Nominated Staff or Key Personnel in accordance with

this Clause 31.5.2 (*Organisational Change*) requires the approval of the Regulators, procure all such approvals as are necessary before making the withdrawal and/or replacement as applicable.

31.5.3 Nothing in this Clause 31 (*Employees and Nominated Staff*) will prevent either the Contractor or the Parent Body Organisation from dismissing or suspending from their duties any Key Personnel or Nominated Staff where such action is:

31.5.3.1 necessary to comply with any applicable Legislation or Regulatory Requirements;

31.5.3.2 required to safeguard the health and wellbeing of any employee on any Site;

31.5.3.3 justified on the grounds that any member of the Key Personnel or Nominated Staff has committed an act of gross misconduct; and/or

31.5.3.4 justified on the grounds that any member of the Key Personnel or Nominated Staff has failed a drugs and/or alcohol test,

provided that the Contractor shall notify the Authority in writing as soon as reasonably practicable of its intention to suspend or dismiss such Key Personnel or Nominated Staff or, where it is not reasonably practicable to do so before such action is taken, the Contractor shall notify the Authority in writing as soon as reasonably practicable following such action.

31.5.4 Where the Contractor and/or the Parent Body Organisation dismisses or suspends any Key Personnel or Nominated Staff pursuant to Clause 31.5.3 (*Organisational Change*) above or where there has been a death in service of any Key Personnel or Nominated Staff the Contractor and the Parent Body Organisation shall as soon as possible and in any event within two (2) Months of the dismissal or suspension replace such Key Personnel or Nominated Staff in accordance with the provisions of this Agreement. Where the replacement of such dismissed or suspended Key Personnel or Nominated Staff requires consultation with the Regulators, the Contractor and the Parent Body Organisation shall comply with such requirement.

31.6 **Non-Contract Activities**

31.6.1 The Contractor shall ensure and procure that the Employees and the Nominated Staff are engaged solely in the performance of the Tasks and the Contractor's other obligations under this Agreement and/or the performance of the Contractor's obligations to the Authority in relation to other sites under the Energy Act or another Site Management and Operations Contract and save

also that this requirement shall not be contravened by appointment of the Nominated Staff to the board of the Parent Body Organisation, provided such appointment does not materially detract from the Nominated Staff members' ability to perform his or her obligation in accordance with this Agreement, the Parent Body Agreement and relevant Secondment Agreement.

31.7 Notice to Authority of Disputes

31.7.1 The Contractor shall notify the Authority in writing of the existence and details of any grievance or dispute (whether actual, pending or threatened) between:

31.7.1.1 the Contractor (or other relevant employer) and any of the Employees or Nominated Staff; and/or

31.7.1.2 the Contractor and any of the Contractor's Subcontractors engaged in connection with this Agreement and/or their personnel; and/or

31.7.1.3 the Contractor (or other relevant employer) and any trade union or other body representing any such person in Clause 31.7.1.1 (*Notice to Authority of Disputes*) or 31.7.1.2 (*Notice to Authority of Disputes*) above

where the consequence of such dispute may include:

31.7.1.3.1 liabilities, Costs or potential Costs in excess of one hundred thousand pounds (£100,000);

31.7.1.3.2 delay to the performance of the Contractor's obligations set out in the Client Specification; or

31.7.1.3.3 a significant adverse affect on regulatory, stakeholder or trade union relationships.

Such notification will be made as soon as reasonably practicable after the Contractor becomes aware of any such dispute and the Contractor shall provide such level of detail within its knowledge as the Authority reasonably requires.

31.7.2 The Contractor shall keep the Authority informed with regard to any dispute notified pursuant to Clause 31.7.1 (*Notice to Authority of Disputes*) above together with any proposed settlements or developments which may affect compliance with the Contractor's obligations set out in Client Specification or result in increased Cost.

31.8 Maintenance of Skills

The Contractor acknowledges the responsibility of the Authority under section 9(2)(a) of the Energy Act in relation to the maintenance and development in the United Kingdom of a skilled workforce able to undertake the work of decommissioning nuclear installations and of cleaning up nuclear sites, shall not by any act or omission cause the Authority to be in breach of such responsibility and shall comply with the provisions of Clause 22 (*Subcontracting/Procurement*). In particular, the Contractor shall:

- 31.8.1 without prejudice to Clause 31.9 (*Authority Approval of Redundancy*) below, when considering redundancies or any other programme involving a reduction of Employee numbers and/or when making make-or-buy decisions pursuant to the Supply Chain Strategic Plan, take into account the Authority's duty to maintain and develop in the United Kingdom a skilled workforce able to undertake the work of decommissioning nuclear installations and of cleaning up nuclear sites under section 9(2)(a) of the Energy Act;
- 31.8.2 consider and plan future skills requirements and predict possible skills shortages and needs and, in each case, train and develop Employees and recruit, train and develop additional employees accordingly; and
- 31.8.3 ensure that when it replaces any of the Employees pursuant to this Clause 31 (*Employees and Nominated Staff*), the replacement has a level of skills and experience which:
 - 31.8.3.1 is at least broadly comparable to that of the Employee that he or she is replacing; or
 - 31.8.3.2 if more appropriate depending on the relevant job position, matches the necessary skills and experience required for that job position;
- 31.8.4 not allow any secondment or transfer of the Employees to the Parent Body Organisation or any Affiliates unless authorised to do so by the Authority.

31.9 Authority Approval of Redundancy

- 31.9.1 Subject to Clauses 31.1 (*Magnox Nominated Staff*), 31.2 (*RSRL Nominated Staff*), 31.2A (*Joint Nominated Staff*), 31.3 (*Magnox Key Personnel*) and 31.4 (*RSRL Key Personnel*) above, the Contractor shall obtain the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed) in advance of:
 - 31.9.1.1 commencing and/or continuing a Redundancy programme or any other programme involving the reduction of Employee numbers such as a voluntary early release or retirement scheme whereby

Employee numbers are reduced by more than fifteen (15) in any thirty (30) Calendar Day period or by more than forty-five (45) in any ninety (90) Calendar Day period; and/or

31.9.1.2 suspending or terminating the employment of between five (5) and fourteen (14) Employees within any period of one (1) Month or less or fifteen (15) or more Employees within any period of three (3) Months or less.

31.9.2 Nothing in this Clause 31 (*Employees and Nominated Staff*) shall prevent the Contractor from dismissing or suspending from their duties or procuring such dismissal or suspension by the Parent Body Organisation any Employees or from procuring the immediate dismissal or suspension of Nominated Staff by the Parent Body Organisation where such action is:

31.9.2.1 necessary to comply with any applicable Legislation or Regulatory Requirements;

31.9.2.2 required to safeguard the health and wellbeing of any employee on any Site;

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

31.9.2.4 justified on the grounds that any Employee has failed an alcohol and/or drugs test,

provided that the Contractor shall notify the Authority in writing as soon as reasonably practicable of its intention to suspend or dismiss such Key Personnel or Nominated Staff or, where it is not reasonably practicable to do so before such action is taken, the Contractor shall notify the Authority in writing as soon as reasonably practicable following such action.

31.9.3 Prior to commencing and/or continuing a Redundancy programme or any other programme involving the reduction of Employee numbers such as a voluntary early release scheme whereby Employee numbers are reduced, the Contractor shall seek to minimise the impact of any such programme by seeking redeployment opportunities including the utilisation of any related Cross Estate initiatives.

31.10 **Non-Discrimination, Equality and Human Rights**

The Contractor shall comply with, and shall use all reasonable endeavours to ensure that Subcontractors and Sub-Subcontractors, the Parent Body Organisation and those

of its Affiliates, agents, Employees and Nominated Staff who carry out activities on the Sites or on behalf of the Contractor shall comply with the:

31.10.1 Human Rights Act 1998;

31.10.2 Employment Rights Act 1996;

31.10.3 [Not used]

31.10.4 [Not used]

31.10.5 [Not used]

31.10.6 Equality Act 2006;

31.10.7 Equality Act 2010; and

31.10.8 any other legal or statutory requirement, modification or re-enactment relating to discrimination or equality in employment, and shall procure that the Parent Body Organisation and those of its Affiliates and agents who carry on activities on the Sites operate an appropriate equal opportunities policy.

31.11 Terms and Conditions of Employment

31.11.1 The Contractor shall keep and maintain adequate HR Internal Procedures and records to enable it to manage the Employees in accordance with Good Industry Practice. Such HR Internal Procedures and records shall contain, amongst other things, all Employees' up to date terms and conditions of employment or engagement and details of remuneration including bonus schemes.

31.11.2 The Contractor shall not, without the prior written consent of the Authority, increase, or permit any increase in, the Costs to be reimbursed by the Authority in relation to Employees including:

31.11.2.1 increase or reclassify wages, salary, other elements of pay, benefits, allowances or emoluments as pensionable or non-pensionable;

31.11.2.2 increase wages, salary, pension contributions or other elements of pay, benefits, allowances (including holiday allowances) or emoluments or make changes to contracted working hours; and

31.11.2.3 agree or approve any terms, policies or arrangements relating to notice entitlements, severance or Redundancy (including without

limitation any augmentations to any wages, salary, and other elements of pay, benefits, allowances, pensions or emoluments),

where such change will cause a significant increase in the Costs or liabilities related to the operation of the Sites and/or performing its obligations under this Agreement or where such change is reasonably likely to result in industrial action with trade unions representing the Employees. Notwithstanding the foregoing provisions of this Clause 31.11.2 (*Terms and Conditions of Employment*), the Contractor shall not propose, negotiate or implement any change to the terms and conditions of employment or other such contractual provisions in respect of the Employees which would result in any increase in the current or future Pension Costs without the prior written consent of the Authority.

31.11.2A In the case of the severance, redundancy, voluntary retirement or early release (including for incapacity or disablement) of any Employees:

31.11.2A.1 no augmentation, enhancement, payment of unreduced benefits or increase (howsoever arising) in respect of any benefit which would otherwise have been payable under an Applicable Scheme (whether immediately or with effect from a future date) if the individual had not left service on grounds of severance, redundancy, voluntary retirement or early release shall be provided without the prior written agreement of the Authority, on a person-by-person basis. The Authority may provide such consent subject to any terms and conditions as it may determine; and

31.11.2A.2 to the extent that the cost (as determined by the Authority) of providing any augmentation, enhancement, unreduced benefits or increase referred to in Clause 31.11.2A.1 (*Terms and Conditions of Employment*) (including, but without limitation, additional payments whether or not paid directly from the Applicable Scheme) exceeds the lower of: (a) one hundred thousand pounds (£100,000) (Indexed); and (b) an amount equal to twice the pensionable pay (as defined by the rules of the relevant Applicable Scheme) of the relevant Employee immediately prior to the date on which he or she ceases to be an Employee, the amount by which the cost exceeds either (a) or (b) as appropriate shall be a Disallowable Cost and will therefore not be included in the Costs to be reimbursed by the Authority to the Contractor, unless the Authority agrees in writing with the Contractor on a person-by-person basis

that such amount is to be included in the Costs to be reimbursed by the Authority to the Contractor.

For the avoidance of doubt, this Clause 31.11.2A shall not apply to circumstances where an Employee is entitled to receive his or her benefits under an Applicable Scheme without any actuarial reduction solely by virtue of having reached the normal retirement date which is relevant to that arrangement.

31.11.3 Subject to compliance with relevant employment law, the Contractor shall make such additions to, omissions from, or other changes to the employment contracts of Employees from time to time as required to be made by the Authority.

31.12 Trade Union Agreements

The Contractor shall disclose to the Authority the terms of all agreements entered into with trade unions or other bodies representing any of the Employees and shall keep the Authority fully informed of any proposed and actual changes to any such agreement or of any proposed and actual new agreements entered into which relate to any of the Employees. The Contractor shall consult the Authority before taking any steps: (i) which are likely to be contrary to the terms or spirit of any such agreement; or (ii) to terminate any such agreement.

31.13 Removal of Contractor or Subcontractor Employees from Site

If the Authority reasonably believes that an Employee is guilty of misconduct or poor performance or that the presence on any Site of an Employee or Subcontractor's employee or a Nominated Staff represents a threat to health, safety, security, public policy or the Environment, then the Authority shall be entitled to require that any such Employee, Subcontractor's employee or Nominated Staff as applicable be removed from the Site and/or from being engaged in the Tasks and the performance of the Contractor's obligations under this Agreement and if such a request is made the Contractor will ensure that any such Employee will be immediately so removed.

31.14 Contractor's responsibility to manage relationship and agreements with Employees and Trade Unions

For the avoidance of doubt, the Contractor acknowledges that it shall be responsible for managing its relationship with its Employees and their respective Trade Union representatives (including any negotiations) and that nothing set out in this Agreement is intended to relieve it from this obligation.

32 PENSIONS

32.1 The Contractor shall do and shall not omit to do anything which the Authority determines to be necessary to fulfil the Authority's duties and obligations in respect of the Employees under Schedule 8 of the Energy Act. In the event of any breach or anticipated breach of this undertaking, the Contractor shall do all things necessary, as directed by the Authority, to restore the rights and benefits of such Employees so as to ensure that the Authority fulfils its duties and obligations under Schedule 8 of the Energy Act. The Contractor shall provide such information as the Authority may determine from time to time to be necessary to satisfy the Authority that the Contractor has complied with this Clause.

32.2 Energy Act Requirements

Participation in Combined Nuclear Pension Plan

32.2.1 Subject to Clauses 32.2.2 (*Energy Act Requirements – Participation in other Applicable Schemes*) and 32.2.3 (*Energy Act Requirements – Participation in other Applicable Schemes*), from the Commencement Date the Contractor shall continue to provide the Employees benefits in the CNPP pursuant to the relevant Deed of Participation applicable to the Employees.

Participation in Other Applicable Schemes

32.2.2 Subject to Clause 32.2.3 (*Energy Act Requirements – Participation in other Applicable Schemes*), the Contractor shall participate in such of the other Applicable Schemes, and in respect of such of the Employees, as the Authority may at any time direct. If such participation is subject to the consent of any other body, the Authority and the Contractor shall use reasonable endeavours to procure such consent.

32.2.3 The Contractor may only provide benefits in respect of the Employees from a pension scheme, and shall only participate in a pension scheme, other than the Applicable Schemes, with the consent of the Authority. Any such other pension scheme shall be included within the meaning of Applicable Scheme for the purposes of the remainder of this Clause 32.2 (*Energy Act Requirements*).

Authority Rights and Contractor Obligations in Respect of Applicable Schemes

32.2.4 The Contractor shall not take any action (or fail to take any action within its control) which would cause it to cease to participate in any Applicable Scheme or otherwise result in a debt becoming payable under Section 75 or 75A of the

Pensions Act 1995 (as amended) without the prior written consent of the Authority.

32.2.5 The Contractor shall, in respect of all Applicable Schemes in which it participates pursuant to this Clause 32.2 (*Energy Act Requirements*):

32.2.5.1 comply with the trust deeds or such other governing documents and rules of the relevant Applicable Schemes relevant to it as an employer;

32.2.5.2 pay all sums due to the trustees (or if there are no applicable trustees the administrator) or managers of the relevant Applicable Schemes as and when they fall due

32.2.5.3 where possible, appoint the Authority as its nominee for the purposes of consultation (or, where applicable, agreement):

32.2.5.3.1 on the investment strategy of the Applicable Schemes under section 35 of the Pensions Act 1995. The Contractor acknowledges that the Authority may take account of its own interests as well as those of the Contractor when discussing investment strategy with the trustees (or if there are no applicable trustees the administrator) or managers of the Applicable Schemes. In respect of any Applicable Scheme to which section 35 of the Pensions Act 1995 does not apply, any powers held by the Contractor under the Scheme to influence notional investment strategy shall be delegated to the Authority;

32.2.5.3.2 on the member nominated trustee/director provisions of the Pensions Act 2004;

32.2.5.3.3 in respect of the matters relating to the funding of the Applicable Schemes as described in section 229(1) of the Pensions Act 2004 (matters requiring agreement of the employer);

32.2.5.4 only exercise or consent to the exercise of any power or discretion and only make any decision in relation to the Applicable Schemes with the consent of the Authority and in such a way as the Authority may direct and shall exercise any such power or discretion, give such consents and make such decisions in such a way as the Authority shall direct;

- 32.2.5.5 if the Authority requests and the governing documentation of the relevant Applicable Scheme permits it, agree to a substitution of the Authority as Principal Employer of the Applicable Scheme;
 - 32.2.5.6 comply with administration systems and risk management procedures as reasonably required by the Authority or the trustees (or if there are no applicable trustees the administrator) or managers of the relevant Applicable Scheme;
 - 32.2.5.7 comply with all obligations whenever arising to consult in respect of matters related to pensions and disclose all relevant information as soon as reasonably practicable in advance of its issuance to the Authority and in connection therewith cooperate and liaise with the Authority as reasonably required by the Authority;
 - 32.2.5.8 not terminate (or allow to be terminated) the service of any Employees or Nominated Staff in circumstances where an enhanced benefit (including, but without limitation, an unreduced early retirement pension) would be due under the Applicable Schemes without the consent of the Authority;
 - 32.2.5.9 comply with its obligations as employer arising under the general Legislation relating to pensions; and
 - 32.2.5.10 except and to the extent required by Legislation, not make, without the consent of the Authority, any announcements or issue any material, information or issue any publicity or advertising in any media or form whatsoever affecting or relating to pension arrangements such consent not to be unreasonably withheld or delayed. Where any such action is required of the Contractor by Legislation, it shall be carried out in a manner and form agreed by the Authority, such agreement not to be unreasonably withheld or delayed.
- 32.2.6 Without prejudice to any other rights under this Clause 32 (*Pensions*), from the Commencement Date the Contractor shall be responsible for all necessary Employee consultation in respect of any change to the pension benefits provided to the Employees which require such consultation. This Clause 32.2.6 (*Authority Rights and Contractor Obligations in Respect of Applicable Schemes*) shall not affect the Authority's obligations in respect of any consultation required under Schedule 8 of the Energy Act.

32.2A Magnox Group of the Electricity Supply Pension Scheme

- 32.2A.1 The Magnox Contractor, as principal employer for the Magnox Group, shall at all times carry out responsible and effective employer management of the Magnox Group with such reasonable degree of skill, care, diligence, prudence and foresight which would ordinarily be expected of a principal employer of the Electricity Supply Pension Scheme, including but not limited to:
- 32.2A.1.1 the appointment of a suitably qualified and experienced secretariat responsible for managing the operation of the Magnox Group and the relationship with the trustee of the Magnox Group;
 - 32.2A.1.2 the appointment of suitably qualified and experienced employer-nominated directors of the trustee body; and
 - 32.2A.1.2 engaging proactively and constructively with the trustee body in its capacity as principal employer to ensure the effective functioning and control of costs of the Magnox Group.
- 32.2A.2 Without prejudice to the provisions of Clause 32.2.5 (*Authority Rights and Contractor Obligations in Respect of Applicable Schemes*) above, whilst the Magnox Contractor is the principal employer for the Magnox Group, the Magnox Contractor shall not take any of the following actions or decisions in respect of the Magnox Group without the consent of the Authority:
- 32.2A.2.1 agree to the rate of contributions payable to the Magnox Group including, but without limitation, the terms of the schedule of contributions and recovery plan under the Pensions Act 2004;
 - 32.2A.2.2 exercise or propose any exercise of the power of amendment in respect of the Magnox Group, including any consultation or proposed ballot of members (where required) in respect of a proposed change to the Magnox Group;
 - 32.2A.2.3 agree or otherwise permit the enhancement or augmentation of any benefits payable to any member of the Magnox Group;
 - 32.2A.2.4 permit the participation of any other entity in the Magnox Group, or the substitution of the Magnox Contractor as the principal employer of the Magnox Group; or
 - 32.2A.2.5 wind-up or purport to wind-up the Magnox Group or any section of it.

32.3 Pension Costs

32.4 The Contractor shall, when preparing, reviewing, proposing, modifying or designing:

32.4.1 any changes to its HR Internal Procedures or the employment contracts of Employees;

32.4.2 any redundancies or any other programme involving a reduction of Employee or Nominated Staff numbers;

32.4.3 any make-or-buy decisions pursuant to the Supply Chain Strategic Plan; and/or

32.4.4 any Business Cases in accordance with this Agreement,

use its reasonable endeavours to identify and quantify the direct or indirect impact that implementation of such change, programme, decision or Business Case will have on the current and future Pension Costs payable by the Contractor. The Contractor shall provide the Authority with such information, data, calculations and proposals which are prepared by or on behalf of the Contractor pursuant to this Clause 32.4 (*Pension Costs*) as the Authority shall require from time to time and shall not implement any such changes, programmes, decisions or Business Cases which may cause an increase to the current and future Pensions Costs payable by the Contractor without the prior written consent of the Authority.

32.5 Subject to compliance with its obligations under this Clause 32 (*Pensions*) and to the extent reasonably practicable having regard to its other obligations under this Agreement, without prejudice to any adjustments to the Phase 1 Target Cost or Phase 2 Target Cost pursuant to Paragraph 2.4 (*Special Items*) or Part 3 (*Target Costs*) of Schedule 6 (*Finance*), the Contractor shall, as an ongoing obligation throughout the Term:

32.5.1 proactively identify and implement ways in which it can improve Internal Procedures, policies, practices and behaviours to reduce the current and future Pension Costs payable by the Contractor; and

32.5.2 not make any changes to the terms and conditions of employment or otherwise which are applicable to any of the Employees or Nominated Staff that could increase the Pension Costs without the consent of the Authority.

The Contractor shall provide the Authority with such information, data, calculations and proposals which are prepared by or on behalf of the Contractor pursuant to this clause 32.5 as the Authority shall require from time to time.

32.6 Section 75 of the Pensions Act 1995

32.6.1 If, in accordance with Clause 32.2.4 (*Authority Rights and Contractor Obligations in Respect of Applicable Schemes*), as a result of an act or failure to act by or in respect of the Contractor a debt arises or may arise in respect of the Contractor under Section 75 or 75A of the Pensions Act 1995, the Contractor shall take all such action as the Authority shall determine to manage or otherwise mitigate the debt which is or would otherwise be payable.

32.6.2 For the purposes of clause 32.6.1 (*Section 75 of the Pensions Act 1995*), but without limitation, the Contractor shall on request by the Authority enter into a flexible apportionment arrangement or scheme apportionment arrangement pursuant to the Occupational Pension Schemes (Employer Debt) Regulations 2005 (as amended).

32.7 **Automatic Enrolment Scheme**

32.7.1 For the purposes of complying with the employer duties provided for in Part 1 of the Pensions Act 2008, the Contractor shall participate in such registered pension scheme as the Authority may nominate from time to time.

32.7.2 Without prejudice to the provisions of clause 32.2.5 above, the Contractor shall not take any of the following actions or decisions in respect of the Automatic Enrolment Scheme without the consent of the Authority:

32.7.2.1 agree to pay contributions in respect of an Employee or any Nominated Staff which exceed the minimum level of contributions required at the relevant time to comply with the requirements of Part 1 of the Pensions Act 2008;

32.7.2.2 agree or otherwise permit the enhancement or augmentation of any benefits payable to any member of the Automatic Enrolment Scheme;

32.7.2.3 exercise or propose any exercise of any power of amendment; or

32.7.2.4 cease to pay contributions or otherwise cease to participate in the Automatic Enrolment Scheme.

PART 11: Termination

33 TERMINATION

Termination by the Authority

33.1 The Authority shall be entitled to terminate this Agreement:

- 33.1.1 on not less than thirty (30) Working Days' prior written notice to the Contractor following any Contractor Default or Persistent Breach;
- 33.1.2 immediately by written notice to the Contractor following any Insolvency Event (provided that such Insolvency or Insolvency Event does not arise as a result of an Authority Default);
- 33.1.3 on not less than thirty (30) Working Days' prior written notice to the Contractor where, before service of such notice, by reason of a Force Majeure Event affecting the Contractor performance by the Contractor of all or a material part of its obligations under this Agreement is materially prevented, hindered or delayed for a period of more than sixty (60) Working Days; or
- 33.1.4 otherwise at its discretion, subject only to providing not less than thirty (30) Working Days' prior written notice to the Contractor.

Termination by the Contractor

33.2 The Contractor shall be entitled to terminate this Agreement:

- 33.2.1 on not less than thirty (30) Working Days' prior written notice to the Authority following an Authority Default;
- 33.2.2 on not less than thirty (30) Working Days' prior written notice to the Authority where, before service of such notice, by reason of a Force Majeure Event affecting the Authority payment by the Authority of an aggregate amount exceeding two million pounds sterling (£2,000,000) (Indexed) due under this Agreement is delayed beyond the due date for its payment for a period of more than sixty (60) consecutive Working Days;
- 33.2.3 on not less than thirty (30) Working Days' prior written notice to the Authority where, before service of such notice, by reason of a Force Majeure Event affecting the Contractor performance by the Contractor of all or a material part of its obligations under this Agreement is materially prevented, hindered or delayed for a period of more than sixty (60) consecutive Working Days, provided that the Authority shall (subject to keeping the Contractor financially whole in respect of its increased costs and lost revenue arising directly from the Force Majeure Event in question) be entitled, at any time before the expiry of such thirty (30) Working Days period, to serve written notice on the Contractor preventing such termination, in which case this Agreement shall not terminate pursuant to the Contractor's notice issued under this Clause 33.2.3 (*Termination by the Contractor*) and the Contractor shall continue to be relieved from its obligations as appropriate pursuant to Clause 13 (*Force Majeure*).

Termination Notices

33.3 In addition to any other requirements pertaining to notices generally or termination notices specifically, set out elsewhere in this Agreement, any termination notice served by either Party pursuant to Clauses 33.1 (*Termination by the Authority*) and 33.2 (*Termination by the Contractor*) above shall specify the grounds on which the Party serving such notice purports to terminate the Agreement and, in the case of any such notice served by the Authority, shall also specify which, if any, of the Nominated Staff the Authority wishes to remain in post following termination in accordance with Clause 7.5 (*Continuing Nominated Staff*) of the Parent Body Agreement.

Expiry and Cross-Termination

33.4 Subject to any earlier termination as set out in Clauses 33.1 (*Termination by the Authority*) and 33.2 (*Termination by the Contractor*) above, this Agreement shall otherwise terminate as set out in Clause 2 (*Commencement and Duration*) or, if earlier, automatically on termination of the Parent Body Agreement in accordance with the terms of that agreement.

Consequences of Termination

33.5 Without prejudice to Clause 36 (*Disputes*), all Disputes arising between the Parties in connection with this Agreement after the date of termination of this Agreement shall be dealt with in accordance with the provisions of the Dispute Resolution Procedure relating to arbitration.

33.6 Where this Agreement is terminated pursuant to Clause 33.1 (*Termination by the Authority*), Clause 33.2 (*Termination by the Contractor*) or automatically on termination of the Parent Body Agreement pursuant to clause 33.4 (*Expiry and Cross-Termination*) above the Contractor shall be entitled to recover from the Authority the amounts payable in accordance with Clause 19.13 (*Payments on Termination*) and Schedule 2 (*Payments on Termination*) of the Parent Body Agreement. Subject to Clause 33.9 (*Accrued Liabilities*), any payments made by the Authority pursuant to Clause 19.13 (*Payments on Termination*) and Schedule 2 (*Payments on Termination*) of the Parent Body Agreement shall be in full satisfaction of any claim which can be made against the Authority by the Contractor in relation to termination of this Agreement and such payments shall be the sole remedy of the Contractor against the Authority in respect of termination of this Agreement.

33.7 [Not used]

Assistance on Revocation of Licence

33.8 In the event of any:

33.8.1 revocation of all or part of any of a Nuclear Site Licence, any Environment Agency or Scottish Environment Protection Agency (as applicable) licence, authorisation, permit or consent or any other Necessary Consent or material licence or permit held by the Contractor the possession of which is necessary to enable the Contractor to operate the Sites; or

33.8.2 receipt of notice by the Contractor of the HSE's (or other relevant body's) intention to revoke such licence or permit or any part thereof,

the Authority shall provide reasonable assistance to the Contractor in its discussions with HSE and/or EA or SEPA as applicable.

Accrued Liabilities

33.9 Termination of this Agreement pursuant to this Clause 33 (*Termination*) shall be without prejudice to the Parties' liabilities which accrued prior to the date of termination.

34 TRANSITION OUT

Acknowledgement

34.1 The Contractor acknowledges that the Authority may wish, at or before the expiry of the Term:

34.1.1 to invite persons (including the Parent Body Organisation) to tender for the right to own the shares in the Magnox Contractor and the RSRL Contractor and to negotiate:

34.1.1.1 a transition agreement dealing with the transition in of the Incoming Parent between the Authority and the Incoming Parent;

34.1.1.2 a replacement parent body agreement between the Authority and the Incoming Parent to replace the Parent Body Agreement; and/or

34.1.1.3 a replacement agreement to be entered into between the new contractor and the Authority (upon the acquisition of the shares by the Incoming Parent); or

34.1.2 to acquire the shares in the Contractor itself; or

34.1.3 any such other arrangement as the Authority may reasonably require in respect of the Sites,

(the "**Competition**").

Preparation for Competition

- 34.2 The Contractor will, if so requested by the Authority, provide the Authority with access to the personnel of the Contractor and all books, records and other materials kept by or on behalf of the Contractor in connection with the Sites for the purpose of assisting the Authority in relation to the tender and/or transfer referred to in Clause 34.1 (*Acknowledgement*) and will supply an external facing team to assist the Authority with the reletting of this Agreement (or future arrangement) which team must consist of a sufficient number of sufficiently qualified and experienced people (in the reasonable opinion of the Authority). Subject to Clause 25 (*Confidentiality and Compliance with Legislation*), the Authority will be permitted to make such personnel, including the external facing team, books, records or other material available to participants in the tender process.
- 34.3 The Contractor will make available to the Authority such information (including financial and operational information) as the Authority reasonably requires in connection with such tender and/or transfer and will be required to assist in the verification of the information.

Parent Body Organisation Bid

- 34.4 The Contractor acknowledges the importance to the Authority of:
- 34.4.1 the Competition being conducted in accordance with EU Procurement Rules; and
 - 34.4.2 the perception by all interested parties that the Competition is fair and unbiased.
- 34.5 If the Parent Body Organisation wishes to participate in the competitive process then immediately on receipt of notice from the Authority notifying the Contractor of the commencement of any Competition for the Sites, the Contractor shall demonstrate to the satisfaction of the Authority that:
- 34.5.1 the Contractor:
 - 34.5.1.1 remains impartial;
 - 34.5.1.2 treats all tenderers equally including providing them with equality of information;
 - 34.5.1.3 makes the Employees and Nominated Staff equally available to assist and be consulted by tenderers, remaining impartial at all times;
 - 34.5.1.4 uses all reasonable endeavours to procure that the tenderers perceive that they are being treated equally; and

34.5.1.5 ensures that all Nominated Staff and Key Personnel have entered into an Impartiality Undertaking in the form attached at Part 5 (*Pro Forma Impartiality Undertaking*) of Schedule 7 (*Employment*).

34.6 The Contractor shall not allow any Employee and/or Nominated Staff to participate in any Competition on behalf of the Parent Body Organisation unless such Employee or Nominated Staff have, subject to the prior written approval of the Authority and the Regulators, been withdrawn at the start of the Competition (in accordance with Clause 31 (*Employees and Nominated Staff*)) from employment at the Sites. For the avoidance of doubt, the Contractor shall not allow any Employee and/or Nominated Staff to participate in the competitive process on behalf of the Parent Body Organisation.

Employees

34.7 Once the Authority has decided on the likely date(s) of contract award in a Competition, the Authority will inform the Contractor of such date(s) (the "**Contract Award Date(s)**"). Save as where otherwise required by applicable Legislation and Regulatory Requirements, during the twelve (12) Months prior to the Contract Award Date(s), the Contractor shall not, without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):

34.7.1 vary or purport or promise to vary the terms and conditions of employment or pensions terms of any Employee;

34.7.2 vary or purport or promise to vary or terminate the Secondment Agreement(s);

34.7.3 vary or purport or promise to vary the terms and conditions of employment of the Nominated Staff to the extent which would adversely affect the performance of the persons working at the Sites or would materially increase the cost to the Contractor or the Authority of the relevant secondment arrangements;

34.7.4 create or grant, or purport or promise to create or grant, terms or conditions of employment for any Employee where the employment of such Employee by the Contractor may commence on or after the end of the Contract Award Date(s) if and to the extent that such terms or conditions are materially different from the terms or conditions of employment of equivalent Employees;

34.7.5 increase or decrease the number of Employees such that:

34.7.5.1 the total number of Employees or the total cost per annum to the Contractor of employing all Employees is increased; or

34.7.5.2 the total number of Employees is decreased

in each case, by more than five per cent (5%) during such period of twelve (12) Months; and

- 34.7.6 save where Clause 31.9.2 (*Authority Approval of Redundancy*) applies, make any changes to the identity of any Key Personnel or to any of the Nominated Staff.

Third Party Contracts

- 34.8 Save as otherwise expressly provided in this Agreement, during the twelve (12) Months prior to the Contract Award Date(s), the Contractor shall not:

34.8.1 enter into any Subcontract, Customer Contract or any other contract or agreement with a Third Party; or

34.8.2 agree to any significant or material amendment of the terms of any Subcontract, Customer Contract or any other contract or agreement with a Third Party,

without the Authority's prior written consent (such consent not to be unreasonably withheld or delayed).

- 34.9 The Contractor shall cooperate and comply with any requirements by the Authority to take steps to terminate any Subcontracts that will continue beyond the expiry or earlier termination of the Term.

Establishment of New SLC

- 34.10 If the Authority notifies the Contractor that it intends to establish a new SLC, the Contractor shall fully co-operate with any reasonable instruction of the Authority to assist in such establishment of and transfer to the new SLC, including in relation to consultation of relevant Employees regarding transfer to the new SLC, separation of IT systems, novation or assignment of IT Contracts, Customer Contracts and Subcontracts as required, the requirement to put legally binding contracts in place between the new SLC and the Contractor and any party with whom the Contractor has Inter SLC Service Contracts and obtaining a new Nuclear Site Licence in respect of the relevant site.

- 34.11 Any requirement of the Authority placed on the Contractor pursuant to Clause 34.10 (*Establishment of New SLC*) shall, to the extent that such requirement is not already contained within the LTP Performance Plan, be the Authority's Change to be included in the LTP Performance Plan in accordance with the Change Control Procedure.

35 TRANSITION ON EXPIRY OR TERMINATION

Transfer to the Authority or Incoming Parent

- 35.1 During the final twelve (12) months before the date on which this Agreement is (pursuant to Clause 2.1 (*Commencement and Duration*)) due to expire, or during any notice period applying to an earlier termination of this Agreement, the Contractor shall co-operate fully as directed by the Authority with any transfer of responsibility from the Parent Body Organisation to an Incoming Parent or to the Authority or any such other arrangement as the Authority may reasonably require in respect of the Sites (as the case may be).
- 35.1A The Outgoing Parent will co-operate with the Authority and the Contractor to ensure that the Outgoing Parent will be responsible for any liability to corporation tax (and any other Tax which would be treated as a Disallowable Cost) arising during the Term (and which has not been discharged on or before the end of the Term).
- 35.2 For the purposes of this Clause 35 (*Termination on Expiry or Termination*) the meaning of the term "co-operate" shall include:
- 35.2.1 liaising with the Authority and/or the Incoming Parent, and providing reasonable assistance and advice concerning the transfer to the Authority or to the Incoming Parent;
- 35.2.2 subject to any constraints imposed by Legislation or any Regulator, allowing the Authority and/or the Incoming Parent access (at reasonable times and on reasonable notice) to relevant Employees, the Sites and any assets; and
- 35.2.3 without prejudice to Clause 15.6 (*Inspection and Audit*), providing to the Authority and/or to the Incoming Parent all and any which is reasonably required for the efficient transfer of responsibility for performance of the Parent Body Organisation's obligations, but excluding any information which is commercially sensitive to the Contractor and/or the Parent Body Organisation (and for the purpose of this Clause 35.2.3 (*Transfer to the Authority or Incoming Parent*) "commercially sensitive" shall mean information which would, if disclosed to a competitor of the Contractor and/or the Parent Body Organisation, give that competitor a competitive advantage over the Contractor and/or the Parent Body Organisation and thereby prejudice the business of the Contractor and/or the Parent Body Organisation, but shall not include any information referred to in Clause 31 (*Employees and Nominated Staff*)).
- 35.3 The Contractor shall use all reasonable endeavours to facilitate the smooth transition in of the Incoming Parent or the transfer of responsibility to the Authority or any such other arrangement as the Authority may reasonably require (as the case may be), and the Contractor shall take no action at any time during the term of this Agreement or thereafter which is calculated or intended, directly or indirectly, to:

- 35.3.1 prejudice, frustrate or make more difficult such transfer; and/or
 - 35.3.2 prejudice, frustrate or make more difficult the Authority's ability to conduct a fair, open and transparent Competition for the appointment of an Incoming Parent or for any other such arrangement required by the Authority, that is compliant with applicable Legislation.
- 35.4 The Contractor undertakes that it will:
- 35.4.1 comply with the Transition In Plan of the Incoming Parent and undertakes that, save to the extent that the Contractor must comply with applicable Legislation and Regulatory Requirements, the Contractor undertakes to the Authority that it will not take any action which is calculated or intended to prevent, prejudices or frustrates (or attempts to prevent, prejudice or frustrate) the transition in of the Incoming Parent or the success of the Transition In Plan;
 - 35.4.2 grant the Incoming Parent and the Incoming Parent's authorised representatives access to:
 - 35.4.2.1 the Sites;
 - 35.4.2.2 the Nominated Staff and Employees;
 - 35.4.2.3 Records and other relevant documentation,in all cases to an extent sufficient, in the Authority's reasonable opinion, to facilitate the Transition In Plan in accordance with the timetable notified to the Contractor by the Authority for such Transition In Plan.

Co-operation with Outgoing Parent

- 35.5 The Contractor also undertakes to the Authority that it will co-operate with the reasonable instructions of the Outgoing Parent and, in particular, will use all reasonable endeavours to facilitate the release of the Nominated Staff of the Outgoing Parent as soon as is compatible with Regulatory Requirements.

Novation of Contracts

- 35.6 The Authority may request that any Subcontracts, Customer Contracts or any other contracts or agreements with Third Parties be novated to the Authority on the same terms as such Subcontracts, Customer Contracts or any other contracts or agreements and the Contractor shall give all reasonable assistance to the Authority in seeking such novation of such Subcontracts, Customer Contracts or any other contracts or agreements as requested, provided that no such novation shall take effect before the

date on which this Agreement expires or is terminated pursuant to Clause 33 (*Termination*) unless expressly agreed by the Parties.

35.7 The Contractor's reasonable and proper costs associated with compliance with this Clause 35 (*Transition on Expiry or Termination*) shall be an Allowable Cost.

36 DISPUTES

36.1 Requirement to Refer Disputes

36.1.1 Save as otherwise expressly provided in this Agreement, any Dispute shall, if it cannot be resolved between the Contractor and the Authority by agreement, be resolved in accordance with the Dispute Resolution Procedure.

36.1.2 No Party shall commence any Legal Proceedings save in accordance with the Dispute Resolution Procedure.

36.1.3 Nothing in this Clause 36.1 (*Requirement to Refer Disputes*) shall prevent or restrict the right of any Party to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

36.1.4 The Contractor shall provide Notice to the Authority of the existence of a Dispute within ten (10) Working Days of either:

36.1.4.1 the date of the Authority's decision (or failure to give a decision or consent by the date on which it was, pursuant to this Agreement, to have been provided) giving rise to such Dispute; or

36.1.4.2 otherwise, the date on which the set of facts giving rise to such Dispute first arose.

36.1.5 In the event that Notice of existence of a Dispute is provided to the Authority after the date referred to in Clause 36.1.4 (*Requirement to Refer Disputes*) above, the Contractor shall not be entitled to any remedy or relief from its obligations under this Agreement in respect of the period for which such Notice is delayed.

36.1.6 If the parties cannot agree the extent of any remedy or relief from the Contractor's obligations under this Agreement in respect of a Dispute, or the Authority disagrees that the Contractor is entitled to any remedy or relief from its obligations under this Agreement arising in respect of a Dispute, the matter shall be resolved in accordance with the Dispute Resolution Procedure.

PART 12: Contract Administration and Miscellaneous Provisions

37 MISCELLANEOUS

37.1 Change in Law

37.1.1 If a CIL Change is necessary to comply with a General Change in Law, then:

37.1.1.1 it shall not affect the categorisation of Costs pursuant to the provisions of Part 2A (Allowable and Disallowable Costs) of Schedule 6 (*Finance*); and

37.1.1.2 the Contractor shall receive no additional compensation for that CIL Change and there shall be no adjustment to the Phase 1 Target Cost or the Phase 2 Target Cost (or any component thereof)

as a result of such a CIL Change.

37.1.2 If a CIL Change is necessary to comply with a Specific Change in Law or a Material General Change in Law then, without prejudice to the provisions of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), the Phase 1 Target Cost and/or the Phase 2 Target Cost shall be adjusted in accordance with Paragraph 6.8 (*Meeting the "No Better No Worse" objective – Required Change Events*) and Paragraph 6.14 (*Authority Acceptance and Implementation of the Proposed Change*) of Schedule 2 (*Change Control Procedure*).

37.1.3 If a Change in Law occurs or is shortly to occur, then either Party may provide notice (the "**Notice of CIL Change**") to the other Party expressing an opinion on its likely effects, giving details of its opinion of:

37.1.3.1 any necessary change in the Tasks;

37.1.3.2 whether any changes are required to the terms of this Agreement to deal with the Change in Law;

37.1.3.3 whether any Necessary Consent must be obtained or amended as a direct result of the Change in Law;

37.1.3.4 whether relief from compliance with obligations is required, including the obligations set out in the Client Specification and/or Achievement of the Client Specification Completion State and/or achievement of the Minimum Performance Standards; and

37.1.3.5 any change in Phase 1 Target Cost or Phase 2 Target Cost that ought to apply as a direct result of any Specific Change in Law or Material General Change in Law,

and such Notice of CIL Change shall be dealt with as a Proposed Change in accordance with the Change Control Procedure.

37.1.4 In support of any consideration of a Proposed Change in response to a Specific Change in Law or Material General Change in Law, in accordance with the Change Control Procedure the Contractor shall, at the Authority's reasonable request:

37.1.4.1 provide evidence that the Contractor has used reasonable endeavours, including (where practicable) the use of competitive quotes, to oblige its Subcontractors to minimise any increase in costs and maximise any reduction in costs;

37.1.4.2 demonstrate how any Costs to be incurred or avoided is being measured in a cost effective manner, including showing that when such expenditure is incurred or would have been incurred, foreseeable Changes in Law at that time have been taken into account by the Contractor;

37.1.4.3 give evidence as to how a Specific Change in Law or Material General Change in Law has affected prices charged by any similar businesses to the Contractor's; and

37.1.4.4 demonstrate that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain assets that have been affected by the Specific Change in Law or Material General Change in Law concerned, has been taken into account in the amount which in its opinion has resulted or is required under Clause 37.1.3.5 (*Change in Law*) above.

37.2 **Representatives and Delegation of Authority to Act**

37.2.1 **Delegation of Authority**

37.2.1.1 Each of the Authority and the Contractor shall provide to the other written Delegations of Authority setting out the decisions which individual members of their respective staffs have authority to take.

37.2.1.2 Each of the Authority and the Contractor is entitled to rely on a written Delegation of Authority of the other Party as evidence that an individual was empowered to make a decision on behalf of the Authority or the Contractor, as applicable.

37.2.2 **Authority to Act**

37.2.2.1 Individual members of the Authority's team shall have such authority to act on behalf of the Authority for the purposes of this Agreement as is specified in the relevant Delegation of Authority in respect of that team member issued by the Authority and copied to the Contractor.

37.2.2.2 Individual members of the Contractor's team shall have such authority to act on behalf of the Contractor for the purposes of this Agreement as is specified in the relevant Delegation of Authority in respect of that team member issued by the Contractor and copied to the Authority.

37.2.2.3 All communications from the Authority to the Contractor and from the Contractor to the Authority which are intended to have a binding effect shall be in writing or given orally and, if given orally, shall be confirmed in writing as soon as reasonably practicable but no later than within three (3) Calendar Days of issue.

37.2.3 **Extent of Authority**

Unless specifically set out in a written Delegation of Authority, no member of the Authority's or the Contractor's team shall have the authority to:

37.2.3.1 agree any variation or amendment to this Agreement; or

37.2.3.2 agree to any material waiver by the Authority or the Contractor (as the case may be) of any term of this Agreement.

37.2.4 **Change in Representative or Delegation of Authority**

37.2.4.1 Each Party may propose a change in its Representative or any other Delegation of Authority by giving the other Party written notification of such change.

37.2.4.2 During any period when an individual named as a Representative or in the Delegation of Authority is unable through illness, incapacity, holidays or any other reason to carry out or exercise his functions under this Agreement, such individual may, with the other Party's approval, delegate his functions to another suitable and appropriate person by giving the other Party written notice.

Notices to Representatives

37.2.5 Subject to Clause 37.7 (*Notices*) below, any Notice, information, instructions or public communication given to:

37.2.5.1 an individual named in the Contractor's Delegation of Authority shall be given in writing and shall be deemed to have been given to the Contractor; and

37.2.5.2 an individual named in the Authority's Delegation of Authority shall be given in writing and shall be deemed to have been given to the Authority.

37.2.6 The Authority shall not be responsible for and the Contractor shall not be entitled to rely on and shall not do so or claim relief, additional time, losses, expenses, damages, costs or other liabilities should the Contractor act on or fail to act on any Notice, communication or other purported instruction given by a person alleging to act for and on behalf of the Authority unless such person is named in the Authority's Delegation of Authority.

37.3 Liaison with Regulators

Communications with Regulators

37.3.1 Save where a Regulatory Requirement expressly prohibits the Contractor from doing so, the Contractor shall promptly copy to the Authority all material correspondence or other communications received from and sent to a Regulator in relation to any Site and the Contractor's activities under this Agreement but unless otherwise instructed by the Authority shall not be required to copy to the Authority minor, administrative or day-to-day correspondence.

Regulator Meetings

37.3.2 The Contractor shall use all reasonable endeavours to give the Authority prompt notice of all Regulator Meetings.

37.3.3 Save in relation to the meetings, or parts thereof, where a Regulatory Requirement prevents the Authority from doing so, the Authority may attend Regulator Meetings. The attendance of the Authority at Regulator Meetings shall at all times be at the discretion of the relevant Regulator(s).

37.3.4 Whether or not the Authority attends Regulator Meetings, the Contractor shall keep the Authority apprised of the Contractor's approach in discussions or negotiations with the Regulator within the constraints of the timetable set by the relevant Regulator. Where the Authority does not attend any Regulator Meeting, the Contractor shall keep the Authority informed on a timely basis of the outcome of the meeting.

Notification of Breach

37.3.5 If the Contractor becomes aware of any circumstances that will or may lead or have led to a breach of one or more Regulatory Requirements, the Contractor shall, as soon as reasonably practicable, notify the Authority of such circumstances in such form and with such detail as requested by the Authority. This obligation is independent of the Contractor's overriding obligation to notify the relevant Regulator of such circumstances pursuant to relevant Regulatory Requirements.

37.4 Meetings

SLC Meetings

37.4.1 The Authority shall be entitled to attend and participate in SLC Meetings and to request SLC Meetings from time to time.

37.4.2 The Contractor shall:

37.4.2.1 maintain a timetable of all SLC Meetings;

37.4.2.2 give the Authority reasonable notice of all proposed SLC Meetings in order to enable the Authority to attend; and

37.4.2.3 at the Authority's request, provide the Authority with the minutes of and any action plans and other related documents resulting from any SLC Meeting.

37.5 Other Meetings

37.5.1 The Contractor shall notify the Authority of any proposed meetings with Customers or Customer Groups or relevant stakeholders and shall give reasonable notice of the date, timing and location of such meetings so that the Authority may also attend such meetings if the Authority so wishes. Where Existing Agreements and/or Customer Contracts contain provisions which prohibit the Authority's attendance at such meetings, the Contractor shall use its reasonable endeavours to procure the agreement of the Customer and/or counterparty to the Authority's attendance at such meetings, and, until such agreement is obtained, the Authority will have due regard to the provisions of the Existing Agreements and/or Customer Contracts in deciding whether to attend such meetings.

37.6 Severability

37.6.1 If any condition, Clause or provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.

37.6.2 In the circumstances referred to in Clause 37.6.1 (*Severability*) above the Parties use reasonable endeavours to agree to substitute for any invalid or unenforceable provision, a provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

37.7 Notices

37.7.1 A notice, approval, consent, or other communication ("**Notice**") in connection with this Agreement and the documents referred to in it must be in written form in the English language. Notices must be delivered either:

37.7.1.1 by electronic mail recorded and referenced in accordance with the Correspondence Process; or

37.7.1.2 by hand or by first class prepaid post (or airmail if posted to or from a place outside the United Kingdom), and copied by electronic mail recorded and referenced in accordance with the Correspondence Process,

marked clearly with the words "Site Licence Company Agreement Communication", to the relevant Party's Representative. Notices must be delivered to the addresses specified in Clause 37.7.3 (*Notices*) below, and in the case of electronic mail, to the addresses for the time being agreed for that purpose in accordance with the Correspondence Process (which as at the Commencement Date are the email addresses specified in Clause 37.7.3 (*Notices*) below).

37.7.2 All Notices must be marked for the attention of the relevant Party's Representative as contained in Clause 37.7.3 (*Notices*) below.

37.7.3 The relevant details of the Authority and the Contractor at the date of this Agreement are:

Authority's Representative:

Addressee: Chief Financial Officer

Address: Nuclear Decommissioning Authority, Herdus House, Westlakes
Science & Technology Park, Moor Row, Cumbria, CA24 3HU

Telephone: [REDACTED] s.40

Email: [REDACTED] s.40 and [REDACTED] s.40 (for
correspondence from the Magnox Contractor);
[REDACTED] s.40 and [REDACTED] s.40 (for
correspondence from the RSRL Contractor);
[REDACTED] s.40 and
[REDACTED] s.40 (for correspondence from the Parent
Body Organisation)

With a copy to:

Addressee: NDA Lead Contract Manager (Magnox and RSRL)

Address: Nuclear Decommissioning Authority, Hinton House, Birchwood,
Warrington, WA3 6GR

Telephone: [REDACTED] s.40

Email: [REDACTED] s.40

Magnox Contractor's Representative:

Addressee: Company Secretary

Address: Magnox Limited, Berkeley Centre, Berkeley, Gloucestershire,
GL13 9PB

Telephone: [REDACTED] s.40

Email: [REDACTED] s.40

RSRL Contractor's Representative:

Addressee: Company Secretary

Address: Research Sites Restoration Limited, Building 392.10/Room
1.05, Harwell Oxford, Didcot, Oxfordshire, OX11 0DF

Telephone: [REDACTED] s.40

Email: [REDACTED] s.40

37.7.4 Any change to the e-mail address, postal address or telephone number of the Representative must be notified by the relevant Party to the other Parties as

soon as reasonably practicable by Notice given in accordance with Clause 37.2.4 (*Change in Representative*) above. The Parties' respective Representatives' addresses and telephone numbers must be within the United Kingdom.

37.7.5 The Parties shall in relation to all Notices:

37.7.5.1 adhere to the use of unique identifiers for each item of correspondence: and

37.7.5.2 maintain records of all Notices (including the author, date, subject, reference and whether a response is required),

in each case as mandated by the Correspondence Process.

37.7.6 In the absence of evidence of earlier receipt, any Notice shall take effect from the time that it is deemed to be received in accordance with Clause 37.7.7 (*Notices*) below.

37.7.7 Subject to Clause 37.7.8 (*Notices*) below, a Notice is deemed to be received:

37.7.7.1 on the second Calendar Day after the electronic mail recorded and referenced in accordance with the Correspondence Process was sent; or

37.7.7.2 if there was no Correspondence Process agreed by the Parties and the Parent Body Organisation and in place at the time the Notice was sent:

37.7.7.2.1 where the Notice was delivered by hand, upon delivery at the address of the addressee;

37.7.7.2.2 where the Notice was delivered by posted letter, on the third (3rd) Calendar Day after posting or, if posted to or from a place outside the United Kingdom, on the seventh (7th) Calendar Day after posting; and

37.7.7.2.3 [Not used]

37.7.7.2.4 where the Notice was sent by electronic mail, on the second (2nd) Calendar Day after such electronic mail was sent.

The place of receipt of electronic mail shall be deemed to be the postal address of the addressee given in, or amended in accordance with, Clause 37.7.2 (*Notices*) above.

- 37.7.8 A Notice received or deemed to be received in accordance with Clause 37.7.7 above on a Calendar Day which is not a Working Day or after 5p.m. on any Working Day, according to the local time in the place of receipt, shall be deemed to be received on the next following Working Day.
- 37.7.9 The Contractor shall ensure that all Notices sent from the Contractor to the Authority in relation to this Agreement shall comply with the Authority's Protective Marking Policy as communicated by the Authority to the Contractor from time to time.
- 37.7.10 Subject to any express provision of this Agreement requiring the Contractor to respond to any communication from the Authority within a specified time period, the Contractor shall respond to any Notice of the Authority (to the extent that a response to such Notice is required or reasonably expected) in a timely manner and in any event within twenty (20) Working Days of receipt or deemed receipt of such Notice.

37.8 Waiver

- 37.8.1 A failure or delay by either Party at any time to enforce any provision of this Agreement or to require performance by the other Party of any provision of this Agreement or the giving of anything whatsoever shall not be construed as a waiver of such provision and shall not affect the validity of this Agreement or any part thereof or the right of the relevant Party to enforce any provision in accordance with its terms. Any waiver or release must be specifically granted in writing, expressed to be a waiver, and signed by the Party granting it and any such waiver or release shall not prejudice or affect any other rights or remedies of the Parties under this Agreement.
- 37.8.2 The waivers, disclaimers, releases, limitations and apportionments of liability, exclusive remedy provisions, and indemnity and hold harmless obligations expressed in this Agreement shall apply even in the event of the fault, negligence, tort, strict liability, breach of Agreement, or otherwise, of the Party whose liability is waived, disclaimed, released, limited or apportioned by any such provision, or fixed by such exclusive remedy provisions, or who is indemnified or held harmless, and shall extend to the liability (if any) of that Party in respect of the fault, negligence, tort, strict liability, breach of Agreement or otherwise of such Party's directors, officers, employees and agents, save that such waivers, disclaimers, releases, limitations and apportionments of liability, exclusive remedy provisions, and indemnity and hold harmless obligations shall not apply to the extent that the relevant Party's conduct (limited, in the case of the Contractor, to the conduct only of the

Nominated Staff or any other person who is provided to the Contractor in accordance with the Parent Body Agreement) leading to such fault, negligence, tort, strict liability, breach of Agreement, or otherwise was fraudulent and/or constitutes Wilful Default.

37.8.3 Without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the Authority shall not bring any claim against any person (including the Nominated Staff or any other person who is provided to the Contractor in accordance with the Parent Body Agreement) other than the Contractor in respect of any losses, liabilities, costs, claims or expenses incurred or arising out of or in connection with this Agreement (together "**Losses**") where and to the extent that the Authority:

37.8.3.1 is entitled to seek recovery of such Losses from the Contractor; or

37.8.3.2 would have been so entitled but for any waivers, disclaimers, releases, limitations and apportionments of liability, exclusive remedy provisions, exclusions, indemnities, hold harmless obligations or other reliefs from liability set out or referred to in this Agreement or arising as a result of the acts or omissions of the Authority; or

37.8.3.3 would have been so entitled but for any insolvency or lack of capacity of or any other similar matter in respect of the Contractor

provided that this restriction shall not operate to limit or exclude any liability that the Contractor may have for the acts or omissions of any such individuals or any rights held by the Authority under the Parent Body Agreement.

37.8.4 To the extent permitted by law, any waivers, disclaimers, releases, limitations and apportionments of liability, exclusive remedy provisions, exclusions and other reliefs from each Party's liability set out in this Agreement are provided for the benefit of that Party and each of that Party's directors, officers, employees and agents (which in the case of the Contractor shall include the Nominated Staff or any other person who is provided to the Contractor in accordance with the Parent Body Agreement). For the avoidance of doubt any limit on the liability of a Party shall be treated as a limit on that Party's and its directors', officers', employees' and agents' liability when taken together in aggregate (and not per person).

37.9 **Entire Agreement**

Each of the Parties confirms that this Agreement together with the Parent Body Agreement, the Nuclear Indemnity, the Parent Company Guarantees (or Alternative

Credit Support), the Magnox Records Agreement, the UKAEA Restructuring Records Agreement, the Overarching Cost Management Agreement, the Property Leases and the documents referred to in them, represents the entire understanding, and constitutes the whole agreement in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto and, without prejudice to the generality of the foregoing, excludes (to the extent permitted by Legislation) any warranty, condition or other undertaking implied by Legislation or by custom.

37.10 Variation

37.10.1 Any Proposed Change and Change shall be made in accordance with the provisions of the Change Control Procedure.

37.10.2 Subject to the Change Control Procedure, and except where expressly provided otherwise in this Agreement, this Agreement (or any document referred to in it) may only be varied with the written agreement of the Parties.

37.10.3 Without prejudice to the priority of this Agreement over the Authority Policies and Procedures, if the Authority decides to change any of the Authority Policies and Procedures, the Contractor will be entitled to submit a Proposed Change, to the extent that the Change is required to respond to the change to the Authority Policies and Procedures, to reflect the impact of such change.

37.11 Assignment

37.11.1 Subject to Clause 22 (*Subcontracting/Procurement*), the Contractor shall not without the Authority's prior written consent, assign (whether absolutely or by way of security and whether in whole or in part), transfer, mortgage, charge or otherwise dispose in any manner whatsoever of the benefit of this Agreement or any part of it and shall not delegate in any manner whatsoever its performance under this Agreement.

37.11.2 The rights and obligations of the Authority under this Agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any Legislation or any scheme pursuant to any Legislation or otherwise) to any person other than to any public body (being a single entity) acquiring the whole of this Agreement and having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Agreement being:

37.11.2.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975; or

37.11.2.2 any other public body whose obligations under this Agreement are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under the guarantee and the obligations of the Authority under this Agreement.

37.12 Contracts (Rights of Third Parties) Act 1999

37.12.1 Save as expressly provided in this Clause 37.12 (*Contracts (Rights of Third Parties) Act 1999*), no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Agreement. Clause 37.8.3 (*Waiver*) shall be enforceable by any person referred to in that clause.

37.12.2 Notwithstanding that any term of this Agreement may be or become enforceable by a person who is not a party to it, the terms of this Agreement or any of them may be varied, amended or modified or this Agreement may be suspended, cancelled or terminated by agreement in writing between the Parties, or this Agreement may be rescinded (in each case), without the consent of any such third party.

37.13 Examination

Without limitation to Clause 37.9 (*Entire Agreement*) above, no enquiry, examination or inspection or lack of enquiry, examination or inspection by the Authority into any matter nor any comment, rejection or approval expressed by such person in regard thereto, either with or without modifications, (nor any absence of the same) shall in any respect relieve or absolve the Contractor from, or modify, any of its obligations or liabilities under or in connection with this Agreement.

37.14 Inspections

Notwithstanding any inspection by the Authority under this Agreement, the Parent Body Agreement or any documents referred to in them, or the failure of the Authority to make any inspection under this Agreement, the Parent Body Agreement or any documents referred to in them, the Contractor's responsibility under this Agreement shall not be relieved or absolved or otherwise modified.

37.15 Contractor's Documents

The Contractor shall be solely responsible for any discrepancies, errors or omissions in any documents that it prepares or has prepared in accordance with this Agreement and for any failure of such documents to comply with this Agreement, notwithstanding that

any such documents have been seen or acknowledged or approved or not objected to or commented on (or not commented on) by the Authority.

37.16 Counterparts

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

37.17 Governing Law and Jurisdiction

37.17.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

37.17.2 Subject to the provisions of Schedule 12 (*Dispute Resolution Procedure*), the Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction (save in relation to enforcement matters) to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

37.18 Set-off

37.18.1 The Contractor shall not be entitled to retain or set off any amount due to the Authority by it, but the Authority may retain or set off any amount owed to it by the Contractor under this Agreement which has fallen due and payable against any amount due to the Contractor under this Agreement.

37.18.2 If the payment or deduction of any amount referred to in Clause 37.18.1 (*Set-Off*) above is disputed then any undisputed element of that amount shall be paid and the disputed element shall be dealt with in accordance with the Dispute Resolution Procedure.

37.19 Default Interest

If either Party fails to pay any amount due and payable by it in accordance with this Agreement, such Party shall pay to the Party to whom the same was due, compound interest on such overdue amount, from the due date until the date of actual payment at a rate of three per cent (3%) above the bank rate of the Bank of England.

37.19A No double recovery

Neither Party shall be entitled to recover or otherwise obtain compensation or restitution under this Agreement, the Parent Body Agreement, the Inter SLC Service Contracts or

the Property Leases to the extent that it has received compensation or obtained restitution from any other source or as a result of the pursuance of other legal remedies in respect of the same loss or damage.

37.20 Continuing Obligations

37.20.1 Save as otherwise expressly provided in this Agreement:

37.20.1.1 termination or expiry of this Agreement shall be without prejudice to any rights, remedies or obligations accrued under this Agreement prior to termination or expiration and nothing in this Agreement shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

37.20.1.2 termination or expiry of this Agreement shall not affect the continuing rights, remedies or obligations of either Party under:

37.20.1.2.1 Clause 1 (*Interpretation*);

37.20.1.2.2 Clause 7 (*Security*);

37.20.1.2.3 Clause 14 (*Performance Management, Performance Assurance and Records*);

37.20.1.2.4 Clause 16 (*Finance*);

37.20.1.2.5 Clause 17 (*Claims Handling*);

37.20.1.2.6 Clause 18 (*Insurance*);

37.20.1.2.7 Clause 19 (*Liabilities and Indemnities*);

37.20.1.2.8 Clause 25 (*Confidentiality and Compliance with Legislation*);

37.20.1.2.9 Clause 26 (*Freedom of Information*);

37.20.1.2.10 Clause 27 (*Data Protection*);

37.20.1.2.11 Clause 29 (*Intellectual Property*);

37.20.1.2.12 Clause 30 (*Information Technology*);

37.20.1.2.13 Clauses 33.5 (*Consequences of Termination*), 33.6 (*Consequences of Termination*) and 33.9 (*Accrued Liabilities*);

37.20.1.2.14 Clause 34 (*Transition Out*);

- 37.20.1.2.15 Clause 35 (*Transition on Expiry or Termination*);
 - 37.20.1.2.16 Clause 36 (*Disputes*);
 - 37.20.1.2.17 Clause 37.2 (*Representatives and Delegation of Authority to Act*);
 - 37.20.1.2.18 Clause 37.6 (*Severability*);
 - 37.20.1.2.19 Clause 37.7 (*Notices*);
 - 37.20.1.2.20 Clause 37.8 (*Waiver*);
 - 37.20.1.2.21 Clause 37.9 (*Entire Agreement*);
 - 37.20.1.2.22 Clause 37.12 (*Contract (Rights of Third Parties) Act 1999*);
 - 37.20.1.2.23 Clause 37.13 (*Examination*);
 - 37.20.1.2.24 Clause 37.14 (*Inspections*);
 - 37.20.1.2.25 Clause 37.16 (*Counterparts*);
 - 37.20.1.2.26 Clause 37.17 (*Governing Law and Jurisdiction*);
 - 37.20.1.2.27 Clause 37.19A (*No Double Recovery*); and
 - 37.20.1.2.28 this Clause 37.20 (*Continuing Obligations*); or
- 37.20.1.3 any Schedule to this Agreement that is necessary to give full effect to any of the above; or
- 37.20.1.4 any other provisions of this Agreement which are expressed to survive termination or which are required to give effect to such termination or the consequences of such termination.

IN WITNESS of which the Parties have executed and delivered this agreement as a deed on the date first above written.

Executed as a deed by affixing the common)
seal of the **NUCLEAR DECOMMISSIONING**)
AUTHORITY in the presence of:)

ADRIAN SIMPER
.....
Director

DAVID BATTERS
.....
Director

Executed as a deed by [s.43(2)])
as attorney for **MAGNOX LIMITED** under a)
power of attorney dated 18 July 2014)
in the presence of:)

[s.43(2)]
.....
as attorney for **MAGNOX LIMITED**

[s.40]
.....
Witness

HERBERT SMITH FREEHILLS LLP
EXCHANGE HOUSE, PRIMROSE STREET
LONDON EC2A 2EG.....
Address
SOLICITOR.....
Occupation

Executed as a deed by **RESEARCH SITES**)
RESTORATION LIMITED acting by a)
director in the presence of:)

ROGER HARDY

.....

Director

SARAH POLLOCK

.....

Witness

HERBERT SMITH FREEHILLS LLP

EXCHANGE HOUSE, PRIMROSE STREET

LONDON EC2A 2EG.....

Address

SOLICITOR.....

Occupation

Client Specification

Magnox and RSRL



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1. Introduction

This introductory section is included to provide useful context and background to the development of this Client Specification and to provide guidance in relation to the strategic context and objectives of the Authority. Introductory sections: 1 – Introduction; 2 – Our approach to the Magnox/RSRL competition; and 3 – Specification Contents are not legally binding. Other than where specifically stated, the Requirements set out in the sections listed below are all legally binding:

- Part 1: Client Requirements - Parent Body Requirements (Table 1)
- Part 2 - Section 1: Site Matrix (Table 2)
- Part 2 - Section 2: Detailed Specification (Table 3)
- Part 2 - Section 3: Strategy Development Support (Table 4)
- Part 2 – Section 4: Completion Criteria (Table 5)
- Part 3: Milestones (Table 6)
- Annex 1 Client Specification: Definitions

This document sets out the Authority's requirements in respect of the activities required on the Magnox Sites and the RSRL Sites in preparing the Sites to Achieve Interim States or Interim End State (as applicable) that mark a significant reduction in risk to people and the Environment. For the Magnox Sites and the Harwell Site, the assumption is that Interim States will be followed by a period of Quiescence, and that further restoration work will be required in order to achieve the Site End State. For the Winfrith Site, the assumption is that once the period of Quiescence commences, further risk reduction to achieve the Site End State will be the consequence of monitored Radioactive decay rather than physical restoration work. As such, the equivalent state in respect of the Winfrith Site is termed the Interim End State.

This document describes the scope, outputs and outcomes required to Achieve the Interim States, and for the Winfrith Site, Achieve the Interim End State, during the course of Phase 1 and Phase 2. In particular, this document describes the required scope expected in delivering extant implementation plans for the Magnox Sites and RSRL Sites as well as describing those strategic opportunities that seek to improve how those outcomes may be achieved such that the specification does not inadvertently foreclose or inhibit their implementation.

This Client Specification forms Schedule 1 of the Site Licence Company Agreement (SLCA). Unless expressed to the contrary, defined terms used in the Client Specification shall have the meanings set out in the SLCA.

2. Our approach to the Magnox RSRL competition

This Client Specification has been developed to deliver the overarching outcomes of delivering the Magnox Sites and the Harwell Site to their Interim States and the Winfrith Site its Interim End State by the end of the Term.

This Client Specification is based on the Authority's Strategy and the outcomes described in the Magnox LTP and RSRL LTP whilst retaining the strategic flexibility to ensure that there is no inadvertent

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foreclosure of the Authority's ability to realise the potential benefits associated with strategy development projects. This is a key driver for structuring the Term in two Phases.

For clarity, the detailed specification for delivery of the Client Specification described below is referred to in the SLCA as "**Phase 1**" and "**Phase 2**". Each Phase has a distinct set of outputs, although some outputs in Phase 2 rely on work to be carried out in Phase 1.

The Authority anticipates that Phase 1 scope will remain largely unaffected by strategic developments that may potentially influence the final outcomes associated with Magnox reactor Decommissioning and Decommissioning at RSRL Sites.

The requirements to be completed in Phase 1 and Phase 2 are indicated as such in the Site Matrix (Table 2 Part 2 Section 1) and in Table 6 Part 3: Milestones and Authority Milestones. The scope of work comprising Phase 2 can be broadly thought of as being carried out during Contract Years 8 -14.

This Client Specification includes requirements to support the Authority in the development of strategy. Such Strategy Development Support may influence the activities covered in Phase 1 and/or Phase 2; these requirements are indicated as "Strategy Development Support" in Table 4 (*Strategy Development Support*) in Part 2 - Section 3.

Three items of Strategy Development Support work are captured as Authority Milestones (M116 – SR1, M117 – SR2 and M118 – SF2).

2.1. Strategic Context

2.1.1. Site Restoration

The Energy Act defines the Authority's powers, functions and responsibilities, of Decommissioning and clean-up and includes "making the site or installation suitable to be used for other purposes". Commensurate with this definition, the objective of the Authority's Strategy for site restoration is to restore designated Sites and release them for other uses. The Authority's Site End States Strategy aims to optimise restoration objectives, with a preference for making Sites suitable for their Next Planned Use.

In practice, if the Authority wants to reuse a site for anything other than another nuclear use or a high-security use then it needs to de-licence the site and end the Period of Responsibility under the Nuclear Installations Act. This requires proof that radioactive Contamination is reduced to a level suitable for any foreseeable future use. The Authority is currently working with Regulators to explore the potential for ending the Period of Responsibility with a proviso over the subsequent use of the site. The outcome of this work may result in greater flexibility to optimise restoration objectives further.

The Authority's driving strategic aim is to deliver Site End States as soon as reasonably practicable with a progressive reduction of risk and hazard. The priority for the Authority is to reduce risks to people and the Environment. When there are no immediate risks, the focus is on acting proportionately to ensure that the net level of risk does not increase or get harder to manage in the long-term (i.e. they are Tolerable Risks or lower risks). Where risks have been reduced, decisions on further site restoration will balance the broad range of factors using the Authority Value Framework. For the purpose of this Client Specification, this strategic aim is satisfied through delivery of scope at least cost rather than accelerated delivery of the scope in order to keep strategic options open, as appropriate.

The Authority shall require the Contractor to exploit opportunities for honing technology and skills, similar to the "lead and learn" philosophy underlying the Magnox LTP (based on the Magnox Optimised Decommissioning Plan). Realisation of these opportunities may influence prioritisation of restoration Projects.

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This Specification does not consider the Decommissioning and site restoration of non-NDA liabilities (except where explicitly defined), for example: the Imperial College nuclear research reactor, known as CONSORT; the Culham Centre for Fusion Energy Joint European Torus fusion research reactor, known as JET; and the UK power generating Advanced Gas Cooled Reactor (AGR) fleet (and the Pressurised Water Reactor Sizewell B) are not included in the scope.

There is a strong interface between Site Restoration and the management of Spent Fuel, Nuclear Materials and Integrated Waste Management. The Authority's expectation is that, wherever possible, Waste management should be optimised in order to facilitate Decommissioning, whilst recognising that Waste management is a critical consideration when planning Decommissioning activities.

The Site Restoration strategy translates differently for different sites depending on the site characteristics.

2.1.2. Spent Fuels and Nuclear Materials

2.1.2.1 Spent Magnox Fuel

Of the 11 Magnox power stations built, comprising 26 reactors, 1 reactor continues to generate electricity and at the point of contract award it is expected that 3 stations will still hold fuel.

Lifecycle management of Spent Magnox Fuel is achieved using reprocessing plant at Sellafield, which is delivered as part of the Magnox Operating Programme (currently MOP 9). Historically, the rate limiting step in the Magnox reprocessing programme has tended to be within the complex plant located in Cumbria. In the future, however, as the number of fuelled Sites decreases and the redundancy in the defueling programme falls, defueling activities will need to be carefully managed to ensure that they don't become the rate determining step in the delivery of MOP.

Strategically, the Authority is strongly committed to bringing the Magnox reprocessing programme to a timely conclusion and requires the Contractor to ensure it has the capability to deliver the right fuel to Sellafield at a rate which does not constrain the performance of the reprocessing plant. Should Magnox reprocessing operations or de-fuelling/transport operations fail irreversibly and unexpectedly, the Authority has committed to exploring a range of fallback options (Part 2 Section 3 Strategy Development Support - SF1).

2.1.2.2 Spent Exotic Fuels

There are three Exotic Fuels currently stored at the Harwell Site, (i) Dragon Fuel, (ii) GLEEP fuel and (iii) Zenith fuel.

The Authority's Strategy includes consideration of the best location for the management of both Waste and materials. The DRAGON spent fuel will be transferred from the Harwell Site to Sellafield for treatment and interim storage.

The Authority's Strategy for the GLEEP and Zenith fuels is that they will be conditioned into a form suitable for storage, transport and disposal. Once Conditioned, these fuels will be stored at the Harwell site alongside other ILW pending a decision on disposal to a GDF.

2.1.2.3 Uranics

The Authority's Strategy includes consideration of the best location for the management of both Waste and materials. The Authority's Strategy for the management of Low Enriched Uranium (LEU) is that it is

transported to Sellafield and managed alongside other LEU materials held there¹. The current strategy for natural and depleted uranium at the Harwell Site is to treat it as Waste and Condition it for direct disposal. This strategy is however under review, and options for alternative approaches to the management of these materials are included in the Strategy Development Support section of this Client Specification (Part 2 Section 3 Strategy Development Support – NM1 and NM2).

2.1.3. Integrated Waste Management

The Authority's strategic objective for the management of Waste is "to ensure that Wastes are managed in a manner that protects people and the environment, now and in the future and in ways that comply with Government policies and provide value for money".

In many respects, Waste management supports the delivery of Site restoration objectives.

Some of the key Waste management aspects of the current strategy for delivering these at the Magnox Sites and the RSRL Sites are:

- Informed decision-making based on the key Waste management principles highlighted within the Authority's Strategy;
- Delivering LLW management in accordance with the UK Strategy for the Management of Solid Low Level Radioactive Waste (LLW) from the Nuclear Industry and as a part of NDA's National LLW Programme;
- Where appropriate, exploring more innovative approaches to Waste management that take into account the principles of the Waste hierarchy;
- Ensuring transport requirements are being addressed, as part of any Waste management process; and
- Continuing to explore multi-site approaches to the management of Intermediate Level Wastes (ILW), where existing and future planned facilities are considered and a programme approach is adopted (for example the sharing of storage facilities with the B station and the Hunterston A site, currently a preferred option).

In summary, the general approach to Higher Activity Waste (HAW) management is:

- Prioritise the retrieval, Conditioning and passive storage of HAW currently held in historical storage facilities;
- Package HAW into a form that is suitable for long-term management;
- Safe and secure interim storage pending availability of the Geological Disposal Facility or near-surface long-term management facility for Waste in Scotland.

In particular for ILW programmes;

- At the Hunterston A Site and the Trawsfynydd Site, the encapsulation and interim storage of ILW in stainless steel packages;
- At the other Magnox Sites, the packaging and interim storage of of ILW in shielded disposable containers;
- At the Harwell Site and the Winfrith Site ILW will be treated and packaged in a combination of shielded and unshielded packages.
- Certain waste currently stored at Harwell is to be transferred to Sellafield for treatment and storage (Contact Handled ILW, Concrete Lined Drums (CLDs)

¹ <http://www.nda.gov.uk/news/harwell-credible-preferred-options.cfm>

2.1.4. Asset Management

The Authority is seeking to secure the reliable, predictable, value driven performance of its assets through the application of risk based asset management good practice. During the Term this will entail the Contractor demonstrating the application of good practice through its assurance processes and actual performance (safe, secure, environment, throughput, cost and schedule) of the assets. This should include establishing a balance between delivering short term goals and ensuring the longer term performance of assets over their lifetime.

2.2. Magnox Sites

The Magnox LTP reflects the strategy for the stations at the Magnox Sites to defer reactor Dismantling for around 85 years from reactor shutdown. This results in a period of fleet-wide Quiescence (all Magnox Sites Quiescent at the same time) lasting over 30 years.

One advantage of deferring reactor Dismantling is to take benefit of Radioactive decay: after 85 years, doses will have reduced such that reactor Dismantling may be able to take place semi-manually as opposed to remotely. Radioactive decay also has the effect of reducing the volume and category of Waste arising from reactor Dismantling (equivalent to Decay Storage of Waste within the reactor). The volume of Intermediate Level Waste arising from reactor Dismantling reduces with time until around 40 years from reactor shutdown, when long-lived radionuclides start to dominate.

It is recognised that there are risks associated with a long deferral period (e.g. risk of asset deterioration, workforce skills reduction, reduction of corporate memory) and that some of these risks may be exacerbated by fleet-wide Quiescence. The length and geographical extent of Quiescence influences the level of restoration that must take place before Quiescence and the management arrangements during Quiescence, in relation to monitoring, record management, security, etc.

As a consequence of the risks associated with deferring reactor Dismantling, the industry has a long history of assessing the potential benefits and detriments of clearing the Magnox Sites sooner. The conclusions are kept under regular review by the Authority.

Current strategy development work is assessing the merits of alternative deferral periods. The Authority is seeking to determine whether there is any significant difference in the cost between remote reactor Dismantling and semi-manual reactor Dismantling based on current money values. The Authority is also assessing the value of Decay Storage of Waste within the reactor, and minimising the need for interim storage of Waste prior to availability of the Geological Disposal Facility. These generic studies are also overlain by Site-specific assessments, for example considering the likelihood of economic reuse of a Site and/or facilities.

A further strategic area is considering the potential merits of a rolling programme of Decommissioning and remediation across the Magnox Sites to avoid fleet-wide Quiescence. This has potential to modify the required management arrangements, e.g. to take account of the skilled workforce still in operation. Any change to the required management arrangements will be dealt with as a Proposed Change in accordance with the Change Control Procedure.

An initial evaluation of the work required to transition sites to their Interim State shows that there are very few differences in the scope of work that will be required in Phase 1 regardless of the number of years that reactor Dismantling is deferred. Differences mainly pertain to potential nugatory spend associated with reactor Safestore, weather envelopes, etc. It is also important to note that accelerating scope has the potential to foreclose strategic options by, for example, forcing the need for reactor Safestore and Quiescence. Therefore, overall, the scope of the detailed specification below will reflect current plans based on a period of Quiescence of approximately 85 years from reactor shutdown, but will include

suitable mechanisms to remove scope uniquely associated with long periods of Quiescence as strategic opportunities mature (Part 2 Section 3 Strategy Development Support – SR2 and SR3).

The Authority's Strategy has not ruled out the potential for in-situ disposal of reactors but this strategy is not mature enough to impact the detailed specification below and, for the avoidance of doubt, any change to the detailed specification will be dealt with as a Proposed Change in accordance with the Change Control Procedure.

2.3. RSRL Sites

2.3.1. Winfrith

The Winfrith Site can be restored to a condition suitable for use as public-access health land by the end of Phase 1. There is a further opportunity to implement the Authority's strategic preference for optimising Site End States.

This will not necessarily mean that the Winfrith Site meets the current criteria for ending the Period of Responsibility under the Nuclear Installations Act. This will be achievable in the decades that follow as a consequence of monitored Radioactive decay and without the need for further restoration work. As such, the condition to be Achieved at the Winfrith Site at the end of Phase 1 is termed the Interim End State.

Unless the regulatory framework is updated to allow ending the Period of Responsibility with restrictions over the subsequent use of the Site, it will be necessary to monitor the Winfrith Site during the period of monitored radioactive decay under suitable management arrangements.

2.3.2. Harwell

The Harwell Site is unique in the Authority's Estate because the end use for most of the Site is known; the Harwell Site is bound for reuse as a science park and the land is not owned by the Authority but leased. Aquifer sensitivity at the Harwell Site reduces the options for restoration objectives/clean-up criteria. As a consequence of these factors, the Site End State and the required pace of restoration are more easily defined.

The principle behind the Interim State for the Harwell Site is that the Site is Decommissioned and remediated such that all identified Radioactive facilities and Waste are either removed or packaged to approved standards for disposal and consigned to a final disposal facility or an Interim Storage facility. Waste stores and packages on-site will be designed to allow storage until final disposal facilities are available and the land can be released to Harwell Oxford+².

2.4. Overarching Strategic Outcomes

The overarching strategic outcomes used to construct the detailed specification below are as follows:

Site Restoration

- Site End States and associated clean-up criteria are optimised to ensure the benefits of site restoration outweigh the detriments;
- Decommissioning and land remediation are progressed in a manner and at a pace that protects people and the Environment, and secures value for money;
- Any land or facilities not required for Decommissioning are released wherever there is a clear Business Case to do so, e.g. there is a clear near-term opportunity for economic reuse;

² Harwell Oxford+ is the science, innovation and business campus adjacent to the Harwell Site. It is owned and managed by a public-private sector joint venture.

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- Unless required for other purposes, facilities will be Decommissioned if they cost more to maintain than Decommissioning; and
- Decommissioning and Land Quality Management are undertaken in a manner that develops technology and skills of value to the rest of the Authority Estate and the nuclear industry as a whole.

Spent Magnox Fuel

- All remaining Magnox fuel is removed from the Magnox Sites as per the MOP;
- The Magnox Sites have the capability to provide Spent Magnox Fuel and the MOP Inventory to Sellafield at a rate that does not constrain reprocessing operations or impact on the delivery of the MOP;
- Off-plan performance will be effectively managed; and
- There will be development of fallback options led by the Authority for the management of Spent Magnox Fuel in the event that completion of the MOP Inventory is not possible (Part 2 Section 3 Strategy Development Support - SF1).

Integrated Waste Management

- To ensure that Wastes are managed in a manner that protects people and the environment, now and in the future, and in a manner that complies with Government policies and provides value for money.
- To treat and package Higher Activity Waste and place it in safe, secure and suitable storage facilities until it can be disposed of, or be held in long-term storage in the case of Higher Activity Waste in Scotland.
- To provide capability and capacity for managing solid LLW to support Decommissioning and operations and actively contribute to the National LLW Programme.
- To reduce the environmental impact of radioactive liquid and gaseous discharges in accordance with the UK Strategy for Radioactive Discharges.
- To reduce generation and optimise the management of Directive Wastes.

Magnox

- The Magnox Sites are progressed to the Interim State identifying and avoiding (as far as reasonably practicable) any work that is likely to be nugatory should the period of Quiescence be reduced or the regulatory framework be updated to enable further optimisation of Site End States;
- The Magnox Sites are progressed to the Interim State at a pace that (as far as is reasonably practicable) does not foreclose strategic options regarding the optimal period between reactor shutdown and Dismantling;
- Interim States are designed with Site End States in mind, making it easier to finish the job;
- Interim States are proportionate to any subsequent period of Quiescence;
- Interim State management arrangements are proportionate to the period and geographical extent of Quiescence; and
- Restoration of the Magnox fleet is programmed to maximise opportunities to learn from experience (“lead and learn”) and minimise the need for demobilising and remobilising key staff and maintain capabilities across the scope.

Winfrith

- The Winfrith Site can be reused as public-access heath land as soon as reasonably practicable and with regulatory consent; and
- Current criteria for ending the Period of Responsibility are achievable in the decades that follow as a consequence of monitored Radioactive decay and without the need for further restoration work.

Harwell

- The Harwell Site is progressed to the Interim State identifying and avoiding (as far as reasonably practicable) any work that is likely to be nugatory should the period of Quiescence be reduced or the regulatory framework be updated to enable further optimisation of Site End States;



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- Interim States are proportionate to any subsequent period of Quiescence;
- Interim State management arrangements are proportionate to the period and geographical extent of Quiescence;
- As far as practicable, other than designated ILW storage facilities, the Site is progressed such that it is suitable for its next planned use (and released to Harwell Oxford+).

3. Specification Contents

This Client Specification cascades directly from the Authority's Strategy and has been methodically constructed to enable clear alignment to the Authority's Strategic Requirements (illustratively shown in Figure 1). Version 2.0 of the Site Strategic Specification ("SSS") sets out the current strategy and gives rise to the baseline scope. The SSS defines the "Strategy" for each strategic area.

Section 2 provides an overview of the strategy as it relates to the Magnox Sites and the RSRL Sites, which is to be delivered by the Contractor and, where applicable, the requirements have been translated into contractual outputs and listed in the output section of this Client Specification.

This Client Specification sets out the Authority's detailed outputs and is structured as follows:

Part 1 – Parent Body Requirements (Table 1)

- As owner of the Magnox Contractor and the RSRL Contractor, the Parent Body Organisation will be required to take an active role in maintaining Contractor capability and performance of the Client Specification.
- Table 1 presents the PBO Requirements in further detail, as broken down into the following four key categories:
 - Client focus;
 - Effective governance of the Contractor;
 - Strong well-led enduring Contractor management team; and
 - Ensure Contractor compliance with the SLCA.

Part 2 – Section 1: Site Matrix (Table 2)

- Table 2 presents an overview of the Requirements in relation to each Site and identifies each requirement, phase and milestone related to each Site.

Part 2 – Section 2: Detailed Specification (Table 3)

- Table 3 sets out the detailed requirements of the Contractor, categorised by the themes and topics of the published NDA Strategy (April 2011) and cascades from the Topic Strategy requirements described in the SSS.
- The detailed requirements are broken down into the following categories:
 - Site Restoration;
 - Spent Fuels;
 - Nuclear Materials;
 - Integrated Waste Management;
 - Business Optimisation; and
 - Critical Enablers.

Part 2 - Section 3: Strategy Development Support (Table 4)

- Table 4 lists requirements for the Contractor to undertake work to investigate or underpin alternative approaches to delivering the Interim States or Interim End State (as appropriate). These are strategies which the Authority has identified as possible alternative strategies it may wish to pursue (which are not contained in the Detailed Specification (in Part 2 Section 2)). The Contractor is obliged to carry out the Strategy Development Support work pursuant to Authority Milestones M116, M117 and M118
- Table 4 also contains requirements for the Contractor to provide "Strategy Development Support". Strategy Development Support will be commissioned by the Authority in accordance with the Call-off Support procedure in the SLCA.

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Part 2 – Section 4: Completion Criteria (Table 5)

- Table 5 sets out the scope of completion criteria for each of the Requirements and the standards/evidence against which completion will be assessed by the Authority.

Part 3 –Milestones (Table 6)

- Part 3 the Milestones, the Authority Milestones and Milestone dates.

Annexes

- Annex 1 - Client Specification: Definitions.

The structure of Part 1 and Part 2 of this Client Specification is illustrated in Figure 1 below.

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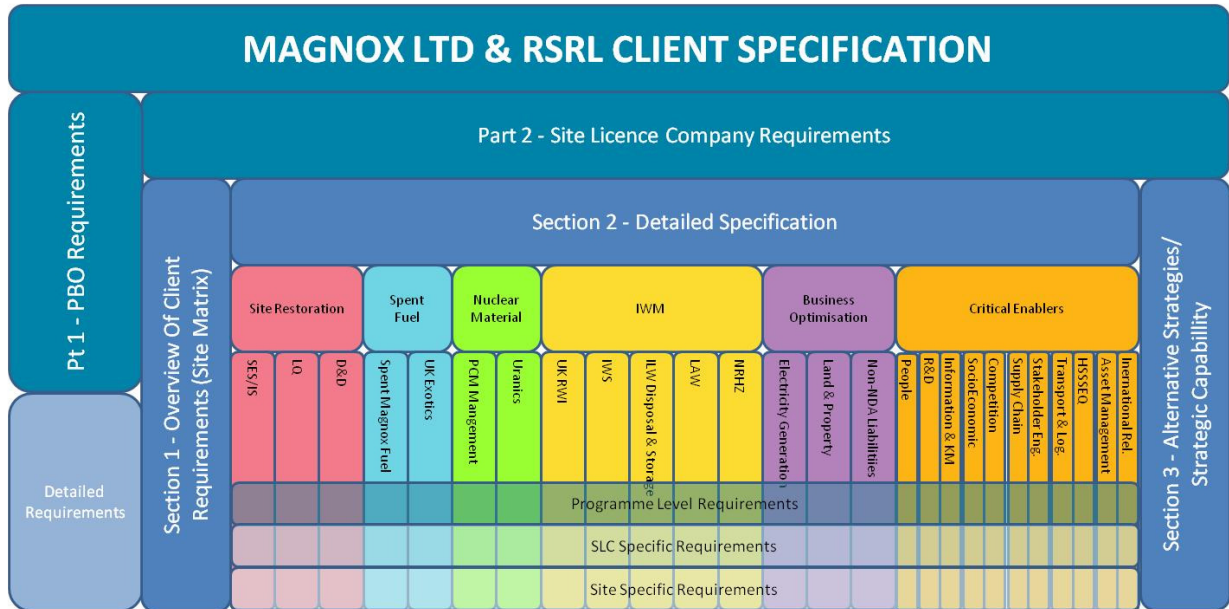


Figure 1: Magnox and RSRL Client Specification Construction

The current approach to achieving the outcomes described in this document is described in detail in the Magnox LTP and the RSRL LTP.

4. Authority Requirements

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Part 1: Parent Body Requirements – Table 1

The Authority requires the PBO to take an active role as owner of the Contractor in maintaining its capability, monitoring its performance and incentivising delivery of this Client Specification. It is the Authority's expectation that the PBO will fulfil this requirement irrespective of the performance of the Contractor under the SLCA and the consequences for Target Fee payments.

The principal objective is for the Requirements to reflect a strong client focus and ensure alignment between medium to long term objectives between the Authority and the Parent Body Organisation driving effective governance of the Contractor and delivering continued culture and capability improvement throughout the Term.

Ref.	Requirement	Contractual obligation
A	Client Focus Long term Authority programme objectives to be reflected in PBO delivery	<p>The PBO shall:</p> <p>A.(i) ensure that the PBO and the Contractor are clearly and effectively aligned with the Authority, in terms of: (1) the Authority's corporate, strategic and business planning processes; and (2) alignment of individual remuneration and reward packages with Authority objectives;</p> <p>A.(ii) through its role in governance of the Contractor, ensure consistent and continuing focus on the delivery of the Client Specification; and</p> <p>A.(iii) immediately inform the Authority (using the skills and expertise available to it) if it considers that delivery of aspects of the Client Specification may lead, over time, to the performance of tasks that do not best achieve the Authority's stated strategic objectives (as stated in the SSS) or which might foreclose any alternative strategies.</p>
B	Effective governance of the Contractor	<p>The PBO shall:</p> <p>B.(i) operate in a manner aligned with the relevant parts of The UK Corporate Governance Code, September 2012 and The Code of Good Practice 2011 for Corporate Governance in Central Government Departments ("the Codes") . The relevant parts of each Code are as follows: (1)The UK Corporate Governance Code: Section A : Leadership; Section B : Effectiveness; Section C: Accountability;</p>

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Ref.	Requirement	Contractual obligation
		<p>Section D: Remuneration; and Section E1: Dialogue with stakeholders and shareholders; and (2)The Code of Good Practice 2011 for Corporate Governance in Central Government Departments: Section 6: Arm's Length Bodies – specifically describing how the Bidder's proposed approach will align with and support delivery of the Authority's obligations in respect of being an Arm's Length Body.</p> <p>B.(ii) be accountable to the Authority and ensure effectiveness and a high standard of governance of the Contractor; B.(iii) ensure that at all levels and in all forms of governance the respective roles, responsibilities and accountabilities of the Contractor, the PBO and, to the extent it is able, the Authority are clear; B.(iv) regularly review the governance of the Contractor and the way in which decisions are made, to test in particular the effectiveness of challenge, and the visibility of the requirements of the Authority as client in the decision making process; B.(v) challenge make/buy decisions of the Contractor and inform the Authority of any areas where the terms of the SLCA or Fee incentive arrangements may have the potential to influence these decisions in ways which do not maximise long term value for money; B.(vi) provide evidence to the Authority that the PBO has an agreed assurance plan for the delivery of the requirements of the Client Specification and the SLCA and also over the performance standards met by the Contractor in meeting the requirements of the SLCA, including reporting; B.(vii) implement a process for regular evaluation of the effectiveness of the PBO and the Magnox Contractor and the RSRL Contractor Boards, their committees, and individual directors; and B.(viii) hold quarterly meetings to inform the Authority of progress against the LTP Performance Plan by the Contractor and PBO assurance of the same.</p>
C	Strong well-led enduring Contractor management team	<p>The PBO shall:</p> <p>C.(i) Comply with best practice as set out in Code of Good Practice 2011 for Corporate Governance in Central Government Departments; C.(ii) ensure that Nominated Staff in management or leadership roles are in post for a period of at least three years from the Commencement Date (subject to exclusions to be agreed between the Authority and the PBO); and C.(iii) on the Commencement Date and annually thereafter, produce a list of skills and capability deficits that will be required to be fulfilled to ensure the Contractor's performance is such that it can maintain its position as a SLC and to comply with the SLCA (and consider wider Authority Estate skills and capability).</p>

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Ref.	Requirement	Contractual obligation
D	Ensure the Contractor complies with the SLCA	The PBO shall: D.(i) ensure the Contractor complies with the Client Specification; D.(ii) inform the Authority as soon as the PBO is aware of any instances where the Contractor is not compliant with the Client Specification; and D.(iii) provide an action plan to resolve any non-compliance at no expense to the Authority.

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Part 2 - Section 1: Site Matrix – Table 2

Table 2 identifies which of the Requirements, contractual obligations and Milestones set out in the Client Specification (CS) are applicable to each Site. Please note that if there is any conflict between this Table and Table 3 (Detailed Specification) in Part 2 - Section 2, Table 3 shall take precedence.

NDA Site Identifier Code.	A Sites	B CS Requirements NOT APPLICABLE to the relevant site CS Reference	C Contract Phase	D Milestones
12	Harwell (HAR)	<u>Site Restoration</u> [1.1.1.2]; [1.1.2.1]; [1.1.3.2]; [1.1.4.1]; [1.1.4.3]; [1.3.5] <u>Spent Fuels</u> [2.1]; [2.1.1] <u>Nuclear Materials</u> None <u>Integration WM</u> [4.3.3]; [4.3.5]; [4.3.6]; [4.3.8]; [4.3.8.1]; [4.3.8.2]; [4.4.2] <u>Business Optimisation</u> [5.1]; [5.1.1]; [5.1.2] <u>Critical Enablers</u> [6.8.1]	Phase 1 Phase 2	M1. LETP Decommissioning and land remediation completed M2. B462 (tube stores) empty M3. Northern Area delicensed M4. B462 (tube stores) decontamination complete M5. B462 RHILW encapsulation and interim storage completed. M6. All Nuclear Materials (including relevant Exotic Fuel, CHILW and uranics) removed from the Harwell Site M7. B459 Decommissioning complete M8. PLUTO MTR Reactor demolition complete M9. DIDO MTR Reactor demolition complete M10. BEPO Reactor demolition complete M11. B220 Decommissioning complete M12. Interim State Achieved

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16	Winfrith (WIN)	<u>Site Restoration</u> [1.1.1.2]; [1.1.4.1]; [1.1.4.2]; [1.2.1.1]; [1.3.1] <u>Spent Fuels</u> [2.1]; [2.1.1]; [2.2]; [2.2.1] <u>Nuclear Materials</u> [3.1]; [3.1.1] <u>Integration WM</u> [4.3.3]; [4.3.5]; [4.3.6]; [4.3.8]; [4.3.8.1]; [4.3.8.2]; [4.3.9.1]; [4.3.10]; [4.3.11]; [4.4.2] <u>Business Optimisation</u> [5.1]; [5.1.1]; [5.1.2] <u>Critical Enablers</u> [6.7.2]; [6.8.1]	Phase 1	M13. Balance of Winfrith Decommissioning (BOWD) ALES and sea discharge pipeline Decommissioning complete M14. Onsite drains Decommissioned M15. Dragon project complete M16. SGHWR project complete M17. BOWD infrastructure and minor facilities demolition complete M18. Interim End State Achieved
			Phase 2	N/A
21	Berkeley (BRK)	<u>Site Restoration</u> [1.1.1.1]; [1.1.1.2]; [1.1.2.1]; [1.1.3.2]; [1.1.4.2]; [1.1.4.3]; [1.2.1.1]; [1.3.5]; <u>Spent Fuels</u> [2.1]; [2.1.1]; [2.2]; [2.2.1] <u>Nuclear Materials</u> [3.1]; [3.1.1] <u>Integration WM</u> [4.3.3]; [4.3.4.3]; [4.3.5]; [4.3.6]; [4.3.8.2]; [4.3.9]; [4.3.9.1]; [4.3.10]; [4.3.11]; [4.4.1] <u>Business Optimisation</u>	Phase 1	M19. Complete retrieval and treatment operations for vault Waste M20. All ILW passively stored (assumes all vault Waste and shielded area Waste Conditioned) M21. E23 Shielded Area Decommissioning complete M22. AETP & Waste Treatment Plant Decommissioning complete M23. Interim State Achieved
			Phase 2	N/A

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		[5.1]; [5.1.1]; [5.1.2] <u>Critical Enablers</u> [6.7.2]; [6.8.2]		
22	Bradwell (BRD)	<u>Site Restoration</u> [1.1.1.1]; [1.1.2.1]; [1.1.3.2]; [1.1.4.2]; [1.1.4.3]; [1.2.1.1]; [1.3.5] <u>Spent Fuels</u> [2.1]; [2.1.1]; [2.2]; [2.2.1] <u>Nuclear Materials</u> [3.1]; [3.1.1] <u>Integration WM</u> [4.3.3]; [4.3.4.3]; [4.3.6]; [4.3.8.1]; [4.3.8.2]; [4.3.9]; [4.3.9.1]; [4.3.10]; [4.3.11]; [4.4.1]; [4.4.2]; [4.5] <u>Business Optimisation</u> [5.1]; [5.1.1]; [5.1.2] <u>Critical Enablers</u> [6.7.2]; [6.8.2]	Phase 1	M24. Active drainage Decommissioning complete M25. ILW (MCI; Contaminated sand & gravel; sludge) retrieved and treated M26. All ILW passively stored M27. Reactor buildings Safestore – weather envelope completed M28. Non-essential peripheral buildings deplanted & demolished M29. Ponds complex and Contaminated structures (Vaults) suitable for Interim State entry M30. Interim State Substantially Complete³ M31. Interim State Achieved
			Phase 2	N/A
23	Dungeness A (DNA)	<u>Site Restoration</u> [1.1.1.1]; [1.1.2.1]; [1.1.3.2]; [1.1.4.2]; [1.1.4.3]; [1.2.1.1]; [1.3.5] <u>Spent Fuels</u> [2.1]; [2.1.1]; [2.2]; [2.2.1] <u>Nuclear Materials</u>	Phase 1	M32. South Side Clearance – demolition of turbine hall ancillary buildings M33. South Side Clearance – demolition of turbine hall M34. Enabling works - control & instrumentation overlay system replacement complete M35. Ponds drained and surfaces treated to stabilise Contamination M36. Enabling works - modular AETP installed M37. Complete bulk asbestos removal M38. Complete inactive commissioning of ILW storage facility

³ Substantially Complete is defined in the Magnox document "Bradwell Early Care & Maintenance Programme – Completion Overview".

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		<p>[3.1]; [3.1.1] <u>Integration WM</u> [4.3.3]; [4.3.4.3]; [4.3.5]; [4.3.8.1]; [4.3.8.2]; [4.3.9]; [4.3.9.1]; [4.3.10]; [4.3.11]; [4.4.1]; [4.4.2]; [4.5] <u>Business Optimisation</u> [5.1]; [5.1.1]; [5.1.2] <u>Critical Enablers</u> [6.7.2]; [6.8.2]</p>		<p>M39. All ILW retrieved, treated and passively stored</p>
			Phase 2	<p>M40. Reactor deplanting complete M41. Ponds complex and Contaminated structures (vaults) suitable for Interim State entry M42. Active drainage Decommissioning complete M43. Non-essential peripheral buildings deplanted & demolished M44. Interim State Achieved</p>
24	Hinkley Point A (HPA)	<p><u>Site Restoration</u> [1.1.1.1]; [1.1.2.1]; [1.1.3.2]; [1.1.4.2]; [1.1.4.3]; [1.2.1.1]; [1.3.5] <u>Spent Fuels</u> [2.1]; [2.1.1]; [2.2]; [2.2.1] <u>Nuclear Materials</u> [3.1]; [3.1.1] <u>Integration WM</u> [4.3.3]; [4.3.4.3]; [4.3.8.1]; [4.3.8.2]; [4.3.9]; [4.3.9.1]; [4.3.10]; [4.3.11]; [4.4.1]; [4.4.2]; [4.5] <u>Business Optimisation</u> [5.1]; [5.1.1]; [5.1.2] <u>Critical Enablers</u> [6.7.2]; [6.8.2]</p>	Phase 1	<p>M45. Ponds drained and surfaces treated to stabilise Contamination. M46. Enabling works - modular AETP installed M47. Complete inactive commissioning of Interim Storage facility M48. Reactor deplanting complete M49. Ponds complex and Contaminated structures (vaults) suitable for Interim State entry M50. Active Drainage Decommissioning complete M51. Non essential peripheral buildings deplanted & demolished</p>
			Phase 2	<p>M52. All ILW retrieved, treated and passively stored M53. Interim State Achieved</p>
25	Hunterston A (HNA)	<p><u>Site Restoration</u> [1.1.1.1]; [1.1.2.1]; [1.1.3.2];</p>	Phase 1	<p>M54. All wet ILW retrieved and passivated M55. Solid Active Waste Bunkers Waste retrieved</p>

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		<p>[1.1.4.2]; [1.1.4.3]; [1.2.1.1]; [1.3.5] <u>Spent Fuels</u> [2.1]; [2.1.1]; [2.2]; [2.2.1] <u>Nuclear Materials</u> [3.1]; [3.1.1] <u>Integration WM</u> [4.3.4.3]; [4.3.8]; [4.3.8.1]; [4.3.8.2]; [4.3.9]; [4.3.9.1]; [4.3.10]; [4.3.11]; [4.4.1]; [4.5] <u>Business Optimisation</u> [5.1]; [5.1.1]; [5.1.2] <u>Critical Enablers</u> [6.7.2]; [6.8.2]</p>		<p>M56. Enabling works - electrical systems reconfiguration M57. Wet ILW retrieval and encapsulation plant Decommissioning complete M58. Active drainage Decommissioning complete M59. AETP & water treatment plant Decommissioning complete M60. Non essential peripheral buildings deplanted & demolished M61. Ponds complex suitable for Interim State entry M62. Solid Active Waste Bunkers Decommissioning complete M63. Reactor deplanting complete M64. All ILW retrieved, treated and passively stored</p>
			Phase 2	M65. Interim State Achieved
26	Oldbury	<p><u>Site Restoration</u> [1.1.1.1]; [1.1.2.1]; [1.1.3.2]; [1.1.4.2]; [1.1.4.3]; [1.2.1.1]; [1.3.5] <u>Spent Fuels</u> [2.2]; [2.2.1] <u>Nuclear Materials</u> [3.1]; [3.1.1] <u>Integration WM</u> [4.3.3]; [4.3.4.3]; [4.3.8.1]; [4.3.8.2]; [4.3.9]; [4.3.9.1]; [4.3.10]; [4.3.11]; [4.4.1]; [4.4.2]; [4.5] <u>Business Optimisation</u> [5.1]; [5.1.1]; [5.1.2]</p>	Phase 1	<p>M66. All Fuel off Site M67. Enabling works - commissioning of alternative effluent dispersal line complete M68. Enabling works - electrical overlay system commissioned M69. Completion of inactive commissioning of Interim Storage facility M70. Ponds drained and surfaces treated to stabilise contamination</p>
			Phase 2	<p>M71. Non essential peripheral buildings deplanted & demolished M72. All ILW retrieved, treated and passively stored M73. Reactor deplanting complete M74. Ponds complex and Contaminated structures (vaults) suitable for Interim State entry M75. Decommissioning modular AETP complete M76. Interim State Achieved</p>

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		<u>Critical Enablers</u> [6.7.2]; [6.8.2]		
27	Sizewell A	<u>Site Restoration</u> [1.1.1.1]; [1.1.2.1]; [1.1.3.2]; [1.1.4.2]; [1.1.4.3]; [1.2.1.1]; [1.3.5] <u>Spent Fuels</u> [2.2]; [2.2.1] <u>Nuclear Materials</u> [3.1]; [3.1.1] <u>Integration WM</u> [4.3.3]; [4.3.4.3]; [4.3.8.1]; [4.3.8.2]; [4.3.9]; [4.3.9.1]; [4.3.10]; [4.3.11]; [4.4.1]; [4.4.2]; [4.5] <u>Business Optimisation</u> [5.1]; [5.1.1]; [5.1.2] <u>Critical Enablers</u> [6.7.2]; [6.8.2]	Phase 1	M77. All Fuel off Site M78. Enabling works - electrical & control and instrumentation systems reconfiguration complete M79. ILW storage facility operational M80. Ponds drained and surfaces treated to stabilise Contamination. M81. All FED processing complete
			Phase 2	M82. AETP & water treatment plant Decommissioning complete M83. Ponds complex suitable for Interim State entry M84. All ILW retrieved, treated and passively stored M85. Reactor deplanting complete M86. Non essential peripheral buildings deplanted & demolished M87. Interim State Achieved
28	Trawsfynydd	<u>Site Restoration</u> [1.1.1.1]; [1.1.2.1]; [1.1.3.2]; [1.1.4.2]; [1.1.4.3]; [1.2.1.1]; [1.3.5] <u>Spent Fuels</u> [2.1]; [2.1.1]; [2.2]; [2.2.1] <u>Nuclear Materials</u> [3.1]; [3.1.1] <u>Integration WM</u> [4.3.3]; [4.3.4.3]; [4.3.8.1];	Phase 1	M88. Ponds suitable for Interim State entry M89. AETP & Waste treatment plant Decommissioning complete M90. All ILW passively stored M91. Active drainage Decommissioning complete M92. Non essential peripheral buildings deplanted & demolished M93. Interim State Achieved (except height reduction and cladding)
			Phase 2	M94. Reactor building Safestore height reduction (demolition) & cladding (HRP) complete

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		[4.3.8.2]; [4.3.9]; [4.3.9.1]; [4.3.10]; [4.3.11]; [4.4.1]; [4.4.2]; [4.5] <u>Business Optimisation</u> [5.1]; [5.1.1]; [5.1.2] <u>Critical Enablers</u> [6.7.2]; [6.8.2]		
29	Wylfa	<u>Site Restoration</u> [1.1.1.1]; [1.1.2.1]; [1.1.3.2]; [1.1.4.2]; [1.1.4.3]; [1.2.1.1]; [1.3.5] <u>Spent Fuels</u> [2.2]; [2.2.1] <u>Nuclear Materials</u> [3.1]; [3.1.1] <u>Integration WM</u> [4.3.3]; [4.3.4.3]; [4.3.5]; [4.3.6]; [4.3.8.1]; [4.3.8.2]; [4.3.9]; [4.3.9.1]; [4.3.10]; [4.3.11]; [4.4.1]; [4.4.2]; [4.5] <u>Business Optimisation</u> <u>Critical Enablers</u> [6.7.2]; [6.8.2]	Phase 1	M95. (Not used) M96. Alternative effluent discharge system - project complete M97. Commence ILW storage facility construction M98. All Fuel off Site M99. Complete inactive commissioning of Interim Storage facility M100. Electrical overlay system reconfiguration complete M101. Control and instrumentation system reconfiguration complete M102. Dry store cell ILW retrieval and processing close out M103. Desiccant retrieval and storage complete
			Phase 2	M104. AETP Decommissioning complete M105. Non-essential peripheral buildings deplanted & demolished M106. All ILW retrieved, treated and passively stored (excluding voids) M107. Interim State Achieved
33	Chapelcross	<u>Site Restoration</u> [1.1.1.1]; [1.1.2.1]; [1.1.3.2]; [1.1.4.2]; [1.1.4.3]; [1.2.1.1]; [1.3.5] <u>Spent Fuels</u> [2.1]; [2.1.1]; [2.2]; [2.2.1]	Phase 1	M108. Bulk asbestos removed (reactors only). M109. All ILW retrieved, treated and passively stored M110. Ponds drained and Contamination stabilised M111. (First) Interim State Achieved
			Phase 2	M112. CXPP Decommissioning complete

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	<p><u>Nuclear Materials</u> [3.1]; [3.1.1]</p> <p><u>Integration WM</u> [4.3.4.3]; [4.3.5]; [4.3.8.1]; [4.3.9]; [4.3.9.1]; [4.3.10]; [4.3.11]; [4.4.1]; [4.4.2]; [4.5]</p> <p><u>Business Optimisation</u> [5.1]; [5.1.1]; [5.1.2]</p> <p><u>Critical Enablers</u> [6.8.2]</p>		<p>M113. AETP & Waste treatment plant Decommissioning complete</p> <p>M114. Non essential peripheral buildings deplanted & demolished</p> <p>M115. Interim State Achieved</p>
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Part 2 - Section 2: Detailed Specification – Table 3

Table 3 describes the detailed requirements of the Contractor, categorised by the themes and topics of the NDA Strategy (published April 2011) and cascades from the Topic Strategy requirements described in the SSS (RSRL: SMS/SSS/RS001; Magnox SMS/SSS/MX001 - Version V2 February 2012).

IMPORTANT: “Italics” are used for contextual information only. These are included for completeness. Such information may be reiterating more detailed requirements that are described in detail elsewhere, for example elements of a national strategy that must be complied with, or where more detailed requirements are described in the next level of detail in the table.

Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
1	<p>SITE RESTORATION: <i>To restore designated Sites and release them for other uses. The strategies underpinning Site Restoration are:</i></p> <ul style="list-style-type: none"> <i>Decommissioning: To deliver Site End States as soon as reasonably practicable with a progressive reduction of risk and hazard.</i> <i>Land Quality Management: To ensure that land quality is managed to protect people and the Environment.</i> <i>To define credible objectives for the restoration of each Site (or part of a Site).</i> 			
1.1	<p>Decommissioning: To deliver Site End States as soon as reasonably practicable, by a progressive reduction of risk and hazard, giving due regard to security, safety and environmental factors, that represents Value for Money to the UK, taking account of all relevant factors. SOD Reference:</p>	<p>To support the Authority's Strategy in relation to continuous Decommissioning (continuous Decommissioning commences at the end of operations and continues until the final demolition of the plant/facility/installation) the Contractor shall:</p> <p>1.1(a) develop and implement the LTP Performance Plan in accordance with Good Industry Practice and Regulatory Requirements;</p> <p>1.1(b) prioritise activities in the LTP Performance Plan such that it mitigates the highest safety and Environmental risks at the Magnox Sites and RSRL Sites;</p> <p>1.1(c) ensure that the LTP Performance Plan is prioritised taking into consideration the Authority's objectives (as set out in the Authority's Strategy), is based upon using Good Industry Practice in relation to Decommissioning and informed by continued engagement in relevant Good Industry Practice engagement forums (e.g. Nuclear Industry</p>	<p>[i] LTP Performance Plan submitted in compliance with SLCA and PCPM for Authority approval</p> <p>[ii] Contract Baseline submitted in compliance with the SLCA and PCPM for Authority approval</p>	<p>Phase 1 ALL</p>

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
	SMS/TS/A4/SOD001 (Version V2 February 2012)	<p>Group for Decommissioning);</p> <p>To support the Authority's Strategy in relation to deferred Decommissioning, (deferred Decommissioning comprises one or more Interim States when the plant/facility/installation is purposely kept in a state of care and maintenance as part of the programme for achieving the Site End State) the Contractor shall (in accordance with Good Industry Practice and Regulatory Requirements):</p> <p>1.1(d) take into account all relevant factors including the capability to re-initiate physical Decommissioning activities associated with knowledge retention and skills base availability, ALARP and Value for Money benefit to the Authority to be gained from the deferral in deciding which parts of the LTP Performance Plan to defer ensuring that deferral gives rise to no more than a Tolerable Risk at all times; and</p> <p>1.1(e) ensure the LTP Performance Plan is based upon using Good Industry Practice in relation to Decommissioning.</p> <p>Where such deferrals are a direct result of an Authority Proposed Change, such Proposed Change shall be subject to the Change Control Procedure.</p>		
1.1.1	Programme Requirement: Manage Plant and Structures to enable Interim State and Interim End State entry	<p>Site Restoration: Programme Requirement: Plant and Structures</p> <p>1.1.1(a) The Contractor shall complete all scope as necessary to prepare each Site for its Interim State or Interim End State (as applicable); and</p> <p>1.1.1(b) the Contractor shall ensure that preparations for the Interim State or Interim End State (as applicable) include the appropriate management of all plant and structures outside of the Licensed Site but within the Premises (both as defined in the Property Leases).</p>	[i] Refer to Table 5 - Completion Criteria: Activities CC1-11 inclusive	<p>Phase 1 [16], [21], [22], [28]</p> <p>Phase 2 [12], [23], [24], [25], [26], [27], [29], [33]</p>
1.1.1.1	SLC Programme Requirement (RSRL): Plant & Structures - Dismantle nuclear reactors at Harwell and Winfrith	<p>For RSRL nuclear reactors, the Contractor shall:</p> <p>1.1.1.1(a) complete the Decommissioning (including decontamination and demolition) of the remaining nuclear reactors at the Harwell Site and the Winfrith Site and complete all physical works necessary to prepare the Sites to an Interim State or Interim End State (as applicable) including management of Wastes arising.</p>	<p>[i] Winfrith [16] – Steam Generating Heavy Water Reactor (SGHWR) Dismantled</p> <p>[ii] Winfrith [16] – DRAGON reactor Dismantled</p> <p>[iii] Harwell [12] – British Experimental Pile Operation</p>	<p>Phase 1 [12], [16]</p> <p>Phase 2 [12]</p>

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
			(BEPO) reactor Dismantled [iv] Harwell [12] – Materials Test Reactor (DIDO) Dismantled [v] Harwell [12] – Materials Test Reactor (PLUTO) Dismantled [vi] Refer to Table 5 - Completion Criteria: Activities CC4-CC8 inclusive	
1.1.1.2	SLC Programme Requirement (Magnox): Plant & Structures – Prepare Magnox Reactor for Safestore for Interim State entry	The Contractor shall: 1.1.1.2(a) complete all scope to prepare reactor buildings for Safestore for the duration of its Quiescent Period following its Interim State entry to allow the buildings to remain as passive stores for the defueled reactors.	[i] Refer to Table 5 - Completion Criteria: Activity CC3	Excludes: [12], [16], [21] Phase 1 [22], [28] ⁴ Phase 2 [23], [24], [25], [26], [27], [29], [33]
1.1.2	Programme Requirement: Plant & Structures – Prepare Contaminated Structures for Interim State or Interim End State entry	The Contractor shall: 1.1.2(a) complete all remaining scope as necessary to prepare the Sites for their Interim State or Interim End State (as applicable); and 1.1.2(b) the Contractor shall ensure that Interim State or Interim End State (as applicable) preparations include the appropriate management of all Contaminated structures outside of the Licensed Site but within the Premises (both as defined in the Property Leases).	[i] Refer to Table 5 - Completion Criteria: Activities CC1- CC2, CC5-CC8 inclusive	Phase 1 [16], [21], [22], [28] Phase 2 [12], [23], [24], [25], [26], [27], [29], [33]
1.1.2.1	SLC Programme Requirement (RSRL): Prepare Plant &	The Contractor shall: 1.1.2.1(a) complete all scope as necessary to prepare the Winfrith Site for its Interim End State; and	[i] Refer to Table 5 - Completion Criteria: Activities CC1- CC2, CC5-CC8 inclusive	Phase 1 [16]

⁴ Note that height reduction and re-cladding at the Trawsfyndd Site takes place in Phase 2, after the reactors have been put into a safestore state.

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
	Structures – Contaminated Structures (Winfrith) for Interim End State entry	1.1.2.1(b) remediate the sea discharge pipeline (within and external to the Nuclear Site Licence boundary, including the section in the intertidal zone). Remediation of the sea discharge pipeline shall meet Regulatory Requirements and planning requirements and take into account the views of the relevant landowners and other key stakeholders. Where agreed this may include the removal of all surface structures associated with the off-Site sections of the pipeline, but not necessarily the removal of subsurface structures.		
1.1.3	Programme Requirement: Plant & Structures – Prepare Non-Contaminated Structures for Interim State or Interim End State Entry	The Contractor shall: 1.1.3(a) for all non-contaminated structures undertake physical works necessary to prepare the Site for its Interim State or Interim End State (as applicable); 1.1.3(b) appropriately manage void space arising from the removal of structures and buildings; 1.1.3(c) demonstrate the long term suitability of subterranean structures for remaining in-situ in perpetuity; and 1.1.3(d) ensure that Interim State or Interim End State (as applicable) preparations include the appropriate management of all non-Contaminated structures outside of the Licensed Site but within the Premises (both as defined in the Property Leases).	[i] Refer to Table 5 - Completion Criteria: Activities CC1- CC2, CC5-CC8 inclusive	Phase 1 ALL SITES Phase 2 [12], [23], [24], [25], [26], [27], [29], [33]
1.1.3.1	Programme Requirement: Plant & Structures – Prepare Non- Contaminated Structures for Interim State or Interim End State Entry (Base Slabs)	The Contractor shall: 1.1.3.1(a) for all non-contaminated base slabs, undertake physical works necessary to prepare the Site for its Interim State or Interim End State (as applicable); and 1.1.3.1(b) demonstrate the suitability of leaving the base slabs in-situ for the Quiescent Period following Interim State or Interim End State (as applicable) entry.	[i] Refer to Table 5 - Completion Criteria: Activities CC8	Phase 1 ALL SITES Phase 2 [12], [23], [24], [25], [26], [27], [29], [33]
1.1.3.2	SLC Programme Requirement (RSRL): Prepare Plant &	The Contractor shall: 1.1.3.2(a) Decommission all redundant structures, infrastructure and services on the Winfrith Site and remove surface structures necessary to prepare	[i] Refer to Table 5 - Completion Criteria: Activities CC7-CC9 inclusive	Phase 1 [16]

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
	Structures – Non-Contaminated Structures (Winfrith Site) for Interim End State Entry	<p>the Site for its Interim End State;</p> <p>1.1.3.2(b) remediate any remaining in-situ structures to meet Regulatory Requirements & planning requirements; and</p> <p>1.1.3.2(c) remediate the underground reactor cooling water reservoir at Blacknoll to meet regulatory and planning standards.</p>		
1.1.4	Programme Requirement: Prepare Plant & Structures – Site Services for Interim State	<p>The Contractor shall:</p> <p>1.1.4(a) remove or isolate legacy Site services (for example: telecoms, sewerage works, town water supplies, electricity supplies and surface water drainage infrastructure) as necessary to prepare the Site for its Interim State (Interim End State in the case of Winfrith);</p> <p>1.1.4(b) demolish and de-plant all legacy service infrastructure as necessary to deliver the Interim State or Interim End State (as applicable); and</p> <p>1.1.4(c) ensure that Interim State or Interim End State (as applicable) preparations include the appropriate management of all site services outside of the Licensed Site but within the Premises (both as defined in the Property Leases).</p>	[i] Refer to Table 5 - Completion Criteria: Activities CC10-CC11 inclusive	Phase 1 ALL SITES
				Phase 2 [12], [23], [24], [25], [26], [27], [29], [33]
1.1.4.1	SLC Programme Requirement (Magnar): Prepare Plant & Structures – Site Services (Magnar Reactor Sites)	<p>The Contractor shall:</p> <p>1.1.4.1(a) ensure all Site enabling works are complete as necessary to undertake scope as required to prepare each Site for its Interim State.</p>	[i] Refer to Table 5 - Completion Criteria: Activities CC10-CC11 inclusive	Excludes: [12], [16]
				Phase 1 ALL SITES (except [12], [16])
				Phase 2 [23], [24], [25], [26], [27], [29], [33]
1.1.4.2	SLC Programme Requirement (RSRL):	<p>The Contractor shall:</p> <p>1.1.4.2(a) ensure all Site enabling works are complete as necessary to undertake</p>	See Requirement 5.2 and 5.2.1 (Land and Property)	Phase 1 [12]

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
	Plant & Structures – Site Services (Harwell)	1.1.4.2(b) scope as required to prepare each Site for its Interim State; and in conjunction with the Harwell joint venture partnership (Science and Technology Facilities Council, the UK Atomic Energy Authority and Goodman) determine what Site services infrastructure is required to support development of the science park on the Harwell Oxford Campus.		Phase 2 [12]
1.1.4.3	SLC Programme Requirement (RSRL): Plant & Structures – Site Services (Winfrith)	The Contractor shall: 1.1.4.3(a) in conjunction with the Zog Group determine what Site services infrastructure on the Winfrith Site are required to be left in situ to service Dorset Green Technology Park (Winfrith) and ensure suitable management arrangements are in place for such services consistent with the Interim End State.	See also Requirement 5.2 and 5.2.1 (Land and Property)	Phase 1 [16]
1.2	Land Quality Management (To ensure the optimum approach to safe land quality management across the Authority Estate) SOD Reference: SMS/TS/A2/SOD001 (Version V2 February 2012)	To support the Authority's Strategy of Land Quality Management (LQM) to protect people and the Environment and to achieve the Site End States at a rate that represents greatest value for money to the Authority, the Contractor shall: 1.2(a) manage, in a manner consistent with Good Industry Practice, and in compliance with Regulatory Requirements and Legislation, Radioactive Contamination and non-Radioactive Contamination in, on or under land within the Site and any Contamination emanating from the Site at or after the Commencement Date, or from land for which the Contractor is deemed to be responsible under relevant Regulatory Requirements or Legislation; 1.2(b) undertake risk-based decision-making in good time to identify areas of significant risk so that the Contractor can put in place appropriate remediation programmes such that the risks identified are mitigated on a timely basis, preventing further significant deterioration of the ground condition; 1.2(c) develop and execute a fully justified and proportionate LQM plan in accordance with Regulatory Requirements that, to the Authority's satisfaction: [i] identifies, characterises, monitors and assesses areas of potential	[i] LTP Performance Plan submitted in compliance with SLCA and PCPM for Authority approval [ii] Contract Baseline submitted in compliance with SLCA and PCPM for Authority approval [iii] Refer to Table 5 - Completion Criteria: Activity CC9	Phase 1 ALL SITES Phase 2 [12], [23], [24], [25], [26], [27], [29], [33]

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
		<p>concern to a level required to inform risk-based decision-making;</p> <p>[ii] includes risk-based schedules and plans for managing ground and groundwater; and</p> <p>[iii] includes appropriate application of the Waste management hierarchy;</p> <p>1.2(d) maintain LQM records required for on-going management by current and future users of the Site;</p> <p>1.2(e) ensure LQM programmes are scheduled appropriately so that they are adequate to ensure reassurance monitoring and to avoid (re)contamination of the ground;</p> <p>1.2(f) ensure that Waste processing routes are planned in a timely manner such that they are in place when required in accordance with Good Industry Practice and Regulatory Requirements;</p> <p>1.2(g) in accordance with Authority guidance 2011-03-31 – LQM Reporting Guidance NLWS_LLWR_10 Issue 2, report to the Authority the status of land quality, the Site LQM Plan and likely Waste arising with time; and</p> <p>1.2(h) continue engagement with Authority good practice working groups as appropriate (e.g. the Authority's Nuclear Industry Group for Land Quality).</p>		
1.2.1	Programme Requirement: Manage Contaminated Ground	<p>For Radioactive and non-Radioactive Contamination in, on or under land within the Site and any Contamination emanating from the Site the Contractor shall:</p> <p>1.2.1(a) demonstrate to the Authority's satisfaction that such Radioactive and non-Radioactive Contamination will be capable of meeting the Safety Case requirements to demonstrate that the Interim State and Interim End State conditions are Achieved without any further remediation activity being required during the Quiescent Period;</p> <p>1.2.1(b) for Radioactive and non-Radioactive Contamination that has emanated from the Site(s) at any time prior to the Interim State or Interim End State (as applicable) being Achieved and which is above those levels required to meet the Site End State, assess whether the material is to</p>	[i] Refer to Table 5 - Completion Criteria: Activity CC9	<p>Phase 1 ALL SITES</p> <p>Phase 2 [12], [23], [24], [25], [26], [27], [29], [33]</p>

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
		<p>be left in-situ and controlled and whether the risk that it poses is acceptable through the completion of a Safety Case (or similar) to the satisfaction of the Regulators;</p> <p>1.2.1(c) ensure that active water management controls (i.e. requiring energised systems) during Interim State or Interim End State (as applicable) are eliminated, or where necessary, minimised; and</p> <p>1.2.1(d) where remediation and/or enhanced management controls are needed, undertake an options assessment to determine suitable intervention strategies.</p>		
1.2.1.1	SLC Programme Requirement (RSRL): Manage Contaminated Ground – RSRL Harwell Western Storage Area	<p>The Contractor shall continue with removal of solvent from the unsaturated zone of the Western Storage Area (WSA) to prevent solvent from reaching the groundwater which requires:</p> <p>1.2.1.1(a) continued removal of solvent from the unsaturated zone;</p> <p>1.2.1.1(b) that groundwater recovery and clean-up will continue and will be capable of meeting the Safety Case requirements to demonstrate that the Interim State is Achieved, subject to Regulator confirmation, and that further treatment is not necessary;</p> <p>1.2.1.1(c) the Contractor to gain agreement with the Environment Agency that a suitable state has been reached such that solvent removal can cease. If agreement cannot be reached, the Contractor shall propose an agreed programme of additional monitoring in accordance with the Change Control Procedure.</p>	[i] Refer to Table 5 - Completion Criteria: Activity CC9	<p>Phase 1 [12]</p> <p>Phase 2 [12]</p>
1.2.2	Programme Requirement: Manage Radioactive and non-Radioactive contaminated drains	<p>For Radioactive and non-Radioactive Contaminated drains, the Contractor shall:</p> <p>1.2.2(a) assess the condition and integrity of the drains/pipework and undertake necessary physical works to prepare the Site for its Interim State or Interim End State (as applicable); and</p> <p>1.2.2(b) provide assessments to demonstrate that the residual life of the drainage infrastructure is sufficient for the residual life of the Site facilities that it is required to support. Where this cannot be demonstrated put in place asset management and/or replacement plans to extend the life of the Site infrastructure for as long as it is</p>	[i] Refer to Table 5 - Completion Criteria: Activities CC9-CC11 inclusive	<p>Phase 1 ALL SITES</p> <p>Phase 2 [12], [23], [24], [25], [26], [27], [29], [33]</p>

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
		required.		
1.3	<p>Site End State/Interim State Definitions: to ensure the selection of the optimum Interim State, End State and date for each Site (or part thereof)</p> <p>SOD Reference: SMS/TS/A2/SOD001 (Version V2 February 2012)</p>	<p>To support the Authority's Strategy of ensuring that the definitions of 'Interim State', 'Interim End State' and the 'Site End State' together encapsulate and articulate the Site restoration objectives, the Contractor shall:</p> <p>1.3(a) ensure that the LTP Performance Plan reflects the outcome of each Site End State Consultation. Where there is a conflict between the relevant Site End State Consultation and this Client Specification this Client Specification shall take precedence;</p> <p>1.3(b) where not already in place, ensure that a defined Interim State (or Interim End State as appropriate) is determined for each Site incorporating "fit for purpose" site restoration objectives and taking account of the views of the Authority, Regulators and stakeholders (<i>"fit for purpose Site Restoration objectives" in the context of an Interim State would suggest that the benefit of subsequent quiescence (e.g. radioactive decay, resource released to focus on other higher risk facilities) outweighs the potential detriments (e.g. costs associated with regulatory and management controls, risks associated with respect to management of assets, etc.);</i></p> <p>1.3(c) inform the Authority of any projects, programmes, etc. likely to impact upon the Interim State or Interim End State (as applicable) and subsequent Quiescent Periods or likely to foreclose Interim State or Interim End State (as applicable) options or impact the declared Site End State or foreclose Site End State options;</p> <p>1.3(d) advise the Authority if it reasonably believes that the terms of the Interim State or Interim End State (as applicable) definition should be reviewed or if a formal review of the Site End State definition should be considered; and</p> <p>1.3(e) pursuant to 1.3(b) above, participate and cooperate with the Authority to determine what constitutes "fit for purpose" Site restoration objectives.</p>	<p>[i] LTP Performance Plan submitted in compliance with the SLCA and PCPM for Authority approval</p> <p>[ii] Contract Baseline submitted in compliance with the SLCA and PCPM for Authority approval</p> <p>[iii] Refer to Table 5 - Completion Criteria: Activity CC1-CC11</p>	<p>Phase 1 ALL SITES</p> <p>Phase 2 [12], [23], [24], [25], [26], [27], [29], [33]</p>

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
1.3.1	Programme Requirement: Complete Interim State Preparations	<p>The Contractor shall:</p> <p>1.3.1(a) complete all physical works necessary to prepare the Site(s) to an Interim State that marks the start of a Quiescent Period.</p> <p>Specifically, the Contractor shall, at least twelve months prior to the planned date for entry into Quiescence, and being wholly consistent with the Authority's Asset Management requirements (see Requirement 6.4):</p> <p>1.3.1(b) provide assessments to demonstrate that the residual life of the Site infrastructure is sufficient for the residual life of the Site facilities that it is required to support. Where this cannot be demonstrated put in place asset management and/or replacement plans to extend the life of the Site infrastructure for as long as it is required;</p> <p>1.3.1(c) ensure maintenance and surveillance arrangements are in place for all facilities and infrastructure remaining on Sites at the Interim State, including the necessary processes, procedures and contracts for the implementation of such maintenance and surveillance arrangements; and</p> <p>1.3.1(d) ensure such maintenance and surveillance arrangements encompass both planned maintenance and corrective action in response to deterioration revealed by surveillance.</p> <p>The Contractor shall also, at an appropriate time (i.e. to be determined by the Contractor):</p> <p>1.3.1(e) work with relevant stakeholders and Regulators to determine the extent of landscaping suitable to meet the Interim State and deliver landscaping activities accordingly.</p>	[i] Refer to Table 5 - Completion Criteria: Activities CC1-11 inclusive	Excludes: [16]
				Phase 1 [21], [22], [28]
				Phase 2 [12], [23], [24], [25], [26], [27], [29], [33]
1.3.2	Programme Requirement: to prepare Interim State and Interim End State management arrangements	<p>At least twelve months prior to the planned Interim State or Interim End State (as applicable) date the Contractor shall:</p> <p>1.3.2(a) put in place suitable arrangements for the management of the Site during the Quiescent Period between Achievement of the Interim State or Interim End State (as applicable) and the final stages of Decommissioning required to meet the condition of each Site End State (recognising that no further physical Decommissioning work will</p>	<p>[i] Refer to Table 5 - Completion Criteria: Activities CC1-11 inclusive</p> <p>[ii] Signed evidence of acceptance of the Site's management and monitoring arrangements by the Contractor's manager</p>	Phase 1 [16], [21], [22], [28]
				Phase 2 [12], [23], [24], [25], [26], [27],

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
		<p>be required at Winfrith);</p> <p>1.3.2(b) demonstrate the effectiveness of these management arrangements prior to any Site achieving its Interim State or Interim End State (as applicable) and entering its Quiescent Period;</p> <p>1.3.2(c) provide a proposed organogram for the on-going organisation of the Site beyond the date on which the Interim State or Interim End State (as applicable) is Achieved;</p> <p>1.3.2(d) put in place suitable and adequate arrangements to maintain compliance with all relevant Legislation and Regulatory Requirements during Quiescence, including such processes, procedures and contracts, skills and capability necessary to implement those arrangements;</p> <p>1.3.2(e) ensure appropriate security measures are in place, a Security Plan which has been approved by ONR is in place and arrangements, processes and procedures and contracts to implement the Security Plan are in place; and</p> <p>1.3.2(f) ensure appropriate provisions are in place for stakeholder engagement between the Interim State or Interim End State (as applicable) and the Site End State.</p>	<p>responsible for implementing Interim State and Interim End State management arrangements</p> <p>[iii] Provision of the results of any Licensee compliance audits by the ONR and Environmental Agencies, undertaken in the 24 Months prior to Interim State entry</p> <p>[iv] Signed copies of relevant consents and permissions from ONR confirming that acceptable management arrangements in relation to post Interim State arrangements are in place</p> <p>[v] Signed copies of relevant consents and permissions from ONR confirming that an acceptable Security Plan in relation to post Interim State or Interim End State (as applicable) arrangements is in place</p>	[29], [33]
1.3.3	Programme Requirement: to implement Interim State and Interim End State management arrangements	<p>Immediately following Achievement of the Interim State or Interim End State (as applicable) date the Contractor shall:</p> <p>1.3.3(a) implement management arrangements to ensure, as far as reasonably possible, safe and effective management of each Site that has Achieved an Interim State or Interim End State (as applicable) for the duration of its Quiescence;</p>	[i] Provision of the results of planned internal audits or reviews undertaken under the Contractor's Integrated Management System to assess compliance with the agreed procedures for management of	Phase 1 [16], [21], [22], [28]

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
		<p>1.3.3(b) demonstrate the ongoing effectiveness of these management arrangements ;</p> <p>1.3.3(c) maintain compliance with all relevant Legislation and Regulatory Requirements, including such processes, procedures and contracts, skills and capability necessary to implement those arrangements;</p> <p>1.3.3(d) maintain Safety Cases during the Term as required under the Nuclear Installations Act and relevant environmental Legislation and permits and authorisations required for the Quiescent Period between Achievement of the Interim State or Interim End State (as applicable) and the final stages of Decommissioning required to meet the condition of each Site End State;</p> <p>1.3.3(e) implement appropriate security measures, including maintenance of the Security Plan and ensuring arrangements, processes and procedures and contracts to implement the Security Plan are in place;</p> <p>1.3.3(f) provide or procure all resources necessary to fulfil its obligations in relation to the safe and effective management of any Site that has Achieved an Interim State or Interim End State (as applicable) for the duration of the Term;</p> <p>1.3.3(g) undertake periodic reviews and updates of transport and disposability assessments as appropriate to take account of changes in regulatory standards; and</p> <p>1.3.3(h) ensure appropriate provisions for stakeholder engagement between the Interim State or Interim End State (as applicable) and the Site End State are put in place.</p>	<p>Sites during Quiescence (including demonstration that relevant active and/or passive management systems are within tolerance) and report on opportunities for improvement</p> <p>[[ii] Provision of the results of any Licensee compliance audits by the ONR and Environmental Agencies to review Quiescence arrangements during the Term</p>	<p>Phase 2 ALL SITES</p>
1.3.4	Programme Requirement: Review the LTP Performance Plan to ensure delivery of the Site End State	<p>Twelve months prior to the Interim State or Interim End State (as applicable) date the Contractor shall:</p> <p>1.3.4(a) ensure that the LTP Performance Plan adequately includes activities between Achievement of the Interim State or Interim End State (as applicable) and the final stages of Decommissioning required to meet the condition of each Site End State in compliance with PCPM (and the Contractor Annexes) (recognising that no further physical</p>	<p>[i] LTP Performance Plan maintained in compliance with the SLCA and PCPM. Any changes made to the LTP Performance Plan as a result of this review shall require Authority approval.</p>	<p>Phase 1 [16], [21], [22], [28]</p> <p>Phase 2 [12], [23], [24], [25], [26], [27],</p>

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
		<p>Decommissioning work will be required at Winfrith;</p> <p>The LTP Performance Plan shall set out in detail:</p> <p>1.3.4(b) the work required to manage or remove remaining infrastructure and structures on Site and dispose of the resulting Waste;</p> <p>1.3.4(c) the work required to meet the condition of the Site(s) End State;</p> <p>1.3.4(d) the arrangements to transfer packages of Waste;</p> <p>1.3.4(e) the management of Safety Cases as required under the Nuclear Installations Act and relevant environmental Legislation and Environmental authorisations including the processes, procedures and contracts to implement such arrangements; and</p> <p>1.3.4(f) arrangements to surrender the Nuclear Site Licence and revoke designations, etc.</p>		[29], [33]
1.3.5	SLC Programme Requirement (RSRL): Deliver RSRL Winfrith Interim End State	<p>The Contractor shall:</p> <p>1.3.5(a) complete all physical works necessary to prepare the Winfrith Site to an Interim End State that returns the Site to heathland, makes the Site suitable for public access and marks the end of all physical restoration works, i.e. further risk reduction required to Achieve the Site End State is passive (e.g. a consequence of Radioactive decay) rather than requiring additional active restoration work;</p> <p>1.3.5(b) work with relevant stakeholders and Regulators to determine the extent of landscaping required to meet the Interim End State and deliver landscaping activities accordingly;</p> <p>1.3.5(c) put in place suitable and adequate arrangements (Institutional Controls) under the Nuclear Site Licence to allow the Site to continue to be licensed and to maintain compliance with all relevant Legislation, Regulatory Requirements and Environmental authorisations, including such processes, procedures and contracts, skills and capability necessary to implement those arrangements; and</p> <p>1.3.5(d) remove or control radiological and chemical hazards to allow the agreed conditions for future use to be met and demonstrate that the Interim End State conditions and the Institutional Controls</p>	<p>[i] Refer to Table 5 - Completion Criteria: Activities CC1-CC2, CC4-CC9 inclusive and CC11</p> <p>[ii] Signed evidence of acceptance of the Site's management and monitoring arrangements by the Contractor's manager responsible for implementing Interim End State management arrangements</p> <p>[iii] Provision of the results of any Licensee compliance audits by the ONR and Environmental Agencies, undertaken in the 24 Months prior to Interim End State entry</p> <p>[iv] Signed copies of relevant consents and permissions from ONR confirming that acceptable</p>	Phase 1 [16]

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
		requirements can be met without the need for any further removal of hazardous or Radioactive contaminants.	management arrangements in relation to post Interim State arrangements are in place [v] Public access as heathland Achieved	
2	<i>SPENT FUELS: To ensure safe, secure and cost-effective lifecycle management of Spent Fuels. The applicable strategies underpinning Spent Fuels are:</i>			
	<ul style="list-style-type: none"> <i>Spent Magnox Fuel: To ensure the safe management then ultimate disposition of Spent Magnox Fuel.</i> <i>Spent Exotic Fuels: To ensure that all Exotic Fuels are managed in a safe and secure way for the lifetime of the fuel.</i> 			
2.1	Reprocess Spent Fuels: Spent Magnox Fuel: To ensure the safe management then ultimate disposal of Spent Magnox Fuel SOD Reference: SMS/TS/C1/SOD001 (Version V2 February 2012)	To support the Authority's Strategy of reprocessing through the Magnox reprocessing facilities (Sellafield Ltd) the Contractor shall: 2.1(a) de-fuel and transport Spent Magnox Fuel to Sellafield and manage the MOP inventory in line with the extant Magnox Operating Programme.	See Requirement 2.1.1, below	Phase 1 [26], [27], [29]
2.1.1	SLC Programme Requirement (Magnox): Manage Spent Magnox Fuel - defueling and transfer	The Contractor shall: 2.1.1(a) be responsible for the overall management integration and co-ordination of the Magnox Operating Programme and its interfaces on behalf of the Authority. Interfaces are outlined in Magnox Operating Programme Management Procedure (MSP); 2.1.1(b) maintain fuel route and transport (including Spent Fuel flask) capability and capacity on the Magnox reactor Sites to ensure Spent Fuel deliveries meet the extant Magnox Operating Programme bounding performance criteria and the Contractor shall not constrain reprocessing throughput; and 2.1.1(c) de-fuel all remaining fuelled Magnox Sites (excluding Calder Hall nuclear reactor), empty all Magnox reactor Sites cooling ponds and	[i] Complete and submit to the Authority an annual review of the MOP identifying main reasons for any loss of capacity and consequential recovery plan [ii] Statement that all Magnox Spent Fuel has been sent off-site to Sellafield accepted by Accountable Person(s) and submitted to the Authority in line with identified Milestones	Phase 1 [26], [27], [29]

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
		cells containing fuel; and transfer all Spent Fuel off-Site to Sellafield for reprocessing in line with the extant Magnox Operating Programme planning guidance dates and the Contractor shall not constrain reprocessing throughput.	(Part 3, below) [iii] Signed copies of relevant permissions from ONR confirming that all Magnox Spent Fuel has been sent off-site to Sellafield (i.e. Fuel Free Verification Achieved)	
2.2	Storage and Disposal of Spent Fuel (Exotic Fuels): To ensure that all Exotic Fuels are managed in a safe and secure way for the lifetime of the fuel SOD Reference: SMS/TS/C3/SOD001 (Version V2 February 2012)	To support the Authority's Strategy of storing and Conditioning for disposal to the Geological Disposal Facility (GDF), the Contractor shall: 2.2(a) for GLEEP and Zenith fuels, complete encapsulation work to Condition for disposal. Store in a manner suitable for transport and/or disposal (i.e. manage as ILW) prior to sending to the GDF; and 2.2(b) for DRAGON fuel, work with Sellafield to complete enabling work required by the Authority and transport Exotic Fuel to Sellafield.	[i] Submit to the Authority records that demonstrate that the GLEEP and Zenith fuels have been Conditioned for disposal in compliance with the Contractor's Integrated Management System and RWMD Letter of Compliance For DRAGON fuel, see Requirement 2.2.1, below	Phase 1 [12] Phase 2 [12]
2.2.1	SLC Programme Requirement (RSRL): Deliver Nuclear Materials Co-Location (DRAGON fuel) Programme	For DRAGON fuel, the Contractor shall: 2.2.1(a) package for transport in suitable transport containers; 2.2.1(b) complete inactive commissioning of the DRAGON fuel transfer route between the Harwell Site and Sellafield; and 2.2.1(c) complete DRAGON fuel transfers from the Harwell Site to Sellafield.	[i] Statement that all DRAGON fuel has been sent off-site to Sellafield approved by Accountable Person(s) [ii] Signed copies of relevant permissions from ONR confirming that all DRAGON fuel has been sent off-site to Sellafield	Phase 1 [12]
3	NUCLEAR MATERIALS: To ensure safe, secure and cost-effective lifecycle management of our Nuclear Materials. The applicable strategy underpinning Nuclear Materials is: <ul style="list-style-type: none"> Uranics: To ensure safe, secure management of the Uranics Inventory. 			

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
3.1	Nuclear Materials: UK Uranics Disposition: to ensure the safe management then ultimate disposition of UK owned uraniums inventory SOD Reference: SMS/TS/B2/SOD001 (Version V2 February 2012)	To support the Authority's Strategy of storing and Conditioning for disposal to the Geological Disposal Facility (GDF), the Contractor shall: 3.1(a) for LEU, prepare for transport to Sellafield and transfer to Sellafield; and 3.1(b) for Natural/Depleted Uranium, these materials are to be stored in the solid waste complex and then transferred to the Harwell Site ILW store. Prior to transfer to the GDF the uranium will be subsequently packaged for disposal and stored pending transfer to the GDF.	[i] Submit to the Authority records that demonstrate that the Natural and Depleted Uranium have been Conditioned for disposal in compliance with the Contractor's Integrated Management System and Letter of Compliance For RSRL LEU, see Requirement 3.1.1, below	Phase 1 [12], Phase 2 [12]
3.1.1	SLC Programme Requirement (RSRL): RSRL Nuclear Materials Co-Location (Low Enriched Uranium - LEU)	For RSRL Low Enriched Uranium (LEU), the Contractor shall: 3.1.1(a) package LEU for transport in a suitable transport container; 3.1.1(b) complete inactive commissioning LEU transfer route between the Harwell Site and Sellafield; and 3.1.1(c) complete LEU transfers from the Harwell Site to Sellafield.	[i] Statement by Accountable Person(s) that all RSRL LEU has been sent off-Site to Sellafield and submission of such statement to the Authority in line with identified Milestones (Part 3, below) [ii] Signed copies of relevant permissions from ONR confirming that all RSRL LEU has been sent off-Site to Sellafield	Phase 1 [12] Phase 2 [12]
4	INTEGRATED WASTE MANAGEMENT: To ensure that Wastes are managed in a manner that protects people and the Environment, now and in the future, and in ways that comply with Government policies and provide value for money. The strategies underpinning Integrated Waste Management are: <ul style="list-style-type: none"> • Higher Activity Waste: To treat and package HAW and place it in safe, secure and suitable storage facilities until it can be disposed of, or be held in long-term storage in the case of a proportion of HAW in Scotland. • Low Activity Waste: For Solid Low Level Waste - To provide capability and capacity for managing solid low level Radioactive Waste to support Decommissioning and operations and make facilities available to other LLW producers. 			

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
	<ul style="list-style-type: none"> For Liquid and Gaseous Discharges -To reduce the Environmental impact of Radioactive liquid and gaseous discharges in accordance with the UK Strategy for Radioactive Discharges. Non-Radioactive and Hazardous Waste: To reduce Waste generation and optimise management practices for non-Radioactive and hazardous Wastes at NDA sites. 			
4.1	<p>Programme Requirement: Integrated Waste Management - Support development of the UK Radioactive Waste Inventory</p>	<p>The Contractor shall provide to the Authority and the Department of Energy and Climate Change, or its successor department (as applicable), information and/or assistance reasonably requested by the Authority to allow completion of the UK Radioactive Waste Inventory. Such information and/or assistance may include but is not limited to:</p> <p>4.1(a) provision of information on Radioactive Wastes;</p> <p>4.1(b) provision of information on Radioactive Material that may become Waste in the future (including land potentially contaminated with Radioactivity that is not currently identified as Waste);</p> <p>4.1(c) provision of inventory data in accordance with the requirements of the 'Waste Inventory Form (WIF)' specification on an annual basis;</p> <p>4.1(d) receipt of data from the previous UK Radioactive Waste Inventory in either electronic or paper form;</p> <p>4.1(e) reviewing the information provided and endorsing amending or deleting the information as required;</p> <p>4.1(f) responding to and addressing queries on the supplied information; and</p> <p>4.1(g) reviewing draft reports and approving the content for release into the public domain.</p> <p>To ensure inventory submissions represent the best available data the Contractor shall:</p> <p>4.1(h) work with the Authority to develop and action an on-going programme of work to define and address priority areas for data inconsistencies, gaps, anomalies and uncertainties between the tri-annual inventory exercises to ensure that a best available, comprehensive and underpinned Radioactive Waste inventory dataset is prepared for the submission for the UK Radioactive Waste Inventory; and</p>	<p>[i] Submission to the Authority information on Radioactive Wastes that have been approved in line with the Contractor's Integrated Management System and satisfies Authority requirements to allow production of a complete UK Radioactive Waste Inventory by the Authority and the Department of Energy and Climate Change, or its successor department</p>	<p>Phase 1 ALL SITES</p> <p>Phase 2 ALL SITES</p>

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
		4.1(i) work with the Authority and representatives of the Authority Estate to support the development of new approaches to the scope and management of Radioactive Waste inventory related information and associated tools (e.g. active participation in inventory best practice working group/forum).		
4.2	Programme Requirements: Integrated Waste Management – Produce an Integrated Waste Strategy	The Contractor shall:	[i] Submission to the Authority of an Integrated Waste Strategy in line with the requirements of ENG01 and approved in line with the Contractor's Integrated Management System	Phase 1 ALL SITES
		4.2(a) produce an Integrated Waste Strategy (IWS) using Authority requirements (ENG01); and 4.2(b) underpin the IWS with appropriate optioneering studies including BAT (for England and Wales) and BPM/BPEO (for Scotland) reviews and the latest Waste inventory data.		Phase 2 ALL SITES
4.3	Integrated Waste Management: HAW - ILW Disposal and Storage: To ensure the safe & effective Disposal of UK owned ILW SOD Reference(s): SMS/TS/D1/SOD004; SMS/TS/D1/SOD005; SMS/TS/D1/SOD006; SMS/TS/D1/SOD008 and SMS/TS/D1/SOD009 (Version V2 February 2012)	<i>To support the Authority's Strategy for storing and Conditioning of ILW for disposal to the GDF the Contractor shall:</i>	See Requirements 4.3.1-4.4.2 inclusive, below	Phase 1 ALL SITES
		4.3(a) <i>in respect of all Sites other than the Hunterston A Site and the Chapelcross Site, ensure that all ILW is packaged and stored in a manner suitable for its eventual disposal to the GDF;</i> 4.3(b) <i>[in respect of the Hunterston Site and the Chapelcross Site ensure all ILW is packaged and stored in a manner as if it were to be Disposed of to the GDF until Scottish HAW Policy Implementation Strategy is developed];</i> 4.3(c) <i>manage HAW as part of an integrated approach to Waste management. In doing so, minimise Waste and apply the Waste management hierarchy approach taking into account Value for Money, affordability and the protection of health, safety, security and the Environment;</i> 4.3(d) <i>ensure that new interim storage facilities have a design life of at least 100 years; and</i> <i>To support the Authority's Strategy for storing and Conditioning ILW for alternative disposal to the GDF the Contractor shall:</i> 4.3(e) <i>agree with the Authority those Radioactive Wastes that are candidates</i>		Phase 2 [12], [23], [24], [25], [26], [27], [29], [33]

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
		<i>for Decay Storage and implement appropriate storage arrangements.</i>		
4.3.1	Programme Requirement: Support development and implementation arrangements for Disposal to the GDF	The Contractor shall: 4.3.1(a) provide to the Authority information and/or assistance reasonably requested by the Authority to support progress against the UK Government's Managing Radioactive Waste Safely Programme and the GDF voluntarism process.	[i] Submission to the Authority of information approved in line with the Contractor's Integrated Management System and which satisfies Authority requirement to support progress against the UK Government's Managing Radioactive Waste Safely Programme and the GDF voluntarism process	Phase 1 ALL SITES Phase 2 [12], [23], [24], [25], [26], [27], [29], [33]
4.3.2	Programme Requirement: Support development and implementation arrangements for Decay Storage	The Contractor shall: 4.3.2(a) prepare and submit to the Authority for approval a Business Case in sufficient detail to enable the Authority to confirm whether Decay Storage should be undertaken; and 4.3.2(b) subject to the approval by the Authority of the Business Case, store any ILW until it reaches the threshold required to dispose of in an alternative manner (e.g. as LLW for meeting the Waste Acceptance Criteria for an alternative disposal Site).	[i] Submit to the Authority a Business Case approved in line with the Contractor's Integrated Management System and Authority Procedures: EGG08 and Strategy Management System.	Phase 1 ALL SITES Phase 2 [12], [23], [24], [25], [26], [27], [29], [33]
4.3.3	SLC Programme Requirement: (Magnox): Support development and implementation arrangements for Scottish HAW Policy	The Contractor shall: 4.3.3(a) support the Authority and Scottish Government in the development of the Scottish HAW Policy Implementation Strategy.	[i] Submission to the Authority of information approved in line with the Contractor's Integrated Management System and which satisfies Authority requirement to support Scottish Government in the development of the Scottish HAW Policy Implementation Strategy	Phase 1 [25], [33] Phase 2 [25], [33]
4.3.4	Programme	The Contractor shall:	[i] Submit to the Authority records	Phase 1

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
	Requirement: Construct and manage suitable ILW storage	<p>4.3.4(a) ensure that all ILW is packaged for final disposal in accordance with Letters of Compliance issued by the Authority Radioactive Waste Management Directorate (RWMD);</p> <p>4.3.4(b) deliver to the Authority records that demonstrate that the ILW has been appropriately characterised; treated and Conditioned (as necessary); packaged; handled; stored; and periodically inspected in compliance with the Contractor's Integrated Management System;</p> <p>4.3.4(c) ensure that Waste management activities are carried out in accordance with the Contractor's Integrated Management System and in a manner which complies with the Waste Products Specification assessed under the Letters of Compliance process for each Waste form, such that Waste remains disposable throughout the Interim Storage Period; and</p> <p>4.3.4(d) ensure that ILW records are retained by the Contractor such that they remain accessible at all times to the Authority and Contractor.</p>	<p>that demonstrate that ILW has been Conditioned for disposal in compliance with the Contractor's Integrated Management System and RWMD Letter of Compliance</p> <p>[ii] Signed copies of relevant Third Party compliance audit reports demonstrating compliance that Waste remains disposable throughout the Interim Storage Period</p> <p>[iii] Signed copies of relevant consents and permissions from ONR confirming acceptable security arrangements to facilitate long term storage</p>	<p>ALL SITES</p> <p>Phase 2 [12], [23], [24], [25], [26], [27], [29], [33]</p>
4.3.4.1	Programme Requirement: Construct and manage suitable ILW storage (Store Design Life and Storage Conditions)	<p>The Contractor shall ensure that:</p> <p>4.3.4.1(a) any new ILW stores that are erected by the Contractor required for storage of Higher Activity Waste on the Site at Interim State should be designed to meet the requirements of industry guidance (Interim Storage of Higher Activity Waste packages); or</p> <p>4.3.4.1(b) if the requirements of industry guidance will not be met, provide to the Authority for approval a written statement as to why the requirements of the industry guidance will not be met including agreement from the Regulators that this approach is appropriate; and</p> <p>4.3.4.1(c) ILW storage and storage locations shall not encumber future Decommissioning operations.</p>	<p>[i] Report demonstrating to the Authority's satisfaction that new ILW stores meet the requirements of industry guidance</p> <p>[ii] Signed evidence of acceptance of the ILW store management arrangements by the Contractor's manager responsible for implementing Interim State management arrangements</p> <p>[iii] Refer to Table 5 - Completion Criteria: Activities CC2</p>	<p>Phase 1 ALL SITES</p>

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
4.3.4.2	Programme Requirement: Develop Consolidated ILW Storage options	The Contractor shall: 4.3.4.2(a) consider benefits of consolidated ILW storage within the Authority Estate and with other ILW producers (including “B stations” adjacent to Authority Sites) and prepare and, if appropriate, submit to the Authority for approval, a Business Case in sufficient detail to enable the Authority to determine whether to instruct the Contractor to implement consolidated ILW storage.	[i] Submission of a Business Case approved in line with the Contractor's Integrated Management System and Authority Procedures: EGG08 and Strategy Management System.	Phase 1 ALL SITES
				Phase 2 [12], [23], [24], [25], [26], [27], [29], [33]
4.3.4.3	Programme Requirement (RSRL): Implement Centralised/ Consolidated ILW Storage options	The Contractor shall: 4.3.4.3(a) implement consolidated ILW storage; 4.3.4.3(b) transfer packaged ILW from the Winfrith Site for storage at the Harwell Site until it is able to be disposed of at the GDF; and 4.3.4.3(c) ensure that the Harwell Site retains the capability and capacity for the storage of ILW arising from the decommissioning of the Culham JET facility should it be required (see also 5.3.1 (c)).	[i] Statement by Accountable Person(s) that all ILW from the Winfrith Site has been sent off-site to the Harwell Site and such statement has been submitted to the Authority in line with identified Milestones (Part 3, below) [ii] Signed copies of relevant permissions from ONR confirming that all ILW from the Winfrith Site has been sent off-site to the Harwell Site	Phase 1 [12], [16]
4.3.5	SLC Programme Requirement (Magnox): Treat Magnox Fuel Element Debris (FED)	The Contractor shall: 4.3.5(a) retrieve and process stored Fuel Element Debris (FED) and produce a final disposable product prior to each Site's planned Interim State date.	[i] Refer to Table 5 - Completion Criteria: Activities CC1-CC2, CC5	Phase 1 [22], [24], [25], [26], [27], [28]
				Phase 2 [26]
4.3.6	SLC Programme Requirement (Magnox): Complete Fuel Storage Pond	The Contractor shall: 4.3.6(a) deplant and decontaminate as necessary remaining pond furniture and produce a final disposable product prior to Achievement of the Interim State;	[i] Refer to Table 5 - Completion Criteria: Activities CC1-CC2, CC5-CC6 [ii] See Requirement 1.1.2	Phase 1 [23], [24], [25], [26], [27], [28], [33]

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
	Drainage and Decontamination for Interim State entry	<p>4.3.6(b) retrieve residual ILW sludge material as necessary from pond structures and produce a final disposable product prior to achieving Interim States;</p> <p>4.3.6(c) drain pond water as necessary and treat the effluent such that it becomes suitable for discharge and that any secondary Wastes are Conditioned to a final disposable product; and</p> <p>4.3.6(d) complete necessary works on the fuel pond structures necessary to meet the requirements of the Interim State prior to Achievement of the Interim State.</p>		<p>Phase 2 [23], [26], [27], [33]</p>
4.3.7	Programme Requirement: Retrieve and Process ILW and Package for Interim State and Interim End State entry	<p>The Contractor shall:</p> <p>4.3.7(a) retrieve and process stored Intermediate Level Waste from vaults/bunkers/stores/tanks/vessels and produce a final disposable product prior to Achievement of the Interim State or Interim End State (as applicable).</p>	[i] Refer to Table 5 - Completion Criteria: Activities CC1-CC2, CC5-CC6	<p>Phase 1 ALL SITES</p> <p>Phase 2 [12], [23], [24], [25], [26], [27], [29], [33]</p>
4.3.8	SLC Programme Requirement (Magnox): Retrieve and Process ILW and Package miscellaneous activated components (MAC) and miscellaneous Contaminated items (MCI) – Magnox Reactor Sites for Interim State entry	<p>The Contractor shall:</p> <p>4.3.8(a) retrieve and process stored Intermediate Level Waste - miscellaneous activated components (MAC) and miscellaneous Contaminated items (MCI) from vaults/bunkers/stores and produce a final disposable product prior to Achievement of the Interim State.</p>	[i] Refer to Table 5 - Completion Criteria: Activities CC1-CC2, CC5-CC6	<p>Excludes: [12], [16], [25]</p> <p>Phase 1 [21], [22], [23], [24], [26], [27], [28], [29], [33]</p> <p>Phase 2 [24], [26], [27], [29], [33]</p>
4.3.8.1	SLC Programme Requirement	<p>The Contractor shall:</p> <p>4.3.8.1(a) retrieve and process operational Intermediate Level Waste (ILW)</p>	[i] Refer to Table 5 - Completion Criteria: Activities CC1-CC2,	Phase 1

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
	(Magnar): Retrieve and Process ILW and Package from Berkeley (AWVR Project)	stored (as at the Commencement Date) in the Active Waste Vaults (AWV), the Caesium Removal Plant (CRP) and the Shielded Area (ex-research labs).	CC5-CC6	[21]
4.3.8.2	SLC Programme Requirement (Magnar): Retrieve and Process Tritiated ILW and Package from Chapelcross Processing Plant (CXPP)	For Chapelcross Processing Plant (CXPP), the Contractor shall: 4.3.8.2(a) Dismantle, retrieve and process all plant and Intermediate Level Waste (ILW) stored in the facility (as at the Commencement Date) and package for disposal.	[i] Refer to Table 5 - Completion Criteria: Activities CC1-CC2, CC5-CC6	Phase 1 [33]
				Phase 2 [33]
4.3.9	SLC Programme Requirement (RSRL): Retrieve and Process ILW and Package (MAC & MCI including Remote Handled ILW (RHILW)) – RSRL Sites	The Contractor shall: 4.3.9(a) retrieve and process Remote Handled ILW from vaults or stores (including tube stores, etc.) and produce a final disposable product.	[i] Refer to Table 5 - Completion Criteria: Activities CC1-CC2, CC5-CC6	Phase 1 [12], [16]
				Phase 2 [12]
4.3.9.1	SLC Programme Requirement (RSRL): Retrieve and Process ILW and Package (MAC & MCI including Remote Handled ILW (RHILW)) – Harwell	The Contractor shall: 4.3.9.1(a) in respect of the Harwell Site – complete all Remote Handled ILW (RHILW) can retrievals prior to the planned Interim State date.	[i] Refer to Table 5 - Completion Criteria: Activities CC1-CC2, CC5-CC6	Phase 1 [12]
				Phase 2 [12]
4.3.10	SLC Programme Requirement (RSRL): Deliver the RSRL Co-Location Programme	For RSRL ILW – Concrete Lined Drums (CLD), the Contractor shall: 4.3.10(a) demonstrate that all Wastes have the necessary characterisation data to satisfy the transport Safety Case and Waste Acceptance Criteria at	[i] Statement by Accountable Person(s) that all RSRL ILW CLD has been sent off-Site to Sellafield and submitted to the	Phase 1 [12]

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
	(ILW – Concrete Lined Drums)	the recipient site (Sellafield); and 4.3.10(b) complete CLD transfers from the Harwell Site to Sellafield.	Authority in line with identified Milestones (Part 3, below) [ii] Signed copies of relevant permissions from ONR confirming that all RSRL ILW CLD has been sent off-Site to Sellafield	
4.3.11	SLC Programme Requirement (RSRL): Deliver the RSRL Co-Location Programme (Contact Handled ILW)	For RSRL Contact Handled ILW (CHILW), the Contractor shall: 4.3.11(a) demonstrate that all Wastes have the necessary characterisation data to satisfy the transport Safety Case and Waste Acceptance Criteria at the recipient site; and 4.3.11(b) complete CHILW transfers from the Harwell Site to Sellafield.	[i] Statement by Accountable Person(s) that all RSRL CHILW has been sent off-Site to Sellafield submitted to the Authority in line with Milestones (Part 3, below) [ii] Signed copies of relevant permissions from ONR confirming that all RSRL CHILW has been sent off-Site to Sellafield	Phase 1 [12]
4.4	Integrated Waste Management: HAW - Graphite - Interim Storage: <i>To ensure safe and robust Interim storage arrangements of graphite until it has been exported to the GDF or near surface management facilities</i> <i>SOD Reference(s): SMS/TS/D1/SOD010 &</i>	To support the Authority's Strategy for storing and Conditioning of graphite for disposal the Contractor shall: 4.4(a) for Magnox reactor graphite, store graphite in-situ (reactor Safestore) until final reactor dismantling prior to export to the GDF; 4.4(b) for other graphite, Condition graphite into a disposable form and interim store in local stores prior to export to the GDF; and 4.4(c) for LLW graphite suitable for direct disposal, Condition into a disposal form and dispose to existing authorised LLW disposal facilities subject to relevant authorisations/Waste Acceptance Criteria.	[i] For 4.4(a), Refer to Table 5 - Completion Criteria: Activity CC3 [ii] For 4.4(b) and 4.4(c), see Requirement 4.4.1 and 4.4.2, below	Phase 1 ALL SITES Phase 2 [12], [23], [24], [25], [26], [27], [29], [33]

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
	<i>SMS/TS/D1/SOD013 (Version V2 February 2012)</i>			
4.4.1	SLC Programme Requirement (RSRL): Retrieve and Package "In-Reactor" Graphite	For RSRL reactors, the Contractor shall: 4.4.1(a) pursue a programme of continuous Decommissioning of the Reactor and package reactor graphite and produce a final disposable product prior to the planned Interim State or Interim End State (as applicable).	<ul style="list-style-type: none"> [i] Refer to Table 5 - Completion Criteria: Activity CC4 [ii] Submit to the Authority records that demonstrate that ILW has been Conditioned for disposal in compliance with the Contractor's Integrated Management System and RWMD Letter of Compliance [iii] Signed copies of relevant Third Party compliance audit reports demonstrating compliance that Waste remains disposable throughout the Interim Storage Period [iv] Signed copies of relevant consents and permissions from ONR confirming acceptable security arrangements to facilitate long term storage 	<p>Phase 1 [12], [16]</p> <p>Phase 2 [12]</p>
4.4.2	Programme Requirement: Retrieve and Package "Ex-Reactor" Graphite	The Contractor shall: 4.4.2(a) retrieve and process stored miscellaneous ex-situ graphite items from vaults and produce a final disposable product prior to Achievement of the Interim State.	<ul style="list-style-type: none"> [i] Refer to Table 5 - Completion Criteria: Activity CC5 [ii] Submit to the Authority records that demonstrate that ILW has been Conditioned for disposal in compliance with the Contractor's Integrated Management System and 	<p>Phase 1 [21], [25]</p> <p>Phase 2 [25]</p>

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
			<p>RWMD Letter of Compliance</p> <p>[iii] Signed copies of relevant Third Party compliance audit reports demonstrating compliance that Waste remains disposable throughout the Interim Storage Period</p> <p>[iv] Signed copies of relevant consents and permissions from ONR confirming acceptable security arrangements to facilitate long term storage</p>	
4.5	<p>Integrated Waste Management: HAW – Thorium: To ensure safe and robust interim storage arrangements and subsequent safe disposition of Thorium</p> <p>SOD Reference(s): SMS/TS/D1/SOD011 (Version V2 February 2012)</p>	<p>To support the Authority’s Strategy for storing and Conditioning of Thorium for disposal to the GDF the Contractor shall:</p> <p>4.5(a) adopt a baseline strategy to characterise, treat, Condition and package material for long-term storage and/or disposal in compliance with an approved LOC pending disposal to GDF;</p> <p>4.5(b) at the time of export to long-term Waste management facility ensure the Waste meets the Waste Acceptance Criteria or equivalent requirements; and</p> <p>4.5(c) consider alternative options/opportunities for the management of Thorium, for example sale to a Third Party, and provide a Business Case to the Authority should a deliverable alternative be determined that provides improved Value for Money.</p>	<p>[i] Submit to the Authority records that demonstrate that ILW has been Conditioned for disposal in compliance with the Contractor's Integrated Management System and RWMD Letter of Compliance</p> <p>[ii] Signed copies of relevant Third Party compliance audit reports demonstrating compliance that Waste remains disposable throughout the Interim Storage Period</p> <p>[iii] Signed copies of relevant consents and permissions from ONR confirming acceptable security arrangements to facilitate long term storage</p> <p>Or</p> <p>[iv] In relation to 4.5(c) provide to</p>	<p>Phase 1 [12], [16], [21]</p> <p>Phase 2 [12]</p>

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
			the Authority a Business Case approved in line with the Contractor's Integrated Management System and Authority procedures: EGG08 and Strategy Management System	
4.6	<p>Integrated Waste Management: Lower Activity Wastes: To ensure continued capability and capacity for LLW management and disposal</p> <p>SOD Reference(s): SMS/TS/D2/SOD001 (Version V2 February 2012)</p>	<p>To support the Authority's Strategy in relation to maximising the operating lifetime of existing authorised LLW disposal facilities and optimising the use of planned UK LLW repository capacity, the Contractor shall:</p> <p>4.6(a) manage solid LLW in accordance with the UK Strategy for the Management of Solid LLW (August 2010);</p> <p>4.6(b) in relation to the obligation in 4.6(a), apply the following principles:</p> <ul style="list-style-type: none"> [i] manage LLW as part of an integrated approach to Waste management; [ii] undertake effective characterisation programmes to ensure rigorous underpinning of Waste information and support good decision making within the parameters of the Regulatory 	<p>[i] See Requirement 6.1, below</p> <p>[ii] For 4.6(c) - provide to the Authority a Business Case approved in line with the Contractor's Integrated Management System and Authority procedures: EGG08 and Strategy Management System should new processing or Disposal capacity on Site been deemed the optimal way to manage LLW following</p>	<p>Phase 1</p> <p>ALL</p>

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
		<p>Requirements and in accordance with Good Industry Practice; and</p> <p>[iii] adopt and implement a Waste hierarchy methodology to achieve the following:</p> <ul style="list-style-type: none"> • where practicable, prevent LLW creation; • through segregation minimise the amount of LLW to be managed in order to maximise resource and costs benefits; • promote reuse to defer Waste production and extend the life of resources; • recycling of metallic LLW as a preference unless a compelling case is made for an alternative route; • size reduce Waste to ensure best use of Disposal capacity; and • use LLW Disposal capacity sparingly, and as a last resort, including only using disposal capacity at LLWR for Wastes where no other routes are reasonably available; and <p>4.6(c) ensure rigorous consideration of supply chain options, including Low Level Waste Repository Ltd (segregated Waste services) prior to constructing new LLW processing/disposal capacity.</p>	<p>consideration of all other options.</p>	<p>Phase 2</p> <p>[12], [23], [24], [25], [26], [27], [29], [33]</p>

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
4.6.1	Programme Requirement: National LLW Strategy Implementation Programme	<p>The Contractor shall:</p> <p>4.6.1(a) using LLWR National Waste Programme Procedure NWPP 02: Generation and Update of Joint Waste Management Plans (JWMP) produce a JWMP agreed with Low Level Waste Repository Ltd. The plan must deliver an integrated approach to the management of LLW and compliance with the UK Nuclear Industry LLW Strategy, specifically the JWMP should include but not be limited to the following:</p> <ul style="list-style-type: none"> <i>[i] the skills and capabilities required to deliver national Waste programmes and achieve outcomes and benefits;</i> <i>[ii] collaborative working on national Waste management programmes to ensure optimised use of existing (and potential future) assets;</i> <i>[iii] utilisation of the NDA Asset Transfer System (NATS) to re-use existing assets as well as using the system to advertise project asset needs to encourage wider application and opportunity realisation;</i> <i>[iv] working with the Shared Service Alliance to deliver value from implementation of existing and potential future national framework contracts (e.g. as part of the National LLW Strategy Implementation Programme currently); and</i> <i>[v] liaising with Low Level Waste Repository Ltd develop SLC programme specific stakeholder engagement and communications plans that are aligned with the National LLW Strategy Implementation Programme implementation.</i> 	[i] Complete and submit to the Authority a signed copy of the Joint Waste Management Plan and an annual update thereafter	Phase 1 ALL
				Phase 2 [12], [23], [24], [25], [26], [27], [29], [33]
4.6.2	Programme Requirement: Dispose Lower Activity Waste.	<p>For LLW (and any sub-category including Very Low Level Radioactive Waste (VLLW), and following consideration of the Waste hierarchy (i.e. opportunities for reuse and recycling of material as backfill for example), the Contractor shall:</p> <p>4.6.2(a) only consider off-Site disposal solutions, however, if off-Site disposal is not available, prepare and submit to the Authority for approval a Business Case containing sufficient detail to enable the Authority to decide whether or not to implement on-Site Disposal.</p>	[i] provide to the Authority a Business Case approved in line with the Contractor's Integrated Management System and Authority Procedures: EGG08 and Strategy Management System should new processing or	Phase 1 ALL
				Phase 2 [12], [23], [24], [25], [26], [27], [29], [33]

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
			Disposal capacity on Site been deemed the optimal way to manage LLW following consideration of all other options	
4.7	<p>Integrated Waste Management: Lower Activity Wastes (Liquid and Gaseous): To reduce the environmental impact of Radioactive liquid and gaseous discharges in accordance with the UK Strategy for Radioactive Discharges</p> <p>SOD Reference(s): SMS/TS/D2/SOD002 (Version V2 February 2012)</p>	<p>To support the Authority's Strategy in relation to the strategic alignment with the implementation of the UK Strategy for Radioactive Discharge, the Contractor shall:</p> <p>4.7(a) manage the Environmental impact of Lower Activity Waste liquid and gaseous discharges through appropriate application of BAT; BPEO & BPM and in line with the UK Strategy for Radioactive Discharges through compliance with Regulatory Authorisations.</p>	See Requirement 6.1, below	<p>Phase 1 ALL</p> <p>Phase 2 [12], [23], [24], [25], [26], [27], [29], [33]</p>
4.8	<p>Integrated Waste Management: Non-Radioactive & Hazardous Waste</p> <p>SOD Reference(s): SMS/TS/D3/SOD001 (Version V2 February 2012)</p>	<p>To support the Authority's Strategy in relation to the strategic alignment with UK and national strategies, the Contractor shall:</p> <p>4.8(a) manage the Directive Wastes in accordance with UK and national and relevant Local Authority strategies for the management of non-Radioactive and hazardous Waste arisings and consider such Wastes as part of the Integrated Waste Strategy (See 4.2);</p> <p>4.8(b) <i>in relation to the obligations above, apply the following principles:</i> <i>[i] adopt and implement Waste hierarchy management methodology for Directive Wastes;</i></p>	See Requirement 6.1, below	<p>Phase 1 ALL</p> <p>Phase 2 [12], [23], [24], [25], [26], [27], [29], [33]</p>

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
		<p>[ii] adopt, where appropriate, suitable decision making criteria (e.g. Best Available Techniques (BAT)) to ensure effective application of the Waste hierarchy;</p> <p>[iii] apply a rigorous approach to Waste characterisation and segregation;</p> <p>[iv] periodic review of Waste treatment routes, coinciding with IWS updates, with the aim of ensuring optimum solutions are deployed; and</p> <p>[v] consider the Proximity Principle disposing of Waste in the nearest appropriate facility.</p>		
5	<p>Business Optimisation: To create an Environment where existing revenue can be secured, and opportunities can be developed against criteria agreed with Government. The strategies underpinning Business Optimisation are:</p> <ul style="list-style-type: none"> • Revenue Optimisation: To maximise the value provided by commercial revenue generating activities and operations. • Land and Property Management: To ensure the Authority manages its land and property to support its Site restoration activities, and make it available for alternative uses that optimise commercial or socio-economic benefit. 			
5.1	Revenue Optimisation - Secure Electricity Generation	<p>To support the Authority's Strategy to maximise its commercial revenue from electricity generation from its operational power stations, the Contractor shall:</p> <p>5.1(a) maximise output from continued electricity generation.</p>	See Requirement 5.1.1, below	Phase 1 [29]
5.1.1	SLC Programme Requirement (Magnox): Revenue Optimisation - Secure Electricity Generation – the Wylfa Site	<p>The Contractor shall:</p> <p>5.1.1(a) for the Wylfa Site nuclear power station, maintain the capability and asset condition to maximise output from continued electricity generation until its cessation of generation;</p> <p>5.1.1(b) ensure adequate management structures, capability and resources to discharge the obligations associated with holding a Nuclear Site Licence for an operating nuclear power station;</p> <p>5.1.1(c) provide and/or maintain the intelligent customer capability (including engineering and technical capability) for any work it undertakes and commissions externally which could affect safety; and</p> <p>5.1.1(d) ensure nuclear safety and environmental standards are maintained to</p>	[i] Statement from the Contractor, approved in line with the Contractor's Integrated Management System, that provides an assessment of the impacts associated with continuing generation. This should include consideration of the Contractor's capability to provide Spent Magnox Fuel to Sellafield at a rate which does not constrain reprocessing	Phase 1 [29]

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
		ensure systems remain fully available, safe and compliant to maintain Spent Fuel shipments to support generation and defueling in accordance with the extant Magnox Operating Programme.	<p>operations or impact on the delivery of MOP</p> <p>[ii] Signed copies of relevant consents and permissions from ONR confirming acceptable arrangements for continued electricity generation until the Wylfa Site's planned closure</p> <p>[iii] See Requirement 6.1, below</p>	
5.1.2	SLC Programme Requirement (Magnox): Revenue Optimisation - Secure Electricity Generation – the Maentwrog Power Station	<p>The Contractor shall:</p> <p>5.1.2(a) for the Maentwrog Power Station maintain the capability and asset condition to maximise output from continued electricity generation;</p> <p>5.1.2(b) support the Authority in determining strategic and commercial options for the long term operation for Maentwrog hydro-electric power station that do not foreclose future options; and</p> <p>5.1.2(c) ensure operational safety and environmental standards are maintained to ensure systems remain fully available, safe and compliant.</p>	<p>[i] Statement from the Contractor approved in line with the Contractor's Integrated Management System assessing impacts of continued generation and the Contractor's capability associated with continuing generation</p> <p>[ii] See Requirement 6.1, below</p>	<p>Phase 1 [29]</p> <p>Phase 2 [29]</p>
5.2	Land & Property: To ensure sufficient land is available to enable NDA to	To support the Authority's Strategy in relation to the reduction of the land footprint to the minimum required for the completion of contracted activities and to realise commercial value through disposal of land, or change of use, the Contractor shall:	<p>[i] For 5.2(f) – provide periodic property management reports to the Authority approved in line with the Contractor's</p>	Phase 1 ALL

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
	<p>complete its mission; where appropriate, make land available for commercial or socio-economic benefit.</p> <p>SOD Reference: SMS/TS/E1/SOD001 and SMS/TS/E2/SOD001 (Version V2 February 2012)</p>	<p>5.2(a) ensure that the land and property assets required to complete the restoration of the Sites are retained;</p> <p>5.2(b) ensure the Contractor's land and property management commitments outside of the Licensed Site but within the Premises (both as defined in the Property Leases) are delivered;</p> <p>Whilst ensuring the delivery of 5.2(a) and 5.2(b), the Contractor shall:</p> <p>5.2(c) co-operate with any Authority initiative to release land and/or facilities as required;</p> <p>5.2(d) assist and cooperate with the Authority in relation to its disposal strategy for surplus land;</p> <p>5.2(e) co-operate with the Authority to determine area(s) for reduction of Nuclear Licensed Site to release land for development (see Requirement 5.2.1); and</p> <p>5.2(f) with the agreement of the Authority, progress de-licensing where commercial or socio-economic benefit can be realised.</p> <p>To support the Authority's Strategy in relation to acquiring and/or retaining leases of land for interim uses necessary to deliver the LTP Performance Plan, the Contractor shall:</p> <p>5.2(g) provide property management services to manage existing leases-in and arrange additional leases-in as and when required; and</p> <p>5.2(h) not retain existing land or acquire new land without prior permission of the Authority.</p> <p><i>To support the Authority's Strategy in relation to maximising the benefit to the Environment by managing the land for wildlife, the Contractor shall:</i></p> <p>5.2(i) <i>manage areas for wildlife, where applicable, until divested;</i></p> <p>5.2(j) <i>not increase the extent of land management for wildlife without prior permission from the Authority; and</i></p> <p>5.2(k) <i>ensure permission of the Authority to continue the sensitive management and protection of remaining assets.</i></p>	<p>Integrated Management System</p> <p>[ii] See Requirement 5.2.1, below</p>	<p>Phase 2 ALL</p>

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
5.2.1	SLC Programme Requirement Re-use of NDA Land	The Contractor shall: 5.2.1(a) exploit synergies with existing operators and developments adjacent to or on Authority Sites where divestment of land and/or utilisation of existing assets will: reduce Authority liabilities; reduce impact (including Environmental impact) and costs; and provide commercial or socio-economic benefit; and 5.2.1(b) ensure that divestment of land and/or utilisation of existing assets does not impact on the Contractor's ability to deliver in line with LTP Performance Plan.	[i] Submission to the Authority of an assessment report of existing nuclear land and property assets that could be declared surplus to requirements to the Authority within two years of the Commencement Date, and on an annual basis thereafter	Phase 1 ALL Phase 2 [12], [23], [24], [25], [26], [27], [29], [33]
5.2.2	SLC Programme Requirement Provision of accommodation to the Authority	The Contractor shall: 5.2.2(a) make available to the Authority office accommodation as reasonably requested by the Authority; this shall include, but is not limited to, office accommodation at the Winfrith Site, Wylfa Site and Berkeley Site.	[i] N/A	Phase 1 ALL Phase 2 ALL
5.3	Non NDA Liability Management: To ensure that the NDA identifies, assesses the impact of and	To support the Authority's Strategy, the Contractor shall: 5.3(a) deliver the existing contracts for the management of Third Party liabilities; and 5.3(b) with Authority approval and support, periodically renegotiate existing	[ii] Provision of periodic management reports to the Authority approved in line with the Contractor's Integrated Management System	Phase 1 ALL

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
	<p>decides how to address Third Party nuclear liabilities</p> <p>SOD Reference: SMS/TS/A1/SOD001 (Version V2 February 2012)</p>	contracts.		<p>Phase 2</p> <p>[12], [23], [24], [25], [26], [27], [29], [33]</p>
5.3.1	Programme Requirement (Non-NDA Liabilities Management)	<p>The Contractor shall:</p> <p>5.3.1(a) under direction from the Authority, provide consultative support through Call-Off Support and undertake works to support the Authority in its management of its contracted obligations relating to Nuclear Liabilities Funding Agreement (NLFA) and the Historic Liabilities Funding Agreement (HLFA) as set out in its letter of designation from HMG Department of Business, Innovation and Skills;</p> <p>5.3.1(b) under direction from the Authority, provide consultative support through Call-Off Support and undertake works to support the Authority in its management of its contracted obligations relating to provision of advice to the Secretary of State on nuclear new build Funded Decommissioning Programmes (FDP)^[5] (and in particular provision of advice on</p>	[i] Evidence of completion to be determined in accordance with Schedule 20 Call-Off Support	<p>Phase 1</p> <p>ALL</p>

⁵ Reference: The Energy Act 2008 – Funded Decommissioning Programme Guidance for New Nuclear Power Stations (DECC December 2011)

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
		<p>Decommissioning and Waste Management Plans (DWMP)) in its letter of designation from HMG Department of Energy and Climate Change; and</p> <p>5.3.1(c) under direction from the Authority provide consultative support through Call-Off and undertake works to support the Authority in its management, and assessment of strategic and commercial options for the management of other NDA and Non-NDA Liabilities. <i>This may include, but not be limited to:</i></p> <p>[i] <i>Ministry of Defence Radioactive Wastes management (including consolidation and treatment);</i></p> <p>[ii] <i>centralised/consolidation of Radioactive Wastes associated with co-located nuclear power stations;</i></p> <p>[iii] <i>Imperial College nuclear research reactor, known as CONSORT;</i></p> <p>[iv] <i>Culham Centre for Fusion Energy Joint European Torus fusion research reactor, known as JET; and</i></p> <p>[v] <i>other consultative support to be defined by the Authority.</i></p>		<p>Phase 2</p> <p>[12], [23], [24], [25], [26], [27], [29], [33]</p>
6	Critical Enablers: Critical Enablers apply across other strategic themes and enable the delivery of such strategic themes			
6.1	<p>Critical Enablers: Health, Safety, Security, Safeguards, Environment & Quality (HSSSEQ):</p> <p>To ensure that the HSSSEQ 'critical enabling' principles are clearly set out and implemented across the Authority Estate to underpin and inform the development and delivery of the</p>	<p>To support the Authority's Strategy in relation to the requirement to secure legal compliance with the UK Health, Safety, Security, Safeguards, Environment and Quality (HSSSEQ) Legislation and Energy Act (2004) requirements, the application of Good Industry Practice and the pursuit of continuous improvements in HSSSEQ performance and the best overall balance of outcomes, the Contractor shall:</p> <p>6.1(a) <i>deliver excellent performance in line with the Authority's Strategy;</i></p> <p>6.1(b) <i>deliver legal compliance with the UK Health, Safety, Security, Safeguards, Environment and Quality (HSSSEQ) Legislation and Energy Act (2004) requirements;</i></p> <p>6.1(c) <i>deliver effective leadership that enhances the HSSSEQ culture in the Contractor and engages with the whole of the workforce;</i></p> <p>6.1(d) <i>deliver accreditation to appropriate quality standards (including but not limited to ISO9001, ISO14001 and OHSAS 18001);</i></p>	<p>[i] Submission to the Authority of an annual report approved in line with the Contractor's Integrated Management System that demonstrates continuous improvements in HSSSEQ performance for all specified requirements 6.1(a)-6.1(aa) inclusive</p> <p>[ii] Submission to the Authority of a monthly report reporting management information to demonstrate the effectiveness of specified Requirements 6.1(b), 6.1(i)-6.1(j), 6.1(n)</p>	<p>Phase 1</p> <p>ALL</p> <p>Phase 2</p> <p>ALL</p>

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
	Authority's Strategy SOD Reference: SMS/TS/F10/SOD001 (Version V2 February 2012)	<p>6.1(e) deliver challenging self-assurance that will provide a well informed self-awareness of the strengths and weaknesses in the Contractor's HSSSEQ performance and arrangements;</p> <p>6.1(f) deliver continuous improvement programmes that address identified concerns and future work requirements;</p> <p>6.1(g) deliver the sharing of best practice within the Contractor, across the Authority Estate, the nuclear industry and in wider industry;</p> <p>6.1(h) deliver open and honest reporting within the Contractor and with the Authority;</p> <p>6.1(i) deliver effective learning from experience and the communication of learning across the Contractor; and</p> <p>6.1(j) deliver constructive and effective working relationships with Regulators on both compliance and strategic matters;</p> <p>The Contractor shall deliver HSSSEQ management system processes that:</p> <p>6.1(k) are fit for purpose across the Contractor when there will be Sites in different stages of their life cycle ranging from operations, through Decommissioning to Quiescence;</p> <p>6.1(l) provide effective safe works controls that will enable rather than constrain the delivery of Decommissioning work including working with contracting organisations; and</p> <p>6.1(m) progressively reduce the arrangements for responding to emergency and security events as the hazard on the Sites reduces;</p> <p>In terms of nuclear safety, the Contractor shall:</p> <p>6.1(n) prioritise and support nuclear safety standards on those Sites that have reactor fuel or Nuclear Materials;</p> <p>6.1(o) maintain appropriate organisational focus on nuclear safety standards as the Sites move through decommissioning; and</p> <p>6.1(p) optimise the nuclear safety case processes to ensure that they are fit for purpose and provide a clear flow of requirements to controls which are proportionate to the stage of each Site in the decommissioning life cycle;</p>	<p>inclusive (this forms part of the NDA Flash Report)</p> <p>[iii] For 6.1(d), signed copies of relevant Third Party compliance audit reports demonstrating compliance with appropriate quality standards</p>	

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
		<p>In terms of environmental safety, the Contractor shall:</p> <p>6.1(q) manage the Sites in a manner that is consistent with environmental sustainability including the more efficient use of resources and reducing carbon emissions in line with the Environment Agency's Nuclear Sector Plan;</p> <p>6.1(r) enhance the environmental awareness and culture in the workforce on the Sites;</p> <p>In terms of security and safeguards, the Contractor shall:</p> <p>6.1(s) deliver effective Nuclear Materials accountancy and safeguards arrangements in a way that is proportionate to each site's risks;</p> <p>6.1(t) deliver physical and procedural security arrangements in line with developing Government policy and legal requirements and in a way that is proportionate to each site's security risks;</p> <p>6.1(u) align the guarding arrangements to the reduction in the hazards on the Sites;</p> <p>6.1(v) establish constructive relationships with DECC, ONR, the Civil Nuclear Constabulary, Civil Nuclear Police Authority, EURATOM and other relevant agencies;</p> <p>6.1(w) develop and put in place fit for purpose long term security arrangements for the Sites in care and maintenance;</p> <p>6.1(x) provide secure IT and information management systems proportionate to the level of risk presented by the information;</p> <p>6.1(y) optimise business continuity arrangements; and</p> <p>6.1(z) enhance security awareness and culture in the workforce on the sites;</p> <p>In terms of Radioactive Waste management the Contractor shall:</p> <p>6.1(aa) prepare fit for purpose Radioactive Waste Management Cases.</p>		

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
6.2	<p>Critical Enablers: Research & Development: To ensure that delivery of the project is technically underpinned by sufficient and appropriate research and development</p> <p>SOD Reference: SMS/TS/F2/SOD001 (Version V2 February 2012)</p>	<p>To support the Authority's Strategy in relation to ensuring that Decommissioning and clean-up plans are technically underpinned by sufficient and appropriate research and development (R&D), the Contractor shall:</p> <p>6.2(a) carry out R&D required to deliver the LTP Performance Plan either directly or through the supply chain;</p> <p>6.2(b) ensure that technical underpinning and short, medium and long-term R&D requirements to deliver the scope as required by the LTP Performance Plan are fully detailed (production of TBUrd (ref. PCPM (PCP-07 and EGG10));</p> <p>6.2(c) consider the views of Regulators on research needs (e.g. ONR's Nuclear Research Needs or equivalent) when developing its R&D programme and respond as appropriate;</p> <p>6.2(d) ensure that R&D requirements to underpin the LTP Performance Plan are identified and reflected in the scope of the LTP Performance Plan, even if opportunities exist to pursue different options (as set out in the PCPM);</p> <p>6.2(e) advise and engage with, the Authority's strategic research and innovation programmes (e.g. Direct Research Portfolio (DRP)) to ensure</p>	<p>[i] For 6.2(a)-(c) - Provision of an Technical Baseline and supporting documents (TBUrd) submitted to the Authority and approved in line with the Contractor's Integrated Management System and PCPM</p> <p>[ii] For 6.2(f), the Contractor shall provide input to Authority established forums at least on a quarterly basis</p>	<p>Phase 1 ALL</p>

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
		<p>alignment of R&D with the Authority's objectives. This may include e.g. attendance at R&D project workshops, identification and reviewing of R&D projects on the Authority's behalf and implementation and dissemination of the outputs of such work (see 6.2 (f));</p> <p>6.2(f) communicate common R&D needs, risks and opportunities via the Nuclear Waste Research Forum (NWRf – a cross industry group that aims to enhance coordination of R&D across UK Site Restoration and Integrated Waste Management activities) through regular attendance and contribution, including:</p> <ul style="list-style-type: none"> [i] active participation and contribution to the work of the NWRf including all its technical working groups, and acting as co-chair to specific NWRf working groups as directed by NWRf or the NDA Research Board (the Authority Board supported by NWRf to promote a common understanding and collaboration between relevant bodies across the UK about respective research and development needs for Decommissioning and Radioactive Waste management); [ii] actively sharing with other SLCs and other external organisations identified by the Authority Good Industry Practice in R&D programmes; and [iii] actively considering implementation of Good Industry Practice identified by other SLCs (e.g. at NWRf) or from outside the Authority Estate including relevant international Good Industry Practice as appropriate subject to the provisions of this agreement, utilise PBO expertise to minimise Contractor research and development requirements; and <p>6.2(g) pursuant to the provisions of Requirement 6.3 identify and support the preservation of key scientific and technical skills required to:</p> <ul style="list-style-type: none"> [i] deliver the scope as per LTP Performance Plan; and [ii] maintain skills and a capability to contribute to the scientific and technical community within the Authority Estate. 		<p>Phase 2 ALL</p>

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
6.3	<p>Critical Enablers: People (including Skills and Capability): To ensure the Authority Estate has the skills and capability to carry out the project efficiently and effectively</p> <p>SOD Reference: SMS/TS/F1/SOD001 (Version V2 February 2012)</p>	<p>To support the Authority's Strategy in relation to working with the SLCs to develop a standardised, consolidated and rationalised approach to people across the Authority Estate, the Contractor shall (in accordance with the Authority's People Strategy):</p> <p>6.3(a) analyse the resource demand, skills and capability requirements to deliver the scope as per LTP Performance Plan, on a short, medium and long term basis;</p> <p>6.3(b) identify skills/capability gaps;</p> <p>6.3(c) produce and maintain a plan showing how it intends to provide the skill and capabilities necessary to deliver the scope as per LTP Performance Plan based on 6.3(a) & 6.3(b) above and to manage the transition and resource profile (Annual Resource Plan);</p> <p>6.3(d) actively work and collaborate with other SLCs/PBOs via Authority established forums such as the Authority's People Strategy Board to:</p> <ul style="list-style-type: none"> [i] ensure such plans as are referred to in 6.3(c) optimise available skills and capabilities across the Authority Estate; [ii] support appropriate collaborative initiatives which may be specified by the Authority; and [iii] identify Authority Estate wide opportunities relative to human resources; and <p>6.3(e) where the Authority determines that efficiencies and/or Value for Money savings will be made as a result of the opportunities identified in 6.3(d) implement the relevant opportunities identified as part of the plan referred to in 6.3(c).</p>	<p>[i] For 6.3(a)-(c) - Provision of an Authority approved Annual Resource Plan</p> <p>[ii] Additionally, the Contractor shall submit a monthly report reporting sufficient management information to demonstrate the effectiveness of its Annual Resource Plan</p> <p>[iii] For 6.3(d), the Contractor shall provide input to Authority established forums at least on a quarterly basis</p> <p>[iv] With regard to 6.3(d)[iii] provide to the Authority a Business Case approved in line with the Contractor's Integrated Management System and Authority procedures: EGG08 and Strategy Management System.</p>	<p>Phase 1 ALL</p>
				<p>Phase 2 ALL</p>

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
6.3.1	Programme requirement – Skills - Interim State or Interim End State entry	The Contractor shall: 6.3.1(a) ensure that the skills and capabilities in place prior to Transition Out are demonstrated to be the minimum required to maintain the safe operation of the Site.	See Requirements 1.3.2 and 1.3.3 (Programme Requirement: to Implement Interim State and Interim End State management arrangements) [i] Signed evidence of acceptance of the Site's skills and capabilities arrangements by the Contractor's manager responsible for implementing Interim State and Interim End State management arrangements [ii] Signed copies of relevant consents and permissions from ONR confirming that acceptable management arrangements in relation to post Interim State or Interim end State (as applicable) arrangements are in place	Phase 1 ALL
				Phase 2 ALL

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
6.4	<p>Critical Enabler: Asset Management: To secure the reliable performance of NDA assets to provide confidence in strategy delivery</p> <p>SOD Reference: SMS/TS/F12/SOD001 (Version V2 February 2012)</p>	<p>To support the Authority's Strategy in relation to the requirement to adopt a recognised Good Industry Practice asset management standard such as the Publicly Available Specification PAS-55, the Contractor shall:</p> <p>6.4(a) implement asset management consistent with Good Industry Practice. When judging whether Good Industry Practice is being achieved the Authority will use:</p> <ul style="list-style-type: none"> [i] Publicly Available Specification PAS-55 (or equivalent) with the expectation that the Contractor demonstrates a maturity level of 3 (or equivalent) as measured by the standard; and [ii] any relevant and recognised guidance (e.g. HSE, IAEA, professional bodies, etc.) associated with the management of assets; and <p>6.4(b) implement local agreements between the Authority and the Contractor. These include, where it represents Value for Money, but are not limited to, instead of procuring new assets:</p> <ul style="list-style-type: none"> [i] utilise available Authority Assets, including those from other SLCs; [ii] utilise assets from, non NDA, external organisations who no longer have a use for them; and [iii] obtain the best market value for assets that no longer have a use within the Authority Estate. 	<ul style="list-style-type: none"> [i] Demonstrate that good practice management of assets is embedded within the business within 24 months of the Commencement Date and maintained throughout the Term [ii] Within 12 months of the Commencement Date the Contractor will present its revised view of critical assets through a dashboard (in line with requirements specified in PCPM) [iii] At the end of Phase 1 and Phase 2 the Contractor shall present optimised Asset Management Plans that could be used to inform subsequent due diligence (if required) [iv] The Authority may utilise independent professionals to assess whether 6.4 (b) [i] to [iii] have been Achieved 	<p>Phase 1 ALL</p> <p>Phase 2 ALL</p>
6.4.1	<p>Programme Requirement: Interim State Maintenance and Surveillance</p>	<p>The Contractor shall:</p> <p>6.4.1(a) ensure maintenance and surveillance arrangements for all Authority Assets remaining on Sites at the Interim State or Interim End State (as applicable) are in place, including the necessary processes, procedures</p>	<p>See Requirements 1.3, 1.3.1, 1.3.2 and 1.3.3 (Programme Requirement: to Implement Interim State and Interim End State</p>	<p>Phase 1 [16], [21], [22], [28]</p>

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
	arrangements	<p>and contracts for the implementation of such maintenance and surveillance arrangements; and</p> <p>6.4.1(b) ensure such maintenance and surveillance arrangements encompass an appropriate balance of planned and corrective maintenance action in response to deterioration revealed by surveillance.</p>	<p>management arrangements)</p> <p>[i] Consistent with 1.3, 1.3.1, 1.3.2 and 1.3.3 the Contractor shall present optimised Asset Management Plans that underpin the LTP performance Plan and arrangements for 'Interim State' or 'Interim End State' as applicable.</p>	<p>Phase 2 ALL</p>
6.5	<p>Critical Enablers: Competition: To bring the best capabilities the market has to offer, at the best price, to deliver the project</p> <p>SOD Reference: SMS/TS/F5/SOD001 (Version V2 February 2012)</p>	<p>To support the Authority's Strategy in relation to the requirement to select an Incoming Parent in accordance with the Public Procurement Regulations and Energy Act obligations, the Contractor shall when required:</p> <p>6.5(a) assist and cooperate with the Authority's competition team through:</p> <p>[i] the provision of information requested by either the Authority or prospective bidders;</p> <p>[ii] the formation of a team at the start of the competition process to facilitate and support the competition (including Site access by bidders) and to manage the subsequent transition to the Incoming Parent;</p> <p>6.5(b) as part of the team detailed in 6.5(a)[ii] above provide a liaison point of contact to the Authority; and</p> <p>6.5(c) observe any reasonable competition protocols determined by the Authority.</p>	<p>Comply with the obligations of SLCA Clause 35 (Transition on Expiry or Termination)</p>	<p>Phase 1 ALL SITES</p> <p>Phase 2 ALL</p>

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
6.6	<p>Critical Enablers: Supply Chain Development: To ensure the optimum use of the supply chain available to the Authority Estate to enable a safe, affordable, cost effective, innovative and dynamic market for clean-up and Decommissioning</p> <p>SOD Reference: SMS/TS/F8/SOD001 (Version V2 February 2012)</p>	<p>To support the Authority's Strategy in relation to the supply chain across the Authority Estate, the Contractor shall:</p> <p>6.6(a) liaise and cooperate with other SLCs to seek efficiencies, share best practice and information and implement the output of such collaboration; and</p> <p>6.6(b) apply Good Industry Practice in procurement processes, supplier relationship management and communication with the supply chain to ensure information is available in an open, transparent, accurate, timely and consistent manner.</p> <p>To support the Authority's Strategy in relation to the Authority's Requirement to work with other nuclear clients and explore synergies with other industries the Contractor shall:</p> <p>6.6(c) liaise and cooperate with the Authority Estate and other industries to seek and implement best practice.</p>	<p>[i] Contractor's Supply Chain management arrangements submitted in compliance with SLCA and PCPM for Authority approval</p> <p>[ii] Contractor shall provide to the Authority information (that has been approved in line with the Contractor's Integrated Management System) on Supply chain/SME information and/or assistance reasonably requested by the Authority to support provision of data to HMG</p> <p>[iii] The Contractor shall provide input to Authority established forums at least on a quarterly basis</p> <p>[iv] Comply with the obligations of SLCA Clause 22 (Subcontracting/Procurement) and Schedule 5 (Subcontracting and Procurement)</p>	<p>Phase 1 ALL SITES</p>
				<p>Phase 2 ALL</p>
6.6.1	<p>Programme Requirement: Support the NDA Shared Service Alliance</p>	<p>The Contractor shall:</p> <p>6.6.1(a) engage in the NDA Shared Service Alliance and facilitate and support cross-estate Collaborative Procurement to deliver value and provide support to the Authority consistent with that currently received in line with stated Magnox LTP baseline.</p>	<p>[i] The Contractor shall provide input to Authority established forums at least on a quarterly basis</p>	<p>Phase 1 ALL SITES</p>
				<p>Phase 2 ALL</p>

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
6.7	<p>Critical Enablers: Information and Knowledge Management: To ensure that the Authority and the Authority Estate (including both Subsidiaries and SLCs) are compliant with all Regulatory Statutory and HMG Guidelines and</p>	<p>To support the Authority's Strategy in relation to the Requirement that the Authority and the Authority Estate are compliant with all Regulatory Statutory and HMG Security Policy Framework requirements on information security, information assurance, information risk management and information governance (including Intellectual Property and Information Communication Technology management), the Contractor shall:</p> <p>6.7(a) implement processes and systems to ensure compliance against the Authority's information governance strategy, the HMG Security Policy Framework and in line with the Authority's declared time-based information risk appetite⁶;</p> <p>6.7(b) submit reports required to comply with the Authority's Information Risk Management Policy (ITP09), HMG Security Policy Framework and the</p>	<p>[i] For 6.7(a)-(e) - Provision of reports in line with PCPM requirements submitted to the Authority approved in line with the Contractor's Integrated Management System</p> <p>[ii] For 6.7(d), the Contractor shall provide input to Authority established forums at least on a quarterly basis</p>	<p>Phase 1 ALL SITES</p>

⁶ <http://www.nda.gov.uk/strategy/criticalenablers/information/info-gov-programme.cfm>

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
	requirements on Information Security, Information Assurance, Information Risk Management and Information Governance (including Intellectual Property and Information Communication Technology management), SOD Reference: SMS/TS/F3/SOD001 (Version V2 February 2012)	<p>Information Assurance Maturity Model (IAMM) annual assessment to the Authority's Senior Information Risk Owner to allow reporting across the Authority Estate, to enable the Authority to fulfil its legal obligations and to inform its declared information risk appetite;</p> <p>6.7(c) ensure appropriate systems are implemented and maintained to:</p> <ul style="list-style-type: none"> [i] sustain corporate memory; [ii] facilitate skills transfer and plan for succession; [iii] disseminate best practice; and [iv] share information to safeguard skills and experience required for future activities within the Authority Estate; <p>6.7(d) participate in the Authority Estate Information Governance Forums and implement agreed outcomes where they generate efficiency savings to the Target Cost or demonstrable benefit to the Authority;</p> <p>6.7(e) comply with any relevant Records Agreements; and</p> <p>6.7(f) in accordance with Requirements specified by the Authority utilise the National Nuclear Archive for inactive and semi-active records once the National Nuclear Archive is operational.</p>		Phase 2 ALL
6.7.1	Programme Requirement – Records & Document management system	<p>The Contractor shall:</p> <p>6.7.1(a) have in place a management system suitable for managing and maintaining records and procedures required to deliver the Site End State;</p> <p>6.7.1(b) ensure that at the Interim State or Interim End State that each record has been dealt with in one of the following ways:</p>	See Requirements 1.3.2 and 1.3.3 (Programme Requirement: to Implement Interim State and Interim End State management arrangements)	Phase 1 ALL SITES

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
		<ul style="list-style-type: none"> [i] stored on Site in compliance with Regulatory and Contractual Requirements, Legislation and HMG Security Policy Framework for use in delivering the Site End State; or [ii] having determined that, whilst still required for regulatory or statutory reasons, but no longer required on-site, transferred to the National Nuclear Archive (once operational); or [iii] having determined that it is no longer required for any of the requirements identified in 6.7.1 (b) [i], be securely destroyed in accordance with local management system requirements. 		Phase 2 ALL
6.7.2	SLC Programme Requirement (RSRL) – Management Standards	The Contractor shall: 6.7.2(a) manage the contract for the management of the Southern Nuclear Archive until it can be transferred to the National Nuclear Archive and in accordance with the Authority’s Information Governance programme (<i>see link at footnote 6</i>).	[i] Submission to the Authority of a periodic report approved in line with the Contractor's Integrated Management System reporting of contract management status and effectiveness	Phase 1 [12] Phase 2 [12]
6.8	Critical Enablers: Socio Economics: To support the creation of dynamic, sustainable local economies for communities living near Sites SOD Reference: SMS/TS/F4/SOD001 (Version V2 February 2012)	To support the Authority's Strategy to take account of the socio-economic consequences of its plans, engaging with agencies for economic development, providing financial support to the Contractor for socio-economic expenditure and providing direct socio-economic funding support, the Contractor shall commit sufficient human and financial resources to do the following, to the Authority's reasonable satisfaction: 6.8(a) apply the principles and approval systems as previously agreed by the Authority for any socio-economic support; 6.8(b) work to support the Authority's socio-economic objectives, as set out in the Authority's Socio-Economic Policy, through engagement with the Authority, Local Authorities, development agencies and other appropriate bodies ensure that three year rolling Socio-Economic Development Plans are prepared in partnership with the Authority, consulted upon with stakeholders and submitted to the Authority and are in line with the	[i] Submission to the Authority of a three year rolling Socio-Economic Development Plan, incorporating PBO, Contractor and site-level commitments, approved in line with the Contractor's Integrated Management System reflecting requirements in 6.8.1 and 6.8.2 below [ii] Submission to the Authority and subsequent publication of annual review of socio-economic performance against	Phase 1 ALL

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
		<p>requirements detailed in the Authority's Socio-Economic Policy and in the socio-economic section(s) of the LTP Performance Plan;</p> <p>6.8(c) prepare, consult upon and publish an annual review of socio-economic performance against the LTP Performance Plan detailed in 6.8(b) above; the plan should include clear objectives, desired outcomes, SMART targets and performance measures;</p> <p>6.8(d) influence, work with and support local and national regeneration/economic development agencies in the delivery of their objectives through the development and execution of a complementary socio-economic plan;</p> <p>6.8(e) prioritise its socio-economic interventions according to both the timescale towards Quiescence at Sites and the prevailing socio-economic conditions in the travel to work area;</p> <p>6.8(f) Whilst cognisant of 6.8(e) above, plans should consider, as a minimum:</p> <ul style="list-style-type: none"> [i] skills retention in localities/skills transition from the Sites to jobs in local communities; [ii] the transfer of learning from the PBO to the Magnox Contractor and the RSRL Contractor in order to engender a more diversified and skilled workforce; [iii] apprentice scheme development, including community apprentices; [iv] optimising the potential/capacity of local supply chains to bid for work from Sites; [v] engagement with local education establishments - supporting curricula and raising aspirations; [vi] supporting the spin-out of functions from the Sites to the local economy as new SMEs; and [vii] re-location of associated staff/offices/businesses within the travel to work area for individual Sites; <p>6.8(g) communicate with employees and trades unions to develop, at the appropriate time, workforce transition plans;</p>	<p>the LTP Performance Plan</p> <p>[iii] For 6.8(f)-6.8(j); ensure alignment with Requirement 6.3 People (including Skills and Capability)</p>	<p>Phase 2</p> <p>ALL</p>

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
		<p>6.8(h) develop individual transition plans and transition training/support programmes as appropriate;</p> <p>6.8(i) work with the supply chain to inform and support them in their own workforce transition plans;</p> <p>6.8(j) make available to appropriate stakeholder organisations the Annual Resource Plans produced; and</p> <p>6.8(k) jointly develop and enter into a stakeholder and Socio-Economic Partnering Agreement with the Authority to support development and delivery of the Socio-Economic Development Plan. This agreement will provide clarity on how the parties intend to collaborate and co-operate in order to deliver stakeholder and socio-economic activity requirements.</p>		
6.8.1	SLC Programme Requirement (Magnox) Develop plans suited to Magnox Sites	<p>The Contractor shall:</p> <p>6.8.1(a) prioritise areas for support. The plan(s) prepared and maintained by the Contractor pursuant to Requirement 6.8 above should take into account:</p> <ul style="list-style-type: none"> [i] Magnox socio-economic plans; [ii] local Socio-Economic Development Plans; [iii] availability of Authority-owned, proximate land to divest for socio-economic benefit; [iv] the prevailing socio-economic conditions in each Magnox Site's locality; [v] results of local stakeholder engagement; [vi] skills retention in localities/skills transfer from each Magnox Site to local communities; [vii] transfer of learning from the PBO to the Magnox Contractor; [viii] apprentice scheme development; [ix] maximising the potential/capacity of local supply chains to bid for 	See Completion Criteria - 6.8, above	<p>Excludes [12]; [16]</p> <p>Phase 1 [21], [22], [23], [24], [25], [26], [27], [28], [29], [33]</p> <p>Phase 2 [21], [22], [23], [24], [25], [26], [27], [28], [29], [33]</p>

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
		<p>work from each Magnox Site;</p> <ul style="list-style-type: none"> [x] engagement with local education establishments, supporting curriculum and raising aspirations; [xi] supporting the spin-out of functions from the Magnox Sites to the local economy; and [xii] re-location of associated staff/offices/businesses to locality around the Magnox Site(s). 		
6.8.2	SLC Programme Requirement (RSRL) Develop plans suited to RSRL Sites	<p>The Contractor shall:</p> <p>6.8.2(a) prioritise areas for support. The plan(s) prepared and maintained by the Contractor pursuant, to Requirement 6.8 above, should take into account:</p> <ul style="list-style-type: none"> [i] local Socio-Economic Development/Regeneration Plans; [ii] availability of Authority-owned, proximate land to divest for socio-economic benefit; [iii] the differing stages of each RSRL Site's life-cycle; [iv] the prevailing socio-economic conditions in each RSRL Site's locality; [v] results of local stakeholder engagement; [vi] skills retention in localities/skills transfer from each RSRL Site to local communities; [vii] transfer of learning from the PBO to the RSRL Contractor; [viii] apprentice scheme development; [ix] maximising the potential/capacity of local supply chains to bid for work from RSRL Sites; [x] engagement with local education establishments, supporting curriculum and raising aspirations; [xi] supporting the spin-out of functions from each RSRL Site to the local economy; and [xii] re-location of associated staff/offices/businesses to locality around 	See Completion Criteria - 6.8, above	<p>Phase 1 [12], [16]</p> <p>Phase 2 [12] , [16]</p>

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
		the RSRL Site(s).		
6.9	<p>Critical Enablers: Public & Stakeholder Engagement & Communications: To build and maintain the support, confidence trust of the public and stakeholders</p> <p>SOD Reference: SMS/TS/F9/SOD001 (Version V2 February 2012)</p>	<p>To support the Authority's Strategy of open and transparent communication, developing individual communication strategies as appropriate to the topic or issue, the Contractor shall commit sufficient human and financial resources to do the following, to the Authority's reasonable satisfaction:</p> <p>6.9(a) carry out public and stakeholder engagement, consultation and communication to support the Contractor's approach to delivering the Interim State/Interim End State/Site End State in accordance with Good Industry Practice;</p> <p>6.9(b) manage the arrangements for engaging with local stakeholders (as identified in the annual communications plan) at each Site, including organising and contributing to regular Site Stakeholder Group (SSG) meetings and their equivalents that are open to the public, Local Authority representatives, media and other interested parties and maintaining the secretariat function and record-keeping associated with these meetings;</p> <p>6.9(c) comply with the principles set out in the Public Stakeholder Engagement and Communications - Statement of Principles (August 2010), which requires clarity, openness, transparency and accessibility, and with the Authority's corporate branding requirements;</p> <p>6.9(d) prepare and deliver a Communications Strategy, updated annually to take account of planned activities at all sites, means of communication and definition of target audiences;</p> <p>6.9(e) comply with the Authority's communications planning arrangements, identifying key issues, risks and opportunities and measures both to mitigate risks and seek opportunities to promote progress;</p> <p>6.9(f) report progress to the Authority via monthly face-to-face client meetings and use the Communications Planning Tool, or its equivalent;</p> <p>6.9(g) maintain a website to hold a wide range of general and site-specific information about Decommissioning progress, socio-economic support, and stakeholder information, including updates on performance progress and its environmental impact on the Sites (including updates to the NDA</p>	<p>[i] Submission of an annual communications plan to the Authority, approved by the Authority and in accordance with the Contractor's Integrated Management System</p> <p>[ii] Additionally, the Contractor shall each month complete and submit to the Authority an updated version of the Communications Planning Tool, or its equivalent</p> <p>[iii] Evidence that that the Contractor is maintaining its website to hold Stakeholder information</p> <p>[iv] Evidence of stakeholder feedback on the Contractor's performance to be collated through an annual stakeholder survey and feedback mechanisms</p>	<p>Phase 1 ALL</p> <p>Phase 2 ALL</p>

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
		<p>Strategy Strategic Environmental Assessment Site Specific Baseline when required), until the date on which the Site End State is achieved;</p> <p>6.9(h) seek and make good use of opportunities to gain positive media coverage;</p> <p>6.9(i) develop and maintain multi-media records (photographic, video and electronic) of Decommissioning and clean-up progress at each Site in line with the Authority's Information and Knowledge Management Strategy;</p> <p>6.9(j) employ personnel with relevant communications skills, qualifications and experience and ensure continuous development of communications and stakeholder engagement team resources; and</p> <p>6.9(k) provide ad hoc support on unanticipated matters (e.g. media enquiries, FOI requests and/or parliamentary questions).</p>		
6.10	<p>Critical Enablers: Transport & Logistics: To ensure the efficient transportation of radioactive and bulk materials is carried out safely and securely</p> <p>SOD Reference: SMS/TS/F10/SOD001 (Version V2 February 2012)</p>	<p>To support the Authority's Strategy in relation to the Authority's requirement to ensure the efficient transportation of Radioactive and bulk materials is carried out safely and securely the Contractor shall:</p> <p>6.10(a) <i>in developing plans in relation to transporting Radioactive Materials and non-Radioactive materials, including bulk volumes from the Sites to an intermediate treatment or storage facility or final storage or a disposal facility ensure:</i></p> <p><i>[i] the safety and security of material movements and the protection of people and the Environment and consider the impact on the resulting carbon footprint;</i></p> <p><i>[ii] optimisation of the planned transportation between Sites;</i></p> <p><i>[iii] the reduction in the adverse impact of all transport modes</i></p>	<p>[i] Submission to the Authority (at least quarterly) of Radioactive and bulk materials transportation forecast submissions (approved in line with the Contractor's Integrated Management System) and ONR Radioactive Materials Transport approval</p> <p>[ii] Submission to the Authority of transport assets made available through the NDA Asset Transfer System (NATS)</p>	<p>Phase 1 ALL</p>

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
		<p><i>throughout the transport routes;</i></p> <p><i>[iv] common and reliable packaging and coordinate transport arrangements to support movement and disposal requirements;</i></p> <p><i>[v] transportation by rail where practicable; and</i></p> <p><i>[vi] maximising the use of existing Authority Assets (including transport infrastructure) rather than develop or procure new assets;</i></p> <p>6.10(b) liaise with the Authority to ensure use of Authority transport assets and capability are appropriately considered and to co-ordinate Waste, Nuclear Fuel or Nuclear Material movement to central facilities;</p> <p>6.10(c) ensure that the suitability of existing infrastructure, particularly the use of Authority Assets, is considered before the Contractor invests in new infrastructure; and</p> <p>6.10(d) contribute to ensuring that transport and logistics are optimised across the Authority Estate.</p>	<p>[iii] With regard to 6.10(c) provide a Business Case approved in line with the Contractor's Integrated Management System and which satisfies the Authority Procedure - EGG08 prior to investment in new infrastructure</p> <p>[iv] With respect to 6.10 (d) the Contractor shall actively participate in the relevant Authority established forums at least on a quarterly basis (for example the Transport and Logistics Working Group)</p>	<p>Phase 2</p> <p>[12], [23], [24], [25], [26], [27], [29], [33]</p>
6.11	<p>Critical Enablers:</p> <p>International Relations: To gain access to international good practice from relationships with counterpart organisations in other countries; to influence technical and legislative</p>	<p>To support the Authority's Strategy in relation to the Authority's role in maintaining strategic international relationships, including bilateral agreements where appropriate, and to facilitate access to international organisations for SLCs, the Contractor shall:</p> <p>6.11(a) utilise the Authority's international relationship routes and agreements to:</p> <p>[i] foster good contacts within overseas counterpart organisations; and</p> <p>[ii] facilitate the exchange of information and other collaboration</p>	<p>[i] Submission to the Authority of an annual report approved in line with the Contractor's Integrated Management System that summarises how the Contractor has utilised the Authority's international relationship routes and agreements</p> <p>[ii] Submission to the Authority of</p>	<p>Phase 1</p> <p>ALL</p>

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Ref.	Requirement	Contractual obligation	Evidence of Completion	Phase/Site(s)
	developments; to maintain good relations with overseas communities and to support Government policy SOD Reference: SMS/TS/F13/SOD001 (Version V2 February 2012)	mechanisms, to support the effective delivery of the LTP Performance Plan; and subject to the provisions of this Agreement, utilise PBO expertise and relationships as appropriate to deliver the Authority's requirements to maintain strategic international relationships. 6.11(b)	a written report following direct engagement overseas counterpart organisations	Phase 2 ALL

Part 2 - Section 3: Strategy Development Support - Table 4

The table below provides a list of requirements where obligations are placed on the Contractor through Part 2–Section 2 (*Detailed Specification*) of the Client Specification relative to Strategy Development Support. The extent of options assessment will depend on specific issues regarding the topic and should be determined in conjunction with the Authority. Typically however, such work would include:

- Full analysis of the options for an alternative strategy (including all relevant stakeholder engagement) (NDA Strategy Management System Gate A);
- Selection of a preferred option (NDA Strategy Management System Gate B); and
- The preparatory work to implement the preferred option (business case NDA Strategy Management System Gate C), any further regulatory engagement (potentially including permitting activities) and preparation of Proposed Change.

Further guidance is available in NDA procedure Strategy Management System – A Guide to Topic Strategy Production Doc No: SMSG04.

Three Strategy Development Support projects have been identified to be costed as part of the Target Cost and are captured as Authority Milestones (M116 – SR1, M117 – SR2 and M118 – SF2) ("Strategy Development Support Milestones") .

Provision of Strategy Development Support (other than pursuant to the Strategy Development Support Milestones) will be provided by the Contractor to the Authority in accordance with Schedule 20 (Call-Off Support) of the SLCA.

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Ref.	Strategy Development Support	Included in Target Cost
SR1	An alternative Site End State for Winfrith Site [WIN - Site 16] which assumes that the Secretary of State revokes the designation for the Winfrith Site once the Site is restored to a condition suitable for use as public-access heath land, i.e. the Interim End State becomes the Site End State perhaps, but not necessarily, as a consequence of the regulatory framework changing to allow delicensing with a proviso over the subsequent use of the Site. The requirement is to describe how the case for revoking the designation might be made and what it might comprise, including a discussion of how to manage ongoing liabilities and any associated institutional controls.	Yes
SR2	<p>Identification of the optimum period between reactor shutdown and dismantling (recognising that 40 and 85 years are not the only credible options).</p> <p>For example: The period of Quiescence following reactor shutdown at the Magnox Sites is reduced from 85 years to 40 years from reactor shutdown. During Phase 2, the majority of Sites are progressed to an Interim State appropriate to deferring reactor dismantling for 40 years from reactor shutdown, with work programmed to minimise and preferably avoid any fleet-wide Quiescence.</p> <p>The requirement is to provide an assessment of the impact on the programme that would result from this change of strategy, i.e. a comparison with the Contractor's proposal for responding to the Requirements of the Client Specification based on a period of quiescence of approximately 85 years.</p> <p>The Contractor should assume that the Site End State involves achieving the current criteria for ending the Period of Responsibility under the Nuclear Installations Act.</p>	Yes
SR3	<p>Requirement to determine the feasibility of reactor Dismantling to achieve any Site End State.</p> <p>During Phase 2, one reactor is Dismantled in order to demonstrate feasibility. Any Waste requiring disposal in the GDF is stored pending availability of this route.</p>	No
SR4	Requirement to support the Authority and RWMD with development of Waste packaging that facilitates Decommissioning.	No
SF1	<p>Requirement to support the development of the Authority's strategic contingency and alternative options in the event of acute or chronic failure of the MOP.</p> <p>The strategy development work will address:</p> <ul style="list-style-type: none"> interim dry storage prior to Conditioning and Disposal; interim wet storage prior to Conditioning and Disposal; Conditioning of wetted fuel, interim storage and Disposal; 	No

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Ref.	Strategy Development Support	Included in Target Cost
	<ul style="list-style-type: none"> provide capability to evaluate contingency and alternative strategic options; and provide support to evaluate alternative de-fuelling priorities/discharge routes. 	
SF2	Scenarios in which performance is not being achieved as expected by the MOP9. The requirement is to provide an assessment of the impact on the Magnox SLC programme resulting from the performance being different to the assumed 500tU/year reprocessed within the range identified in MOP9 (450 tU/year and 740 tU/year) and options should the rate fall below the lower bound performance range (450tU/year) of the MOP9.	Yes
NM1	Consider alternative management options for LEU including: storage at alternative sites; direct sale; and, processing to support sale or alternative storage options.	No
NM2	Consider alternative management options for natural and depleted uranium including: storage at alternative sites; direct sale; and, processing to support sale or alternative storage options.	No
IW1	<p>Requirement to support the development of the Authority's potential alternative strategy for on-Site, near surface management and disposal in compliance with and to implement Scottish HAW policy.</p> <p>In relation to HNA [Site 25] and CHX [Site 33]:</p> <ul style="list-style-type: none"> identify within plans which Waste streams could be Disposed of via alternative Disposal means e.g. on Site burial; identify within plans which Waste streams could be stored in suitable facilities, specifically identifying those Wastes not suitable for long term storage. 	No
IW2	Requirement to support the Authority's potential alternative strategy to review UK system for Radioactive Waste Classification.	No
IW3	Requirement to support the Authority's potential alternative strategy for the long-term management and disposal of graphite Wastes including: bulk reactor graphite, fuel sleeves and test reactor graphite.	No
IW4	Potential to support the Authority in its role as the implementing organisation for geological disposal particularly with regard to engaging local Governments and communities who have registered interest in discussions about participation in the siting process.	No
IW5	Potential to change the packaged ILW transport and emplacement schedule for each Site and review and amend the date of delivery of the Site(s) End State where applicable following determination of GDF availability.	No
IW6	4.3.4.2(a) consider benefits of consolidated ILW storage within the Authority Estate and with other ILW producers (including "B stations" adjacent to Authority Sites) (See Part 2 - Section 2: Detailed Specification – Table 3 Requirement 4.3.4.2 (a))	Yes (included as a requirement in Table 3)
BO1	Requirement to support the Authority's potential alternative strategy for evaluating opportunities for the use of Authority capability and assets for the future management of third party liabilities (e.g. "B stations" and new nuclear build adjacent to Authority Sites) and to develop	No

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Ref.	Strategy Development Support	Included in Target Cost
	specific business cases articulating benefit to the UK Taxpayer.	
BO2	Potential to undertake Waste and/or Decommissioning services for CCFE Culham.	No
BO3	Potential to undertake Waste and/or Decommissioning services for Imperial College Consort.	No

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Part 2 – Section 4: Completion Criteria – Table 5

The following table sets out a number of generic Completion Criteria, which typically apply to more than one of the Requirements in Table 3 (Detailed Specification Part 2 Section 2). Where a Completion Criteria is relevant to a Requirement, this is indicated in Table 3. This table (Table 5) describes the scope of Completion Criteria and the evidence that must be provided to demonstrate completion. There are also Requirement-specific Completion Criteria in Table 3 (Detailed Specification Part 2 Section 2).

In several of the rows the Evidence of Completion refers to an “Authority approved Contractor options assessment report”. It is intentional that the specific nature of that report is not described, as this may differ between Requirements and Sites. In some circumstances the report may be produced specifically for this purpose, in other cases a report produced for another purpose may be suitable (for example a BAT case produced for Regulatory purposes). In some cases a single report may be suitable for meeting the Evidence of Completion for more than one Site or project.

Examples of the types of reports that could fulfil this purpose include: a Strategy Management System gate paper; a BAT, BPEO or BPM paper produced for Regulators; a Business Case; or a project specific optioneering report. In general, it is expected that this would include consideration of issues such as safety, environment, economic and financial considerations and the interests of relevant stakeholders and would consider impacts over the whole lifecycle of the Site, not just the term of the SLCA. Where a decision results in residual risks, it is expected that these are Tolerable Risks (or lower risks). The level of effort required to produce this evidence should be proportionate to the scale of the issue being considered.

Ref.	Activity	Scope - Completion Criteria	Evidence of Completion
CC1	Post Operational Clean Out (POCO)	<ul style="list-style-type: none"> As appropriate to the Contractor's technical solution, all pipe work, vessels and tanks drained and made ready for strip out of all internal fixtures and fittings (including equipment, pipe work, vessel and tanks). All operational inventories of Radioactive and non-Radioactive materials removed from the plant and plant demonstrated to meet the conditions of the Decommissioning Safety Case to allow Decommissioning to commence. All relevant Waste and equipment removed and treated and/or disposed of, or placed in final package suitable for future 	<ul style="list-style-type: none"> [i] Photographic evidence. [ii] Decommissioning Safety Case accepted by Accountable Person(s) to allow Decommissioning to commence. [iii] Survey to demonstrate that all operational inventory has been removed from the plant. [iv] Approved Waste consignment notes/evidence of treatment and/or disposal.

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Ref.	Activity	Scope - Completion Criteria	Evidence of Completion
		treatment and/or disposal.	
CC2	New plant construction	<ul style="list-style-type: none"> All new plant fully commissioned with design intent or throughput demonstrated. 	<ul style="list-style-type: none"> [i] Photographic evidence of physical construction completion. [ii] Approved commissioning reports (where appropriate inactive and active commissioning reports) completed and accepted by Accountable Person(s) and made available to the Authority if requested. [iii] CDM Health and Safety file completed and accepted by Accountable Person(s) and made available to the Authority if requested. [iv] Report demonstrating to the Authority's satisfaction that design intent or throughputs have been met. [v] Approved Operational Safety Case completed and accepted by Accountable Person(s) and made available to the Authority if requested. [vi] Where required for facility operations, signed copies of relevant consents and permissions obtained from the appropriate Regulator(s).
CC3	Magnox Reactors prepared for Safestore	<ul style="list-style-type: none"> Reactor de-fuelling completed. Reactor buildings deplanting and soft strip completed and structure isolated and all Hazardous Material removed and unlit, unheated and isolated from all sources of hazardous energy (where practicable). Heat exchangers purged of water and penetrations sealed and made safe for the Quiescent Period. Voids within Safestore made safe. For any residual active systems, necessary controls and monitoring regimes required are completed and put in place by the Contractor for the Quiescent Period. Relevant consents and permissions have been obtained from the 	<ul style="list-style-type: none"> [i] Authority approved Contractor options assessment report demonstrating that the appropriate level of Decommissioning and remediation has been Achieved and any residual risks are Tolerable Risks or lower risks. For example, costs identified for controls, maintenance and monitoring regimes during Quiescence are less than the costs of implementing further Decommissioning and remediation prior to Quiescence. [ii] Building condition survey (including Radiological survey) completed and accepted by Accountable Person(s) and submitted to the Authority. [iii] Signed evidence of acceptance of the reactor Safestore management and monitoring arrangements by the Contractor's manager responsible for implementing Interim State and Interim

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Ref.	Activity	Scope - Completion Criteria	Evidence of Completion
		appropriate Regulator(s) in relation to reactor Safestore.	End State management arrangements. [iv] Signed copies of relevant consents and permissions obtained from the appropriate Regulator(s) in relation to reactor Safestore.
CC4	Research Reactors (including the reactor vessel, associated shielding and cooling systems)	<ul style="list-style-type: none"> Research Reactors Decommissioning and Dismantling fully completed. All Waste resulting from reactor Dismantling has been treated and/or disposed of, or placed in final packages suitable for future treatment and/or disposal. 	[i] Photographic evidence. [ii] Signed evidence of acceptance that the reactor buildings footprint is suitable for Interim State or Interim End State entry by the Contractor's manager responsible for building demolition. [iii] Letters of Compliance for all Intermediate Level Wastes received. [iv] Approved Waste consignment notes/evidence of treatment and/or disposal. [v] Declassification reports approved by Accountable Person(s).
CC5	Radioactive Contaminated Structures (ILW Vaults; Cells; Ponds; Fuel Routes facilities; Waste Treatment (including effluent treatment, etc)	<ul style="list-style-type: none"> All tanks/vessels/vaults/structures containing wet Wastes emptied (including heels/residual sludges) and processed and Waste packages subsequently disposed or transferred to long term Waste storage. All tanks/vessels/vaults/structures containing dry Wastes emptied and processed and Waste packages subsequently disposed or transferred to long term Waste storage. All residual operational Radioactive inventories of Radioactive and non-Radioactive materials removed from the structures. Radioactive Contaminated structures decontaminated to agreed cleanup criteria and de-planting completed. Overbuilding requirements minimised and active water management arrangements minimised; below ground facilities assessed for ingress/egress containment. Building shells isolated and prepared for demolition (CC7). 	[i] Photographic evidence. [ii] Letters of Compliance for all Intermediate Level Wastes received. [iii] CDM Health and Safety file updated and accepted by Accountable Person(s) and made available to the Authority if requested. [iv] Authority approved Contractor options assessment report demonstrating that the appropriate level of Decommissioning and remediation has been Achieved and any residual risks are Tolerable Risks or lower risks. For example, costs identified for controls, maintenance and monitoring regimes during Quiescence are less than the costs of implementing further Decommissioning and remediation prior to Quiescence. [v] Signed evidence of acceptance of the area by the Contractor's manager responsible for building demolition. [vi] Signed evidence of acceptance of the structure's management and monitoring arrangements by the Contractor's manager responsible for implementing Interim State and Interim End State management arrangements.

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Ref.	Activity	Scope - Completion Criteria	Evidence of Completion
			[vii] Approved Waste consignment notes/evidence of off-Site disposal.
CC6	Building decontamination	<ul style="list-style-type: none"> • Building shells isolated (mechanically and electrically) with soft strip completed and all Hazardous Material removed. • Floor bases suitably remediated in preparation for demolition activities. • Radioactive and non-Radioactive (e.g. asbestos) Contamination removed such that the requirements for demolition have been satisfied and the plant is demonstrated to the satisfaction of the Authority to be suitable for demolition without the need for future decontamination. • All Waste resulting from preparation for demolition treated and/or disposed of, or placed in final package suitable for future treatment and/or disposal. • Responsibility for buildings has transferred from Contractor's decontamination team/project to Contractor's demolition team/project (as appropriate). 	<ul style="list-style-type: none"> [i] Photographic evidence. [ii] Signed evidence of acceptance of the area by the Contractor's manager responsible for building demolition. [iii] Isolation certificates. [iv] Declassification reports approved by Accountable Person(s). [v] CDM Health and Safety file updated and accepted by Accountable Person(s) and made available to the Authority if requested. [vi] Approved Waste consignment notes/evidence of treatment and/or disposal.
CC7	Above ground demolition (Removal of Buildings)	<ul style="list-style-type: none"> • All building shells and structures on the Site removed to below ground level (except where agreed with the Authority that a structure should not be removed to below ground level). See also CC8. • Timing of building demolition to take account of land characterisation and land remediation requirements. 	<ul style="list-style-type: none"> [i] Where the Contractor plans not to remove a structure to below ground level, an Authority approved Contractor options assessment report demonstrating that the appropriate level of cost effective Decommissioning and remediation has been Achieved and any residual risks are Tolerable Risks (or lower risks). For example, lifetime costs identified for controls, maintenance and monitoring regimes are less than the costs of implementing further Decommissioning and remediation prior to Quiescence. [ii] Photographic evidence showing structures have been removed. [iii] CDM Health and Safety file completed and accepted by Accountable Person(s) and made available to the Authority if requested. [iv] Signed evidence of acceptance of the structural management and

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Ref.	Activity	Scope - Completion Criteria	Evidence of Completion
			<p>monitoring arrangements by the Contractor's Accountable Person for implementing Interim State and Interim End State management arrangements.</p> <p>[v] Foundation slab condition survey (including radiological survey) completed and accepted by Accountable Person(s) and submitted to the Authority.</p>
CC8	Foundations and Subsurface structures	<ul style="list-style-type: none"> The extent to which foundations and subsurface structures are to be removed to be agreed with the Authority, taking account of Regulatory Requirements, stakeholder interests and impacts on the lifetime of the Site (including final site clearance activities and the Site End State). All foundations and subsurface structures remediated in line with the agreed Interim State or Interim End State (as appropriate). This may include leaving structures in situ provided that residual Radioactive and non-Radioactive Contamination levels poses a Tolerable Risk (or lower risks) to safety, health or the environment in the period between the Interim State or Interim End State (as applicable) and the Site End State and agreement is reached with the relevant Regulator(s). Where concrete substructures exist, which are not part of a building foundation, they may be left in situ provided that they meet the same conditions as would have been required had they been classed as foundations. Where appropriate, utilise reused or recycled material to backfill void volumes and other site restoration activities rather than importing clean fill material unnecessarily. Subject to the agreement of relevant Regulators, this may include reuse of inert material, or suitable Radioactive and/or non-Radioactive contaminated material from Decommissioning and remediation activities that is "Out of Scope or Exempt" material (EPR/RSA regulations) and in certain circumstances VLLW and LLW. 	<p>[i] Authority approved Contractor options assessment report demonstrating that the appropriate level of cost effective Decommissioning and remediation has been Achieved and any residual risks are Tolerable Risks or lower risks. For example, lifetime costs identified for controls, maintenance and monitoring regimes are less than the costs of implementing further Decommissioning and remediation prior to Quiescence. This should take into account the agreed Site End State and the impact on final site clearance activities.</p> <p>[ii] A report clearly identifying on Site drawings the location of all foundations and substructures that are to be retained and left in situ.</p> <p>[iii] Signed evidence of acceptance by the Accountable Person(s) responsible for implementing Interim State and Interim End State management arrangements.</p> <p>[vi] For backfilled demolition void space, evidence that inert (or where appropriate suitable Radioactive Contaminated material from Decommissioning and remediation activities including "Out of Scope or Exempt" material (EPR/RSA regs) has been used (or an assessment report showing why it was discounted) rather than importing clean fill.</p> <p>[iv] Signed copies of relevant consents and permissions obtained from the appropriate Regulator(s) in relation to foundations and sub-structures being left in-situ supporting Interim State and Interim End State entry.</p>

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Ref.	Activity	Scope - Completion Criteria	Evidence of Completion
CC9	Land Contamination	<ul style="list-style-type: none"> Detailed land quality assessment completed that shows: <ul style="list-style-type: none"> Contamination levels in the ground and ground water have been determined via a robust characterisation plan to prepare the Site(s) for their Interim State or its Interim End State (as applicable); For any residual Radioactive or non-Radioactive Contamination, necessary controls and monitoring regimes required to be put in place by the Contractor to prepare the Site(s) for their Interim State or its Interim End State (as applicable); Residual Radioactive or non-Radioactive Contamination poses a Tolerable Risk (or a lower risk) to safety, health or the environment in the period between the Interim State or Interim End State and the Site End State (as applicable). Relevant consents and permissions have been obtained from the appropriate Regulator(s) in relation to land quality demonstrating that the requirements of Site(s) Interim State or its Interim End State can be met. 	<ul style="list-style-type: none"> [i] Land quality assessment accepted by Accountable Person(s). [ii] Authority approved Contractor options assessment report demonstrating that the appropriate level of Decommissioning and remediation has been Achieved and any residual risks are Tolerable Risks or lower risks. For example, costs identified for controls, maintenance and monitoring regimes during Quiescence are less than the costs of implementing further Decommissioning and remediation prior to Quiescence. [iii] Signed copies of relevant consents and permissions obtained from the appropriate Regulator(s) in relation to land quality supporting Interim State and Interim End State entry (as applicable).
CC10	Utilities and Site Infrastructure	<ul style="list-style-type: none"> Detailed assessment to demonstrate that the residual life of the Site infrastructure is sufficient to support the Site to its Site End State. 	<ul style="list-style-type: none"> [i] Authority approved Contractor options assessment report demonstrating that the appropriate level of Decommissioning and remediation has been Achieved and any residual risks are Tolerable Risks or lower risks. For example, costs identified for controls, maintenance and monitoring regimes to manage the residual life of the Site infrastructure during Quiescence are less than the costs of implementing further Decommissioning and remediation prior to Quiescence. <i>All roads and footpaths on the Site are to be left in situ provided that they meet the requirements of the Interim State/Interim End State.</i> [ii] An assessment report explicitly identifying those assets or infrastructure supported by an Asset Management Plan.

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Ref.	Activity	Scope - Completion Criteria	Evidence of Completion
			<p>[iii] A report clearly identifying the location of all roads and footpaths that are to be retained and left in situ.</p> <p>[iv] Signed evidence of acceptance of the Asset management arrangements by the Contractor's manager responsible for implementing Interim State and Interim End State management arrangements.</p> <p>[v] Signed copies of relevant consents and permissions obtained from the appropriate Regulator(s) to demonstrate that the residual life of the Site facilities is sufficient.</p>
CC11	Site Drains and Underground Services	<ul style="list-style-type: none"> • Detailed assessment for drains and underground services on the Site that shows: <ul style="list-style-type: none"> - Residual Contamination (Radioactive and non-Radioactive) determined via a robust characterisation plan to prepare the Site(s) for their Interim State or its Interim End State; - The condition of the drains and services are such that they can be left in-situ and satisfy the requirements to Achieve the Interim States and Interim End State (as applicable) without further remediation activity (and meets the requirements of the Site End State); - That residual drains on Site are sufficient to manage future surface water run off; and - The location of all drains and underground services that are to be retained and left in situ. • Relevant consents and permissions have been obtained from the appropriate Regulator(s) in relation leaving drains and services in-situ. 	<p>[i] Authority approved Contractor options assessment report demonstrating that the appropriate level of Decommissioning and remediation has been Achieved and any residual risks are Tolerable Risks or lower risks. For example, costs identified for controls, maintenance and monitoring regimes to manage the underground drains and services during Quiescence are less than the costs of implementing further Decommissioning and remediation prior to Quiescence.</p> <p>[ii] Copies of isolation certificates for any buried cables left in situ and updated drawings showing where cables have been left in situ and isolated.</p> <p>[iii] Signed evidence of acceptance of the Asset management arrangements by the Contractor's manager responsible for implementing Interim State and Interim End State management arrangements.</p> <p>[iv] Evidence from the Contractor to the Authority that it has updated the Site drawings showing all drains and other buried utility services that are to be left in situ on the Site such updated Site Drawing to be available to the Authority on request.</p> <p>[v] Signed copies of relevant consents and permissions obtained from the appropriate Regulator(s) to demonstrate that underground drains and services can be left in-situ.</p>



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Part 3: Milestones – Table 6

The Milestones and Authority Milestones set out in Table 6 represent the outcomes expressed in the Magnox LTP and the RSRL LTP for each Site (and for a number of tasks that do not relate to a particular site, including Strategy Development Support and Asset Management requirements) within each of Phase 1 and Phase 2.

The Milestone dates are indicative of the 2013 Magnox LTP and the 2013 RSRL LTP for delivery of these outcomes and are not intended to be legally binding. The Authority Milestones are highlighted in bold text and with a grey background and the dates against these Authority Milestones and are intended to be legally binding and the consequences for failure to deliver such Authority Milestones are set out in the Site Licence Company Agreement. The Authority Milestones and their accompanying dates cannot be altered unless agreed with the Authority in accordance with the Change Control Procedure.

The third column of Table 6 ("Evidence of Completion/ Completion Criteria") indicates the most significant Requirements from Table 3 (*Detailed Specification*) that must be delivered to meet the scope of the Milestone and to Achieve completion of the Milestone. It is expected that evidence of completion for the Milestones will be drawn from the completion criteria and evidence associated with these Requirements, as detailed in column 4 ("Evidence of Completion") of Table 3 (*Detailed Specification*).

In some circumstances a milestone may only represent a step in the progress of implementing a Requirement from Table 3 (*Detailed Specification*), in which case relevant information to demonstrate progress is likely to be required. (For example M27 demonstrates completion of the weather envelope for the Bradwell reactors, which is only a step in the process of preparing the reactor for safestore (requirement 1.1.1.2 (a) from Table 3 (*Detailed Specification*)), in which case the Contractor is likely to provide relevant evidence of progress using the completion criteria detailed for this Requirement).

For non-Site specific Milestones, a specific deliverable is detailed in the third column of Table 6 ("Evidence of Completion / Completion Criteria") to demonstrate what is required for Achievement of that Milestone.

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SITE	Site Specific Elements	Evidence of Completion/ Completion Criteria	Milestone Dates
[12] Harwell (HAR)	M1. LETP Decommissioning and land remediation completed	1.1.2 1.2.1	Jun-19
	M2. B462 (tube stores) empty	4.3.7 4.3.9 4.3.9.1	Jan-21
	M3. Northern area delicensed	1.2.1 5.2.1	Feb-21
	M4. B462 (tube stores) decontamination complete	1.1.2	Feb-21
	M5. B462 RHILW encapsulation and interim storage completed.	4.3.4 4.3.4.1	Jun-22
	M6. All Nuclear Materials (including relevant Exotic Fuel, CHILW and uranics) removed from the Harwell Site	2.2.1 3.1.1 4.3.10 4.3.11	Feb-22
	M7. B459 Decommissioning complete	1.1.2	Apr-25
	M8. PLUTO MTR Reactor demolition complete	1.1.1.1 (a) 4.4.1	Apr-25
	M9. DIDO MTR Reactor demolition complete	1.1.1.1 (a) 4.4.1	Apr-25
	M10. BEPO Reactor demolition complete	1.1.1.1 (a) 4.4.1	May-25
	M11. B220 Decommissioning complete	1.1.2	Sep-25
	M12. Interim State Achieved	1.3 1.3.1 1.3.2 1.3.3	Mar-27
[16] Winfrith (WIN)	M13. Balance of Winfrith Decommissioning (BOWD) ALES and sea discharge pipeline Decommissioning complete	1.1.2.1 (a) 1.1.2.1 (b)	Jan-20
	M14. Onsite drains Decommissioned	1.1.4 1.2.2	Oct-20
	M15. Dragon project complete	1.1.1.1 (a) 4.4.1	Mar-21
	M16. SGHWR project complete	1.1.1.1 (a)	Mar-21
	M17. BOWD infrastructure and minor facilities demolition complete	1.1.2.1 (a) 1.1.3	Mar-21

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SITE	Site Specific Elements	Evidence of Completion/ Completion Criteria	Milestone Dates
	M18. Interim End State Achieved	1.3 1.3.1 1.3.2 1.3.3 (a) 1.3.5 4.3.4.3	Mar-21
[21] Berkeley (BRK)	M19. Complete retrieval and treatment operations for vault Waste	4.4.2 4.3.7 4.3.8 4.3.8.1	Aug-17
	M20. All ILW passively stored (assumes all vault Waste and shielded area Waste Conditioned)	4.3.4 4.3.4.1 4.3.7 4.3.8.1	Oct-17
	M21. E23 Shielded Area Decommissioning complete	1.1.2	Mar-17
	M22. AETP & waste treatment plant Decommissioning complete	1.1.2 1.1.3 1.1.4	Mar-21
	M23. Interim State Achieved	1.3 1.3.1 1.3.2 1.3.3 (a)	Mar-21
[22] Bradwell (BRD)	M24. Active drainage Decommissioning complete	1.2.2	Sep-14
	M25. ILW (MCI; Contaminated sand & gravel; sludge) retrieved and treated	4.3.7 4.3.8	Sep-14
	M26. All ILW passively stored	4.3.4 4.3.4.1	Mar-15
	M27. Reactor buildings Safestore – weather envelope completed	1.1.1.2 (a)	Aug-15
	M28. Non-essential peripheral buildings deplanted & demolished	1.1.2 1.1.3	Nov-14
	M29. Ponds complex and Contaminated structures (vaults) suitable for Interim State entry	1.1.2	Mar-15
	M30. Interim State Substantially Complete⁷	1.1.1.2 (a)	Mar-15

⁷ Substantial completion at Bradwell is defined in the Magnox document "Bradwell Early Care & Maintenance Programme – Completion Overview"

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SITE	Site Specific Elements	Evidence of Completion/ Completion Criteria	Milestone Dates
		1.3 1.3.1	
	M31. Interim State Achieved	1.3 1.3.1 1.3.2 1.3.3 (a)	Dec-15
[23] Dungeness A (DNA)	M32. South side clearance – demolition of turbine hall ancillary buildings	1.1.3	Sep-14
	M33. South side clearance – demolition of turbine hall	1.1.3	Jan-15
	M34. Enabling works – control & instrumentation overlay system replacement complete	1.1.4.1	Sep-15
	M35. Ponds drained and surfaces treated to stabilise Contamination	1.1.2 4.3.6	Nov-17
	M36. Enabling works - modular AETP installed	1.1.4.1	Jan-18
	M37. Complete bulk asbestos removal	1.1.2 1.1.3	Feb 18
	M38. Complete inactive commissioning of ILW storage facility	4.3.4.1	Apr-18
	M39. All ILW retrieved, treated and passively stored⁸	4.3.4 4.3.4.1 4.3.7 4.3.8	Feb-19
	M40. Reactor deplanting complete	1.1.1.2 (a)	Nov-24
	M41. Ponds complex and Contaminated structures (vaults) suitable for Interim State entry	1.1.2 4.3.6	May-25
	M42. Active drainage Decommissioning complete	1.2.2	July-26
	M43. Non-essential peripheral buildings deplanted & demolished	1.1.2 1.1.3	Oct-26
	M44. Interim State Achieved	1.1.1.2 (a) 1.3 1.3.1 1.3.2 1.3.3 (a)	Mar-27

⁸ The reference to “retrieval” in milestones M39, M52, M64, M72, M106, M109 refers to the ILW at the Site that requires retrieval.

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SITE	Site Specific Elements	Evidence of Completion/ Completion Criteria	Milestone Dates
[24] Hinkley Point A (HPA)	M45. Ponds drained and surfaces treated to stabilise Contamination	1.1.2 4.3.6	Apr-15
	M46. Enabling works - modular AETP installed	1.1.4.1	Mar-17
	M47. Complete inactive commissioning of Interim Storage facility	4.3.4.1	Jul 17
	M48. Reactor deplanting complete	1.1.1.2 (a)	Nov-20
	M49. Ponds complex and Contaminated structures (vaults) suitable for Interim State entry	1.1.2 4.3.6	Jan-21
	M50. Active drainage Decommissioning complete	1.2.2	Mar-21
	M51. Non-essential peripheral buildings deplanted & demolished	1.1.2 1.1.3	Mar-21
	M52. All ILW retrieved, treated and passively stored	4.3.4 4.3.4.1 4.3.5 4.3.7 4.3.8	Nov-24
	M53. Interim State Achieved	1.1.1.2 (a) 1.3 1.3.1 1.3.2 1.3.3 (a)	Apr-25
[25] Hunterston A (HNA)	M54. All wet ILW retrieved and passivated	4.3.7	Feb-17
	M55. Solid Active Waste Bunkers Waste retrieved	4.4.2	Sep-17
	M56. Enabling works - electrical systems reconfiguration	1.1.4.1	Oct-17
	M57. Wet ILW retrieval and encapsulation plant Decommissioning complete	1.1.2	Jan-18
	M58. Active drainage Decommissioning complete	1.2.2	Nov-18
	M59. AETP & water treatment plant Decommissioning complete	1.1.2 1.1.3 1.1.4	May-19
	M60. Non-essential peripheral buildings deplanted & demolished	1.1.2 1.1.3	Jun-19
	M61. Ponds complex suitable for Interim State entry	1.1.2 4.3.6	Mar-20
	M62. Solid Active Waste Bunkers Decommissioning complete	1.1.2	Mar-20

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SITE	Site Specific Elements	Evidence of Completion/ Completion Criteria	Milestone Dates
	M63. Reactor deplanting complete	1.1.1.2 (a)	Aug-20
	M64. All ILW retrieved, treated and passively stored	4.3.4 4.3.4.1 4.3.7	Sep-20
	M65. Interim State Achieved	1.1.1.2 (a) 1.3 1.3.1 1.3.2 1.3.3 (a)	Mar-22
[26] Oldbury (OLD)	M66. All Fuel off Site	2.1.1	Dec-15
	M67. Enabling works - commissioning of alternative effluent dispersal line complete	1.1.4.1	Nov-15
	M68. Enabling works - electrical overlay system commissioned	1.1.4.1	Apr-16
	M69. Completion of inactive commissioning of Interim Storage facility	4.3.4.1	Oct-17
	M70. Ponds drained and surfaces treated to stabilise contamination	1.1.2 4.3.6	Jan-21
	M71. Non-essential peripheral buildings deplanted & demolished	1.1.2 1.1.3	Jun-22
	M72. All ILW retrieved, treated and passively stored	4.3.4 4.3.4.1 4.3.5 4.3.7 4.3.8	Jul-23
	M73. Reactor deplanting complete	1.1.1.2 (a)	Jun-24
	M74. Ponds complex and Contaminated structures (vaults) suitable for Interim State entry	1.1.2 4.3.6	Oct-24
	M75. Decommissioning modular AETP complete	1.1.2 1.1.3 1.1.4	Sep-26
	M76. Interim State Achieved	1.1.1.2 (a) 1.3 1.3.1 1.3.2 1.3.3 (a)	Sep-27
[27] Sizewell II A (SZA)	M77. All Fuel off Site	2.1.1	Sep-14
	M78. Enabling works - electrical & control & instrumentation systems reconfiguration	1.1.4.1	Oct-14

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SITE	Site Specific Elements	Evidence of Completion/ Completion Criteria	Milestone Dates
	complete		
	M79. ILW storage facility operational	4.3.4.1	Mar-17
	M80. Ponds drained and surfaces treated to stabilise Contamination	1.1.2 4.3.6	Mar-18
	M81. All FED processing complete	4.3.5	Feb-21
	M82. AETP & water treatment plant Decommissioning complete	1.1.2 1.1.3 1.1.4	Nov-22
	M83. Ponds complex suitable for Interim State entry	1.1.2 4.3.6	Nov-22
	M84. All ILW retrieved, treated and passively stored	4.3.4 4.3.4.1 4.3.7 4.3.8	Dec-23
	M85. Reactor deplanting complete	1.1.1.2 (a)	Jan-26
	M86. Non-essential peripheral buildings deplanted & demolished	1.1.2 1.1.3	Jan-26
	M87. Interim State Achieved	1.1.1.2 (a) 1.3 1.3.1 1.3.2 1.3.3 (a)	Mar-27
[28] Trawsfynydd (TRN)	M88. Ponds suitable for Interim State entry	1.1.2 4.3.6	Feb-15
	M89. AETP & waste treatment plant Decommissioning complete	1.1.2 1.1.3 1.1.4	Nov-15
	M90. All ILW passively stored	4.3.4 4.3.4.1 4.3.7 4.3.8	Nov-15
	M91. Active drainage Decommissioning complete	1.2.2	Aug-16
	M92. Non-essential peripheral buildings deplanted & demolished	1.1.2 1.1.3	Sept-16
	M93. Interim State Achieved (except height reduction and cladding)	1.1.1.2 (a)	Dec-16
	M94. Reactor building Safestore height reduction (demolition) & cladding (HRP) complete	1.1.1.2 (a) 1.3 1.3.1 1.3.2	Jul-26

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SITE	Site Specific Elements	Evidence of Completion/ Completion Criteria	Milestone Dates
		1.3.3 (a)	
[29] Wylfa (WYL)	M95. (Not used)		
	M96. Alternative effluent discharge system - project complete	1.1.4.1	Oct-16
	M97. Commence ILW storage facility construction	4.3.4.1	Dec-16
	M98. All fuel off Site	2.1.1	Dec-17
	M99. Complete inactive commissioning of interim storage facility	4.3.4.1	Jun-18
	M100. Electrical overlay system reconfiguration complete	1.1.4.1	Nov-18
	M101. Control & instrumentation system reconfiguration complete	1.1.4.1	May-19
	M102. Dry store cell ILW retrieval and processing close out	4.3.4 4.3.7 4.3.8	Mar-20
	M103. Desiccant retrieval and storage complete	4.3.4 4.3.7	Aug-20
	M104. AETP Decommissioning complete	1.1.2 1.1.3 1.1.4	Mar-25
	M105. Non-essential peripheral buildings deplanted & demolished – project complete	1.1.2 1.1.3	May-25
	M106. All ILW retrieved, treated and passively stored (excluding voids)	4.3.4 4.3.4.1 4.3.7 4.3.8	Mar-25
	M107. Interim State Achieved	1.1.1.2 (a) 1.3 1.3.1 1.3.2 1.3.3 (a)	Jun-25
[33] Chapelcross (CHX)	M108. Bulk asbestos removed (reactors only).	1.1.2 1.1.3	Oct-15
	M109. All ILW retrieved, treated and passively stored	4.3.4 4.3.4.1 4.3.7 4.3.8	Aug-16
	M110. Ponds drained and contamination stabilised	1.1.2	Sept-16

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SITE	Site Specific Elements	Evidence of Completion/ Completion Criteria	Milestone Dates
		4.3.6	
	M111. (First) Interim State Achieved	1.3 1.3.1 4.3.8.2	Mar-17
	M112. CXPP Decommissioning complete	1.1.2 4.3.8.2	Nov-27
	M113. AETP & waste treatment plant Decommissioning complete	1.1.2 1.1.3 1.1.4	Mar-28
	M114. Non-essential peripheral buildings deplanted & demolished	1.1.2 1.1.3	Mar-28
	M115. Interim State Achieved	1.1.1.2 (a) 1.3 1.3.1 1.3.2 1.3.3 (a)	Mar-28
Not site specific	M116. Complete Strategy Development Support study SR 1 – Winfrith Dedesignation (Table 4 – SR1)	Submission of Gate C paper for approval by the Authority	Sep-16
	M117. Complete Strategy Development Support study SR 2 – Period of Quiescence for Magnox reactors (Table 4 – SR2)	Submission of Gate C paper for approval by the Authority	Sep-16
	M118. Complete Strategy Development Support study SF 2 – Management of alternative MOP scenarios (Table 4 – SF2)	Submission of proposal for the management of spent Magnox fuel reflecting progress in the delivery of the MOP.	Sep-16
	M119. Update to Critical Assets Dashboard	Submission of updated Critical Assets dashboard	Sep-15
	M120. Asset Management Plan (End of Phase 1)	Submission of updated Asset Management Plan	Mar-21
	M121. Asset Management Plan (End of Phase 2)	Submission of updated Asset Management Plan	Mar-28

Annexes

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Annex 1 - Client Specification: Definitions

In this Schedule 1 the defined terms used shall have the same meaning as defined terms used in the SLCA except to the extent that such defined terms are given a different meaning below or are expressly otherwise defined elsewhere in this Schedule 1 the following terms shall, unless the context otherwise requires, have the meanings ascribed below:

"Accountable Person(s)" means those individuals authorised and responsible under the Contractor's Integrated Management System for ensuring and/or demonstrating completion of works specified in the Client Specification (this may be project specific or be a wider responsibility across the business);

"ALARP" or "as low as reasonably practicable" means the application of measures necessary to reduce risk until the cost of these measures whether in money, time or trouble, is disproportionate to the reduction of risk;

"Authority Estate" means the sites owned by the Authority and the Site Licence Companies that operate them and the Authority subsidiaries (e.g. DRS, INS, etc.);

"Authority's Socio-Economic Policy" means the Authority policy 'NDA Socio-Economic Policy, 2008';

"Authority's Strategy" means the NDA Strategy effective from April 2011;

"BAT" or "**Best Available Techniques**" means the latest stage of development of processes, facilities or methods of operation which indicate the practical suitability of a particular measure for limiting Waste arisings and disposal;

"Best Practicable Environmental Option" or "**BPEO**" means a set of procedures adopted with the goal of managing Waste and other Environmental concerns which emphasise the protection and conservation of the Environment across land, air and water. The BPEO procedure establishes for a given set of objectives, the option that provides the most benefits or the least damage to the Environment, as a whole, at acceptable cost, in the long term as well as in the short term;

"Best Practicable Means" or "**BPM**" means the term used by the Environment Agency and Scottish Environment Protection Agency in authorisations issued under the Radioactive Substances Act which requires operators to take all reasonably practicable measures in the design and operational management of their facilities to minimise Waste creation, abating discharges, and monitoring plant discharges and the Environment taking account of such factors as the availability and cost of relevant measures, operator safety and the benefits of reduced discharges and disposals;

"Business Case" means a business case prepared by the Contractor in accordance with public sector good practice and guidance issued by the Authority from time to time;

"CHILW" or "**Contact Handled ILW**" means packaged Radioactive ILW that due to its external dose rate it is able to be directly handled without the need of remote handling equipment;

"Collaborative Procurement" means the procurement of goods and services for benefit across the Authority Estate, whether by:

(a) one SLC on behalf of more than one SLC, and/or including a member of the Authority Estate, and/or an agreed external member forming part of a Collaborative Procurement initiative; or

(b) a centralised function within the Authority Estate; or

(c) a Third Party;

"Communications Planning Tool" means the Authority's planning matrix, which contains details of forthcoming communications milestones and events across the Authority Estate, who is responsible for

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delivering them, what level of communication activity is anticipated etc. Authority SLC communications teams provide the data for its compilation and use it in their monthly meetings with the Authority;

"**Concrete Lined Drums**" or "**CLDs**" means disposal containers (formally known as sea disposal drums) containing Radioactive ILW historically packaged for sea disposal;

"**Condition**", "**Conditioned**" and "**Conditioning**" means the process used to prepare Waste for long-term storage and/or disposal by converting it into a form that is physically and chemically stable, e.g. by encapsulation in cement;

"**Contamination**" means the presence of substances in areas other than originally intended or the presence of residue resulting from the historic presence of materials which have subsequently been removed and "**non-contaminated**" shall be construed accordingly;

"**Decay Storage**" means the process of allowing material containing short-lived radionuclides to decay so that the final Waste is easier to dispose of as Radioactive Waste, or until the point where the Waste becomes exempt from specific Regulatory Requirements;

"**Depleted uranium**" or "**DU**" means uranium which contains a reduced proportion of the fissile isotope ²³⁵U compared with Natural Uranium;

"**Direct Research Portfolio**" refers to the Authority's directly funded research programme to address generic multi-SLC needs, risks and opportunities identified from analysing the SLC's TBuRD documents and through the Nuclear Waste Research Forum;

"**Directive Wastes**" is the term used in national Legislation to describe Waste which (a) falls within the definition in Article 1(1)(a) of the Waste Framework Directive and (b) is not excluded from the scope of the Waste Framework Directive under Article 2(1)(b); it does not include Radioactive Waste, but does include the majority of non-radioactive Wastes generated at Authority sites;

"**Dismantle**" and "**Dismantling**" means the disassembly and removal of any structure, system or component during Decommissioning. Dismantling may be performed immediately after permanent retirement of a nuclear facility or it may be deferred;

"**Exotic Fuels**" means:

- (a) enriched unirradiated solid uranium and uranium compounds stored on the Site(s);
- (b) irradiated miscellaneous fuels group as defined by the Contractor's fuel strategy, but excluding those Thorium Waste fuels and post irradiation examination (PIE) samples which are to be encapsulated as Waste;

"**Fuel Element Debris**" or "**FED**" means residual parts of the magnesium alloy cladding that surrounded the Spent Magnox Fuel and was removed and stored at Site before the Spent Fuel was sent to Sellafield;

"**Fuel Free Verification**" means confirmation from Regulators that they deem there is no longer any nuclear fuel remaining on a given Site; this is achieved following exhaustive checks of all areas where fuel might realistically be located, with the scope of these checks being drawn up in agreement with the Regulator;

"**Geological Disposal Facility**" or "**GDF**" means the facility that will be developed under Government's Managing Radioactive Waste Programme for the management of Higher Activity Waste;

"**Harwell Oxford+**" means the science, innovation and business campus adjacent to the Harwell Site, which is owned and managed by a public-private sector joint venture;

"**Hazardous Materials**" means those materials that present a hazard to human health and come under consideration of the various hazardous materials Legislation, for example COSHH, lead, asbestos, etc.;

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"**Higher Activity Waste**" or "**HAW**" means the Waste which is defined in current UK categorisations as High Level Waste, Intermediate Level Waste (ILW) and certain Waste categorised as Low Level Waste (LLW), which by their nature are not currently suitable for disposal in existing LLW facilities;

"**IAEA**" means the International Atomic Energy Authority;

"**Information Assurance Maturity Model**" or "**IAMM**" means the HMG information assurance maturity model used by HMG Cabinet Office to set targets and measure progress of information risk management improvements across all UK Government Departments;

"**Information Governance**" means an amalgamation of the following disciplines: information management, information risk management, knowledge management, information and communication technology and intellectual property put in place by the Authority to fulfil the requirements of the Authority's Information Governance Strategy in order to meet its statutory and regulatory obligations;

"**Institutional Control**" means a legal or administrative tool or action taken to reduce the potential for exposure to hazards. Institutional controls may include, but are not limited to, land use restrictions, environmental monitoring requirements, and site access and security measures;

"**Integrated Waste Strategy**" or "**IWS**" means a strategy for the management of all Waste at a nuclear licensed site including information on how a Waste producer optimises its approach to Waste management in an integrated way; the Waste streams and discharges expected from current and future operations; and actions required to improve the approach to Waste management. The specification for the production of an IWS is contained in the Authority owned document ENG01;

"**Interim End State**" means in respect of a Site, the end of all physical works and no further active restoration work will take place to achieve the Site End State, i.e. restoration will be passive for example as a consequence of Radioactive decay;

"**Interim State**" means a natural milestone or decision point in the Site restoration programme that typically represents a significant reduction in risk and hazard and a change in how the Site is managed. For Magnox Sites and the Harwell Site the Interim State represents the Site entering a period of Quiescence;

"**Interim Storage**" means storage of Intermediate Level Waste until a final disposal route is available;

"**Interim Storage Period**" means the period of Interim Storage;

"**Intermediate Level Waste**" or "**ILW**" means Waste with activity levels above [12] gigabecquerel per tonne beta/gamma or 4 gigabecquerel per tonne alpha;

"**Letters of Compliance**" or "**LOC**" means the letters issued by the RWMD that set out the limits and conditions to be met in order to receive authorisation to send Waste to the GDF;

"**Low Enriched Uranium**" or "**LEU**" means uranium that has a concentration of the fissile isotope ²³⁵U greater than Natural Uranium and lower than 20% by weight;

"**Low Level Waste**" or "**LLW**" means Radioactive Waste with activity levels below 12 gigabecquerel per tonne beta/gamma or 4 gigabecquerel per tonne alpha;

"**Low Level Waste Repository**" or "**LLWR**" means the UK LLW disposal facility located near Drigg in Cumbria operated by LLWR Ltd;

"**Lower Activity Waste**" is a general term used to collectively refer to Low Level Waste and Radioactive liquid and gaseous discharges;

"**Magnox Operating Plan Inventory**" or "**MOP Inventory**" means the remaining amount of Spent Magnox Fuel requiring reprocessing;

"**Magnox Operating Programme**" or "**MOP**" means the Authority delivery programme to meet the Authority's strategy to reprocess all Spent Magnox Fuel;

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"**Milestones**" means those milestones set out in Table 6 of Part 3 of the Client Specification other than Authority Milestones;

"**National Nuclear Archive**" or "**NNA**" means the Authority owned national archive facility to be provided by the Authority;

"**Natural Uranium**" means naturally occurring uranium containing about 0.711% of the fissile isotope ²³⁵U by weight;

"**NISR**" means the Nuclear Industries Security Regulations 2003 (as amended);

"**Non NDA Liability Management**" means the Non NDA Liability Management strategy that relates to third party assets and materials on Authority sites and at other Non Authority sites for which it has either been agreed the Authority will take on this responsibility, or where the Authority is the only practicable and safe long term management service provider;

"**Northern Area**" refers to the part of the Harwell Site that is separate from and located to the North of the main parts of the Harwell Site; it is where Harwell LETP is presently located;

"**Nuclear Installations Act**" means the Nuclear Installations Act 1965;

"**Nuclear Materials**" means those materials covered by Article 197 of the Euratom Treaty (in the context of Magnox and RSRL emphasis is on uranium, whilst there are stocks of Thorium these are being treated as a Waste);

"**Nuclear Sector Plan**" refers to the Environment Agency's Sector Plan for the nuclear industry which sets out the issues facing the industry and reports on a number of performance measures and targets agreed between the Environment Agency and the nuclear industry;

"**Nuclear Waste Research Forum**" or "**NWRF**" means the collaborative Authority industry working group ensuring strategic coordination of research and development by determining and sharing common R&D needs, risks and opportunities. Its membership includes representatives from the Authority, NDA RWMD, NDA Site Licence Companies, Regulators and organisations with significant nuclear decommissioning liabilities. It meets on a quarterly basis. The terms of reference can be found at the following link: <http://www.nda.gov.uk/documents/upload/Nuclear-Waste-Research-Forum-Terms-of-Reference.pdf>;

"**Period of Responsibility**" has the meaning given to it in section 5(3) of the Nuclear Installations Act 1965;

"**Proximity Principle**" is a key element of EU environmental and municipal Waste management policy. It was introduced in Article 5 of the Waste Framework Directive (75/442/EEC as amended by Directive 91/156/EEC), and is incorporated into UK Waste strategy documents; the proximity principle, is described in Planning Policy Statement 10 (England) (Ref. 8) and suggests that Waste planning should "enable Waste to be disposed of in one of the nearest appropriate installations";

"**Public Procurement Regulations**" means the Public Contracts Regulations 2006 (as may be amended from time to time);

"**Quiescence**" or "**Quiescent Period**" means the period during which a Site is made safe and purposely kept in a state of passive safety for a period which is likely to be more than one decade;

"**Radioactive**" means the spontaneous emission of radiation, generally alpha or beta particles, often accompanied by gamma rays, from the nucleus of an unstable isotope. Also, the rate at which radioactive material emits radiation and "**Radioactivity**" shall be construed accordingly;

"**Radioactive Material**" means material that is Radioactive and if declared as Waste when no further use is envisaged for it will be managed as Radioactive Waste (ILW or LLW);

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"Radioactive Waste" means any material contaminated by or incorporating Radioactivity above certain thresholds defined in Legislation and for which no further use is envisaged;

"Regulatory Authorisations" means any authorisations required pursuant to the Regulatory Requirements;

"RHILW" or **"Remote Handled ILW"** means packaged Radioactive ILW that due to its external dose rate it is unable to be directly handled and requires the need of remote handling equipment;

"Radioactive Waste Management Case" or **"RWMC"** is a requirement of the "Joint Regulatory Guidance on Radioactive Waste management";

"Safestore" means an intruder and weather proof structure around the remaining buildings that contains active plant (including reactor buildings) requiring minimum maintenance, monitoring and surveillance during the Quiescent Period;

"Safety Case" means a document to be produced by the Contractor in accordance with the Regulators' requirements which demonstrates (among other things) that the operations of a particular plant or facility have been considered in normal operations and fault conditions and demonstrates that any resulting risk is at most a Tolerable Risk;

"Scottish HAW Policy" means the Scottish Government policy of 2011 in relation to HAW ("Scotland's Higher Activity Radioactive Waste Policy 2011, The Scottish Government, Edinburgh 2011");

"Scottish HAW Policy Implementation Strategy" means the implementation strategy referred to in section 3 of the Scottish HAW Policy;

"Security Plan" means the security plan approved for the Site in accordance with NISR;

"Security Policy Framework" means HMG Cabinet Office Guidance on those standards, best practice guidelines and approaches that are required to protect UK Government assets (people, information and infrastructure);

"Senior Information Risk Owner" or **"SIRO"** means the individual with responsibility for the overall information risk policy of the Authority in accordance with the Security Policy Framework as published by the Cabinet Office;

"Shared Service Alliance" means the collaborative grouping of the Authority and its SLCs whose objective is to look at ways of sharing support costs and delivery of improved value for money across the Authority Estate by exploiting the alliance's combined buying power and assets to the full;

"Site End State" means the condition to which designated land and its associated structures and infrastructure need to be restored;

"Site End State Consultation" means the Authority sponsored consultation on each Site's preferred End State and end use carried out by the Site Stakeholder groups for each Site completed in March 2008;

"Site Strategic Specification" or **"SSS"** means the overarching translation of the Authority's Strategy into a specification for SLCs. It defines the strategic assumptions that the SLCs are required to adopt in compiling their Lifetime Plans for restoration of each Site;

"Socio-Economic Development Plan" means the plan developed and updated on an annual basis by the Contractor pursuant to the Requirement 6.8;

"Southern Nuclear Archive" refers to the remainder of the UKAEA Archive based at the Harwell Site; it is managed on the Authority's behalf by a commercial organisation until commencement of operations at the National Nuclear Archive with the RSRL Contractor acting as client for the contract;

"Spent Fuel" means nuclear fuel that has been irradiated in a nuclear reactor;

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"**Spent Magnox Fuel**" means Spent Fuel from a Magnox reactor;

"**Strategic Option Diagram**" or "**SOD**" means the Authority's method of describing strategic options within the Site Strategic Specification;

"**Strategy Development Support**" means support required from the Contractor and indicated as such in the column titled, "Strategy Development Support" of Table 4 in Part 2 Section 3 (*Strategy Development Requirements*) of this Schedule 1 (*Client Specification*);

"**Strategy Management System**" means the structured approach to decision making used by the Authority to determine strategic positions described in SMSG04 Strategy Management System – A Guide to Topic Strategy Production;

"**Tolerable Risk**" means the level of risk defined as "tolerable" in the Health and Safety Executive guidance document 'The Tolerability of Risk from Nuclear Power Stations' 1988 as amended in 1992 in relation to nuclear safety issues, extended to include conventional, environmental and economic issues, in addition to nuclear safety. Tolerability does not mean 'acceptability'. It refers to a willingness to live with a risk so as to secure certain benefits and in the confidence that it is being properly controlled;

"**Very Low Level Radioactive Waste**" or "**VLLW**" is a sub-set of LLW defined in the UK Policy for the Management of Solid Low Level Radioactive Waste (March 2007) and means:

(a) in the case of low volumes ('dustbin loads') of VLLW Radioactive Waste which can be safely disposed of to an unspecified destination with municipal, commercial or industrial Waste ("dustbin" disposal), each 0.1m³ of Waste containing less than 400 kilobecquerels (kBq) of total activity or single items containing less than 40 kBq of total activity. For Wastes containing carbon-14 or hydrogen-3 (tritium):

(i) in each 0.1m³, the activity limit is 4,000 kBq for carbon-14 and hydrogen-3 (tritium) taken together

(ii) for any single item, the activity limit is 400 kBq for carbon-14 and hydrogen-3 (tritium) taken together,

controls on disposal of this material, after removal from the premises where the Wastes arose, are not necessary; and

(b) in the case of high volumes of VLLW Radioactive Waste with maximum concentrations of four megabecquerels per tonne (MBq/te) of total activity which can be disposed of to specified landfill sites. For Waste containing hydrogen-3 (tritium), the concentration limit for tritium is 40MBq/te,

controls on disposal of this material, after removal from the premises where the Wastes arose, will be necessary in a manner specified by the environmental regulators;

"**Waste Acceptance Criteria**" means the requirements of the receiving body on the parameters which the material must comply with in order for the material to be accepted into the receiving body's facility; and

"**Waste Products Specification**" means the Waste product specification produced to allow the Disposal Authority to conduct a disposability assessment and issue a Letter of Compliance.

Schedule 2

CHANGE CONTROL PROCEDURE

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1 BACKGROUND AND SCOPE OF SCHEDULE

Scope of Schedule

- 1.1 This Schedule 2 sets out the scope and required procedure in accordance with which all Proposed Changes and Changes in respect of this Agreement shall be processed. The Parties acknowledge and agree that (without prejudice to the provisions of Paragraph 6.14 (*Authority Acceptance and Implementation of the Proposed Change*) below or any provision of this Agreement expressly requiring the Authority to act reasonably when deciding whether or not to Approve a Proposed Change), the existence of a process by which the Authority is to consider certain Proposed Changes shall not be construed as creating a right for the Contractor to require any Change.
- 1.2 This Schedule 2 also sets out the Contractor's monitoring and reporting obligations to the Authority and the right of the Authority to audit compliance by the Contractor with its obligations under this Schedule 2.

Contract Baseline

- 1.3 The purpose of the Contract Baseline is to:
- (a) demonstrate performance of the Contractor's obligations set out in the Client Specification and achievement of the Interim State or Interim End State (as applicable) for each Site by defined dates in respect of which a Category 0 Change will be required to effect any amendment to their content or achievement date;
 - (b) identify Authority Milestones that the Contractor is required to Achieve by defined dates, in respect of which a Category 0 Change will be required to effect any amendment to their content or achievement date;
 - (c) identify Target Fee Payment Milestones (other than Authority Milestones) that the Contractor is scheduled, as at the Commencement Date, to Achieve by defined dates;
 - (d) set out agreed estimates of the Allowable Costs comprising the Phase 1 Target Cost and the Phase 2 Target Cost, as apportioned to each Contract Year; and
 - (e) assist the Authority to monitor the Contractor's performance in accordance with this Agreement.

LTP Performance Plan

- 1.4 During the Consolidation Phase, the Contractor shall implement the Consolidation Plan in accordance with Appendix B (*Development of the LTP Performance Plan*) to develop the Magnox Commencement Date LTP and the RSRL Commencement Date LTP into the LTP Performance Plan.
- 1.5 The LTP Performance Plan shall be an evolving document over which (subject to the provisions of this Schedule 2 and any other provision of this Agreement) following completion of the Consolidation Phase the Contractor shall retain content control. The Contractor shall change and update the LTP Performance Plan continuously in accordance with the Change Control Procedure such that the LTP Performance Plan:
- (a) encompasses all the operations of the Contractor and encompasses delivery of and describes the totality of activities planned by the Contractor or instructed by the Authority to take each Site from its current state to full completion of the Contractor's obligations set out in Client Specification;
 - (b) describes the totality of the post-Interim State and post-Interim End State, as applicable, activities required to deliver the final end state for each of the Sites (provided that the inclusion of such post-Interim State and post-Interim End State, as applicable, activities within the LTP Performance Plan shall not require the Contractors to undertake them);
 - (c) in terms of pre-Interim State and pre-Interim End State, as applicable, activities only, contains no more than those activities that are required to complete the Contractor's obligations set out in the Client Specification or are otherwise required to encompass the operations of the Contractor and performance of the Contractor's obligations under this Agreement;
 - (d) identifies:
 - (i) when such work is to be performed (the schedule); and
 - (ii) how much it is anticipated to cost to discharge the scope up to the Interim State or Interim End State, as applicable, and (separately) the Authority's estimate of its full lifetime liabilities to take each Site from its Interim State or Interim End State, as applicable, up to its final end state;
 - (e) is a contemporaneous plan which supports and underpins delivery of the Client Specification and achievement of each Interim State or Interim End State, as applicable;
 - (f) provides the Authority with the information it needs to comply with its mandatory reporting obligations;

- (g) contains sufficient detail to enable verification of Cost and inform funding requirements;
- (h) in terms of the activities required to complete the Contractor's obligations set out in the Client Specification or otherwise required for performance of the Contractor's obligations under this Agreement, allocates all such activities, their schedule and their cost to Phase 1 or Phase 2 such that:
 - (i) the activities allocated to Phase 1 describe the totality of activities planned by the Contractor to Achieve Phase 1 Completion;
 - (ii) the activities allocated to Phase 2 describe the totality of activities planned by the Contractor to Achieve Phase 2 Completion (to the extent that such activities have not been allocated to Phase 1).

1.5A For the avoidance of doubt, any Proposed Change to the LTP Performance Plan to adjust the cost estimates in the LTP Performance Plan for actual or forecast inflation shall be a Category 0 Change.

Authority Programme Controls Procedures (PCPs)

1.6 In processing and implementing (as a Change) any Proposed Change in accordance with this Schedule 2, the Parties shall have regard to and shall (subject to Paragraph 1.7 (*Authority Programme Controls Procedures*) below) comply with the provisions of the PCP-M, which comprises:

- (a) PCP-01 (*Work Breakdown Structures*) and PCP-01-01 (*Work Breakdown Structure Dictionary and Guidelines*);
- (b) PCP-02 (*Electronic Data Submissions*);
- (c) PCP-04 (*Charging Practice*);
- (d) PCP-05 (*Change Control*);
- (e) PCP-07 (*Baseline Management*);
- (f) PCP-09 (*Cost Estimating*);
- (g) PCP-10 (*Risk Management*);
- (h) PCP-11 (*Scheduling*);
- (i) PCP-13 (*Progress Reporting and Reviews*); and
- (j) [Not used]

(k) PCP-17 (*Sanction*),

in each case to the extent relevant and as interpreted by the PCP-M Contractor Annexe; and

(l) the PCP-M Contractor Annexe.

1.7 In the event of any conflict, inconsistency or incompatibility between:

(a) the provisions of this Schedule 2 or any other provision of this Agreement; and

(b) the provisions of any document referred to in Paragraphs 1.6(a) to (l) (*Authority Programme Controls Procedures*) above,

the provisions of this Schedule 2 or elsewhere in this Agreement (as relevant) shall prevail and shall be applied instead of such conflicting, inconsistent or incompatible provision in such document referred to in Paragraphs 1.6(a) to (l) (*Authority Programme Controls Procedures*) above.

2 CONDUCT OF THE PARTIES

Reasonableness and Good Faith

2.1 In complying with its obligations and exercising its rights under this Schedule 2, each Party shall at all times act reasonably and in good faith.

Value for Money Objective

2.2 In complying with its obligations under this Schedule 2, the Contractor shall at all times act in such a way that Value For Money is achieved and maintained for the Authority.

No Change through Conduct

2.3 The Parties agree that no Change shall occur or be deemed to have occurred through course of conduct or otherwise, and can occur only through the application of the relevant provisions of this Schedule 2.

Contractor Conduct and Contractor Change Control Procedure

2.4 In complying with its obligations under this Schedule 2 the Contractor shall at all times ensure:

(a) compliance with the Authority Policies and Procedures (in so far as relevant and consistent with this Agreement);

- (b) compliance with Good Industry Practice; and
 - (c) correct categorisation (and accurate recording of such categorisation) of any Proposed Change as a Category 0 Change, a Category I Change, a Category II Change or a Category III Change.
- 2.5 The Contractor shall establish, maintain and comply with the Contractor's Internal Change Control Procedure to the reasonable satisfaction of the Authority and shall procure that such procedure is compliant with the provisions of Paragraph 2.4 (*Contractor Conduct and Contractor Change Control Procedure*) above.
- 2.6 The Contractor shall at any time upon the Authority's request promptly provide details of the Contractor's Internal Change Control Procedure, including evidence of compliance with Paragraph 2.4 (*Contractor Conduct and Contractor Change Control Procedure*) and any other information concerning the Contractor's Internal Change Control Procedure as reasonably requested by the Authority.

No Misuse of Change Control Procedure

- 2.7 The Contractor shall not use or attempt to use this Schedule 2 or any Change or Proposed Change to:
- (a) distort performance of its obligations under this Agreement or distort reporting of performance of such obligations to the Authority in accordance with this Agreement; or
 - (b) mask poor performance or non-compliance with:
 - (i) the relevant Authority Policies and Procedures;
 - (ii) Good Industry Practice; and/or
 - (iii) any provision of this Agreement; or
 - (c) manipulate or distort the application of the Shareline,
- or otherwise use or attempt to use this Schedule 2 or any Change or Proposed Change in a manner that is deliberately or knowingly inconsistent with the standards of conduct set out in this Paragraph 2 (*Conduct of the Parties*).
- 2.8 [Not used]

3 TREND LOG AND CHANGE CONTROL LOG

Trend Log

- 3.1 The Contractor shall identify and categorise any trends in the scope, schedule or cost of performing its obligations under this Agreement in accordance with PCP-05 (*Change Control*).
- 3.2 On a Monthly basis, the Contractor shall record and monitor the status of such trends by maintaining and updating a "Trend Log" (as such term is used in PCP-05 (*Change Control*)) in a form reasonably satisfactory to the Authority and in accordance with PCP-05 (*Change Control*).

Change Control Log

- 3.3 The Contractor shall record the status of any Proposed Changes and Changes (grouped according to the Category of such Proposed Changes and including a supporting rationale for such categorisation) by maintaining and updating a "Change Control Log" in accordance with PCP-05 (*Change Control*) and shall promptly make such "Change Control Log" available to the Authority as requested.
- 3.4 Such "Change Control Log" shall be included in the SLC Performance Reports.

4 INITIATION AND CHARACTERISATION OF CHANGES

Initiation of Proposed Change

- 4.1 Any Party may initiate a Proposed Change in accordance with the provisions set out in this Schedule 2.
- 4.2 If the Authority wishes to initiate a Proposed Change, it shall provide the Contractor with Notice of the same, to be followed within thirty (30) Working Days (or such other period as the Parties may agree) with such details as the Contractor may reasonably require in order to comply with its obligations under Paragraph 4.3 (*Proposed Change Categorisation*) below.

Proposed Change Categorisation

- 4.3 The Contractor shall, upon either:
- (a) initiating a Proposed Change itself; or
 - (b) receiving details of a Proposed Change initiated by the Authority,
- categorise such Proposed Change as a Category 0 Change, Category I Change, Category II Change or Category III Change in accordance with the Contractor's Internal Change Control Procedure.

4.4 Where the Contractor categorises a Proposed Change as a Category 0 Change in accordance with Paragraph 4.3 (*Proposed Change Categorisation*):

- (a) it shall provide Notice to the Authority of the same at least fifteen (15) Working Days (or such other period as may be agreed by the Parties) before taking any further steps in relation such Proposed Change, such Notice to include an analysis of the impact of such Proposed Change (including the impact of such Proposed Change on any other SLCs to the extent the Contractor is, or ought reasonably to be, aware of such impact); and
- (b) if such Proposed Change is required as a result of any of the events listed at Paragraph 6.14 (*Authority Acceptance and Implementation of the Proposed Change*) (each a "**Required Change Event**"), the Contractor will include reference to the relevant Required Change Event in the Notice.

Proposed Change Categorisation – Disagreement

4.5 Where the Authority disagrees:

- (a) with the Contractor's categorisation of any Proposed Change set out in the Change Control Log or in any Notice provided pursuant to Paragraph 4.4 (*Proposed Change Categorisation*); and/or
- (b) in the case of a proposed Category 0 Change, that the Proposed Change is required as a result of the Required Change Event recorded by the Contractor in the Change Control Log,

the Authority shall within fifteen (15) Working Days (or such other time as agreed between the Parties, acting reasonably) of receipt of the Change Control Log or the Notice provided pursuant to Paragraph 4.4 (*Proposed Change Categorisation*) (as applicable) (*Initiation of Proposed Change*) give reasons for such disagreement and indicate the categorisation and/or the relevant Required Change Event (if any) which it believes should apply.

4.6 Where the Contractor does not agree with the Authority's reasons and/or the Authority's re-categorisation of the Proposed Change or indication as to the relevance or otherwise of any Required Change Event pursuant to Paragraph 4.5 (*Proposed Change Categorisation - Disagreement*) above, the Contractor shall notify the Authority of the same within (15) Working Days (or such other time as agreed between the Parties, acting reasonably) of receipt of the Notice given by the Authority pursuant to Paragraph 4.5 (*Proposed Change Categorisation - Disagreement*) and the provisions of Paragraph 4.7 (*Proposed Change Categorisation - Disagreement*) below shall apply and such disagreement shall be treated as a Dispute under the Dispute Resolution Procedure. If the Contractor has

not notified the Authority within (15) Working Days (or such other time as agreed between the Parties, acting reasonably) in accordance with this Paragraph 4.6 *Proposed Change Categorisation - Disagreement*), than the Authority's categorisation and/or the relevant Required Change Event (if any) which it believes should apply (as indicated in its Notice given pursuant to Paragraph 4.5 *Proposed Change Categorisation - Disagreement*) shall be deemed to be the correct categorisation and/or Required Change Event.

- 4.7 No Party shall be entitled to take any steps to implement a specific Proposed Change whilst any disagreement under Paragraphs 4.5 and 5.6 *Proposed Change Categorisation - Disagreement*) above remains unresolved or pending a resolution of such Dispute in accordance with the Dispute Resolution Procedure.

5 CATEGORY I, CATEGORY II AND CATEGORY III CHANGES

Contractor's Internal Change Control Procedure

- 5.1 Subject to:

- (a) an appropriate Contractor's Internal Change Control Procedure being established, maintained and followed by the Contractor to the reasonable satisfaction of the Authority in accordance with Paragraphs 2.5 and 2.6 *Contractor Conduct and Contractor Change Control Procedure*) above; and
- (b) any suspension of the Contractor's rights under this Paragraph 5.1 pursuant to Paragraph 5.3 *Suspension of the Contractor's Rights to Approve*) below,

the Contractor is not required to seek the Approval of the Authority in respect of any Proposed Change that has been agreed or determined to be a Category I Change, Category II Change or Category III Change but such Proposed Change shall be subject to the Approval process set out in the Contractor's Internal Change Control Procedure.

- 5.2 Notwithstanding Paragraph 5.1 *Contractor's Internal Change Control Procedure*) above, the provisions of Paragraph 11 *Implementation of a Change*) below shall continue to apply to any Change implemented in accordance with the Contractor's Internal Change Control Procedure.

Suspension of the Contractor's Rights to Approve

- 5.3 The Contractor's rights to Approve Category I Changes, Category II Changes and/or Category III Changes in accordance with the Contractor's Internal Change Control Procedure may be wholly or partially suspended (with the effect that Paragraph 5.1 *Contractor's Internal Change Control Procedure*) above is wholly or partially

disapplied in respect of Category I Changes, Category II Changes and/or Category III Changes and the Authority's Approval of such Proposed Changes will be required as relevant) where the Authority determines that:

- (a) the Contractor has materially breached Paragraphs 2.4, 2.5 and/or 2.6 (*Contractor Conduct and Contractor Change Control Procedure*) above; or
- (b) the Contractor has breached Paragraph 2.7 (*No Misuse of Change Control Procedure*) above,

in the preparation, categorisation, Approval or implementation of any Proposed Change categorised as a Category I Change, Category II Change or Category III Change.

5.3A For the purposes of Paragraph 5.3 (*Suspension of the Contractor's Rights to Approve*), a "partial" suspension of the Contractor's rights to Approve Category I Changes, Category II Changes and/or Category III Changes in accordance with the Contractor's Internal Change Control Procedure shall mean a reasonable and proportionate suspension of rights in respect of some but not all of:

- (a) the Magnox Contractor or the RSRL Contractor;
- (b) Category I Changes, Category II Changes or Category III Changes;
- (c) the Sites; or
- (d) the steps, stages or processes comprising the Contractor's Internal Change Control Procedure.

5.4 Where the Authority, acting reasonably, determines that any of the failures as set out in Paragraph 5.3 (*Suspension of the Contractor's Rights to Approve*) above have occurred, it shall inform the Contractor of the same in writing, setting out:

- (a) details of the alleged failure and stating that the Contractor's rights to Approve Category I Changes, Category II Changes and/or Category III Changes in accordance with the Contractor's Internal Change Control Procedure are suspended for a period of time that the Authority considers reasonable and proportionate in the circumstances taking into account any proposed rectification plans submitted to the Authority and the likelihood of continued Contractor failures set out in Paragraph 5.3 (*Suspension of the Contractor's Rights to Approve*); and
- (b) where the Contractor's rights to Approve Category I Changes, Category II Changes and/or Category III Changes in accordance with the Contractor's Internal Change Control Procedure are to be partially suspended, the extent

to which such rights are partially suspended (and the extent to which any such rights are not suspended) with reference to the matters listed in Paragraph 5.3A (*Suspension of the Contractor's Rights to Approve*) above.

- 5.5 Where a suspension of the Contractor's rights has occurred pursuant to Paragraph 5.4 (*Suspension of the Contractor's Rights to Approve*) above, all Proposed Changes falling within the scope of the suspension shall be Approved or rejected by the Authority in accordance with PCP-05 (Change Control) in so far as relevant and consistent with this Agreement until such time as the Authority determines, acting reasonably, that such suspension shall be withdrawn. The Authority shall notify the Contractor in writing of the date(s) on which it determines that any suspended rights shall be wholly or partly reinstated. To the extent specified in such notice, any rights that have been suspended pursuant to Paragraph 5.4 (*Suspension of the Contractor's Rights to Approve*) above shall be reinstated on such date(s) (with the effect that, from such date(s), Paragraph 5.1 (*Contractor's Internal Change Control Procedure*) above shall apply in respect of Category I Changes, Category II Changes and/or Category III Changes).
- 5.6 If the Authority Approves any Proposed Change pursuant to Paragraph 5.5 (*Suspension of the Contractor's Rights to Approve*) above, the steps required to implement the relevant Change (including, where applicable, incorporation of the Change into the LTP Performance Plan and/or Contract Baseline) shall be completed by the Contractor within thirty (30) Calendar Days (or such other period as the Parties may agree) of the Authority's Approval. The provisions of Paragraph 11 (*Implementation of a Change*) shall also apply in respect of such Change.
- 5.7 Where a suspension of the Contractor's rights has occurred pursuant to Paragraph 5.4 (*Suspension of the Contractor's Rights to Approve*) above and such suspension continues for a period of thirty (30) Calendar Days or more, the Contractor shall reimburse the Authority's reasonable costs incurred in Approving or rejecting Proposed Changes in accordance with Paragraph 5.5 (*Suspension of the Contractor's Rights to Approve*) that would have been Approved or rejected by the Contractor if its rights to Approve such Proposed Changes had not been suspended.
- 5.8 [Not used]
- 5.9 [Not used]
- 5.10 [Not used]
- 5.11 [Not used]
- 5.12 [Not used]

Authority Right to Veto Proposed Changes

- 5.13 Subject to the provisions of Clause 13.6 (*Instigation of a Proposed Change*) of this Agreement, Paragraph 6.14 (*Authority Acceptance and Implementation of the Proposed Change*), the Authority shall have the right to veto on any one or more of the grounds set out in Paragraph 5.16(a) to 5.16(f) any Proposed Change which is a Category I Change, Category II Change or Category III Change (or any Change which was a Category I Change, Category II Change or Category III Change prior to Approval). This right shall be exercisable at any time (whether or not any steps have been taken to Approve the Proposed Change or implement the Change in question).
- 5.14 Any exercise of the Authority's veto under Paragraph 5.13 (*Authority Right to Veto Proposed Changes*) above shall be by Notice served on the Contractor, and shall specify the grounds (as listed in Paragraph 5.16 (*Authority Right to Veto Proposed Changes*) below) on which such exercise is based.
- 5.15 Where the Contractor does not agree with the grounds on which the Authority's exercise of the veto is based, the Contractor shall notify the Authority of the same within twenty (20) Working Days (or such other period as the Parties may agree, acting reasonably) of receipt of the Notice pursuant to Paragraph 5.14 (*Authority Right to Veto Proposed Changes*). If the Contractor has not notified the Authority within such period, the Authority's decision to veto the Proposed Change or Change shall be deemed to be valid.
- 5.16 The Authority may veto a Proposed Change or Change pursuant to Paragraph 5.13 (*Authority Right to Veto Proposed Changes*) above if it considers, acting reasonably, that:
- (a) the Contractor has materially breached Paragraphs 2.4, 2.5 and/or 2.6 (*Contractor Conduct and Contractor Change Control Procedure*) above in relation to the Proposed Change or Change in question;
 - (b) the Contractor has breached Paragraph 2.7 (*No Misuse of Change Control Procedure*) above in relation to the Proposed Change or Change in question;
 - (c) the Proposed Change or Change will have or has had a detrimental effect on the delivery of the Client Specification and/or any Interim State or Interim End State, as applicable;
 - (d) the Proposed Change or Change will increase or has increased the risk to the Authority of failing to deliver its published strategy and objectives; or
 - (e) [Not used]

- (f) the Proposed Change or Change would be reasonably likely to have a material and adverse effect on the Contractor's ability to perform its obligations under this Agreement,

and the Authority shall, acting reasonably, engage and consult with the Contractor in connection with the exercise of its veto.

5.17 Where the Authority exercises its right to veto a Proposed Change or Change in accordance with Paragraphs 5.13 to 5.16 (*Authority Right to Veto Proposed Changes*) above, the Contractor shall (subject to Paragraph 5.21 (*Authority Right to Veto Proposed Changes*) below):

- (a) take no further action to Approve the Proposed Change or implement the Change in question; and
- (b) (unless otherwise directed by the Authority) take all necessary steps to reverse any steps taken to implement such Proposed Change or Change, such that, to the fullest extent possible, the subject matter of such Proposed Change or Change is reinstated to the position which pertained immediately prior to any such steps being taken to implement such Proposed Change or Change.

5.18 If the Contractor will suffer financial loss as a result of any exercise by the Authority of its veto pursuant to Paragraphs 5.13 to 5.16 (*Authority Right to Veto Proposed Changes*) above and the grounds for such exercise are any of the grounds listed at Paragraphs 5.16(c) to 5.16(f) (*Authority Right to Veto Proposed Changes*) above (and do not include any of the grounds listed at Paragraphs 5.16(a) to 5.16(b) (*Authority Right to Veto Proposed Changes*) above), the Contractor shall promptly (and in any event within five (5) Working Days, unless the Parties otherwise agree, acting reasonably) respond to the Authority's Notice issued pursuant to Paragraph 5.14 (*Authority Right to Veto Proposed Changes*) above with a counter-Notice, setting out:

- (a) details of such financial loss (including a reasonable estimate of quantum), having regard to the Contractor's obligations under Paragraph 5.21 (*Authority Right to Veto Proposed Changes*) below; and
- (b) details of how any delay by the Authority in responding to such counter-Notice will affect the quantum of such financial loss,

in each case supported by such additional information as the Authority may reasonably require to reach an informed decision in respect of such counter-Notice.

5.19 The Authority shall, as soon as reasonably practicable (and in any case (unless the Parties otherwise agree)) within five (5) Working Days (unless the Parties otherwise

agree, acting reasonably) of receipt of any counter-Notice served under Paragraph 5.18 (*Authority Right to Veto Proposed Changes*) above) either:

- (a) withdraw the exercise of its veto, in which case the provisions of Paragraph 5.17 (*Authority Right to Veto Proposed Changes*) shall not apply in respect of the Proposed Change or Change in question, and the Contractor shall be free to proceed with such Proposed Change or Change (subject to any other relevant provisions of this Agreement pertaining to such Proposed Change or Change); or
- (b) confirm the exercise of its veto, in which case the provisions of Paragraphs 5.17 (*Authority Right to Veto Proposed Changes*), 5.20, (*Authority Right to Veto Proposed Changes*) and 5.21 (*Authority Right to Veto Proposed Changes*) shall continue to apply in respect of the Proposed Change or Change in question.

5.20 Where the Authority exercises its right to veto a Proposed Change or Change in accordance with Paragraphs 5.13 to 5.16 (*Authority Right to Veto Proposed Changes*) above and the grounds for such exercise are any of the grounds listed at Paragraphs 5.16(c) to 5.16(f) (*Authority Right to Veto Proposed Changes*) above (and do not include any of the grounds listed at Paragraphs 5.16(a) to 5.16(b) (*Authority Right to Veto Proposed Changes*) above), the Authority shall, subject to the Contractor's compliance with Paragraphs 5.18 (*Authority Right to Veto Proposed Changes*) above and 5.21 (*Authority Right to Veto Proposed Changes*) below, reimburse the Contractor's reasonable financial losses (including those arising directly from compliance with Paragraph 5.21 (*Authority Right to Veto Proposed Changes*) below) arising directly from any exercise by the Authority of its right to veto a Proposed Change or Change in accordance with Paragraphs 5.13 (*Authority Right to Veto Proposed Changes*) to 5.16 (*Authority Right to Veto Proposed Changes*) above (whether or not such veto is subsequently withdrawn pursuant to Paragraph 5.19 (*Authority Right to Veto Proposed Changes*) above).

5.21 The Contractor shall use reasonable endeavours to mitigate any financial loss arising from any exercise by the Authority of its right to veto a Proposed Change or Change in accordance with Paragraphs 5.13 (*Authority Right to Veto Proposed Changes*) to 5.16 (*Authority Right to Veto Proposed Changes*) above. Where the Contractor has served a counter-Notice under Paragraph 5.18 (*Authority Right to Veto Proposed Changes*) above or has referred such exercise for resolution under the Dispute Resolution Procedure, for the purposes of this Paragraph 5.21 (*Authority Right to Veto Proposed Changes*) "reasonable endeavours" shall be deemed to include taking whichever course of action (in terms of ceasing or continuing to take any steps to implement the Proposed Change or Change in question pending the Authority's

response under Paragraph 5.19 (*Authority Right to Veto Proposed Changes*) above or pending resolution of such Dispute, as the case may be) is reasonably considered likely to minimise the quantum of such financial loss without compromising compliance with the Contractor's obligations under this Agreement.

6 CATEGORY 0 CHANGES

Contractor Proposed Changes

6.1 Where a Proposed Change has been agreed or determined to be a Category 0 Change, the Contractor shall:

- (a) propose any required amendment to this Agreement (including any of its Schedules, appendices or annexes); and/or
- (b) within twenty (20) Working Days (or within such period as the Parties may agree) of the Authority providing such details as are required in accordance with Paragraph 4.2 (*Initiation of Proposed Change*) above, where such Proposed Change is initiated by the Authority and is categorised as a Category 0 Change pursuant to Paragraph 4 (*Initiation and Characterisation of Changes*) above,

complete and submit the Category 0 Change Control Form to the Authority, in accordance with the PCP-M Contractor Annexe and Paragraph 6.3 (*Category 0 Change Control Form*) below.

"No Better and No Worse" Requirement

6.2 The Contractor shall prepare, and shall provide evidence to the Authority that it has completed, the Category 0 Change Control Form in accordance with Good Industry Practice and shall:

- (a) demonstrate how any increase or decrease to the Phase 1 Target Cost and/or the Phase 2 Target Cost to be incurred or avoided is being evaluated so as to optimise Value for Money, including showing that when such increase or decrease is to be incurred or avoided, Changes in Law which are in respect of such change have been taken into account by the Contractor;
- (b) subject to (c) to (g) (*"No Better and No Worse" Requirement*) below, demonstrate the fulfilment of the objective that (save for the obligation of the Authority to make payments or altered payments in respect of the Proposed Change arising from the Proposed Change itself) the Parties are in no better and no worse position in relation to the Contract Documents than they would have been if such Proposed Change were not implemented, provided that:

- (i) to the extent that the Proposed Change, together with any other Changes previously Approved by the Authority, would result in:
 - (A) an aggregate increase or decrease of the Phase 1 Target Cost of more than ten per cent (10%) of the Phase 1 Target Cost as at the Commencement Date; and/or
 - (B) an aggregate increase or decrease of the Phase 2 Target Cost of more than ten per cent (10%) of the Phase 2 Target Cost as at the Commencement Date,

the Contractor shall propose for the Authority's approval as part of its Category 0 Change Control Form submission, a pro-rata adjustment of the Phase 1 Target Fee and/or the Phase 2 Target Fee (as applicable) and any relevant amounts of Allocated Target Fee, together with appropriate changes to any agreed date for achievement of a Target Fee Payment Milestone (including the re-portionment of Target Fee and/or the creation of additional Target Fee Payment Milestones to the extent required to address such Change), provided further that this adjustment shall only relate to the amount of such increase or decrease that is above ten per cent (10%) of the Phase 1 Target Cost and/or the Phase 2 Target Cost (as applicable);

- (iA) the Phase 1 Target Fee shall be adjusted pursuant to Paragraph (i) above the first time that an aggregate increase described at (i)(A) above occurs, and the Phase 2 Target Fee shall be adjusted pursuant to Paragraph (i) above the first time that an aggregate increase described at (i)(B) above occurs. The Phase 1 Target Fee and Phase 2 Target Fee shall each be adjusted once only pursuant to Paragraph (i) above. Where an adjustment of the Phase 1 Target Fee or Phase 2 Target Fee has been made pursuant to Paragraph (i) above, to the extent that any subsequent Proposed Changes, together with any other Changes previously Approved by the Authority following such adjustment, would result in:
 - (A) an aggregate increase or decrease of the Phase 1 Target Cost of more than two per cent (2%) of the Phase 1 Target Cost as at the date of the last adjustment made pursuant to Paragraph (i) or this Paragraph (iA); and/or
 - (B) an aggregate increase or decrease of the Phase 2 Target Cost of more than two per cent (2%) of the Phase 2 Target

Cost as at the date of the last adjustment made pursuant to Paragraph (i) or this Paragraph (iA),

the Contractor shall propose for the Authority's approval as part of its Category 0 Change Control Form submission, a pro-rata adjustment of the Phase 1 Target Fee and/or the Phase 2 Target Fee (as applicable) and any relevant amounts of Allocated Target Fee, together with appropriate changes to any agreed date for achievement of a Target Fee Payment Milestone (including the re-apportionment of Target Fee and/or the creation of additional Target Fee Payment Milestones to the extent required to address such Change), provided further that this adjustment shall relate to the full amount of such increase or decrease of the Phase 1 Target Cost and/or the Phase 2 Target Cost (as applicable);

(ii) where Paragraph (i) above applies, to the extent that the Proposed Change, together with other Changes previously Approved by the Authority, would result in:

(A) an aggregate increase or decrease of the Phase 1 Target Cost as at the Commencement Date by ten per cent (10%) or less; or

(B) an aggregate increase or decrease of the Phase 2 Target Cost as at the Commencement Date by ten per cent (10%) or less,

no adjustment shall be made to any amounts of Allocated Target Fee or the Phase 1 Target Fee or Phase 2 Target Fee (as applicable) (without prejudice to any subsisting provisions of Schedule 6 (*Finance*) permitting such adjustments irrespective of any Proposed Change), although the Contractor may propose as part of its Category 0 Change Control Form that Allocated Target Fee that would otherwise cease to be payable as a direct consequence of such Change shall be re-allocated to an alternative new or existing Target Fee Payment Milestone (and the Authority shall act reasonably when considering such proposal);

(iiA) where Paragraph (iA) above applies, to the extent that the Proposed Change, together with other Changes previously Approved by the Authority following the last adjustment made pursuant to Paragraph (i) or (iA), would result in:

- (A) an aggregate increase or decrease of the Phase 1 Target Cost as at the at the date of the last adjustment made pursuant to Paragraph (i) or (iA) by two per cent (2%) or less;
or
- (B) an aggregate increase or decrease of the Phase 2 Target Cost as at the date of the last adjustment made pursuant to Paragraph (i) or (iA) by two per cent (2%) or less,

no adjustment shall be made to any amounts of Allocated Target Fee or the Phase 1 Target Fee or Phase 2 Target Fee (as applicable) (without prejudice to any subsisting provisions of Schedule 6 (*Finance*) permitting such adjustments irrespective of any Proposed Change), although the Contractor may propose as part of its Category 0 Change Control Form that Allocated Target Fee that would otherwise cease to be payable as a direct consequence of such Change shall be re-allocated to an alternative new or existing Target Fee Payment Milestone (and the Authority shall act reasonably when considering such proposal);

- (iii) regardless of there being any increase or decrease to the Phase 1 Target Cost and/or Phase 2 Target Cost as a result of a Proposed Change, there shall be no adjustment made under either Paragraph 6.2(b)(i) (*"No Better and No Worse" Requirement*) or Paragraph 6.2(b)(ii) (*"No Better and No Worse" Requirement*) above to the way in which the Phase 1 Shareline is calculated pursuant to Paragraphs 1.6 to 1.10 (*Calculation of Phase 1 Shareline*) of Part 4B (*Calculation of Target Fee*) of Schedule 6 (*Finance*) or the Phase 2 Shareline is calculated pursuant to Paragraphs 1.22 to 1.25 (*Calculation of Phase 2 Shareline*) of Part 4B (*Calculation of Target Fee*) of Schedule 6 (*Finance*);
- (iv) in determining the aggregate increase or decrease of the Phase 1 Target Cost or the Phase 2 Target Cost for the purposes of Paragraph 6.2(b)(i) and (ii) (*"No Better and No Worse" Requirement*) above the provisions of Paragraph 6.11 (*Innovative Proposed Changes*) below shall apply in relation to any innovative Proposed Change as defined in Paragraph 6.11 below;
- (v) to the extent that the Proposed Change would result an increase to the Phase 1 Target Cost and/or the Phase 2 Target Cost (in all cases except the matters referred to in Paragraph 6.14(z) (*Authority*

Acceptance and Implementation of the Proposed Change), the Contractor shall submit its proposed corresponding adjustment to the percentage values in Paragraph 2.1.1A.1 (*Performance Metrics*) and Paragraph 2.1.1B (*Performance Metrics*) of Schedule 15 (*Minimum Performance Standards*) to reflect any change in the relative value of the Phase 2 Target Cost to the Phase 1 Target Cost; and

- (vi) to the extent that the Proposed Change would have a material effect on the ability of the Contractor to achieve an agreed PBI Level (or otherwise on the recovery of PBI Fee by the Contractor), the Contractor shall propose for the Authority's approval as part of its Category 0 Change Control Form submission such adjustments to the relevant Performance Agreement Form as may be required to achieve the objective that the Parties are in no better and no worse position in relation to the Contract Documents;
- (c) subject to Paragraph 6.8 (*Meeting the "No Better No Worse" objective – Required Change Events*) (where applicable) where the Proposed Change has been initiated in order to address the consequences of the occurrence of a Required Change Event (other than the Required Change Event specified in Paragraph 6.14(z) (*Authority Acceptance and Implementation of the Proposed Change*)), the Contractor will demonstrate fulfilment of the objective that the consequences of such Required Change Event are neutralised in accordance with the principles set out in Paragraph 6.8 (*Meeting the "No Better No Worse" objective – Required Change Events*) below such that the Contractor is in no better and no worse position than that in which it would have been if such Required Change Event had not occurred;
- (d) subject to Paragraph 6.9 (*Meeting the "No Better No Worse" objective – Alternative Strategies*) (where applicable) where the Proposed Change has been initiated in order to address the consequences of implementing an Alternative Strategy, the Contractor will demonstrate fulfilment of the objective that the consequences of implementing such Alternative Strategy are neutralised in accordance with the principles set out in Paragraph 6.9 (*Meeting the "No Better No Worse" objective – Alternative Strategies*) below such that the Contractor is in no better and no worse position than that in which it would have been if such Alternative Strategy were not implemented;
- (e) where a Proposed Change is initiated to address a proposed adjustment to the Phase 2 Target Cost in accordance with Appendix G (*Special adjustment to the Phase 2 Target Cost*) of Schedule 6 (*Finance*) following the approval

by the Authority of an Estimate at Phase 2 Completion for such purpose in accordance with Appendix G (*Special adjustment to the Phase 2 Target Cost*) of Schedule 6 (*Finance*), the Contactor shall demonstrate that implementation of the Proposed Change will satisfy the requirements of Paragraph 6.10 (*Meeting the "No Better No Worse" objective – Special adjustment to the Phase 2 Target Cost*) and such Proposed Change shall not count towards an aggregate increase or decrease of the Phase 2 Target Cost for the purposes of Paragraph 6.2(b)(i) and (ii) (*"No Better and No Worse" Requirement*) above;

- (f) include, as a separate line item in the evaluation of any proposed increase or decrease to the Phase 1 Target Cost and/or the Phase 2 Target Cost, the Contractor's allowance for annual inflation (as shown in the Contract Baseline) for any Contract Years in which the Costs incurred by the Contractor will be affected by the Proposed Change, such forecast to be not less than two per cent (2%) per annum; and
- (g) where a Proposed Change is initiated to address a proposed adjustment to the Phase 1 Target Cost in accordance with Paragraphs 2.9 to 2.13 (*Adjustment for Wylfa extended generation*) of Part C (*Target Costs*) of Schedule 6 (*Finance*), the Contactor shall demonstrate that implementation of the Proposed Change will satisfy the requirements of Paragraph 6.10A (*Meeting the "No Better No Worse" objective – Adjustment for Wylfa extended generation*) and such Proposed Change shall include an adjustment to the Phase 1 Target Fee in accordance with those provisions and shall not be subject to or count towards an aggregate increase or decrease of the Phase 1 Target Cost for the purposes of Paragraph 6.2(b)(i) and (ii) (*"No Better and No Worse" Requirement*) above.

6.2A Where an adjustment of the Phase 1 Target Fee or Phase 2 Target Fee has been made pursuant to Paragraph 6.2(b)(i) above, to the extent that any subsequent Proposed Changes, together with any other Changes previously Approved by the Authority following such adjustment, would result in:

- (a) an aggregate increase or decrease of the Phase 1 Target Cost of two per cent (2%) or less of the Phase 1 Target Cost as at the date of the last adjustment made pursuant to Paragraph 6.2(b)(i) or Paragraph 6.2(b)(iA) above; and/or
- (b) an aggregate increase or decrease of the Phase 2 Target Cost of two per cent (2%) of the Phase 2 Target Cost or less as at the date of the last adjustment made pursuant to Paragraph 6.2(b)(i) or Paragraph 6.2(b)(iA),

on the expiry or earlier termination of this Agreement a pro-rata adjustment of the Phase 1 Target Fee and/or the Phase 2 Target Fee (as applicable) shall be made to reflect such increases or decreases of the Phase 1 Target Cost and/or the Phase 2 Target Cost (as applicable) (to the extent that such increases or decreases have not resulted in an adjustment of the Phase 1 Target Fee and/or the Phase 2 Target Fee (as applicable) during the Term).

Category 0 Change Control Form

- 6.3 The Category 0 Change Control Form must contain such information at the appropriate level of detail as the Contractor reasonably considers that the Authority may require to properly assess such proposal.

Evaluation of the Category 0 Change Control Form

- 6.4 Within twelve (12) Working Days (or such other period as the Parties may agree) of receipt of the Category 0 Change Control Form, the Authority may request such additional information as is reasonable to enable it to assess the Proposed Change and/or to request any clarification of the information provided by the Contractor.
- 6.5 The Contractor shall provide the information requested by the Authority pursuant to Paragraph 6.4 (*Evaluation of Category 0 Change Control Form*) or provide reasons as to why such information is not available either in whole or in part within ten (10) Working Days (or such other period as the Parties may agree) of receipt of such request for information.
- 6.6 Subject to Paragraphs 6.8 (*Meeting the "No Better No Worse" objective – Required Change Events*), 6.9 (*Meeting the "No Better No Worse" objective – Alternative Strategies*), 6.10 (*Meeting the "No Better No Worse" objective – Special adjustment to the Phase 2 Target Cost*), 6.10 (*Meeting the "No Better No Worse" objective – Adjustment for Wylfa extended generation*) and 6.11 (*Innovative Proposed Changes*) below, the Authority shall evaluate the Category 0 Change Control Form, taking into account all relevant issues, including but not limited to whether or not:
- (a) a change in the Target Fee and/or PBI Fee and/or the Shareline will occur;
 - (b) the Proposed Change will affect the quality of the services to be provided pursuant to this Agreement and in support of the performance of the Contractor's obligations set out in the Client Specification or the likelihood of successful delivery of the services to be provided pursuant to this Agreement and in support of the performance of the Contractor's obligations set out in the Client Specification;

- (c) the Proposed Change will have any impact on the timeliness of delivery of the services to be provided pursuant to this Agreement and in support of the performance of the Contractor's obligations set out in the Client Specification (including the timely achievement of any Target Fee Payment Milestones or Site Completion Dates);
- (d) the Proposed Change will interfere with the relationship of the Authority or the Contractor with Third Parties;
- (e) the Proposed Change can be implemented without the Annual Site Funding Limit being exceeded;
- (f) the residual value of the Authority Assets would be reduced;
- (g) the Proposed Change materially affects the risk or costs to which the Authority is exposed; and/or
- (h) [Not used]
- (i) the Proposed Change is reasonably justifiable, by reference to the information to be provided pursuant to Paragraph 6.3 (*Category 0 Change Control Form*) above,

and shall, acting reasonably, engage with the Contractor to evaluate the impact of the Category 0 Change Control Form on such relevant issues within twenty (20) Working Days of the later of receipt of the Category 0 Change Control Form or the receipt of the information provided by the Contractor pursuant to Paragraph 6.5 (*Evaluation of the Category 0 Change Control Form*) above.

- 6.7 At the same time as evaluating the Proposed Change, the Authority shall also consider any related approvals submitted or required in accordance with the SaV Procedure.

Meeting the "No Better No Worse" objective – Required Change Events

- 6.8 Subject to Paragraphs 6.10 (*Meeting the "No Better No Worse" objective – Special adjustment to the Phase 2 Target Cost*) and 6.11 (*Innovative Proposed Changes*) below, where a Proposed Change is initiated in order to address the consequences of a Required Change Event, the Authority will (acting reasonably) evaluate the Category 0 Change Control Form in accordance with the following so as to meet the objective set out in Paragraph 6.2(c) (*"No Better and No Worse" Requirement*) above:

- (a) The impact of a Required Change Event on the Contractor's entitlement to Target Fee (as adjusted by Shareline) and PBI Fee will be neutralised by:

- (i) an addition to or deduction from the Phase 1 Target Cost and/or the Phase 2 Target Cost (as applicable) of:
 - (A) in the case of the matters referred to in Paragraph 6.14(d) (*Authority Acceptance and Implementation of the Proposed Change*), an amount equal to the Allowable Cost (including any incremental Associated Allocable Cost) that would not have been incurred or saved if the position identified in the relevant Authority Assumption had been unchanged and accurate;
 - (B) in the case of the matters referred to in Paragraph 6.14(e) (*Authority Acceptance and Implementation of the Proposed Change*), the amount calculated in accordance with Appendix A (*Special Items*) of Schedule 6 (*Finance*); or
 - (C) in the case of the matters referred to in Paragraph 6.14(f) (*Authority Acceptance and Implementation of the Proposed Change*), the amount calculated in accordance with Appendix C (*Adjustments for Radioactive Waste Volumes*) of Schedule 6 (*Finance*); or
 - (D) in all other cases except the matters referred to in Paragraph 6.14(z) (*Authority Acceptance and Implementation of the Proposed Change*), the Allowable Cost (including any incremental Associated Allocable Cost) that has been and/or will be saved or incurred by reason of occurrence of the relevant event listed at Paragraph 6.14 (*Authority Acceptance and Implementation of the Proposed Change*);
- (iA) a corresponding adjustment to the percentage values in Paragraph 2.1.1A.1 (*Performance Metrics*) and Paragraph 2.1.1B (*Performance Metrics*) of Schedule 15 (*Minimum Performance Standards*) to reflect any change in the relative value of the Phase 2 Target Cost to the Phase 1 Target Cost following an increase or decrease in the Phase 1 Target Cost and/or Phase 2 Target Cost pursuant to (i) above;
- (ii) an adjustment to the Phase 1 Target Fee pro rata to the addition to or deduction from the Phase 1 Target Cost and a pro rata adjustment of any relevant amounts of Allocated Target Fee, but only to the extent that such an adjustment is applicable in accordance with Paragraph 6.2(b) (*"No Better and No Worse" Requirement*) above; and

- (iii) an adjustment to the Phase 2 Target Fee pro rata to the addition to or deduction from the Phase 2 Target Cost and a pro rata adjustment of any relevant amounts of Allocated Target Fee, but only to the extent that such an adjustment is applicable in accordance with Paragraph 6.2(b) (*"No Better and No Worse" Requirement*) above; and
 - (iv) an adjustment to PBI Fee pro rata to any adjustment to the agreed date for Achievement of the Client Specification Completion State in the Contract Baseline, which shall be consistent with the levels of PBI Fee available in each Contract Year pursuant to Paragraph 3.4 (*PBI Fee*) of Part 4A (*Calculation of PBI Fee*) of Schedule 6 (*Finance*), as measured by the relative value of such PBI Fee to the Budgeted Cost of Work Scheduled in each Contract Year;
- (b) The impact of the Required Change Event on the agreed dates contained in the Client Specification or Contract Baseline for achievement of any Interim State or Interim End State, as applicable, any agreed date for achievement of an Authority Milestone, any other time-related obligation placed on the Contractor and any date on which any PBI Fee will cease to be payable will be neutralised by addition of the length of time that, due to occurrence of the Required Change Event, achievement of any Interim State or Interim End State, as applicable, Authority Milestone, or other relevant obligation is or will be delayed. In addition, the Contractor shall be entitled to request that the PBI Fee allocated to the PBI Level achievement of which has been so delayed or prevented shall be reallocated to existing or new PAFs. If the relevant reallocation of PBI Fee cannot be so agreed, the Authority shall be entitled, acting reasonably, to determine such reallocation (if any) as it considers appropriate and such determination shall be binding on the Parties;
- (c) The amount of Allowable Cost saved or incurred as referred to in Paragraph 6.8 (*Meeting the "No Better No Worse" objective – Required Change Events*) above and the extent of any delay as referred to in Paragraph 6.8(b) above will be assessed on the assumption that the Contractor responds to the Required Change Event in accordance with Good Industry Practice and such that Value For Money is achieved and maintained for the Authority;
- (d) Where:
 - (i) any amount of Allowable Cost that will be saved or incurred as referred to in Paragraph 6.8(a)(i) above; or

- (ii) any length of time by which Achievement of any Interim State, Interim End State or any Authority Milestone or other relevant obligation will be delayed as referred to in Paragraph 6.8(b) above,

cannot reasonably be determined at the time of evaluation of the Category 0 Change Control Form, the Parties will (acting reasonably) agree assumptions on which such determination is to be based.

Meeting the "No Better No Worse" objective – Alternative Strategies

6.9 Where a Proposed Change is initiated in order to address the consequences of the exercise by the Authority of the option to implement an Alternative Strategy in accordance with Paragraph 2.5 (*Alternative Strategies*) of Part 3 (*Target Cost*) of Schedule 6 (*Finance*), the Authority will (acting reasonably) evaluate the Category 0 Change Control Form in accordance with the following so as to meet the objective set out in Paragraph 6.2(d) (*"No Better and No Worse" Requirement*) above:

- (a) The impact of the Alternative Strategy on the Contractor's entitlement to Target Fee (as adjusted by Shareline) and PBI Fee will be neutralised by:
 - (i) an addition to or deduction from the Phase 1 Target Cost and/or the Phase 2 Target Cost (as applicable) of the Allowable Cost (including any incremental Associated Allocable Cost) that has been and/or will be saved or incurred by reason of implementation of the Alternative Strategy;
 - (iv) a corresponding adjustment to the percentage values in Paragraph 2.1.1A.1 (*Performance Metrics*) and Paragraph 2.1.1B (*Performance Metrics*) of Schedule 15 (*Minimum Performance Standards*) to reflect any change in the relative value of the Phase 2 Target Cost to the Phase 1 Target Cost following an increase or decrease in the Phase 1 Target Cost and/or Phase 2 Target Cost pursuant to (i) above;
 - (ii) an adjustment to the Phase 1 Target Fee pro rata to the addition to or deduction from the Phase 1 Target Cost and a pro rata adjustment of any relevant amounts of Allocated Target Fee;
 - (iii) an adjustment of the Phase 2 Target Fee pro rata to the addition to or deduction from the Phase 2 Target Cost and a pro rata adjustment of any relevant amounts of Allocated Target Fee;
 - (iv) an adjustment to PBI Fee pro rata to any adjustment to the agreed date for Achievement of the Client Specification Completion State in the Contract Baseline, which shall be consistent with the levels of

PBI Fee available in each Contract Year pursuant to Paragraph 3.4 (*PBI Fee*) of Part 4A (*Calculation of PBI Fee*) of Schedule 6 (*Finance*), as measured by the relative value of such PBI Fee to the Budgeted Cost of Work Scheduled in each Contract Year; and

- (b) The impact of the Alternative Strategy on the agreed dates contained in the Client Specification or Contract Baseline for achievement of any Interim State or Interim End State, as applicable, any agreed date for achievement of an Authority Milestone, any other time-related obligation placed on the Contractor and any date on which any PBI Fee will cease to be payable will be neutralised by addition of the length of time that, due to the implementation of the Alternative Strategy, achievement of any Interim State or Interim End State, as applicable, Authority Milestone, or other relevant obligation is or will be delayed. In addition, the Contractor shall be entitled to request that the PBI Fee allocated to the PBI Level achievement of which has been so delayed or prevented shall be reallocated to existing or new PAFs. If the relevant reallocation of PBI Fee cannot be so agreed, the Authority shall be entitled, acting reasonably, to determine such reallocation (if any) as it considers appropriate and such determination shall be binding on the Parties;
- (c) The extent of any delay as referred to in Paragraph 6.9(b) above will be assessed on the assumption that the Contractor responds to the exercise of the option to implement an Alternative Strategy in accordance with Good Industry Practice and such that Value For Money is achieved and maintained for the Authority;
- (d) Where:
 - (i) any amount of Allowable Cost that will be saved or incurred as referred to in Paragraph 6.9(a)(i) above; or
 - (ii) any length of time by which Achievement of any Interim State, Interim End State or any Authority Milestone or other relevant obligation will be delayed as referred to in Paragraph 6.9(b) above,

cannot reasonably be determined at the time of evaluation of the Category 0 Change Control Form, the Parties will (acting reasonably) agree assumptions on which such determination is to be based.

Meeting the "No Better No Worse" objective – Special adjustment to the Phase 2 Target Cost

- 6.10 Where a Proposed Change is initiated to address a proposed adjustment to the Phase 2 Target Cost in accordance with Appendix G (*Special adjustment to the*

Phase 2 Target Cost) of Schedule 6 (*Finance*) following the approval by the Authority of an Estimate at Phase 2 Completion for such purpose in accordance with Appendix G (*Special adjustment to the Phase 2 Target Cost*) of Schedule 6 (*Finance*):

- (a) the Phase 2 Target Cost shall be increased or decreased by the amount necessary for the Phase 2 Target Cost to equate to the Estimate at Phase 2 Completion approved by the Authority for such purpose;
- (b) the Contract Baseline and Annual Site Funding Limits for any Contract Years in which Allowable Costs have been apportioned under the Phase 2 Cost Profile approved by the Authority for such purpose shall be adjusted in accordance with the Proposed ASFL approved by the Authority for such purpose; and
- (c) such Proposed Change shall entail an adjustment to the Phase 2 Target Cost, the Contract Baseline and the Annual Site Funding Limits in accordance with (a) and (b) above only and shall not include any adjustment to the Phase 1 Target Cost, Phase 1 Target Fee, Phase 2 Target Fee, PBI Fee or any time-related obligation placed on the Contractor.

Meeting the "No Better No Worse" objective – Adjustment for Wylfa extended generation

6.10A Where a Proposed Change is initiated to address a proposed adjustment to the Phase 1 Target Cost in accordance with Paragraphs 2.9 to 2.13 (*Adjustment for Wylfa extended generation*) of Part C (*Target Costs*) of Schedule 6 (*Finance*):

- (a) the Phase 1 Target Cost;
- (b) the Contract Baseline and the Annual Site Funding Limits for any applicable Contract Years; and
- (c) the Phase 1 Target Fee and any relevant amounts of Allocated Target Fee for Target Fee Payment Milestones for Phase 1,

shall be adjusted in accordance with Paragraphs 2.9 to 2.14 (*Adjustment for Wylfa extended generation*) of Part C (*Target Costs*) of Schedule 6 (*Finance*), and such Proposed Change shall not include any adjustment to the Phase 2 Target Cost, Phase 2 Target Fee, PBI Fee or any time-related obligation placed on the Contractor.

Innovative Proposed Changes

6.11 The Parties have agreed the following provisions so as to incentivise the Contractor to consider and propose innovative technical solutions aimed at achieving an overall

reduction in Phase 1 Target Cost or the Phase 2 Target Cost or otherwise reducing hazards or Authority liabilities in connection with the Sites.

- (a) For the purposes of this Schedule 2 (*Change Control Procedure*) an innovative Proposed Change is a Proposed Change to the Client Specification the effect of which, if implemented, would be to reduce the Phase 1 Target Cost and/or the Phase 2 Target Cost or otherwise reduce hazards and/or potential liabilities in connection with any Site in a manner beneficial to the Authority. In deciding whether to Approve any innovative Proposed Change the Authority shall be entitled to take into account possible additional costs to the Authority relating to other sites for which the Authority has financial responsibility under the Energy Act 2004.
- (b) Subject to Paragraph 6.8(c) (*Meeting the "No Better No Worse" objective – Required Change Events*), where a Party submits an innovative Proposed Change and the Authority subsequently Approves such innovative Proposed Change or any other Proposed Change that is substantially similar to such innovative Proposed Change:
 - (i) the amount of any deduction from the Phase 1 Target Cost and/or the Phase 2 Target Cost that would, but for this provision, be made pursuant to Paragraph 6.8(a)(i) (*Meeting the "No Better No Worse" objective – Required Change Events*) or 6.10 (*Meeting "No Better No Worse" objective – Special adjustment to the Phase 2 Target Cost*) above in connection with Approval of such Proposed Change will be reduced by an amount equal to fifteen per cent (15%) of the amount that would otherwise fall to be deducted;
 - (ii) the amount of any deduction from the Phase 1 Target Cost and/or the Phase 2 Target Cost pursuant to Paragraph 6.8(a)(i) (*Meeting the "No Better No Worse" objective – Required Change Events*) or 6.10 (*Meeting "No Better No Worse" objective – Special adjustment to the Phase 2 Target Cost*) in connection with Approval of such Proposed Change shall be disregarded for the purposes of Paragraphs 6.2(b)(i) (*"No Better and No Worse" Requirement*) and 6.2(b)(ii) (*"No Better and No Worse" Requirement*) above; and
 - (iii) where any Allocated Target Fee would cease to be payable as a direct consequence of such Change, the amount of such Allocated Target Fee shall be re-allocated to an alternative new or existing Target Fee Payment Milestone. The Contractor may propose the manner of such re-allocation in its Category 0 Change Control Form

and the Authority shall act reasonably when considering such proposal.

- (c) The provisions set out at Paragraph 6.11(b) (*Innovative Proposed Changes*) shall not apply to any Change resulting from the implementation of any Alternative Strategies identified in the table appearing in Paragraph 2 (*Adjustments to the Phase 1 Target Cost and Phase 2 Target Cost*) of Part 3 (*Target Cost*) of Schedule 6 (*Finance*). For the avoidance of doubt, notwithstanding the expiry of the date by which the options set out at Paragraph 2 (*Adjustments to the Phase 1 Target Cost and Phase 2 Target Cost*) of Part 3 (*Target Cost*) of Schedule 6 (*Finance*) must be exercised, the provisions set out at Paragraph 6.11(b) shall continue not to apply to any Change resulting from the implementation of any of those Alternative Strategies.

Authority Acceptance and Implementation of the Proposed Change

6.12 Subject to Paragraph 6.14 (*Authority Acceptance and Implementation of the Proposed Change*) below, the Authority shall in its sole discretion Approve or reject the Proposed Change as detailed in the Category 0 Change Control Form within twenty (20) Working Days (or such other period as the Parties may agree, acting reasonably, having regard to the complexity of the Proposed Change) of the later of:

- (a) receipt by the Authority of the Category 0 Change Control Form; or
- (b) receipt by the Authority of the additional information or clarification requested by the Authority pursuant to Paragraph 6.4 (*Evaluation of the Category 0 Change Control Form*) in accordance with Paragraph 6.5 (*Evaluation of the Category 0 Change Control Form*),
- (c) [Not used]

as the case may be, in accordance with Paragraph 6.6 (*Evaluation of the Category 0 Change Control Form*) above.

6.13 The Proposed Change that is the subject of a Category 0 Change Control Form shall (without prejudice to the provisions of Paragraph 6.14 (*Authority Acceptance and Implementation of the Proposed Change*) below) not be implemented by any Party unless and until Approval of the relevant Proposed Change is provided.

6.14 The Authority cannot refuse Proposed Changes to the extent such Proposed Changes are required to address the following items provided that the extent of any adjustment to the Phase 1 Target Cost, Phase 2 Target Cost, Phase 1 Target Fee, Phase 2 Target Fee, PBI Fee or any time-related obligation placed on the Contractor

shall be subject to the provisions of Paragraph 6.8 (*Meeting the "No Better No Worse" objective – Required Change Events*) to Paragraph 6.11 (*Innovative Proposed Changes*):

- (a) Emergency Action (save that there shall be no adjustment to the Phase 1 Target Cost, Phase 2 Target Cost, Target Fee, PBI Fee or any time-related obligation placed on the Contractor where the Emergency Action arises as a consequence of an act or omission on the part of the Contractor relating to any Site or delivery of any Interim State or Interim End State, as applicable);
- (b) a Change necessary to comply with a Change in Law (provided that this shall not in any way affect the application of Clause 37.1 (*Change in Law*) of this Agreement). In relation to a Change in Law, entitlement to adjustment to Target Fee, PBI Fee, the Phase 1 Target Cost, Phase 2 Target Cost and/or any time-related obligations in accordance with Paragraph 6.8 (*Meeting the "No Better No Worse" objective – Required Change Events*) is subject to Clause 37.1 (*Change in Law*) of this Agreement and arises only where such Change in Law constitutes a Specific Change in Law or a Material General Change in Law;
- (c) a Regulatory Requirement, provided that in relation to a Regulatory Requirement the Contractor shall not be entitled to adjustment to Target Fee, PBI Fee, the Phase 1 Target Cost, the Phase 2 Target Cost or any time-related obligations in accordance with Paragraph 6.8 (*Meeting the "No Better No Worse" objective – Required Change Events*) unless such Regulatory Requirement falls within one of the other events listed in this Paragraph 6.14 (*Authority Acceptance and Implementation of a Proposed Change*) (and in such case only to the extent that such other event entitles the Contractor to such adjustments);
- (d) a Material Adverse Effect resulting directly from any change to or inaccuracy in the position identified in an Authority Assumption;
- (e) any difference between the Cost incurred (or in the case of Customer Contracts, the actual revenue generated) in respect of a matter set out in Appendix A (*Special Items*) of Schedule 6 (*Finance*) in a Contract Year and the provisional amount applicable to that matter in Appendix A (*Special Items*) of Schedule 6 (*Finance*);
- (f) in accordance with Appendix C (*Adjustments for Radioactive Waste Volumes*) of Schedule 6 (*Finance*) the Authority is reasonably satisfied that there is a Material Radioactive Waste Variance;

- (g) a Material Adverse Effect resulting directly from a Customer changing its requirements inside the scope of its rights under any Customer Contract;
- (h) a Material Adverse Effect resulting directly from the Authority issuing an instruction under:
 - (i) Clause 5.5.1 (*The Authority's right to instruct*) of this Agreement;
 - (ii) Clauses 20.3 (*Authority's right to instruct*) or 20.4 (*Authority's right to instruct*) of this Agreement in respect of any Customer Contract or otherwise instructing or requiring any change to Customer Contracts, including (without limitation) any change to scope, terms or pricing structures or entry into new Customer Contracts;
 - (iii) Paragraph 18 (*Authority's right to instruct*) of Schedule 5 (*Subcontracting and Procurement*) in respect of any Subcontract and/or any agreement between the Authority and the Contractor pursuant to Paragraph 18.5 (*Authority's Right to Instruct*) of Schedule 5 (*Subcontracting and Procurement*); or
 - (iv) Clause 23.3.4 (*Compliance*) or 23.6 (*Review of the Inter SLC Service Contracts*) of this Agreement to enter into or change an Inter SLC Service Contract;
- (i) a Material Adverse Effect resulting directly from the Contractor having followed an Authority instruction in respect of the exercise of a discretion pursuant to Part 1 (*Permitted Activities*) of Schedule 4 (*Commercial*);
- (j) the Authority having issued an Authority Direction;
- (k) a Material Adverse Effect resulting directly from a change to the Authority Policies and Procedures as referred to in Clause 37.10.3 (*Variation*);
- (l) [Not used]
- (m) a Dependency Event;
- (n) the inflation assessment carried out by the Authority (and contributed to by the Contractor) pursuant to PCP-09 (*Cost Estimating*), as supplemented by the PCP-M Contractor Annexe, indicates that over the course of any one Contract Year the rate of inflation is equal to or greater than six per cent (6%); or

- (o) a Material Adverse Effect resulting directly from the exercise by the Authority of its rights under Clause 6.4.2.1 (*Use of Authority Assets*) or Clause 6.4.2.2 (*Use of Authority Assets*) of this Agreement;
- (p) a Material Adverse Effect resulting directly from the Authority requiring the Contractor to implement any Cross Estate Initiative;
- (q) a Material Adverse Effect resulting directly from the Contractor incurring any Historical Costs not included in the Phase 1 Target Cost or Phase 2 Target Cost;
- (r) a Material Adverse Effect resulting directly from a change to or inaccuracy in the position identified in an assumption agreed between the Parties pursuant to Paragraph 6.8(d) (*Meeting the "No Better No Worse" objective – Required Change Events*);
- (s) a Material Adverse Effect resulting directly from a Regulatory Delay (save that there shall be no adjustment to Target Fee or PBI Fee);
- (t) a Material Adverse Effect resulting directly from an amendment or withdrawal of any Permitted Activity under Clause 21.5 (*Permitted Activities*) of this Agreement or rejection by the Authority of a Permitted Activities Request under Paragraph 2 (*Content of Permitted Activities Request*) of Part 1 (*Permitted Activities*) to Schedule 4 (*Commercial*) in circumstances where the subject matter of the Permitted Activity Request does constitute a Permitted Activity as agreed between the Parties or determined in accordance with the Dispute Resolution Procedure;
- (u) a Material Adverse Effect resulting directly from an Insolvency Event in relation to any Subcontractor imposed on the Contractor by the Authority pursuant to Paragraph 18 (*Authority's right to instruct*) of Schedule 5 (*Subcontracting/Procurement*);
- (v) a Material Adverse Effect resulting directly from an addition to, omission from or other change to the employment contracts of Employees required to be made by the Authority in accordance with Clause 31.11.3 (*Terms and Conditions of Employment*) of this Agreement;
- (w) an instruction of the Authority pursuant to Clause 34.10 (*Establishment of New SLC*) or requirement pursuant to Clause 34.11 (*Establishment of New SLC*);
- (x) any revocation of all or part of any Nuclear Site Licence, any Environment Agency or Scottish Environment Protection Agency (as applicable) licence,

authorisation, permit or consent or any other Necessary Consent or material licence or permit held by the Contractor the possession of which is necessary to enable the Contractor to operate the Sites where such revocation is not due to a material breach by the Contractor of its obligations under this Agreement and is due to an act, omission, or failure by the Authority;

- (y) the Authority does not have sufficient rights or title to grant licences of Authority IP to the Contractor as identified in the Client Specification;
- (z) the Authority has approved an Estimate at Phase 2 Completion for the purposes of adjusting the Phase 2 Target Cost to equate to the Estimate at Phase 2 Completion in accordance with Appendix G (*Special adjustment to the Phase 2 Target Cost*) of Schedule 6 (*Finance*) (save that the effect of such Change shall be exclusively as set out in Paragraph 6.10 (*Meeting the "No Better No Worse" objective - Special Adjustment to the Phase 2 Target Cost*); and
- (aa) the Contractor takes any action in response to any actual, suspected or threatened infringement by any Third Party of Authority Owned IP or Developed IP licensed to the Authority in accordance with Clause 29.5.2 (*Infringement of IP owned by the Authority*),

provided that no adjustment to the Phase 1 Target Cost or Phase 2 Target Cost or other relief should be granted by the Authority to the extent the Proposed Change arises as a result of Defective Performance in circumstances where a period of nine (9) Months has passed since the Commencement Date or within such nine (9) Month period, the Nominated Staff have had a reasonable opportunity to identify, address and avoid the Defective Performance.

Restrictions on Authority Proposed Change

- 6.15 The Authority shall not initiate a Proposed Change which:
- (a) requires the Proposed Change to be implemented in a way that infringes Legislation or is unavoidably inconsistent with Good Industry Practice;
 - (b) would materially and adversely impact upon the Contractor's ability to comply with its site licence conditions;
 - (c) would cause any Necessary Consent to be revoked (or would require a new Necessary Consent required to implement the relevant Proposed Change which is likely to be unobtainable);

- (d) would, if implemented, result in a fundamental change in the nature of the Agreement or the services to be delivered;
- (e) would materially and adversely affect the Contractor's ability to deliver the services to be provided pursuant to this Agreement and in support of the performance of the Contractor's obligations set out in the Client Specification, in a way that is not addressed by the application of the provisions of this Schedule 2 (*Change Control Procedure*);
- (f) would adversely affect the health and safety of any person; and/or
- (g) would be unlawful or *ultra vires* for the Authority to implement (or require to be implemented),

and any Proposed Change that contravenes this Paragraph 6.15 shall, once such contravention has been identified, be deemed to have been withdrawn (requiring no further action from the Contractor).

Authority Rejection of the Proposed Change

- 6.16 Where the Authority initiates a Proposed Change pursuant to Paragraph 4 (*Initiation and Characterisation of Proposed Changes*), if it rejects any resulting Category 0 Change Control Form it may require the Contractor to resubmit the Category 0 Change Control Form.
- 6.17 Subject to Paragraph 6.16 (*Authority Rejection of the Proposed Change*) above, if the Authority rejects the Proposed Change, it shall be obliged to give its reasons for such a rejection.

7 EMERGENCY CHANGES

- 7.1 Where the Contractor reasonably believes that:
 - (a) an Emergency Change is required due to the need for Emergency Action; and
 - (b) the Contractor is unable due to time constraints to process the Emergency Change as a Proposed Change in accordance with this Schedule 2 prior to taking such Emergency Action,

the Contractor shall implement the Emergency Change as promptly as possible, provided that:

- (i) it notifies the Authority of the Emergency Action and the need for an Emergency Change in accordance with Paragraph 7.2 (*Emergency Changes*); and

- (ii) as soon as is practicable (and in any event within ten (10) Working Days of the Emergency Change being identified by the Contractor) it retrospectively applies the provisions of Paragraph 4 (*Initiation and Characterisation of Changes*) (and any other relevant provision following the application of Paragraph 4 (*Initiation and Characterisation of Changes*)),

so that the Emergency Change is retrospectively treated as a Proposed Change.

7.2 As soon as possible, or, if later, immediately following any Emergency Change implemented, the Contractor must send a written notification to the Authority setting out the following:

- (a) a description of the circumstances causing the Contractor to believe that the Emergency Change is or was required; and
- (b) an explanation as to why time is or was of the essence in those circumstances.

8 CHANGE IN LAW

8.1 The procedure and cost of introducing a Change resulting from a Change in Law shall be dealt with in accordance with Paragraph 6.8 (*Meeting the "No Better No Worse" objective – Required Change Events*) above and other relevant provisions of this Schedule 2 and Clause 37.1 (*Change in Law*) of this Agreement.

9 AUTHORITY RIGHT OF AUDIT

9.1 The Contractor acknowledges the Authority's right to audit the Contractor's Internal Change Control Procedure and the implementation of any Change which has been undertaken by the Contractor at any time and to the extent deemed necessary by the Authority.

9.2 Any such audit shall be undertaken at the Authority's cost (subject always to the provisions of Paragraph 4.1 (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*)).

10 OBLIGATION TO NOTIFY

10.1 Without prejudice to the provision of Clause 4 (*Contractor's Obligations*), which shall continue to apply following any notification under this Paragraph 10 (*Obligation to Notify*), if at any time the Contractor becomes aware of any contravention of this Schedule 2 it shall notify the Authority of the same as soon as reasonably practicable and provide details of the act, event or circumstances and any impact such act, event

or circumstances will have on the Contractor's performance of its other obligations under this Agreement.

11 IMPLEMENTATION OF A CHANGE

- 11.1 The Contractor shall implement any Change in accordance with the basis on which it was Approved (which, in the case of a Category 0 Change, shall be the Category 0 Change Control Form as agreed by the Authority).
- 11.2 The Parties shall ensure that any formal amendment required to this Agreement or any other Contract Document as a result of any Change that is Approved in accordance with this Schedule 2 shall be effected within forty (40) Working Days of approval of such Change.
- 11.3 Within five (5) Working Days of a Change arising in accordance with this Schedule 2 the Change shall be entered into the "Change Control Log" (as such term is used in PCP-05 (*Change Control*)) by the Contractor in accordance with PCP-05 (*Change Control*) and Paragraph 3 (*Trend Log and Change Control Log*).

Appendix A

Category 0 Change Control Form

NDA/Magnox/RSRL CATEGORY 0 CHANGE CONTROL REQUEST

1. Summary of the Change

Change no. Version Date change raised Trend no. Date trend raised

Title

Contract Baseline Change LTP Performance Plan Change

Trigger for Change:
(E.g. scope change, strategy change, Required Change Event, etc.)

Required approval date?

Implications if the change is not approved by this date

Magnox/RSRL are expected to address proposed changes to the baseline in a timely manner. This section should detail all implications including cost, schedule, risk, reputation, etc., that may occur if approval is not given by the indicated date.

Date to NDA

Date Received by NDA

Project ID/ CWBS

PSWBS

2. Effects of the Change

Client Specification Change Target Fee Milestone Change Funding Change

PBI Fee Payment Change Novel/Contentious/Repercussive Target Cost Change

Directed Change in NDA Documents/Requirements (e.g. NDA Strategy) Change in Terms and Conditions Change in Law

Scope Acceleration Scope Deferral Change to Nominated Staff

Additional Scope Scope Deletion Regulatory Changes/Requirements

3. Description of the Change

“What” – clearly identifying what the change is.

Any impact to the interim end state(s) or interim state; interim end date; Client Specification and Target Fee Payment Milestone dates must be clearly articulated.

4. Justification for the Change

“Why” - the event that has triggered the change, describing why it is a valid reason for change.

5. Impact of the Change

Is this change independent of other changes?	Yes		No	
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If 'No' explain which changes, and why:

Impact Assessment *This section must identify whether any other projects/programmes of work are affected by this change. If no impact state “none”. It should be clearly identified whether this change proposal encompasses the change in full, or whether additional changes will be raised as a result of this. Separate change proposals for one event (trigger) should be discouraged, however where this is unavoidable, forecast cost and schedule impacts should be included, together with a timeline for the submission of the change(s). The impact assessment should include a description of the basis on which the assessment was made, and any assumptions relating to that basis.*

Alternatives Considered

This section must identify what alternative solutions/changes were considered, and why they were dismissed

Impact to Execution Year <input type="checkbox"/>	Impact to Contract Term <input type="checkbox"/>	Impact to Out Years (Phase 1 / Phase2 / beyond) <input type="checkbox"/>
Fee Implications/Benefits Realisations (Magnox/RSRL or National) <input type="checkbox"/>	Impact to ASFL/EAC affordability <input type="checkbox"/>	Impact to NDA Targets or Milestones <input type="checkbox"/>
Impact to Capital/Resource Budgets <input type="checkbox"/>	Material Impact to Site Level documents <input type="checkbox"/>	Impact to prioritisation/SED score <input type="checkbox"/>
Funded via savings/efficiencies <input type="checkbox"/>	Impact to third party interdependencies <input type="checkbox"/>	Impact to NDA Strategy <input type="checkbox"/>
Regulator Impact <input type="checkbox"/>	Impact to waste metrics <input type="checkbox"/>	Impact to site-wide baseline components, e.g. TBURD, Hazard Baseline, Skills, IWS <input type="checkbox"/>
Other <input type="checkbox"/>		

Cost Impact:	Cost (£) (Target Cost / Contract Baseline)	Contingency (£) (Target Cost / Contract Baseline)	Total (£) (Target Cost / Contract Baseline)	Cost (£) (LTP Performance Plan)	Contingency (£) (LTP Performance Plan)	Total (£) (LTP Performance Plan)
Execution Year Baseline Impact						
Out Year Baseline Impact (Phase 1)						
Inflation Forecast Impact		n/a		n/a	n/a	n/a
Out Year Baseline Impact (Phase 2)						
Beyond contract term	n/a	n/a	n/a			
Total Impact to Baseline						

NB: If the change affects multiple CWBS and/or PSWBS elements, a table must be attached detailing the change at each WBS element.

Schedule Impact:		Does the change impact:	YES	NO
Execution year impact	Working Days	Critical Path		
Out-year impact (Phase 1)	Working Days			
Out-year Impact (Phase 2)	Working Days	Authority Milestones		
Total Impact	Working Days	Payment Milestones		
		If Yes, give details below		

Details: *If the proposed change is of relevance and interest to a Regulator, or has a potential impact on key milestones, details should be provided here, together with dialogue to date and proposed action.*

Impact Summary	PRIOR TO CHANGE	POST CHANGE	MOVEMENT
Phase 1 – Target Cost (current MV) cost BAC	£	£	£
Inflation forecast BAC	£	£	£
Total Target Cost BAC	£	£	£
Target cost EAC	£	£	£
Performance Plan BAC	£	£	£

Performance Plan EAC	£	£	£
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Risk Impact:

Identify, for example, any risks that have been eliminated as a result of this change; any new emerging risks; potential mitigations; whether there is an impact to the contingency value. Identify threats and/or opportunities.

Identify any change to the risk distribution between Magnox/RSRL and NDA should the change be approved.

Impact Summary

Phase 2 –

	PRIOR TO CHANGE	POST CHANGE	MOVEMENT
Target Cost (current MV) cost BAC	£	£	£
Inflation forecast BAC	£	£	£
Total Target Cost BAC	£	£	£
Target cost EAC	£	£	£
Performance Plan BAC	£	£	£
Performance Plan EAC	£	£	£

Risk Impact:

Identify, for example, any risks that have been eliminated as a result of this change; any new emerging risks; potential mitigations; whether there is an impact to the contingency value. Identify threats and/or opportunities.

Identify any change to the risk distribution between Magnox/RSRL and NDA should the change be approved.

6. Supporting Information (to be attached) : NB. Documents should be red-lined to demonstrate changes -

Detailed Volume <input type="checkbox"/>	Basis of estimate <input type="checkbox"/>	Cost Summary <input type="checkbox"/>	Schedule <input type="checkbox"/>	Risk Analysis and Risk Register <input type="checkbox"/>
Cost Contingency Analysis and Calculations <input type="checkbox"/>	Schedule Contingency Analysis and Outputs <input type="checkbox"/>	Other <input type="checkbox"/>	<u>List Other Documents:</u>	

7. Approval

Magnox/RSRL APPROVAL

Position	Print Name	Signature	Date
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Programme Manager			
Business Services Director			
Managing Director			

FOR NDA USE ONLY:

Decision

Approved

Rejected

Returned pending additional information or clarification

Comments

If the Proposed Change is being approved, give details of any conditions attaching to approval. If the Proposed Change is being rejected, give reasons why (SLCA Sch 2 Para 6.17). If additional information or clarification is required to assess the Proposed Change, give details of information or clarification sought (SLCA Sch 2 Para 6.4).

If approved

Conditions attaching to approval:

If rejected

Reason(s) for rejection:

If returned pending additional information or clarification

Details of additional information or clarification required:

Date of resubmission:

Position	Print Name	Signature	Date
Authorised NDA representative			

NDA Core Function Distribution (Category 0 Changes Only)

BUSINESS SERVICES FUNCTION		
<i>NAME</i>	<i>SIGNATURE</i>	<i>DATE</i>
Comments:		
ASSURANCE FUNCTION		
<i>NAME</i>	<i>SIGNATURE</i>	<i>DATE</i>
Comments:		
FINANCE FUNCTION		
<i>NAME</i>	<i>SIGNATURE</i>	<i>DATE</i>
Comments:		
STRATEGY FUNCTION		
<i>NAME</i>	<i>SIGNATURE</i>	<i>DATE</i>
Comments:		

Appendix B

Development of the LTP Performance Plan

1 CONSOLIDATION OBJECTIVE

- 1.1 With respect to the LTP Performance Plan, the objective of the Parties to be achieved during the Consolidation Phase is to develop the Magnox Commencement Date LTP and the RSRL Commencement Date LTP into a consolidated plan or combination of plans comprising an LTP Performance Plan for all the Sites that is aligned with the activities, schedules, cost estimates and other commitments contained in the Final Tender and satisfies the requirements of Paragraph 1.5 (LTP Performance Plan) of this Schedule 2 (Change Control Procedure).

2 IMPLEMENTATION OF THE CONSOLIDATION PLAN

- 2.1 As at the Commencement Date, the LTP Performance Plan is constituted by the Magnox Commencement Date LTP and the RSRL Commencement Date LTP together. The Parties acknowledge that in such form the LTP Performance Plan is not yet aligned with the activities, schedules, cost estimates and other commitments contained in the Final Tender and does not yet satisfy the requirements of Paragraph 1.5 (LTP Performance Plan) of this Schedule 2 (Change Control Procedure).
- 2.2 To achieve the objective described in Paragraph 1 (Consolidation Objective) above, the Contractor shall implement the Consolidation Plan by:
- (a) consolidating the Magnox Commencement Date LTP and the RSRL Commencement Date LTP into an overarching plan or combination of plans describing the totality of activities required to take each Site individually and all Sites together from their current states to their final end states;
 - (b) developing the activities, schedules, cost estimates and other commitments contained in the Final Tender into a format that is compliant with all applicable Authority Policies and Procedures and incorporating such compliant activities, schedules, cost estimates and other commitments into the LTP Performance Plan (to the extent not already incorporated) and otherwise changing and updating the activities, schedules, cost estimates and other content of the LTP Performance Plan inherited from the Magnox Commencement Date LTP and RSRL Commencement Date LTP;
 - (c) allocating the activities, schedules, cost estimates and other content of the LTP Performance Plan (to the extent that such content relates to completion of the Client Specification or performance of the Contractor's obligations under this Agreement, and whether incorporated from the Final Tender or

inherited from the Magnox Commencement Date LTP and RSRL Commencement Date LTP) to either to Phase 1 or Phase 2, provided that unless otherwise approved by the Authority:

- (i) the activities allocated to Phase 1 shall not be scheduled to be completed later than 31 March 2021;
 - (ii) the activities allocated to Phase 2 shall not be scheduled to commence prior to 1 April 2021 or be completed later than 31 March 2028; and
 - (iii) in the course of incorporating the activities, schedules, cost estimates and other commitments contained in the Final Tender into the LTP Performance Plan the Contractor shall not reallocate activities, schedules, cost estimates or other commitments allocated to Phase 1 in the Final Tender to Phase 2 in the LTP Performance Plan (or vice versa);
- (d) ensuring that by the end of the Consolidation Phase the LTP Performance Plan is fully compliant with all applicable Authority Policies and Procedures, in accordance with this Appendix B (*Development of the LTP Performance Plan*).

3 APPLICATION OF THE CHANGE CONTROL PROCEDURE DURING THE CONSOLIDATION PHASE

Changes to the LTP Performance Plan

- 3.1 To the extent required to achieve the objective described in Paragraph 1 (Consolidation Objective) above, the Contractor shall initiate Proposed Changes to the LTP Performance Plan in accordance with the Change Control Programme in the Consolidation Plan.
- 3.2 Subject to Paragraph 3.2A (Changes to the LTP Performance Plan) below, during the Consolidation Phase, any Proposed Changes and Changes to the LTP Performance Plan shall be processed in accordance with the Change Control Procedure, and the identification of any matter in the Final Tender shall not entitle the Contractor to be relieved from or to avoid its obligations under the Change Control Procedure, provided that any Proposed Change to the LTP Performance Plan that is inconsistent with the activities, schedules, cost estimates and other commitments contained in the Final Tender shall be deemed to be a Category 0 Change.
- 3.2A The identification of a Category 0 Change in the Change Control Programme shall be sufficient Notice to the Authority of the same for the purposes of Paragraph 4.4 (*Proposed Change Categorisation*) of the Change Control Procedure.

Changes to the Phase 1 Target Cost, Phase 2 Target Cost or Contract Baseline

- 3.3 During the Consolidation Phase, if either Party proposes to make any Changes to this Agreement (including the Phase 1 Target Cost, the Phase 2 Target Cost, the Contract Baseline and any other schedules, appendices or annexes) such Proposed Changes or Changes shall be processed in accordance with the Change Control Procedure, and the identification of any matter in the Final Tender shall not entitle the Contractor to be relieved from or to avoid its obligations under the Change Control Procedure.

Approval and rejection of Proposed Changes

- 3.4 The Parties acknowledge that the value, volume and impact of any Proposed Changes are likely to be greater during the Consolidation Phase than subsequently during the remainder of the Term. Accordingly:
- (a) the exercise by the Authority of its discretion to Approve or reject Proposed Changes pursuant to Paragraph 6.12 (*Authority Acceptance and Implementation of the Proposed Change*) of this Schedule 2 (*Change Control Procedure*) during the Consolidation Phase shall be without prejudice to the

exercise by the Authority of its discretion pursuant to that Paragraph at any subsequent time during the Contract Term; and

- (b) the conduct of the Authority in complying with its obligations under Paragraph 2.1 (*Reasonableness and Good Faith*) of this Schedule 2 (*Change Control Procedure*) during the during the Consolidation Phase shall be without prejudice to the conduct of the Authority in complying with its obligations under that Paragraph at any subsequent time during the Contract Term.

4 SANCTION AND VALIDATION DURING THE CONSOLIDATION PHASE

AiP or Sanction for existing Work Activities

- 4.1 Subject to Paragraph 7 (Re-Sanction) of Schedule 3 (Financial Sanction and Validation), the Contractor may assume that any AiP or Sanction for existing Work Activities within the LTP Performance Plan (as inherited from the Magnox Commencement Date LTP or the RSRL Commencement Date LTP) that has been given by the Authority prior to the Commencement Date shall remain valid and that the Contractor shall not be required to reapply for such AiP or Sanction.
- 4.2 The Contractor may assume that any self-AiP or self-sanction for existing Work Activities within the LTP Performance Plan (as inherited from the Magnox Commencement Date LTP or the RSRL LTP) that has been given by the Magnox Contractor or the RSRL Contractor (as applicable) in accordance with the Magnox Contractor or RSRL Contractor's Internal Procedures for AiP and sanctioning shall remain valid and that the Contractor shall not be required to reapply for such self-AiP or self-sanction.
- 4.3 Paragraphs 4.1 and 4.2 (AiP or Sanction for existing Work Activities) shall not entitle the Contractor to be relieved from or to avoid its obligations under Schedule 3 (Financial Sanction and Validation) and PCP-17 (Sanction) in respect of such Work Activities.

AiP or Sanction for activities identified in the Final Tender

- 4.4 The Contractor shall comply with the requirements of Schedule 3 (Sanction and Validation) in respect of all activities identified in the Final Tender that the Contractor proposes to carry out or incorporate into the LTP Performance Plan, and the identification of such activities in the Final Tender shall not entitle the Contractor to be relieved from or to avoid its obligations under Schedule 3 (Financial Sanction and Validation) and PCP-17 (Sanction) in respect of such Work Activities.
- 4.5 For the avoidance of doubt, the identification of any activities in the Final Tender that the Contractor proposes to incorporate into the LTP Performance Plan and that fall

within the scope of the Schedule of Delegated Authority shall not entitle the Contractor to be relieved from or to avoid its obligations under Schedule 3 (Financial Sanction and Validation) and PCP-17 (Sanction) in respect of such Work Activities, including its obligations:

- (a) to ensure that self-AiP and sanction for such Work Activities is carried out in accordance with the Contractor's Internal Procedures for self-AiP and sanctioning; and
- (b) to produce and maintain a rolling twelve (12) month Work Activity sanction schedule in relation to such Work Activities.

5 CHANGE CONTROL PROGRAMME

5.1 The Contractor shall ensure that at all times during the Consolidation Phase the Change Control Programme accurately specifies the nature, Category and schedule of all Proposed Changes to be made to the LTP Performance Plan to achieve the objective described in Paragraph 1 (Consolidation Objective) above.

5.2 The Contractor shall:

- (a) upon the Authority's request, promptly provide to the Authority an up-to-date copy of the Change Control Programme;
- (b) include the Change Control Programme in the SLC Performance Reports together with the Change Control Log; and
- (c) immediately notify the Authority of any change to the Change Control Programme (or any other aspect of the Consolidation Plan that would have a material impact on the achievement of the objective described in Paragraph 1 (*Consolidation Objective*) above).

5.3 When requested by the Authority to do so, the Contractor shall provide to the Authority the basis and rationale for any changes to the Change Control Programme and an explanation of how this reflects Good Industry Practice.

5.4 The Contractor shall, within the time reasonably specified by the Authority, prepare and submit for the Authority's approval any further changes to the Change Control Programme reasonably identified as being required by the Authority.

5.5 When responding to any Contractor request for the Authority's approval of changes to the Change Control Programme, the Authority shall not unreasonably withhold its approval and shall:

- (a) respond in writing within ten (10) Calendar Days (or such other period as the Parties may, acting reasonably, agree) of receipt of such request; and
- (b) where the Authority does not approve of such changes, provide reasons for any determination that the Contractor's proposed changes to the Change Control Programme are unsuitable.

6 COMPLIANCE WITH AUTHORITY POLICIES AND PROCEDURES

- 6.1 Without prejudice to the Contractor's obligation in Paragraph 2.2(d) (Implementation of the Consolidation Plan) to ensure that by the end of the Consolidation Phase the LTP Performance Plan is fully compliant with all applicable Authority Policies and Procedures, during the Consolidation Phase any non-compliance of the LTP Performance Plan with applicable Authority Policies and Procedures shall not constitute a breach of the Contractor's obligations under this Agreement to comply with Authority Policies and Procedures.

7 CONSOLIDATION PHASE DELIVERABLES

LTP Performance Plan and Contract Baseline

- 7.1 On completion of the implementation of the Consolidation Plan, the Contractor shall give Notice to the Authority and shall submit the LTP Performance Plan and the Contract Baseline to the Authority for approval. The purpose of such approval is to formally consent to the use of the LTP Performance Plan and the Contract Baseline for the purposes contemplated by this Agreement and the PCP-M.

Consolidation Report

- 7.2 Together with the LTP Performance Plan and Contract Baseline submitted pursuant to Paragraph 7.1 (LTP Performance Plan and Contract Baseline) above, the Contractor shall submit to the Authority a report (the "Consolidation Report"), setting out in a level of detail reasonably satisfactory to the Authority:
- (a) to the extent that the LTP Performance Plan or Contract Baseline, following implementation of the Consolidation Plan, does not fully align or is inconsistent with the activities, schedules, estimated costs or any other commitments made in the Final Tender:
 - (i) the variance between the LTP Performance Plan or Contract Baseline and the Final Tender; and
 - (ii) a rationale for the variance and an explanation of how this reflects Good Industry Practice and Value for Money;

- (b) to the extent that any Changes to the Phase 1 Target Cost and/or, Phase 2 Target Cost have been Approved during the Consolidation Phase:
 - (i) the variance between the Phase 1 Target Cost and/or Phase 2 Target Cost as at the Commencement Date and the Phase 1 Target Cost and/or Phase 2 Target Cost as at completion of the Consolidation Phase; and
 - (ii) a rationale for the variance and an explanation of how this reflects Good Industry Practice and Value for Money;
- (c) a summary of the extent to which any Changes that have been Approved during the Consolidation Phase:
 - (i) will affect the quality of the services to be provided pursuant to this Agreement and in support of the performance of the Contactor's obligations set out in the Client Specification or the likelihood of successful delivery of the services to be provided pursuant to this Agreement and in support of the performance of the Contactor's obligations set out in the Client Specification; or
 - (ii) have impacted or may impact on the timeliness of delivery of the services to be provided pursuant to this Agreement and in support of the performance of the Contactor's obligations set out in the Client Specification (including the timely achievement of any Target Fee Payment Milestones or Site Completion Dates);
- (d) to the extent that any Changes have been Approved during the Consolidation Phase to address any Required Change Event(s), how such Required Change Event(s) have been or will be addressed by the implementation of the Change(s); and
- (e) confirmation that the LTP Performance Plan is fully compliant with all applicable Authority Policies and Procedures and an assurance statement (signed by the Managing Directors of the Magnox Contractor and the RSRL Contractor and a director of the Parent Body Organisation) that the LTP Performance Plan has been developed in accordance with the requirements of this Appendix B (*Development of the LTP Performance Plan*).

Approval of the LTP Performance Plan and Contract Baseline

- 7.3 Within ten (10) Working Days (or such other period as the Parties may agree) of receipt of the LTP Performance Plan and Contract Baseline in accordance with Paragraph 7.1 (LTP Performance Plan and Contract Baseline) above, the Authority

may request such additional information as is reasonable to enable it to assess the LTP Performance Plan and Contract Baseline and/or to request any clarification of the information provided by the Contractor.

- 7.4 The Contractor shall provide the information requested by the Authority pursuant to Paragraph 7.3 (Approval of the LTP Performance Plan and Contract Baseline) above within ten (10) Working Days of receipt of such request for information.
- 7.5 The Authority shall assess the LTP Performance Plan and Contract Baseline and shall approve or (if one or more of the grounds specified in Paragraph 7.6 (Approval of the LTP Performance Plan and Contract Baseline) below has been met) reject the LTP Performance Plan and Contract Baseline within thirty (30) Working Days (or such other period as the Parties may agree, acting reasonably, having regard to the value, volume, nature and impact of the Changes to the LTP Performance Plan and Contract Baseline throughout the Consolidation Phase) of the later of:
- (a) receipt by the Authority of the LTP Performance Plan and Contract Baseline;
or
 - (b) receipt by the Authority of the additional information or clarification requested by the Authority pursuant to Paragraph 7.3 (*Approval of the LTP Performance Plan and Contract Baseline*) above.
- 7.6 The grounds on which the Authority may reject the LTP Performance Plan and Contract Baseline are:
- (a) that the Authority is not satisfied (acting reasonably) that the objective described in Paragraph 1 (*Consolidation Objective*) above has been achieved; or
 - (b) that the Contractor has failed to comply, or has not yet complied with, the requirements of Paragraph 2.2 (*Implementation of the Consolidation Plan*) above.
- 7.7 Any rejection of the LTP Performance Plan and Contract Baseline under Paragraph 7.5 (Approval of the LTP Performance Plan and Contract Baseline) above shall be by Notice to the Contractor, and shall specify the ground(s) on which the LTP Performance Plan and Contract Baseline have been rejected.
- 7.8 If the Authority has rejected the LTP Performance Plan and Contract Baseline in accordance with Paragraph 7.5 (Approval of the LTP Performance Plan and Contract Baseline) above, the Contractor shall continue to develop the LTP Performance Plan in accordance with this Appendix B (Development of the LTP Performance Plan) and on completion of any further steps required to achieve the objective described in

Paragraph 1 (Consolidation Objective) above or comply with the requirements of Paragraph 2.2 (Implementation of the Consolidation Plan) above the Contractor shall resubmit the LTP Performance Plan and Contract Baseline for approval by the Authority in accordance with Paragraph 7.1 (LTP Performance Plan and Contract Baseline) above.

Appendix C

PCP-M Contractor Annexe

For the avoidance of doubt, the attached PCP-M Contractor Annexe shall form part of the Authority Policies and Procedures.

**SLC Annexe (referred to in the SLCA as the PCP-M
Contractor Annexe)**

Schedule 3

FINANCIAL SANCTION AND VALIDATION

1 PURPOSE

The purpose of this Schedule 3 (*Financial Sanction and Validation*) is to set out the Parties' obligations and responsibilities in respect of financial sanction and validation ("**SaV**") by the Authority of Work Activities identified within the LTP Performance Plan. Further details of the SaV procedure are specified in PCP-17 (*Sanction*) together with guidance on application of the procedure. Any capitalised terms in this Schedule that are not defined in this Agreement have the meanings given to them in PCP-M.

2 CONTRACTOR'S GATED PROCESS

2.1 The Contractor shall operate a "gated" process for validating and approving all Work Activities (the "**Gated Process**"). The Gated Process shall be operated in accordance with the Contractor's Internal Procedures and must be approved by the Authority.

2.2 The Contractor shall keep and maintain sufficient records of the Gated Process which can be made available to the Authority for review as reasonably requested. The Contractor shall submit any proposed revisions to the Gated Process to the Authority for approval.

2.3 Where the Authority participates in the Gated Process, any approval or guidance given by the Authority as part of that Gated Process shall not constitute, or replace the obligation to obtain, the Authority's approval under this Schedule 3 (*Financial Sanction and Validation*).

2.4 Once the Contractor has identified a Work Activity to which this Schedule 3 (*Financial Sanction and Validation*) applies it shall apply the Gated Process to that Work Activity.

3 GATED PROCESS FOR SANCTION AND VALIDATION OF WORK ACTIVITIES

3.1 Subject to the Schedule of Delegated Authority, the Contractor shall ensure that the Gated Process, and its submissions to the Authority required under the SaV procedure, are fully compliant with PCP-17 (*Sanction*).

3.2 Where a Work Activity requires SaV pursuant to PCP-17 (*Sanction*), the Contractor will follow the steps below:

3.2.1 identify whether the Work Activity is subject to the SaV procedure in accordance with Paragraph 4 (*Application*) below);

- 3.2.2 develop and obtain the Authority's comments on an Integrated Assurance and Approvals Plan in accordance with Paragraph 10 (*Integrated Assurance and Approvals Plan*) below;
- 3.2.3 complete a post-investment appraisal ("**Post Investment Appraisal**") in accordance with the terms of the Integrated Assurance and Approvals Plan (see Paragraph 8 (*Work Activity Completion and Post Investment Appraisal*) below);
- 3.2.4 subject to the Schedule of Delegated Authority:
 - 3.2.4.1 apply to the Authority for an approval in principle in accordance with PCP-17 (*Sanction*) ("**AiP**" or "**Approval in Principle**") of the Work Activity (see Paragraph 5 (*Approval In Principle*) below); and
 - 3.2.4.2 apply to the Authority for sanction and validation ("**Sanction**") in accordance with the terms of the Integrated Assurance and Approvals Plan (see Paragraph 6 (*Sanction*) below).

4 APPLICATION

- 4.1 This Schedule 3 (*Financial Sanction and Validation*) shall apply when the Contractor proposes to:
 - 4.1.1 commence a Work Activity identified in the LTP Performance Plan;
 - 4.1.2 materially change the scope of a Work Activity identified in the LTP Performance Plan and such Work Activity does not fall within the Schedule of Delegated Authority;
 - 4.1.3 add a new Work Activity to the LTP Performance Plan.
- 4.2 Once the Contractor has identified a Work Activity and such Work Activity does not fall within the Schedule of Delegated Authority it shall designate the Work Activity as one of the following types of Work Activity:
 - 4.2.1 Programme;
 - 4.2.2 Project (inclusive of any Subcontract);
 - 4.2.3 IT Programme, Project or Subcontract;
 - 4.2.4 Standalone Procurement;
 - 4.2.5 Customer Contract;
 - 4.2.6 Asset Disposal;

- 4.2.7 Inter SLC Service Contracts;
- 4.2.8 Alternative Remuneration Task;
- 4.2.9 Investment Opportunity;
- 4.2.10 Dispute or Claim Negotiation.

Subject to Paragraph 10 below, once the Contractor has identified which type of activity the Work Activity constitutes it shall, where this Schedule 3 (*Financial Sanction and Validation*) applies, refer to PCP-17 (*Sanction*) to identify the mandatory SaV procedural steps to be followed.

5 APPROVAL IN PRINCIPLE

- 5.1 To the extent that a Work Activity does not fall within the Schedule of Delegated Authority:
 - 5.1.1 the Contractor shall seek approval in principle for the Work Activity by submitting the documents specified in PCP-17 (*Sanction*) ("**AiP Submission**") to the Authority;
 - 5.1.2 the Authority shall assess the AiP Submission and inform the Contractor within thirty (30) Calendar Days if the Work Activity is approved in principle (or not);
 - 5.1.3 following confirmation of AiP from the Authority, the Contractor shall continue to deliver the Work Activity in accordance with the Gated Process. The Contractor shall undertake assurance and governance and seek Sanction in accordance with the agreed Integrated Assurance and Approvals Plan, or as required by the Authority.

6 SANCTION

- 6.1 To the extent that a Work Activity does not fall within the Schedule of Delegated Authority:
 - 6.1.1 the Contractor shall submit the Work Activity to the Authority for Sanction in accordance with the Integrated Assurance and Approvals Plan. The Contractor shall seek Sanction for the Work Activity by submitting the documents specified in PCP-17 (*Sanction*) ("**Sanction Submission**") to the Authority;
 - 6.1.2 the purpose of Sanction is to formally approve the expenditure to be incurred at the main execution phase of the Work Activity and any necessary staged approval of expenditure leading up to that point.

- 6.1.3 the Authority will assess the Sanction Submission and inform the Contractor within thirty (30) Calendar Days whether the submission is of adequate quality or whether or not Sanction is granted. The Authority shall inform the Contractor if any further SaV procedural steps are required and the Contractor shall update the Integrated Assurance and Approvals Plan accordingly. The information provided by the Authority will include advice on any extension to the thirty (30) Calendar Day response time if the Sanction Submission requires to be submitted to a higher sanction authority;
- 6.1.4 following confirmation of Sanction from the Authority, the Contractor shall continue to deliver the Work Activity in accordance with the Gated Processes. The Contractor shall seek further Sanction in accordance with the agreed Integrated Assurance and Approvals Plan, or as required by the Authority.

7 RE-SANCTION

- 7.1 To the extent that a Work Activity does not fall within the Schedule of Delegated Authority;
- 7.1.1 the Contractor is required to obtain further Sanction ("**Re-Sanction**") from the Authority in the following circumstances:
- 7.1.1.1 where there is a reasonable expectation that the financial value of the Sanction will be exceeded;
 - 7.1.1.2 where there is a reasonable expectation that the scheduled timetable for implementation of the Work Activity will not be met;
 - 7.1.1.3 where there is a proposed change to the Work Activity scope, or delivery strategy;
 - 7.1.1.4 where the Contractor proposes to change an Authority approved Acquisition and/or Subcontract Strategy;
 - 7.1.1.5 where there is a new interdependency between Projects within a Programme which impacts upon both individual Projects and the Programme itself.
- 7.1.2 as soon as the Contractor is aware that Re-Sanction may be required, it must consult the Authority and, if applicable, a Sanction Submission shall be submitted to the Authority. The Contractor shall seek a Re-Sanction for the Work Activity by submitting the documents specified in PCP-17 (*Sanction*) ("**Re-Sanction Submission**") to the Authority;

7.1.3 the Authority shall assess the Re-Sanction Submission and inform the Contractor within thirty (30) Calendar Days whether or not the Re-Sanction is granted; if future SaV procedural steps are required these will be agreed on the Integrated Assurance and Approvals Plan. The additional procedural steps will include advice on any extension to the thirty (30) Calendar Day response time if the Re-Sanction Submission requires to be submitted to a higher sanction authority;

7.1.4 following confirmation of Re-Sanction from the Authority, the Contractor shall continue to deliver the Work Activity in accordance with the Gated Process. The Contractor shall seek Sanction in accordance with the agreed Integrated Assurance and Approvals Plan or as required by the Authority.

8 WORK ACTIVITY COMPLETION AND POST-INVESTMENT APPRAISAL

8.1 In accordance with the Integrated Assurance and Approvals Plan, upon completion of the Work Activity the Contractor shall upon request provide to the Authority a final update to the Business Case setting out the results, reports and recommendations provided to the Contractor under the Gated Process. The Contractor shall also set out the lessons learned from the activity and an action plan of how these lessons learned will be incorporated into future Work Activities.

8.2 The Contractor will be required to demonstrate that continuous learning from each of the Contractor's internal gate reviews is being captured and deployed.

9 SCHEDULE OF WORK ACTIVITY SANCTIONS

9.1 The Contractor shall produce and maintain a rolling twelve (12) month Work Activity Sanction Schedule (the "RSS") in relation to the Work Activities that do not fall within the scope of the Schedule of Delegated Authority which shall be submitted to the Authority in accordance with the requirements of PCP-17 (*Sanction*).

9.2 For information purposes, the Contractor shall in addition to the RSS provided pursuant to Paragraph 9.1 above, produce and maintain a rolling twelve (12) month Work Activity sanction schedule in relation to the Work Activities that do fall within the scope of the Schedule of Delegated Authority at the same time as the RSS is submitted to the Authority. The Contractor shall provide any information reasonably requested by the Authority in relation to such Work Activities as soon as reasonably practicable after receiving such request.

10 INTEGRATED ASSURANCE AND APPROVALS PLAN

10.1 The Contractor shall ensure that each Work Activity to which this Schedule 3 (*Financial Sanction and Validation*) applies falls within an Integrated Assurance and Approvals

Plan developed in accordance with PCP-17 (*Sanction*). For the avoidance of doubt, to the extent consistent with PCP-17 (*Sanction*), the Contractor may prepare a single Integrated Assurance and Approvals Plan covering one or more Work Activities.

10.2 Save in relation to any Work Activity within the scope of Schedule of Delegated Authority, the Contractor is required to submit its Integrated Assurance and Approvals Plan a minimum of ninety (90) Calendar Days (or such shorter period as may be agreed by the Parties acting reasonably) prior to the planned submission date for the submission to which it relates. The Authority shall retain the right to review any such Integrated Assurance and Approvals Plan and comment within thirty (30) Calendar Days (or such shorter period as may be agreed by the Parties acting reasonably). The Contractor shall proceed as planned against the submitted Integrated Assurance and Approvals Plan if no comment is provided by the Authority. Where the Authority comments on the Integrated Assurance and Approvals Plan, comments shall be addressed by the Contractor, the revised Integrated Assurance and Approvals Plan shall be re-submitted to the Authority and the Contractor shall proceed against the revised Integrated Assurance and Approvals Plan.

10.3 Save in relation to any Work Activity within the scope of Schedule of Delegated Authority:

10.3.1 the Integrated Assurance and Approvals Plan shall be revised, revalidated and resubmitted at least ninety (90) calendar days (or such shorter period as may be agreed by the Parties acting reasonably) prior to each Authority staged sanction point; and

10.3.2 the Contractor shall be required to notify the Authority of any changes to the Integrated Assurance and Approvals Plan by including such changes in the RSS.

10.4 In relation to a Work Activity or Work Activities falling within the scope of the Schedule of Delegated Authority, the Contractor shall also have delegated authority to approve any Integrated Assurance and Approvals Plan required in connection with such Work Activity or Work Activities.

11 BUSINESS CASE

The Contractor shall produce, maintain and update a Business Case for each Work Activity at each gate review stage in the Gated Process. The Business Case shall be prepared in accordance with Good Industry Practice and shall include a Value for Money assessment of the Work Activity (including, where relevant, an assessment of the impact of the commencement of, change to or addition of the Work Activity on the current and future Pension Costs payable by the Contractor). The Business Case shall

be available for Authority review as reasonably requested. In the case of a Work Activity not falling within the Schedule of Delegated Authority, an updated Business Case shall be submitted to the Authority at each intervention point identified in the Integrated Assurance and Approvals Plan.

12 PROJECT LEVEL ACQUISITION STRATEGY

Save in relation to any Work Activity within the scope of Schedule of Delegated Authority, the Contractor shall be required to submit a Project Level Acquisition Strategy to the Authority for approval. The full details relating to the Project Level Acquisition Strategy are specified in PCP-17 (*Sanction*).

13 SUBCONTRACT STRATEGY

13.1 In the case of a Work Activity not falling within the Schedule of Delegated Authority:

13.1.1 if the Work Activity includes the placement of Subcontracts the Contractor shall, in accordance with the Integrated Assurance and Approvals Plan, submit detailed Subcontract Strategies to the Authority prior to issue of an OJEU notice;

13.1.2 in circumstances where the value of a Subcontract is less than twenty five million pounds sterling (£25,000,000.00) and is not deemed to be Novel, Contentious or Repercussive, the Authority's approval of the Subcontract Strategy will be sufficient for the Contractor to proceed to Subcontract placement.

13.1.3 subject to Paragraph 13.1.2 (*Subcontract Strategy*) above, the Contractor is required to submit a notification to the Authority seven (7) Calendar Days prior to placing the Subcontract. The notification shall be submitted using the Compliance Notification Form, the proforma for which is contained in PCP-17 (*Sanction*).

13.1.4 if there is any variance from the Authority approved Subcontract Strategy the Contractor shall immediately advise the Authority in accordance with Paragraph 7 (*Re-Sanction*) above.

14 TERMS OF AUTHORITY SANCTION AND VALIDATION

14.1 Any sanction or validation provided by the Authority in respect of a Work Activity:

14.1.1 shall be without prejudice to any of the Authority's rights under this Agreement;

14.1.2 shall not, unless expressly agreed, relieve or excuse the Contractor from any liability, responsibility or obligation under this Agreement;

- 14.1.3 shall not in respect of any Cost arising in relation to the Work Activity, unless expressly agreed, alter whether such Cost is treated by the Authority as an Allowable Cost or a Disallowable Cost;
- 14.1.4 shall not constitute acceptability of any Subcontract terms and conditions which could not in the reasonable opinion of the Authority be ascertained from the information provided by the Contractor pursuant to the notification and disclosure requirements of Paragraph 13 (*Subcontract Strategy*) above;
- 14.1.5 shall not constitute Authority agreement to relieve the Contractor of a responsibility for performing the works or delivering/receiving the supplies which form the subject matter of the Subcontract or Series of Subcontracts; and
- 14.1.6 shall not constitute acceptance by the Authority of any terms and conditions of any Customer Contract which are outside the terms of the Negotiation Mandate.

15 AUTHORITY REJECTION OF WORK ACTIVITY

- 15.1 The Authority shall be entitled, at any time and in its sole discretion to reject or recycle a Work Activity AiP, Sanction or Re-Sanction, save that, for the avoidance of doubt, the Authority shall not be entitled to refuse the Contractor's implementation of a new Work Activity that arises out of a Required Change although the Authority shall be entitled to comment on, require amendment to and approve such a Work Activity in accordance with the provisions of this Schedule 3 (*Financial Sanction and Validation*) in order to ensure that the Change is addressed in the manner that the Authority desires).
- 15.2 Where an AiP, Sanction or Re-Sanction Submission is rejected or recycled by the Authority, the Authority is obliged to inform the Contractor of the reasons for its decision within thirty (30) Calendar Days.
- 15.3 Save in relation to any Work Activity within the scope of Schedule of Delegated Authority:
 - 15.3.1 the Authority may request from the Contractor such additional information as the Authority reasonably requires for the purposes of considering the AiP, Sanction and/or Re-Sanction Submissions and shall make any such request to the Contractor as soon as reasonably practicable following receipt of the Contractor's submission; and
 - 15.3.2 the Contractor shall provide any information requested by the Authority pursuant to submission approval as soon as reasonably practicable after receiving such request.

16 SCHEDULE OF DELEGATED AUTHORITY

16.1 The Contractor shall be entitled to self AiP/sanction spending and commitment of resources of up to fifty million pounds sterling (£50,000,000) (other than IT/Telecoms Projects which shall be subject to a limit of one million pounds sterling (£1,000,000) or where any such project or capital commitment is Novel, Contentious or Repercussive) unless:

16.1.1 the Contractor's Internal Procedures for AiP/sanctioning do not or have ceased to comply with the relevant Authority's Policies and Procedures;

16.1.2 the Contractor has failed to comply either in whole or in part with the Contractor's Internal Procedures for AiP/sanctioning; or

16.1.3 the Contractor has failed to adhere to Good Industry Practice;

16.1.4 [Not used],

in which case the Authority's approval is required.

16.2 Where Authority approval is required pursuant to Paragraph 16.1 above, the following shall apply:

16.2.1 where anticipated expenditure is greater than fifty million pounds sterling (£50,000,000) but less than one hundred million pounds sterling (£100,000,000) (which includes design, construction, commissioning, operations and decommissioning costs associated with the activity), the Authority shall use its reasonable endeavours to respond to any request for Approval within twenty (20) Working Days; or

16.2.2 where anticipated expenditure is greater than fifty million pounds sterling (£50,000,000) but less than one hundred million pounds sterling (£100,000,000) (which includes design, construction, commissioning, operations and decommissioning costs associated with the activity) in any one Contract Year the Authority shall use its reasonable endeavours to respond to any request for Approval within sixty (60) Working Days; or

16.2.3 where anticipated expenditure is greater than one hundred million pounds sterling (£100,000,000) (which includes design, construction, commissioning, operations and decommissioning costs associated with the activity), the Authority shall use its reasonable endeavours to respond to any request for Approval within sixty (60) Working Days; or

16.2.4 where any such expenditure is Novel, Contentious or Repercussive, the Authority shall use its reasonable endeavours to respond to any request for Approval within sixty (60) Working Days.

16.3 If the Authority (acting reasonably) considers that the Contractor has failed to act in accordance with relevant Internal Procedures and Authority Policies and Procedures, the Authority shall have the right to suspend the Contractor's ability to sanction spending and commitment of resources within the limits set out in Paragraph 16.1 (*Schedule of Delegated Authority*) above.

Schedule 4

COMMERCIAL

PART 1 – PERMITTED ACTIVITIES

1 PERMITTED ACTIVITIES

1.1 Notwithstanding the Schedule of Delegated Authority, Permitted Activities are any activities in relation to Customer Contracts provided that any such activities:

- 1.1.1 are not Novel, Contentious or Repercussive;
- 1.1.2 do not involve the provision of any indemnity;
- 1.1.3 do not involve a waiver of debt;
- 1.1.4 do not involve a Customer-funded project;
- 1.1.5 do not include a payment or credit note in settlement of liabilities of the Contractor under any other contract;
- 1.1.6 do not generate a value of sales or costs over two hundred and fifty thousand pounds sterling (£250,000);
- 1.1.7 do not involve a potential cash deferment to later years;
- 1.1.8 do not involve:
 - (A) a price reduction against any submitted bid price; or
 - (B) additional risk recognised within the Contractor's risk register in relation to the proposed Customer Contract in excess of that allowed for in the Contractor's bid price,
over twenty five thousand pounds sterling (£25,000);
- 1.1.9 are not and are not expected to be loss-making; and
- 1.1.10 are not contrary to any relevant provision contained in PCP-17.

1.2 In the event of any uncertainty as to whether any of the conditions at Paragraph 1.1.1 (*Permitted Activities*) to 1.1.10 (*Permitted Activities*) apply or where the Contractor wishes to enter into a Customer Contract to which Paragraphs 1.1.1 (*Permitted Activities*) to 1.1.10 (*Permitted Activities*) apply, the Contractor will consult the Authority in accordance with the Permitted Activities Request procedure as contained in this Schedule and shall comply with the Authority's instructions.

2 CONTENT OF PERMITTED ACTIVITIES REQUEST

2.1 The Contractor shall ensure that each Permitted Activities Request shall contain the following:

2.1.1 the date of the Permitted Activities Request;

2.1.2 the reasons for requesting the proposed new, amended or updated Permitted Activity; and

2.1.3 the terms of the proposed amendment to the Permitted Activity.

2.2 As soon as reasonably practicable after receipt by the Authority of the Permitted Activities Request, the Parties shall meet to discuss and attempt to agree the proposals set out in the Permitted Activities Request (or any modifications made pursuant to Paragraph 2.1 (*Content of Permitted Activities Request*) above).

2.3 If, as a result of the discussions undertaken pursuant to Paragraph 2.2 (*Content of Permitted Activities Request*), modifications to the proposal are required by the Authority in its sole discretion, the Contractor shall modify the Permitted Activities Request and shall issue any such modifications to the Authority as soon as reasonably practicable.

2.4 The Authority shall be entitled, at any time and in its sole discretion, to reject the Permitted Activities Request and the Authority shall give reasons for such a rejection.

2.5 If the Authority consents to the Permitted Activities Request (as modified (if relevant) pursuant to Paragraph 2.3 (*Content of Permitted Activities Request*)), it shall notify the Contractor in writing.

2.6 As soon as reasonably practicable after receipt of such notification, the Contractor shall amend the Permitted Activity to which the notification relates and provide a certified copy of such amendment to the Authority.

PART 2 – CUSTOMER CONTRACTS

1 AMENDMENTS TO CUSTOMER CONTRACTS AND NEW CUSTOMER CONTRACTS

- 1.1 Prior to seeking any approval required from the Authority in respect of a Customer Contract or a New Customer Contract, the Contractor shall first consult and comply with Schedule 3 (*Financial Sanction and Validation*) and relevant provisions of PCP-17.
- 1.2 Upon receipt of the Authority's AiP/sanction or self-approval by the Contractor where applicable in relation to a Customer Contract Work Activity pursuant to Schedule 3 (*Financial Sanction and Validation*) and relevant provisions of PCP-17 and subject to the willingness of the counterparty (or proposed counterparty) to proceed, the Contractor shall negotiate the New Customer Contract or the Amendment (as applicable) with the counterparty (or proposed counterparty) in accordance with the terms of the Negotiation Mandate.
- 1.3 If, at any time, the Authority, acting reasonably, considers it necessary and/or efficacious to attend such negotiations with the counterparty (or proposed counterparty), the Contractor shall use all reasonable endeavours to procure the agreement of the counterparty (or proposed counterparty) to the Authority's attendance at such negotiations.
- 1.4 Unless the Authority agrees otherwise, any AiP/sanction by the Authority to an AiP 1 Submission or Sanction Submission shall be conditional upon the Contractor confirming in writing to the Authority that:
- 1.4.1 subject to Paragraph 1.4.2 (*Amendments to Customer Contracts and New Customer Contracts*), no New Customer Contract and no Amendment (as the case may be) contains any term which:
- (A) provides the counterparty to the Customer Contract with a right of consent or a right of termination or amendment if the Contractor is subject to a change in ownership, management or control;
 - (B) directly or indirectly excludes or attempts to exclude any right of the Authority which arises under the Contracts (Rights of Third Parties) Act 1999 or in any other way seeks to prevent the Authority from enforcing the terms of the Customer Contract;
 - (C) directly or indirectly excludes or attempts to exclude (as the case may be) any of the terms set out in Paragraph 1.4.2 below;
- 1.4.2 subject to Paragraph 1.4.3, any New Customer Contract shall contain:

- (A) provisions allowing the disclosure to the Authority by the Contractor of such Customer Contract and any information passing between the parties in relation to it and, where permitted under Clause 25 (*Confidentiality and Compliance with Legislation*), disclosure by the Authority to Third Parties;
- (B) an acknowledgement by the counterparty to the Customer Contract of the Contractor's obligations to comply with, and the Authority's rights under, Clauses 14.1 (*Reporting and Reviewing*), 14.2 (*Records*), 15 (*Inspection and Audit*) and 25 (*Confidentiality and Compliance with Legislation*) and a waiver of any liability that may arise under the Customer Contract as a result of the Contractor complying with its obligations under such Clauses of this Agreement;
- (C) an obligation on the counterparty to the Customer Contract to make its employees available for the purposes of the Authority's audit under Clause 15 (*Inspection and Audit*);
- (D) a termination for convenience provision enabling the Contractor to terminate at any time on giving reasonable notice to the counterparty to the Customer Contract (and, in the event of such termination for convenience, the Contractor shall only agree, subject to the Authority's approval, to pay the relevant counterparty's reasonable costs arising directly from the termination of the Customer Contract and shall not agree any payment in respect of loss of anticipated profits, loss of opportunity or the consequential losses of affiliates of the counterparty);
- (E) a provision ensuring that the Customer Contract is capable of being assigned to the Authority's nominee either without the consent of the counterparty to the Customer Contract or with the consent of the counterparty to the Customer Contract, such consent not to be unreasonably withheld (and in either case without requiring the consent of any other Third Party and without incurring any payment obligation or other additional liability);

1.4.3 where an existing Customer Contract contains any of the terms in Paragraph 1.4.1 or excludes or attempts to exclude (as the case may be) any of the terms in Paragraph 1.4.2, the Contractor having used reasonable endeavours to ensure that the Amendment alters the terms of the existing Customer Contract so that such existing Customer Contract does not include any of the

terms in Paragraph 1.4.1 and does not exclude or attempt to exclude (as the case may be) any of the terms in Paragraph 1.4.2.

1.5 Any AiP/sanction by the Authority to the Contractor's entry into a New Customer Contract or an Amendment (as applicable) pursuant to Clause 20.1 (*Amendments to Customer Contracts and New Customer Contracts*) of this Agreement and this Schedule:

1.5.1 shall be without prejudice to any of the Authority's rights under this Agreement;

1.5.2 shall not constitute acceptance by the Authority of any terms and conditions of the New Customer Contract or the Amendment (as applicable) which are outside the terms of the agreed Sanction Plan (as modified (where relevant) pursuant to Schedule 3 (*Financial Sanction and Validation*) and relevant provisions of PCP-17);

1.5.3 shall not, unless expressly agreed in writing between the Parties, relieve or excuse the Contractor from any liability or obligation under this Agreement; and

1.5.4 shall not in respect of any cost arising in relation to the New Customer Contract or, in the case of an Amendment, in relation to the relevant existing Customer Contract, unless expressly agreed in writing between the Parties, alter whether such cost is treated by the Authority as an Allowable Cost or a Disallowable Cost.

1.6 Within thirty (30) Calendar Days of the execution of any Customer Contract or of any Amendment being effected (as applicable), the Contractor shall provide the Authority with a certified copy of the New Customer Contract or a certified conformed copy of the existing Customer Contract incorporating the Amendment (as applicable).

1.7 If following any AiP/sanction by the Authority for entry into a New Customer Contract or Amendment the Contractor is unable to enter into such New Customer Contract or Amendment, the Contractor shall inform the Authority in writing that this is the case and at the same time shall provide an explanation as to why the entry into the New Customer Contract or the Amendment (as applicable) has not taken place.

2 CONTENTS OF AUTHORITY'S INSTRUCTIONS NOTICE

2.1 Any Authority instruction pursuant to Clause 20.3 (*Authority's right to instruct*) shall set out:

2.1.1 the date of the instruction;

2.1.2 sufficient detail to enable the Contractor to implement the instruction including:

(A) in all cases where the instruction relates to an existing Customer Contract, details of the relevant Customer Contract including:

- (1) a sufficient description of the Customer Contract for the Contractor to be able to identify it;
- (2) the detailed instruction which the Authority requires the Contractor to implement;
- (3) details of any waiver to be given by the Authority pursuant to Paragraph 3.3 (*Authority's Instructions*); or

(B) where the Authority wishes the Contractor to enter into a New Customer Contract, details of:

- (1) the identity of the counterparty to the New Customer Contract and any details in respect of the counterparty and its business and/or the Authority's relationship with the counterparty;
- (2) a description of the subject matter of the New Customer Contract;
- (3) the term and commencement date of the New Customer Contract;
- (4) any estimated Costs and Costs which are likely to be incurred or no longer incurred as a result of the Contractor entering into the New Customer Contract;
- (5) the estimated annual and total revenue likely to be receivable under the New Customer Contract;
- (6) the principal terms which should be contained in the New Customer Contract 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;

2.1.3 any reason for the Authority's instructions which the Authority wishes (but, for the avoidance of doubt, is not obliged) to convey to the Contractor;

- 2.1.4 the date by which the Authority wishes its instructions to have been implemented (subject to agreement by the counterparty or the proposed counterparty); and
- 2.1.5 any other information that the Authority reasonably considers would assist the Contractor in carrying out its instructions.

3 AUTHORITY'S INSTRUCTIONS

3.1 As soon as reasonably practicable after the Contractor receives an instruction pursuant to Clause 20.3 (*Authority's right to instruct*), the Parties shall meet to discuss the instructions. The Contractor shall inform the Authority:

- 3.1.1 if the instructions may have any impact on any Subcontract or Series of Subcontracts; and
- 3.1.2 of any impact of which the Contractor is aware of the instructions on the Authority, the Contractor, the performance or terms of this Agreement and/or the Customer Contracts.

3.2 Subject to Paragraph 3.3 (*Authority's Instructions*), the Contractor shall be entitled at any time before the Authority confirms its instruction pursuant to Paragraph 3.4 (*Authority's Instructions*), to serve on the Authority a written notice (an "**Objection Notice**") setting out in detail the grounds on which the Contractor objects to the instruction, provided that the Contractor shall only be entitled to object to the instruction if the instruction would, if implemented:

- 3.2.1 be inconsistent with the Contractor's obligations under Clause 4.1 (*Standard of Performance*);
- 3.2.2 be inconsistent with the Contractor's obligations under Clause 4 (*Contractor's Obligations*);
- 3.2.3 result in the Contractor being in breach of any of its obligations under this Agreement (other than its obligation to perform the Customer Contracts in relation to which a waiver will be provided under Paragraph 3.3 (*Authority's Instructions*));
- 3.2.4 materially alter the basic nature of the outputs to be provided,

and upon the Authority's receipt of any Objection Notice, the provisions of Paragraph 3.1 (*Authority's Instructions*) shall apply save for, if the Parties cannot agree within thirty (30) Calendar Days of meeting (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 under Clause 36 (*Disputes*). If the Parties agree, or the Disputes Resolution Procedure determines, that the Contractor's objections are valid, the Authority shall withdraw or modify the instruction.

- 3.3 If the Authority instructs the Contractor not to perform any of its obligations under any Customer Contract, the Authority shall waive the Contractor's obligation under this Agreement to perform such obligations in respect of the relevant Customer Contract.
- 3.4 As a result of the discussions undertaken pursuant to Paragraph 3.1 (*Authority's Instructions*), the Authority may confirm, modify or withdraw its instruction.
- 3.5 Without prejudice to Paragraph 3.7 (*Authority's Instructions*), upon receipt of any confirmation pursuant to Paragraph 3.4 (*Authority's Instructions*), the Contractor shall implement the Authority's instructions in accordance with the instruction and in accordance with any further guidance from the Authority (as applicable given the nature of the instruction). If, at any time, the Authority acting reasonably considers it necessary and/or efficacious to attend any negotiations with the counterparty (or proposed counterparty), the Contractor shall use all reasonable endeavours to procure the agreement of the counterparty (or proposed counterparty) to the Authority's attendance at such negotiations.
- 3.6 Upon receipt of any modification pursuant to Paragraph 3.2 (*Authority's Instructions*) or 3.4 (*Authority's Instructions*), the provisions of Paragraphs 3.1 (*Authority's Instructions*) to 3.5 (*Authority's Instructions*) shall apply with the necessary changes according to the circumstances.
- 3.7 If the counterparty (or proposed counterparty) to the Customer Contract is unwilling to proceed in the manner prescribed by the Authority in its instruction, the Contractor shall use its reasonable endeavours to overcome the counterparty's objections through negotiation (in which event it shall comply with the Authority's directions as to the negotiating strategy and approach to be adopted) and to carry out the Authority's instructions. The Authority and the Contractor shall consult with one another in order to agree how to resolve the issue.
- 3.8 The Authority may request from the Contractor such additional information and in such format as the Authority reasonably requires for the purpose of considering any issues raised by the Contractor in relation to an instruction. The Contractor shall provide any information requested by the Authority pursuant to this Paragraph 3.8 (*Authority's Instructions*) as soon as reasonably practicable after receiving such request and in any event by such deadline as the Authority reasonably requests.
- 3.9 If, as a result of any discussions pursuant to Paragraph 3.7 (*Authority's Instructions*), the Authority modifies or withdraws the instruction, the Authority shall issue to the

Contractor any such modification or withdrawal (as the case may be) as soon as reasonably practicable.

- 3.10 Upon receipt of any modification pursuant to Paragraph 3.9 (*Authority's Instructions*), the provisions of Paragraphs 3.1 (*Authority's Instructions*) to 3.5 (*Authority's Instructions*) shall apply with the necessary changes according to the circumstances.

Schedule 5

SUBCONTRACTING AND PROCUREMENT

Part 1: Subcontracting/Procurement Requirements

1 PURPOSE

- 1.1 This Part 1 (*Subcontracting/Procurement Requirements*) of Schedule 5 (*Subcontracting and Procurement*) sets out the Contractor's obligations in relation to the awarding of Subcontracts and other procurement activities as referred to in Clauses 22 (*Subcontracting/Procurement*) and 23 (*Inter SLC Service Contracts*) of this Agreement.
- 1.2 The Contractor shall ensure that it has in place Internal Procedures that comply with the Authority procedure set out in this Part 1 (*Subcontracting/Procurement Requirements*) and PCP-17 (*Sanction*).

2 EU PROCUREMENT RULES

- 2.1 The Contractor shall comply with EU Procurement Rules in all respects as they apply to a contracting authority or a utility for the purposes of the Public Contracts Regulations 2006 or the Utilities Contracts Regulations 2006 as applicable.
- 2.2 If compliance with any provision of this Part 1 (*Subcontracting/Procurement Requirements*) or any other provision of or referred to by this Agreement would cause a breach of EU Procurement Rules the Contractor shall comply with EU Procurement Rules.

3 APPLICATION

- 3.1 This Part 1 (*Subcontracting/Procurement Requirements*) applies in respect of:
- 3.1.1 all Subcontracts to be awarded or amended by the Contractor; and
 - 3.1.2 the renewal of all Existing Agreements by the Contractor.
- 3.2 This Part 1 (*Subcontracting/Procurement Requirements*) does not apply in respect of Secondment Agreements.

4 PROCUREMENT PLANNING

- 4.1 The Contractor shall prepare and submit to the Authority a procurement plan in accordance with the requirements specified in paragraphs 7.3.16 and 7.3.17 of PCP-07 (*Baseline Management*) and in accordance with the Supply Chain Strategic Plan.
- 4.2 The Contractor shall ensure that the effectiveness of its procurement planning processes, and the Authority approval submissions required under the SaV procedure,

are fully compliant with PCP-17 (*Sanction*). Performance metrics specified in PCP-17 (*Sanction*) shall be monitored and reported by the Contractor to the Authority each period, in accordance with the reporting process specified in PCP-13 (*Progress Reporting and Reviews*). For the avoidance of doubt, the performance metrics shall be applied by the Authority in accordance with the relevant agreement in place at the time between the Parties (as may be amended by agreement from time to time) and may be used to agree or determine PBI Levels or to determine the Contractor's entitlement to PBI Fee in accordance with Part 4A (*Calculation of PBI Fee*) and Part 4C (*Payment of PBI Fee and Target Fee*) of Schedule 6 (*Finance*).

5 SUBCONTRACT AND PROCUREMENT REPORTING

The Contractor shall provide to the Authority a quarterly subcontract and procurement report prepared in accordance with PCP-13 (*Progress Reporting and Reviews*).

6 PAYMENTS TO SUBCONTRACTORS

The Contractor must meet its obligations to make payments to Subcontractors promptly and in accordance with agreed terms.

7 SUPPLY CHAIN STRATEGIC PLAN

7.1 Subject to Clause 7.2 (*Supply Chain Strategic Plan*) below, the Contractor shall maintain the Supply Chain Strategic Plan throughout the Term in accordance with the Change Control Procedure as an up-to-date, accurate and complete plan in relation to the Contractor's supply chain for the purposes of this Agreement, ensuring that the Supply Chain Strategic Plan contains as a minimum:

7.1.1 a procurement plan in accordance with the requirements specified in paragraphs 7.3.16 and 7.3.17 of PCP-07 (*Baseline Management*);

7.1.2 a procurement strategy in accordance with the requirements specified in paragraph 7.3.18 of PCP-07 (*Baseline Management*) and which contains the Contractor's processes, plans, strategies or methodologies for:

7.1.2.1 "make-or-buy" decision making;

7.1.2.2 managing supply chain risk (threat and opportunity) and managing and developing key supplier relationships;

7.1.2.3 complying with the requirements of Paragraph 2 (*EU Procurement Rules*), Paragraph 12 (*Contracts with Affiliates*) and Paragraph 13 (*Sole Source Awards*) of this Schedule 5 (*Subcontracting*), including, but not limited to, the governance and assurance processes that relate to the choice and implementation of the

relevant procurement procedures and how any decisions to use sole source or single tender procurements will be made;

- 7.1.2.4 applying appropriate use of different procurement strategies, contract types and pricing mechanisms dependent upon cost, technical complexity or risk and how these strategies will be developed to support achievement of the Authority's strategic objectives notified to the Contractor from time to time;
- 7.1.2.5 providing visibility of opportunities and transparency of information to the supply chain at Sub-Subcontract level, including but not limited to the use of the procurement plan to demonstrate opportunities for potential Sub-Subcontractors;
- 7.1.2.6 assessing the impact of the Contractor's proposed procurement strategies on the supply chain and their socio-economic impact;
- 7.1.2.7 engaging with Small and Medium Enterprises (SMEs) directly and via Subcontractors, including but not limited to monitoring and encouraging the use of SMEs and working with SMEs to enhance their capability and successful delivery;
- 7.1.2.8 implementing supply chain partnering, including but not limited to early contractor engagement and use of BS11000 or equivalent;
- 7.1.2.9 maintaining and developing the Contractor's contributions to Collaborative Procurement, including but not limited to maintaining governance arrangements, identifying and delivering opportunities and supplying resources for Collaborative Procurement;
- 7.1.2.10 augmenting and developing the skills of the Employees, where appropriate, to improve contract management and the performance of the supply chain, including but not limited to learning from the supply chain, providing Employees with opportunities for secondments to suppliers or Affiliates, mentoring and capability or competence assessments; and
- 7.1.2.11 moving from the procurement and subcontracting strategies of the Magnox Contractor and the RSRL Contractor as at the Commencement Date to the strategy developed by the Parent Body Organisation as part of the Final Tender.

- 7.2 Any Proposed Change to the Supply Chain Strategic Plan that would require or entail a material change to the content of the plan or a change relating to compliance with PCP-

07 (*Baseline Management*) or the requirements of Paragraph 2 (*EU Procurement Rules*), Paragraph 12 (*Contracts with Affiliates*) and Paragraph 13 (*Sole Source Awards*) of this Schedule 5 (*Subcontracting*) shall be a Category 0 Change.

8 RECORDS MANAGEMENT

The Contractor shall comply with and shall procure that any Subcontractor or Sub-Subcontractor complies with the record management requirements set out in Clause 14 (*Performance Management, Performance Assurance and Records*) of this Agreement and any record management policies issued by the Authority from time to time.

9 INTELLECTUAL PROPERTY

The Contractor shall comply with the Contractor's obligations set out in Clause 29 (*Intellectual Property*) of this Agreement and Commercial Guidance 02 in relation to the awarding of Subcontracts.

10 REQUIREMENT TO MAINTAIN A SKILLED WORKFORCE

10.1 The Contractor shall not, without the prior written approval of the Authority, enter into any contract or other arrangement as a consequence of which the employment of any of the Employees transfers to a Third Party (whether under the terms of such contract or by operation of Law).

10.2 In making an application to the Authority for its approval pursuant to paragraph 10.1 above, the Contractor shall set out in a level of detail reasonably satisfactory to the Authority how the benefits of the transaction as a whole outweigh any adverse impact of the transfer on the range, mix and quality of the skills of the Contractor's workforce together with the Contractor's strategy for:

10.2.1 ensuring the transfer is consistent with the requirements of Clause 31.8 (*Maintenance of Skills*) of the Agreement;

10.2.2 its retention of intelligent customer capability and control; and

10.2.3 ensuring compliance with paragraph 11 (*Transfer of Employees*) below.

10.3 An application by the Contractor for approval under paragraph 10.1 shall be submitted to the Authority at least six months prior to the entry into the relevant contract or arrangement.

11 TRANSFER OF EMPLOYEES

11.1 The Contractor shall procure that where as a result of entry into a Subcontract, Sub-Subcontract or Series of Subcontracts the employment of any Protected Employee transfers to a Subcontractor, Sub-Subcontractor or any Third Party (the "**Transferee**

Employer") and following the transfer of employment such Protected Employees will continue to undertake wholly or mainly Authority Facing Work the Subcontractor, Sub-Subcontractor or Third Party (as appropriate) (being the "**Transferor Employer**") shall:

- 11.1.1 ensure that on or before the date of transfer of employment the Transferee Employer has established a pension scheme which has been certified by the Government Actuary's Department ("**GAD Certified Pension Scheme**") as providing sufficient benefits, to enable the Authority to satisfy itself that its duties and obligations under Part 4 of Schedule 8 of the Energy Act 2004 have been met, and comply fully with the Fair Deal on Staff Pensions issued by HM Treasury in June 1999, including the supplementary guidance issued by HM Treasury in June 2004 concerning bulk transfer payments;
 - 11.1.2 ensure that on or before the date of transfer of employment each Protected Employee is enrolled as a member of the GAD Certified Pension Scheme;
 - 11.1.3 do and shall not omit to do anything which the Authority determines to be necessary to enable the Authority to satisfy itself that its duties and obligations in respect of the Protected Employees under Schedule 8 to the Energy Act 2004 are met;
 - 11.1.4 maintain for the duration of the Subcontract, Sub-Subcontract or Series of Subcontracts a record of those Protected Employees undertaking wholly or mainly Authority Facing Work; and
 - 11.1.5 comply with the Authority's policies for the provision of pensions within the nuclear industry.
- 11.2 The Contractor shall further ensure that in the event of any breach of the undertakings required under this paragraph 11, the Transferor Employer shall do all things reasonably necessary, as directed by the Authority, to restore the rights and benefits of such Protected Employees so as to enable the Authority to satisfy itself that its duties and obligations under Schedule 8 to the Energy Act 2004 are met.

12 CONTRACTS WITH AFFILIATES

- 12.1 The Contractor shall not enter into a Subcontract with an Affiliate unless:
 - 12.1.1 the Subcontract has been offered for competitive tender and the Contractor has procured that there is open and equitable competition with no unfair advantage of any nature accruing to the relevant Affiliate(s); or

- 12.1.2 the Contractor has awarded the Subcontract in accordance with paragraph 13 (*Sole Source Awards*) below and accordingly can provide adequate substantiating documentation and rationale for not competing the Subcontract.
- 12.2 The Contractor shall notify the Authority in advance (in accordance with the notification requirements issued by the Authority from time to time) of:
 - 12.2.1 the inclusion of an Affiliate in any competitive tender; or
 - 12.2.2 the sole source award of a Subcontract to an Affiliate.
- 12.3 Should the Contractor wish to effect any subsequent changes to a Subcontract awarded to an Affiliate, it must consider the terms of any Authority approval to its Subcontract Strategy and identify whether any such change is required to be Re-Sanctioned in accordance with paragraph 9 of Schedule 3 (*Financial Sanction and Validation*) and PCP 17 (*Sanction*).

13 SOLE SOURCE AWARDS

- 13.1 The Contractor shall not, without the prior written approval of the Authority, make an award of any Subcontract where such Subcontract has not been offered for competitive tender, and in such case the Contractor shall be required to demonstrate to the satisfaction of the Authority that a sole source award is reasonably justified in the circumstances.
- 13.2 In demonstrating that it is not required to hold a competitive tender, the Contractor may not rely on the fact that:
 - 13.2.1 the award of the Subcontract does not exceed the financial thresholds specified in the EU Procurement Rules for the application of those rules;
 - 13.2.2 the Subcontract constitutes a Part B services contract as defined in the Public Contracts Regulations 2006; or
 - 13.2.3 the Subcontract constitutes a services concession or works concession as defined in the Public Contracts Regulations 2006.
- 13.3 In demonstrating that it is not required to hold a competitive tender, the Contractor may rely on any of the grounds for use of the negotiated procedure without prior publication of a contract notice set out in regulation 14 of the Public Contracts Regulations 2006.

14 TERMINATION PAYMENTS

The Contractor shall not, without the prior written approval of the Authority, enter into any Subcontract which includes the provision of termination payments which might reasonably be expected to exceed either £100,000 (one hundred thousand pounds

Sterling) or 15% (fifteen per cent) of the total value of the Subcontract whichever is the greater. For the purposes of this paragraph 14 (*Termination Payments*) only, "termination payment" shall mean any payment due from the Contractor to the Subcontractor (or anyone nominated by the Subcontractor) which arises by reason of the termination of the Subcontract.

15 TERMS OF AUTHORITY APPROVAL

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

15.1.1 of the acceptability of any Subcontract terms and conditions which could not in the reasonable opinion of the Authority be ascertained from the information provided by the Contractor pursuant to the notification and disclosure requirements of this Part 1 (*Subcontracting/Procurement Requirements*) and PCP-17 (*Sanction*);

15.1.2 of the definition of any Cost incurred under the Subcontract as either an Allowable Cost or a Disallowable Cost; nor

15.1.3 to relieve the Contractor of any responsibility for performing the works or delivering/receiving the supplies or service which form the subject matter of the Subcontract; nor

15.1.4 to relieve the Contractor of any of its responsibilities under this Agreement.

16 FLOWDOWN OF CONTRACTUAL PROVISIONS

16.1 Subject only to paragraph 17 (*Exception to Flowdown of Contractual Provisions*) below, the Contractor shall ensure that:

16.1.1 all Subcontracts shall include the contractual provisions set out in Part A of the Appendix to this Part 1 (*Subcontracting/Procurement Requirements*); and

16.1.2 all Subcontracts and Sub-Subcontracts include the contractual provisions set out in Part B of the Appendix to this Part 1 (*Subcontracting/Procurement Requirements*).

16.2 For the purposes of this paragraph 16 (*Flowdown of Contractual Provisions*) the Contractor shall ensure, and shall procure that all its Subcontractors ensure, that the provisions referred to in paragraph 16.1 above are incorporated into all new Subcontracts and Sub-Subcontracts (other than contracts with utility companies) which have a value per annum in excess of one hundred and fifty thousand pounds Sterling

(£150,000). For Subcontracts and Sub-Subcontracts which have a value per annum of less than one hundred and fifty thousand pounds Sterling (£150,000) the Contractor shall be required to use its professional judgement as to which of these provisions should be incorporated into the Subcontract or Sub-Subcontract, with the exception of provision 11 (*Payment Terms*) which (except to the extent otherwise permitted in that provision) must be included in all Subcontracts and Sub-Subcontracts regardless of value.

17 EXCEPTION TO FLOWDOWN OF CONTRACTUAL PROVISIONS

17.1 Where the Contractor enters into Subcontracts in connection with an Asset Purchase which:

17.1.1 the Contractor reasonably considers does not contain significant risk in terms of value, duration or nature; or

17.1.2 contracts with a value of less than one hundred and fifty thousand pounds Sterling (£150,000);

it shall not be required to flowdown the contractual provisions referred to in paragraph 16.1 (*Flowdown of Contractual Provisions*) above, but shall be required to use its professional judgement as to which of these provisions should be incorporated into the Subcontract, with the exception of provision 11 (*Payment Terms*) which (except to the extent otherwise permitted in that provision) must be included in all Subcontracts and Sub-Subcontracts regardless of value.

17.2 Subject to paragraph 17.1 above, the Contractor shall not without the Authority's prior written approval (not to be unreasonably withheld or delayed) conclude any Subcontract which omits any of the contractual provisions referred to in paragraph 16.1 (*Flowdown of Contractual Provisions*) above.

17.3 When seeking the Authority's approval in accordance with paragraph 17.2, the Contractor must specify:

17.3.1 with reference to the Procurement Plan then current, which Subcontract is the subject of the request;

17.3.2 which contractual provision(s) specified in paragraph 16.1 (*Flowdown of Contractual Provisions*) the Contractor wishes to be excluded (in part if applicable) in respect of the proposed Subcontract; and

17.3.3 an explanation of the risks and benefits flowing from the proposed omission(s), particularly but not only how the relevant contractual provision(s) (or part of the

contractual provision(s) if applicable) will affect the pricing mechanism of the Subcontract if not omitted.

17.4 When responding to any Contractor request submitted pursuant to this paragraph 17 (*Exception to Automatic Flowdown of Contractual Provisions*), the Authority shall:

17.4.1.1 not unreasonably withhold consent to the exclusion of the relevant contractual provision(s) (or part thereof if applicable) identified by the Contractor in its request;

17.4.1.2 provide its decision in writing within fifteen (15) Working Days; and

17.4.1.3 provide reasons for any refusal of consent to the Contractor's request.

18 AUTHORITY'S RIGHT TO INSTRUCT

18.1 The Authority, acting reasonably, shall be entitled to instruct the Contractor to:

18.1.1 exercise its rights to terminate (or not terminate) a Subcontract;

18.1.2 amend any Inter-SLC Service Contract (in accordance with Clause 23 (*Inter SLC Service Contracts*) of the Agreement) or seek to amend any other Subcontract;

18.1.3 enter into a new Subcontract in accordance with timescales, with counterparties and on terms specified by the Authority;

18.1.4 resist an amendment proposed by a counterparty to any Subcontract;

18.1.5 waive or not waive any of the counterparty's obligations under a Subcontract, in each case where the Authority reasonably believes that such steps will best enable the Authority to fulfil its statutory functions and duties (and the Contractor shall not waive any counterparty's obligations to make any payment to the Contractor under a Subcontract without the prior written approval of the Authority).

18.2 If the Authority wishes to issue instructions to the Contractor pursuant to paragraph 18.1 (*Authority's Right to Instruct*) above, the Authority shall where practicable discuss the instructions with the Contractor and the Contractor shall assist the Authority in obtaining any information that the Authority may reasonably require. During such discussion, the Contractor shall (having regard to the preliminary nature of the Authority's wish to issue instructions) inform the Authority of any objections or impact of which the Contractor is aware that such instructions may have upon the Authority, the Contractor, any Subcontract, the performance of or terms of this Agreement (including the application of

Part 2 (*Costs*) of Schedule 6 (*Finance*) or upon any Customer Contract in accordance with Schedule 2 (*Change Control Procedure*).

- 18.3 Any instruction issued by the Authority pursuant to this paragraph 18 (*Authority's Right to Instruct*) shall be deemed to be a Proposed Change initiated by the Authority pursuant to Paragraph 4.2 (*Initiation of Proposed Change*) of Schedule 2 (*Change Control Procedure*).
- 18.4 In issuing any instruction pursuant to this paragraph 18 (*Authority's Right to Instruct*) the Authority shall take into account the Contractor's obligations under the EU Procurement Rules.
- 18.5 If the counterparty (or proposed counterparty) to the Subcontract is unwilling to proceed in the manner prescribed by the Authority in its instruction, the Contractor shall use its reasonable endeavours to carry out the Authority's instructions and the Authority and the Contractor shall consult with one another in order to agree how to resolve the issue.

Appendix 1

Part A – Provisions to be incorporated into all Subcontracts

Pursuant to paragraph 16.1.1 of Part 1 (*Subcontracting/Procurement Requirements*) of Schedule 5 (*Subcontracting/Procurement*) the Contractor shall include the following provisions in each and every Subcontract.

1 Change of Control

In the event of any change in ownership, management or control of the Contractor, the Subcontractor shall not be entitled to terminate the Subcontract or make any amendment to this Subcontract.

2 Novation and Assignment

2.1 The Contractor shall be entitled to assign, novate or transfer its interest in the Subcontract to a party nominated by the Authority:

2.1.1 without the consent of the Subcontractor;

2.1.2 without requiring the consent of any third party; and

2.1.3 without incurring any payment obligation or other additional liability.

3 Termination for Convenience

3.1 The Contractor shall be entitled to terminate this Subcontract at any time upon giving reasonable notice, to the Subcontractor. For the purposes of this paragraph 3.1 "reasonable notice" shall not be less than 30 days' notice.

3.2 Where the Contractor terminates the Subcontract pursuant to Clause 3.1 above, the Subcontractor shall be entitled to recover from the Contractor costs reasonably and actually incurred and arising directly from termination of the relevant Subcontract. For the avoidance of doubt, the Subcontractor shall not be entitled to recover any payment in respect of loss of anticipated profits, loss of opportunity or consequential losses.

4 Rights of Third Parties

The Authority shall, pursuant to the Contracts (Rights of Third Parties) Act 1999, be entitled to enforce any of the Contractor's rights under the Subcontract and any term in this Subcontract which directly or indirectly prevents or attempts to prevent the Authority from exercising those rights shall have no legal effect.

5 Agreement under section 12(3A) of the Nuclear Installations Act 1965 to provide protection for contractor equipment on the licensed site in the event of nuclear damage

5.1 Pursuant to section 12(3A) of the Nuclear Installations Act 1965 ("**the Act**"), the Contractor and the Subcontractor agree as follows:

5.1.1 In the event of an occurrence involving nuclear matter as defined within section 7 of the Act, the Contractor shall be liable to the Subcontractor for damage to the property of the Subcontractor and / or the property of the Subcontractor's subcontractors or suppliers which is located on the [*insert details of the nuclear licensed site*] for the purposes of the Subcontract.

5.1.2 The liability in paragraph 5.1.1 shall be limited to liability for property damage as would otherwise exist if section 7(3) of the Act did not apply and claims under this agreement for property damage shall be governed by the Act as if section 7(3) of the Act did not apply.

5.1.3 The Contractor shall not be liable under paragraph 5.1.1 unless and to the extent that the Subcontractor has notified the Contractor and the Authority of:

5.1.3.1 the estimated value of the Subcontractor's plant, equipment and assets [and any such plant, equipment and assets of its subcontractors or suppliers brought onto [*insert details of the nuclear licensed site*]] on an annual basis for the purposes of the Subcontract in accordance with the Authority's insurance renewal requirements; and

5.1.3.2 where the value of such property has changed by (20%) or more during any one (1) year.

5.1.4 The liability in paragraph 5.1.1 shall be limited to the market value of the property notified in writing pursuant to paragraph 5.1.3 above.

5.1.5 The Contractor shall not be liable under (a) to the extent that the occurrence involving nuclear matter was attributable to any act or omission of the Subcontractor or any employee, servant or agent of the Subcontractor [, or the Subcontractor's subcontractor or any employee, servant or agent of the Subcontractor's subcontractor] done with the intent to cause injury or damage or done with reckless disregard for the consequences of the act or omission.

5.2 For the avoidance of doubt, nothing in this Subcontract is or shall be deemed to be an agreement for the Subcontractor to incur liability under Section 12(3A) of the Act.

Part B – Provisions to be incorporated into all Subcontracts and Sub-Subcontracts

Pursuant to paragraph 16.1.2 of Part 1 (*Subcontracting/Procurement Requirements*) of Schedule 5 (*Subcontracting/Procurement*) the Contractor shall include the following provisions in each and every Subcontract and shall procure that such provisions are included within each and every Sub-Subcontract.

6 Rights of Audit, Inspection and Access

6.1 Subject to compliance with applicable Law and Regulatory Requirements, [*insert name of the relevant contractor*], the Authority and the Authority's Agents shall be entitled at any time, or frequency, to conduct an audit, inspection, review, periodic monitoring and spot check for the purposes of:

6.1.1 reviewing [*insert name of relevant subcontractor*]'s activities in connection with, and performance in respect of, this [*Subcontract*];

6.1.2 verifying the accuracy of the [*insert contract term used to refer to the contract price*] and any costs of suppliers (including subcontractors) of the [*Works*][*Services*] which shall include the verification of any supporting documentation in respect of the [*insert contract term used to refer to the contract price*];

6.1.3 reviewing all information required to be kept by [*insert the name of the relevant subcontractor*] pursuant to this [*Subcontract*];

6.1.4 verifying the accuracy and completeness of any management information delivered or required by this [*Subcontract*];

6.1.5 reviewing the integrity, confidentiality and security of the information required to be kept by the [*insert name of relevant subcontractor*] pursuant to this [*Subcontract*];

6.1.6 reviewing [*insert name of relevant subcontractor*]'s compliance with the Freedom of Information Act 2000, Environmental Information Regulations 2004 and the Data Protection Act 1998, in accordance with paragraph 8, compliance with the Bribery Act 2010 in accordance with paragraph 7 and any other Regulatory Requirements or legislation applicable to the [*Works*][*Services*].

6.2 For the purpose of carrying out an audit pursuant to this paragraph 6 [*insert the name of the relevant contractor*], the Authority and any Authority Agent shall, subject to compliance with applicable Law and Regulatory Requirements, be entitled to:

- 6.2.1 reasonable access to all parts of the [*Site or any other*] site and facilities used by the [*insert the name of the relevant subcontractor*] in the performance of the [*Works*][*Services*];
 - 6.2.2 interview any employees, secondees or other personnel of the [*insert the name of the relevant subcontractor*];
 - 6.2.3 carry out any inspections or tests to determine the integrity of information supplied and the quality of the information systems used by [*insert the name of the relevant subcontractor*];
 - 6.2.4 request and receive all information, books of account, records and data together with appropriate rights of access to any equipment and/or information systems required to obtain such information; and
 - 6.2.5 copy and collate any information requested pursuant to this paragraph 6.
- 6.3 For the purposes of:
- 6.3.1 carrying out the audit and certification of the Authority's accounts;
 - 6.3.2 carrying out an examination pursuant to section 6(1) of the National Audit Act 1983 or any re-enactment thereof, of the economy, efficiency and effectiveness with which the Authority has used its resources;
- the Comptroller and Auditor General may examine such documents relating to expenditure and income as he may reasonably require which are owned, held or otherwise within the control of [*insert the name of the relevant subcontractor*] and may require [*insert the name of the relevant subcontractor*] to produce such oral or written explanations as he considers necessary. [*insert the name of the relevant subcontractor*] agrees that they will make such documentation available for use by the Comptroller and/or Auditor General in exercising his statutory duties and functions.
- 6.4 Where appropriate, [*insert the name of the relevant contractor*] shall discuss the outcome of the audit findings with [*insert the name of the relevant subcontractor*]. In such circumstances, [*insert the name of the relevant subcontractor*] shall maintain records of the audit findings together with details of any corrective action taken as a result of such audit findings.
 - 6.5 During any inspection or audit of the [*insert the name of the relevant subcontractor*]'s site or facilities [*insert the name of the relevant subcontractor*] shall (on request) make available suitable office accommodation for the purposes of the audit.
 - 6.6 [*insert the name of the relevant contractor*], the Authority and any Authority Agent shall use reasonable endeavours to ensure that the conduct of each audit does not

unreasonably disrupt the *[insert the name of the relevant subcontractor]* or delay the provision of the *[Works][Services]*. *[insert the name of the relevant subcontractor]* shall not be excused from performance of any aspect of its obligations under this *[Subcontract]* for any period of time during which the *[insert the name of the relevant contractor]*, Authority, Authority Agents and/or the Comptroller and Auditor General are exercising their respective rights under this paragraph 6.

7 Anti-Bribery and Corruption

7.1 *[insert the name of the relevant subcontractor]* shall and shall procure that persons associated with it (as defined in section 7 of the Bribery Act 2010) in connection with this *[Subcontract]* shall:

- 7.1.1 comply with Relevant Requirements and Relevant Policies;
- 7.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 7.1.3 not do, or omit to do, any act that will cause or lead the Authority, *[insert the name of the relevant contractor]* and/or *[insert the name of the relevant subcontractor]* to be in breach of any of the Relevant Requirements or Relevant Policies;
- 7.1.4 have and shall maintain in place throughout the term of this agreement its own policies, procedures or processes, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and this paragraph 7, and will enforce them where appropriate;
- 7.1.5 promptly report to *[insert the name of the relevant contractor]* any request or demand for any undue financial or other advantage of any kind received by *insert the name of the relevant subcontractor]* or any person working for or engaged by *[insert the name of the relevant subcontractor]* in connection with the performance of this *[Subcontract]*;
- 7.1.6 if requested, other than in relation to a breach of this paragraph 7, provide the Authority and/or *[insert the name of the relevant contractor]* with any reasonable assistance, at the *[insert the name of the relevant contractor]*'s reasonable cost, to enable the Authority and/or *[insert the name of the relevant contractor]* to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with any of the Relevant Requirements or Relevant Policies;

- 7.1.7 within 30 days of the date of this [Subcontract], certify to [insert the name of the relevant contractor] in writing signed by an officer of the [insert the name of the relevant subcontractor] compliance with this paragraph 7 by the [insert the name of the relevant subcontractor]. [insert the name of the relevant subcontractor] shall provide such supporting evidence of compliance as [insert the name of the relevant contractor] may reasonably request.
- 7.2 [insert the name of the relevant subcontractor] shall immediately notify the Authority and [insert the name of the relevant contractor] if, at any time during the term of this [Subcontract], its circumstances, knowledge or awareness changes such that it would not be able to comply with this paragraph 7.
- 7.3 If [insert the name of the relevant subcontractor] notifies [insert the name of the relevant contractor] that it suspects or knows that there may be a breach of paragraph 7.1, [insert the name of the relevant subcontractor], the [insert the name of the relevant subcontractor] must respond promptly to the [insert the name of the relevant contractor]'s enquiries, co-operate with any investigation, and allow the [insert the name of the relevant contractor] and/or the Authority to audit books, records and any other relevant documentation.
- 7.4 [insert the name of the relevant contractor] may terminate this [Subcontract] by written notice with immediate effect if the [insert the name of the relevant subcontractor] or any persons associated with it persons associated with it (as defined in section 7 of the Bribery Act 2010) in connection with this [Subcontract] (in all cases whether or not acting with the [insert the name of the relevant subcontractor]'s knowledge) breaches paragraph [7.1].
- 7.5 Any dispute relating to the interpretation of this paragraph 7, or the materiality of any breach of this paragraph 7 shall be determined by [insert the name of the relevant contractor] and its decision shall be final and conclusive.

8 Compliance with the statutory obligations of the Authority

Freedom of Information Act 2000 (FOIA) and Environmental Information Regulations 2004 (EIR)

- 8.1 [insert the name of the relevant subcontractor] acknowledges that the Authority is subject to the requirements of FOIA, and the EIR and the [insert the name of the relevant subcontractor] shall assist and co-operate with the Authority and/or [insert the name of the relevant contractor] to enable the Authority to comply with these information disclosure requirements.
- 8.2 If the Authority is required to provide information as a result of a request made to it under FOIA and /or EIR and such information is in the possession of any of [insert the

name of the relevant subcontractor] or its suppliers then *[insert the name of the relevant subcontractor]* shall provide such information to the *[insert the name of the relevant contractor]* as soon as reasonably practicable.

- 8.3 *[insert the name of the relevant subcontractor]* shall provide all necessary assistance as reasonably requested by the Authority and/or *[insert the name of the relevant contractor]* to enable the Authority to respond to a Request for Information (as defined under FOIA) within the time for compliance set out in section 10 of the FOIA or regulation 5 of EIR.
- 8.4 The Authority shall be responsible for determining at its absolute discretion whether any information provided to the Authority is exempt from disclosure in accordance with FOIA or EIR or is to be disclosed in response to a request for information.
- 8.5 *[insert the name of the relevant subcontractor]* acknowledges that the Authority may, acting in accordance with the FOIA or EIR disclose information without consulting *[insert the name of the relevant subcontractor]*, or the Authority may, at its discretion, elect to consult *[insert the name of the relevant subcontractor]* and take its views into account.
- 8.6 *[insert the name of the relevant subcontractor]* acknowledges that any lists or schedules provided by it outlining confidential information or commercially sensitive information are of indicative value only and that the Authority may nevertheless be obliged to disclose such information in accordance with this paragraph 8.

Data Protection Act 1998 (DPA)

- 8.7 *[insert the name of the relevant subcontractor]* shall comply at all times with the DPA or such other equivalent data protection legislation and shall not perform its obligations under this *[Subcontract]* in such a way as to cause *[insert the name of the relevant contractor]* or the Authority to breach any of its obligations under the DPA or such other equivalent data protection legislation.
- 8.8 Notwithstanding the general obligation in paragraph 8.7, where the *[insert the name of the relevant subcontractor]* is processing Personal Data (as defined by the DPA) as a Data Processor (as defined by the DPA) for the *[insert the name of the relevant contractor]*, *[insert the name of the relevant subcontractor]* shall:
- 8.8.1 process the Personal Data only in accordance with instructions from the *[insert the name of the relevant contractor]* (which may be specific instructions or instructions of a general nature) as set out in this *[Subcontract]* or as otherwise notified by *[insert the name of the relevant contractor]*;

- 8.8.2 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- 8.8.3 ensure that all employees or agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this paragraph 8.

9 Insurance

- 9.1 *[insert the name of the relevant Contractor]* shall notify *[insert the name of the relevant subcontractor]* of the relevant Authority Insurances, including any information provided by the Authority from time to time in respect of such Authority Insurances.
- 9.2 *[insert the name of the relevant subcontractor]* shall:
- 9.2.1 not purchase insurance that duplicates the Authority Insurances;
 - 9.2.2 consent to being a joint named insured under the Authority Insurances; and
 - 9.2.3 comply with (and shall procure that its subcontractors and suppliers to this *[Subcontract]* agree to comply with) any instructions issued by the Authority from time to time in relation to the Authority Insurances, claims handling and other procedures relevant to this *[Subcontract]*.
- 9.3 *[insert the name of the relevant subcontractor]* shall arrange appropriate insurance cover to reflect the nature of the *[Works][Services]* to be performed (for example public and product liability, employers' liability, professional indemnity and motor insurance). For the avoidance of doubt, all such *[insert the name of the relevant subcontractor]*'s insurance policies, with the exception of any professional indemnity insurance, shall contain a provision which obliges the insurers to indemnify the *[insert the name of the relevant contractor]*, *[insert the name of the relevant SLC]*, *[insert the name of the relevant SLCs PBO]* and the Authority in respect of claims made against them arising from the performance of the *[Works][Services]* by the *[insert the name of the relevant subcontractor]*.

10 Agreements with trade unions or other bodies representing employees

The Subcontractor shall comply with the terms of all agreements which the Subcontractor has entered into with trade unions or other bodies representing the employees of the Subcontractor which relate to those employees of the Subcontractor.

11 Payment Terms

11.1 Each amount to be paid to the Subcontractor under this Subcontract shall be payable:

11.1.1 on the last day of the month following the month in which the paying party receives a valid invoice for that amount; or

11.1.2 where under any other provision of this Subcontract that amount is payable on an earlier date, in accordance with that other provision.

11.2 To the extent this Subcontract is a construction contract as defined in the Housing Grants, Construction and Regeneration Act 1996 (as amended), the final date for payment of an amount due under this Subcontract is:

11.2.1 the last day of the month following the month in which the paying party receives a valid invoice for that amount; or

11.2.2 any earlier date identified as the final date for payment under any other provision of this Subcontract.

11.3 For the purposes of this Paragraph 11, a valid invoice is an invoice that:

11.3.1 the Subcontractor was entitled to submit in accordance with this Subcontract; and

11.3.2 complies with the requirements of this Subcontract.

11.4 Any provision of this Subcontract that purports to make payment to the Subcontractor conditional on:

11.4.1 receipt of any payment by the paying party from a third person;

11.4.2 certification of any payment to the paying party;

11.4.3 [performance of obligations under another contract;] and/or

11.4.4 [a decision by any person as to whether obligations under another contract have been performed],

shall have no effect [*provisions 11.4.3 and 11.4.4 shall be included or excluded in accordance with the professional judgement of the Contractor*].

11.5 Nothing in this Paragraph 11 overrides any provision of this Subcontract relating to payment to the Subcontractor following termination of this Subcontract or termination of the Subcontractor's obligations under this Subcontract by reason of any breach or failure on the part of the Subcontractor.

Appendix 2

Inter-SLC Service Contract Pro Forma

Draft

Inter-SLC Services Contract Pro Forma

..... 20●

[]

and

[]

SERVICES AGREEMENT

For the provision of [] by

[Service Provider] to [Customer]

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BETWEEN:

- (1) **[SERVICE PROVIDER]**, a company incorporated under the laws of [] with registered number [] ("**Service Provider**"); and
- (2) [], a company incorporated under the laws of [] with registered number [] (the "**Customer**").

[Note: cross-references to M&O Contracts in this proforma contract are subject to which SLC is the Service Provider and which is the Customer]

WHEREAS:

- (A) [Service Provider] has agreed to provide certain services to the Customer on the terms and conditions set out in this Agreement.
- (B) The Customer is willing to accept the services and has agreed to perform certain obligations on the terms and conditions set out in this Agreement.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement the defined terms used shall have the same meaning as defined terms used in the Energy Act except to the extent that such defined terms are given a different meaning in Schedule A (Definitions). Defined terms used in this Agreement which are not defined in the Energy Act shall have the meaning specified in Schedule A (Definitions).

1.2 Interpretation

1.2.1 In this Agreement:

- (A) headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;
- (B) all references to Clauses and Schedules are references to clauses of and schedules to this Agreement and all references to Parts, Sections, Paragraphs, Annexes or Appendices are references to parts, sections and paragraphs contained in and annexes and appendices to the Schedules;
- (C) the Schedules are an integral part of this Agreement and reference to this Agreement includes reference to the Schedules;
- (D) all references to agreements, procedures, documents or other instruments include (subject to all relevant approvals) a reference

to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time;

- (E) all references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision;
- (F) all references to any licence, authorisation or consent shall include references to any licence, authorisation or consent which amends, extends, consolidates or replaces the same or which has been, amended, extended, consolidated or replaced by the same;
- (G) words importing the singular include the plural and vice versa;
- (H) words importing a particular gender include all genders;
- (I) **"person"** includes an individual, partnership, firm, trust, body corporate, government department, corporation sole, governmental body, authority, agency or unincorporated body of persons or associations;
- (J) any reference to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over the functions or responsibilities of such public organisation;
- (K) references to **"Party"** and **"Parties"** means a party or the parties to this Agreement as applicable;
- (L) all monetary amounts are expressed in pounds sterling;
- (M) references to the word **"includes"** or **"including"** are to be construed without limitation;
- (N) references to a document being **"in the agreed form"** means a copy of such document initialled for the purposes of identification by the Parties; and
- (O) any reference in this Agreement to a Party providing its consent or approval shall be deemed to be a reference to prior written consent or approval.

2. TERM

This Agreement shall take effect on the date hereof and remain in full force and effect until the date on which any termination is effective in accordance with Clause 16 (Termination).

3. OBLIGATIONS OF [SERVICE PROVIDER]

[Service Provider] shall provide the Services set out in Schedule B to the Customer in accordance with the terms and conditions of this Agreement.

4. OBLIGATIONS OF THE CUSTOMER

4.1 The Customer shall pay all sums due to [Service Provider] pursuant to the terms of this Agreement in consideration for the provision of the Services and in accordance with Clause 11 (Billing and Payment) and Schedule C (Payment).

4.2 The Customer shall perform all of its obligations set out in Schedule B.

5. PARTIES' OBLIGATIONS

Each Party shall:

5.1 comply with the other Party's Internal Procedures which are relevant to the performance of this Agreement as notified to it by that other Party from time to time;

5.2 comply with all applicable Law;

5.3 comply with all applicable Regulatory Requirements of the Regulators; and

5.4 comply, or procure compliance, with each other's Internal Procedures relating to safety and Site security when such Party, or such Party's representatives, are on the other's Site.

6. ACCESS TO THE CUSTOMER SITE

6.1 The Customer agrees with the Service Provider that until the termination of this Agreement the Service Provider may have access to and (where previously authorised by the Customer) may use and/or occupy such part or parts of the land and buildings on the Customer Site specified by the Customer from time to time in order to enable the Service Provider to perform its obligations under this Agreement.

6.2 The Service Provider agrees with the Customer that when exercising the rights referred to in Clause 6.1 the Service Provider shall at all times:

6.2.1 not impede in any way the Customer or its officers servants or agents in the exercise of the Customer's rights of possession and ownership of the Customer Site; and

6.2.2 not do anything which would contravene the terms of any Nuclear Site Licence affecting the whole or any part of the Customer Site; and

- 6.2.3 comply with the terms of any regulations properly made by the Customer from time to time regarding access to and use/occupation of the whole or any part of the Customer Site.
- 6.3 The rights granted to the Service Provider by this Clause 6 are personal to the Service Provider and shall not be capable of being assigned or otherwise dealt with or disposed of.
- 6.4 The Service Provider shall not by virtue of the provisions of this Clause 6 claim to be or become entitled to any estate right or interest in or exclusive possession of any of the land or buildings comprising the Customer Site and nothing contained in this Clause 6 shall be construed as creating an legal or equitable demise of the whole or any part of the Customer Site.

7. STANDARD OF PERFORMANCE

[Service Provider] shall provide the Services to the standard set out in Schedule B (Services):

- 7.1 in a safe, secure, efficient, cost effective, transparent and co-operative manner;
- 7.2 exercising Good Industry Practice;
- 7.3 in a transparent and cooperative manner with both the Customer and the Regulators;
- 7.4 ensuring that all aspects of the Services meet all standards, specifications and requirements set out in Schedule B;
- 7.5 to the extent relevant and/or appropriate, in a manner which, in relation to the [Service Provider] Site and the Services provided under this Agreement, enables [Service Provider] to fulfil its obligations under its Nuclear Site Licence and in relation to the Customer Site and the Services received under this Agreement, enables the Customer to fulfil its obligations under its Nuclear Site Licence; and
- 7.6 to the extent relevant to and/or appropriate for such Services in a professional manner befitting an adviser including with reasonable competence, with integrity, impartiality, objectivity and confidentiality and avoiding conflicts of interest (and for the avoidance of doubt, notifying the Customer promptly of any potential for conflict of interest which arises).

8. MODIFICATIONS TO SERVICES

- 8.1 Subject to Clause 9 (Management of Change) and Clause 8.3, the Customer shall be entitled to serve notice on [Service Provider] requesting that [Service Provider] modifies the Services to enable the Customer to comply with any applicable Law or Regulatory Requirement. The Customer shall send a copy of such notice to the Authority. The Authority shall consider, amongst other things, the Customer's and [Service Provider]'s respective obligations under Law and Regulatory Requirements and shall respond in

writing to the Customer and [Service Provider] confirming whether, and the extent to which, it consents to the Services being modified as proposed in the Customer's notice. Where the Authority notifies the Customer and [Service Provider] that it consents to the Services being modified, [Service Provider] shall modify the Services accordingly within such timescales as agreed between the Parties [and the Authority].

- 8.2 Subject to Clause 9 (Management of Change) and Clause 8.3, [Service Provider] shall be entitled to serve notice on the Customer of an intention to modify the Services to enable [Service Provider] to comply with any applicable Law or Regulatory Requirement. [Service Provider] shall send a copy of the notice to the Authority. The Authority shall consider, amongst other things, the Customer's and [Service Provider]'s respective obligations under Law and Regulatory Requirements and shall respond in writing to the Customer and [Service Provider] confirming whether, and the extent to which, it consents to the Services being modified as proposed in [Service Provider]'s notice. Where the Authority notifies the Customer and [Service Provider] that it consents to the Services being modified, [Service Provider] shall modify the Services accordingly within such timescales as agreed between the Parties [and the Authority].
- 8.3 Any increase or reduction in the costs of providing the Services which is directly attributable to any modification of the Services in accordance with Clauses 8.1 or 8.2 shall be agreed between the Parties within thirty (30) Calendar Days of the date of receipt of the request in Clause 8.1 or of receipt of the notification in Clause 8.2 (as applicable). The Parties shall notify the Authority of the agreed adjustment in costs (if any). If the Parties cannot agree any such increase or reduction in costs within this time, either Party shall be entitled to refer the dispute to the Authority for determination in accordance with Clause 19 (Disputes).
- 8.4 Subject to Clause 9 (Management of Change), either Party shall be entitled to serve notice on the other Party requesting modifications to the Services for any other reason which does not fall within Clauses 8.1 or 8.2. The requesting Party shall send a copy of such notice to the Authority. The Parties shall agree any adjustment of the costs within thirty (30) Calendar Days of such request and notify the Authority of the agreed adjustment in costs (if any). If the Parties cannot agree the adjustment to the costs within this time, each Party shall be entitled to refer the dispute to the Authority for determination in accordance with Clause 19 (Disputes). The Authority shall respond in writing to the Customer and [Service Provider] confirming whether, and the extent to which it consents to the Services being modified as proposed in the requesting Party's notice. Where the Authority notifies the Customer and [Service Provider] that it consents to the Services being modified, [Service Provider] shall modify the Services accordingly within such timescales as agreed between the Parties [and the Authority].
- 8.5 Schedules A to C shall be amended in writing to accommodate any modifications made in accordance with this Clause 8 (Modifications to Services). Any failure to make such

amendments to Schedules A to C shall be without prejudice to any modifications so made.

9. MANAGEMENT OF CHANGE

9.1 Notwithstanding any provision contained in Clause 8 (Modifications to Services), each Party must comply with this Clause 9 (Management of Change).

9.2 The Parties acknowledge that any change in any aspect of the provision of the Services may have an impact on each other's ability to comply with the Authority's output requirements and/or perform its LTP (as appropriate) within relevant targets and budgetary constraints. To the extent relevant and/or appropriate, the Parties shall notify each other from time to time of the scope, schedule, cost and/or funding consequences to its LTP that will occur as a result of any proposed change to the Services.

9.3 Regardless of whether the Customer or [Service Provider] has received any notification in accordance with Clause 9.2:

9.3.1 [the Customer and [Service Provider] shall monitor and oversee the provision of the Services by [Service Provider] and they may:

(A) agree appropriate performance targets as to scope, schedule and cost for the provision of the Services;

(B) agree procedures for measuring the provision of the Services against such targets;

(C) agree appropriate remedial and other actions to be taken in consequence of any failure to meet such targets; and

(D) monitor the provision of the Services against the agreed performance targets.

9.3.2 the Customer and [Service Provider] shall have access to each other's relevant personnel when reasonably practicable in order to discuss and where necessary to meet to review the provision and the performance of the Services and agree any modifications in accordance with this Agreement;]

9.3.3 [Service Provider] shall provide the Customer with relevant and adequate information on a timely basis to keep the Customer informed of the status and progress of the Services and of any trends which may affect the provision of the Services;

9.3.4 immediately upon [Service Provider] becoming aware that it is or may become unable to provide any aspect of the Services resulting in actual or anticipated interruption or limitation of the Services or any part thereof for any reason other than a Force Majeure Event, [Service Provider] shall give as much notice to the Customer as is reasonably practicable in the circumstances specifying:

- (A) the extent to which the Services are affected;
- (B) the reason for the interruption or limitation of the Services;
- (C) the action being taken to remedy the situation;
- (D) [Service Provider]'s best estimate of the duration of the interruption or limitation of the Services; and
- (E) [Service Provider] shall, as soon as possible, provide a copy of the notice served on the Customer in accordance with this Clause 9.3.4 to the Authority.

Nothing in this Clause 9.3.4 shall affect [Service Provider]'s obligation to provide the Services or its other obligations under this Clause 9 (Management of Change). Each Party shall take such steps as may be reasonably practicable in the circumstances to mitigate against the consequences of the interruption or limitation. If the interruption or limitation exceeds or is estimated to exceed 48 hours, in addition to the Parties continuing to mitigate, the Parties will consult with a view to making suitable alternative arrangements.

9.4 Without prejudice to this Clause 9 (Management of Change), [Service Provider] shall use its best endeavours to assist the Customer in complying with its obligations contained Clause 4 (Trend Log and Change Control Log) Schedule 2 (Change Control) and Schedule 3 (Financial Sanction and Validation) of the Customer M&O Contract as and when, and in such manner as, the Customer reasonably requests.

9.5 Without prejudice to this Clause 9 (Management of Change) the Customer shall use its best endeavours to assist [Service Provider] in complying with its obligations contained in Clause 4 (Trend Log and Change Control Log) Schedule 2 (Change Control) and Schedule 3 (Financial Sanction and Validation) of the [Service Provider] M&O Contract as and when, and in such a manner as [Service Provider] reasonably requests.

10. REPLACEMENT OF EMPLOYEES

10.1 [Service Provider] shall, in respect of the provision of the Services, ensure that when it replaces any Employee engaged in the provision of the Services, the replacement has the level of skills and experience which:

10.1.1 is at least broadly comparable to that of the Employee that he or she is replacing; or

10.1.2 if more appropriate, in the opinion of [Service Provider], depending on the relevant job position, matches the necessary skills and experience required for that job position.

11. BILLING AND PAYMENT

- 11.1 By each Invoice Date, [Service Provider] shall submit to the Customer an invoice specifying as separate items of account in respect of the period to which that invoice relates:
- 11.1.1 the amount due as calculated in accordance with the costing principles set out in Schedule C (Payment);
 - 11.1.2 any adjustment as applicable in accordance with Clause 8 (Modification to Services); and
 - 11.1.3 any VAT payable on any sums as are due from the Customer.
- 11.2 Subject to Clause 11.3, within thirty (30) Calendar Days of receipt of an invoice in accordance with Clause 11.1 the Customer shall pay to [Service Provider] all sums due in respect of such invoice by direct bank transfer or equivalent instantaneous transfer of funds to such account as [Service Provider] may from time to time notify to the Customer.
- 11.3 Where any sum included in an invoice submitted in accordance with Clause 11.1 is disputed by the Customer in good faith, the Customer shall within fifteen (15) Calendar Days of receipt of such invoice provide [Service Provider] with a statement of the amount in dispute and the reason why it is disputed. The undisputed amount shall be paid by the date specified in Clause 11.2. If the Parties cannot agree the disputed amount within fifteen (15) Calendar Days of receipt of the statement by [Service Provider], either Party shall be entitled to refer the dispute to the Authority for determination in accordance with Clause 19 (Disputes). Any amount agreed or determined to be payable shall be paid within twenty-one (21) Calendar Days of such agreement or determination and interest shall accrue on such amount from the date such amount was originally due until the date of payment at the rate of one (1) per cent. per annum above the base rate during such period of [*bank*] compounded annually.
- 11.4 Should the Customer fail to make payment on the due date of any sum due in accordance with Clause 11.2 (other than any sum which is notified as being the subject of a bona fide dispute in accordance with Clause 11.3), interest on the amount unpaid shall accrue from the date such amount was due until the date of payment at the rate of three (3) per cent. per annum above the base rate during such period of [*bank*] compounded annually.
- 11.5 Except as set out in Clause 11.3, all payments to be made under this Agreement shall be made without any set-off or deduction in respect of any claims or disputes or otherwise (other than any set-off, counterclaim, deduction or withholding required by Law) but shall be without prejudice to any claims or rights which the Parties may have against the other.

12. CO-OPERATION

- 12.1 The Parties shall co-operate with each other and provide all reasonable assistance and take all reasonable action to enable the other to perform their respective obligations under this Agreement and under the [Service Provider] M&O Contract and the Customer M&O Contract (as applicable).
- 12.2 [Service Provider] shall notify the Customer of any changes to [Service Provider]'s obligations in the [Service Provider] M&O Contract that, in its reasonable opinion, may affect the rights and/or obligations of the Parties under this Agreement, and the Customer shall notify [Service Provider] of any changes to its obligations in the Customer M&O Contract that, in its reasonable opinion, may affect the rights and/or obligations of the Parties under this Agreement. The Customer or [Service Provider], as relevant, shall also notify the Authority if the changes to the relevant M&O Contract affects the rights and/or obligations of the Authority under this Agreement.
- 12.3 Such notification must be provided to the other Party, within [●] days from the date the relevant amendment is effected. Following such notification, the Parties shall consult to determine what variations are required to this Agreement as a result of the relevant amendment. To the extent that the Parties cannot agree on the variations that are required to this Agreement within [●] days, the Parties shall [be entitled to] refer the dispute to the Authority for determination in accordance with Clause 19 (Disputes). No variation agreed between the Parties pursuant to this Clause 12.3 shall be effective unless the Authority has given its prior written consent to the variation.

13. RECORDS AND ACCESS TO INFORMATION

- 13.1 [Service Provider] shall be responsible for the maintenance of all records ordinarily maintained by service providers providing equivalent services, or as otherwise reasonably requested by the Customer (including training records) relating to the provision of the Services. The Customer shall, at all reasonable times, have access to such records.
- 13.2 Each Party shall provide to the other Party such information, records or reports as the other Party may reasonably request from time to time in order for the other Party to monitor the performance of the obligations under this Agreement and/or to conduct any audit of the Services in order to comply with any applicable Law or Regulatory Requirement or any request or direction given by the Authority.
- 13.3 The Customer may request any information (including justification, technical options, details of relevant accounting principles and cost allocations) that it may reasonably require to review any amounts payable or which would be payable by it under this Agreement. On receiving such a request [Service Provider] shall use its reasonable endeavours to provide all such information within such timescales as reasonably requested by the Customer.

14. INSPECTION AND AUDIT

- 14.1 [Service Provider] shall use its best endeavours to assist the Customer in fulfilling its obligations under [Clause 15] (Inspection and Audit) of the Customer M&O Contract.
- 14.2 The Customer shall use its best endeavours to assist [Service Provider] in fulfilling its obligations under [Clause 15] (Inspection and Audit) of the [Service Provider] M&O Contract.

15. LIMITATION OF LIABILITY

- 15.1 Save as expressly set out in this Agreement, neither Party (the "**Party Liable**") nor any of its officers, employees, agents or contractors shall have any liability whatever to the other Party for any direct, indirect or consequential loss (including loss of profit, loss of production, loss of contract or loss of goodwill and any liability arising out of any liability of the other to any other person) whether resulting from the performance or non-performance by the Party Liable of its obligations under this Agreement or negligence, breach of contract or otherwise on the part of the Party Liable or any of its officers, employees, agents or contractors under or arising out of this Agreement.
- 15.2 Nothing in this Agreement shall have the effect of excluding or restricting the liability of either Party or of its officers, employees, agents or contractors for death or personal injury arising out of such person's negligence if such exclusion or restriction would be unlawful under the Unfair Contract Terms Act 1977.
- 15.3 Each Party agrees that the other Party (the "**relevant Party**") holds the benefit of Clauses 15.1 and 15.2 above as trustee for itself and for its officers, employees, agents and contractors provided that in enforcing those provisions the relevant Party shall be obliged to take only such steps as it may, in its absolute discretion, think fit.
- 15.4 [Notwithstanding Clause 15.1, [the Customer] [Service Provider] acknowledges that if it is in breach of this Agreement as a result of its negligence, inaction or wilful default, the Authority shall be able to recover any losses the Authority incurs arising from such negligence, inaction or wilful default from [the Customer's] [Service Provider]'s Parent Body Organisation under the terms of the relevant Parent Body Agreement.
- 15.5 Notwithstanding Clause 15.1, [the Customer] [Service Provider] acknowledges that its liability to the Authority pursuant to part 11 of the [Customer] [Service Provider] M&O Contract is not limited by this Clause 15.]

OR

- 15.6 [Notwithstanding Clause 15.1, the Parties acknowledge that if a Party is in breach of this Agreement as a result of its negligent action or inaction or wilful default, the Authority shall be able to recover any losses the Authority incurs arising from such negligence, inaction or wilful default from that Party's Parent Company in accordance with, and subject to, the terms of the relevant Parent Body Agreement].

16. TERMINATION

- 16.1 Notwithstanding any provision of this Clause 16 (Termination):
- 16.1.1 no termination of this Agreement shall be effective without the prior written consent of the Authority, such consent to be sought by the relevant Party prior to its seeking to exercise any rights or option to terminate this Agreement; and
 - 16.1.2 [Service Provider] shall not be entitled, in any circumstances, to terminate this Agreement until the date six (6) Months following the Commencement Date.
- 16.2 Subject to Clause 16.1, this Agreement shall terminate as a result of:
- 16.2.1 early termination caused by an Event of Default in accordance with Clause 16.3 (Event of Default);
 - 16.2.2 Termination for Convenience in accordance with Clause 16.7 (Termination for Convenience); or
 - 16.2.3 termination for Long Term Force Majeure in accordance with Clause 17.3 (Long Term Force Majeure).
- 16.3 **Event of Default**
- 16.3.1 Either Party (the "**Initiating Party**") may terminate this Agreement in accordance with Clause 16.4 (Termination or Remedy for Event of Default) on the occurrence of an Event of Default with respect to the other Party (the "**Breaching Party**"). The following events are Events of Default:
- (A) The occurrence of an Insolvency Event in respect of the Breaching Party except where in the case of [Service Provider] such Insolvency Event was caused by the Customer not making any undisputed payment in accordance with Clause 11 (Billing and Payment);
 - (B) Any revocation of any licence, authorisation, permit or consent which is necessary to enable the Breaching Party to comply with its obligations under this Agreement; and/or
 - (C) The breach by the Breaching Party of any of its obligations under this Agreement which materially and adversely affects the performance of this Agreement.
- 16.4 **Termination or Remedy for Event of Default**
- 16.4.1 If an Event of Default has occurred and the Initiating Party wishes to terminate this Agreement, the Initiating Party shall be entitled, subject to Clause 16.1, to serve (copied to the Authority at the same time) a termination notice (the "**Termination Notice**") on the Breaching Party.

- 16.4.2 The Termination Notice shall specify the type of Event of Default that has occurred, giving reasonable details.
- 16.4.3 If the Initiating Party (acting reasonably) considers that the Event of Default is incapable of remedy the Initiating Party shall specify this in the Termination Notice and this Agreement shall terminate on the date falling thirty (30) Calendar Days after the date of receipt by the Breaching Party of the Termination Notice.
- 16.4.4 In the case of an Event of Default which the Initiating Party (acting reasonably) considers is capable of remedy, the Termination Notice shall require the Breaching Party at the Breaching Party's option either:
- (A) to remedy the Event of Default within thirty (30) Calendar Days of the date of the Termination Notice (or such longer period as may be agreed by the Initiating Party in its absolute discretion);
 - (B) to propose within thirty (30) Calendar Days of the date of the Termination Notice and obtain the Initiating Party's approval to a programme to remedy the Event of Default (the "**Remedial Programme**").

16.5 **Remedial Programme**

- 16.5.1 The Remedial Programme shall specify in detail how the Event of Default is proposed to be remedied and the latest date by which the Breaching Party anticipates that the Event of Default will be remedied.
- 16.5.2 Where the Breaching Party proposes a Remedial Programme in accordance with Clause 16.4.4, the Initiating Party shall have thirty (30) Calendar Days within which to notify the Breaching Party whether the Initiating Party accepts the proposed Remedial Programme (such acceptance not to be unreasonably withheld). Failure of the Initiating Party to provide such notification shall constitute deemed acceptance by the Initiating Party. Where the Initiating Party notifies the Breaching Party that it does not accept the Remedial Programme, Initiating Party and the Breaching Party shall endeavour within the following thirty (30) Calendar Days to agree any necessary amendments to the Remedial Programme. In the absence of agreement within such thirty (30) Calendar Day period, either the Initiating Party or the Breaching Party shall refer the dispute to the Authority for determination in accordance with Clause 19 (Disputes).
- 16.5.3 Subject to Clause 16.1 (Termination), if the Event of Default is not remedied within the period agreed between the Initiating Party and the Breaching Party or the period determined by the Authority for such remedy, the

Initiating Party shall be entitled to terminate this Agreement on giving thirty (30) Calendar Days written notice.

16.6 **Performance Warning**

If a Party (the "**Notifying Party**") reasonably believes that the other Party is demonstrating a pattern of behaviour which is reasonably likely to lead to an Event of Default, it shall serve a notice (copied to the Authority at the same time) on the other Party specifying its concerns and requiring the other Party to take steps to address those concerns by a date specified by the other Party acting reasonably.

16.7 **Termination for Convenience**

Subject to Clause 16.1, the Customer shall be entitled to terminate this Agreement at any time upon giving not less than six (6) Months' written notice to [Service Provider].

[Note: Only the Customer will have termination for convenience rights in those Inter SLC Service Contracts which relate to sole source services. This template may be used for non-sole source contracts where the SLC providing the service wins the Customer's procurement competition]

16.8 **Costs on Termination**

Termination of this Agreement by a Party in accordance with this Clause 16 (Termination) shall not entitle either the other Party to the payment of any costs or result in the terminating Party or its Parent Body Organisation incurring any other liability to the other Party (as appropriate) or any Third Party.

17. **FORCE MAJEURE**

17.1 **Performance of Obligations**

Subject to Clause 17.2 (Notification and Mitigation), if a Party (the "**Affected Party**") is, or could reasonably be expected to be, materially hindered, prevented or delayed from performing any of its obligations under this Agreement by reason of a Force Majeure Event, such obligations shall be suspended (to the extent affected) for a period equal to the duration of the Force Majeure Event except that [Service Provider] shall not be excused from the due and punctual performance of any of its obligations under this Agreement by reason of any circumstances to the extent that the impact of such circumstances on [Service Provider]'s ability so to perform its obligations could have been avoided or mitigated by the maintenance and implementation of appropriate business continuity and disaster recovery plans consistent with ISO/IEC 17799 and Good Industry Practice in respect of the Critical Site IT Systems.

17.2 Notification and Mitigation

17.2.1 The Affected Party shall, as soon as reasonably practicable, on becoming aware of a Force Majeure Event, notify the other Party (copied to the Authority at the same time) in writing of:

- (A) the nature of the Force Majeure Event relied on;
- (B) the estimated effect of the Force Majeure Event on the Affected Party's ability to perform its obligations under this Agreement; and
- (C) the period for which it is estimated the Force Majeure Event will continue.

17.2.2 As soon as reasonably practicable following notification pursuant to Clause 17.2.1, the Parties shall consult with each other and use all reasonable endeavours to agree appropriate arrangements to mitigate the effects of the Force Majeure Event and facilitate the resumption of the affected obligation.

17.2.3 The Affected Party shall:

- (A) use all reasonable endeavours to minimise the effects of the Force Majeure Event on the performance of its obligations under this Agreement;
- (B) where the Affected Party is [Service Provider], provide written reports as often as the Customer reasonably requires in the circumstances of [Service Provider]'s progress in minimising the effects of the Force Majeure Event and indicating when it is estimated that performance of the affected obligation will resume; and where the Affected Party is the Customer, provide updates to [Service Provider] as often as is reasonably possible in the circumstances of the Customer's progress in minimising the effects of the Force Majeure Event and indicating when it is estimated that performance of the affected obligation will resume;
- (C) so far as reasonably practicable provide any information relating to the Force Majeure Event and its effects as the other Party may reasonably request; and
- (D) (without prejudice to any applicable Law and/or Regulatory Requirement) make any alternative arrangements for resuming the performance of its obligations as may be practicable without incurring material additional expense.

- 17.2.4 The Affected Party shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 17.2.5 The Affected Party shall, as soon as reasonably practicable after the cessation of a Force Majeure Event, notify the other Party in writing that the Force Majeure Event has ended and shall resume the full performance of its obligations under this Agreement as soon as is reasonably practicable.
- 17.2.6 For the avoidance of doubt, save to the extent stipulated in this Clause 17 (Force Majeure), neither Party shall be released from any of its obligations under this Agreement as a result of a Force Majeure Event. To the extent that [Service Provider] cannot perform its obligations in respect of the Services, the Customer shall have no obligation to make payments in respect of the Services.

17.3 **Long Term Force Majeure**

If the performance by the Affected Party of substantially all of its obligations under this Agreement is materially prevented, hindered or delayed by reason of a Force Majeure Event for a period of more than ninety (90) consecutive Calendar Days ("**Long Term Force Majeure**"), the other Party may, subject to Clause 16.1, terminate this Agreement with immediate effect by notice to the Affected Party (copied to the Authority at the same time) on or at any time after the expiry of such ninety (90) Calendar Day period.

18. **CONFIDENTIALITY**

18.1 **Disclosure by the Authority**

The Parties acknowledge the Authority's rights in relation to confidentiality under the M&O Contracts.

18.2 **Confidential Information**

18.2.1 Subject to Clause 18.4, each Party shall hold in confidence all documents, materials and other information, whether technical or commercial, supplied by or on behalf of the other disclosing Party (including all documents and information supplied for the purposes of the Authority determining a dispute between the Parties in accordance with this Agreement) and all documents, materials and other information of any nature relating to a Third Party which it may acquire or have access to directly or indirectly and shall not, except with the written authority of the other, publish or otherwise disclose the same otherwise than as expressly provided for in this Agreement unless or until the recipient Party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no

contravention of this Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

18.2.2 Neither Party shall make use of this Agreement or any information issued or provided by or on behalf of the other Party in connection with this Agreement otherwise than for the purpose of complying with its obligations under this Agreement and otherwise than as expressly provided for in this Agreement except with the written authority of the other Party.

18.3 Disclosure of Confidential Information by the Authority

18.3.1 So far as is practicable, to the extent the Authority gives the Customer or [Service Provider] reasonable notice of any proposed disclosure pursuant to [clause 25.3] (Disclosure by the Authority) of the [Service Provider] M&O Contract or [clause 25.3] (Disclosure by the Authority) of the Customer M&O Contract (as appropriate) the Party receiving the notice (the "**Notifying Party**") shall give reasonable notice to the other Party (the "**Recipient Party**") of the proposed disclosure.

18.3.2 In the event of a notice being given under Clause 18.3.1, the Recipient Party may, but shall not be required to, request the Notifying Party to make representations to the Authority in relation to the Authority's proposed disclosure. If so requested, the Notifying Party shall make such representations to the Authority as soon as reasonably practicable. The Notifying Party shall keep the Recipient Party apprised of all communications with the Authority in relation to the representations made on the Notifying Party's behalf.

18.4 Disclosure by the Parties

Each Party may disclose without the consent of the other Party, any and all information acquired by it under or pursuant to this Agreement save for information which is judged by ONR to be security sensitive (unless the recipient of information pursuant to this Clause 18.4 (Disclosure by the Parties) holds all relevant security clearances) to:

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

18.4.2 the Authority;

18.4.3 the Regulators;

- 18.4.4 the extent required by any parliamentary obligation, applicable Law or pursuant to an order of any court of competent jurisdiction;
- 18.4.5 insurers, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 18.2 (Confidential Information);
- 18.4.6 professional advisers including lenders, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 18.2 (Confidential Information); and
- 18.4.7 any department, officer, agent, representative, employee, consultant or adviser of any of the entities referred to in Clauses 18.4.1 to 18.4.6 subject, in any case where the entity in question would be required to provide an undertaking of confidentiality equivalent to that contained in Clause 18.2 (Confidential Information), to obtaining such an undertaking of confidentiality.

18.5 Damages not the only remedy

Without prejudice to any other rights or remedies the Parties may have, the Parties acknowledge and agree that damages alone would not be an adequate remedy for a breach by the Parties of this Clause 18 (Confidentiality) and that any Party shall be entitled to apply to the English Courts for injunctive relief or specific performance as well as any other equitable relief for any threatened or actual breach of this Clause 18 (Confidentiality) by the Parties which the Parties agree would be more appropriate remedies.

18.6 Authority's rights

The Parties acknowledge that any breach of this Clause 18 (Confidentiality) may affect the Authority's interests and therefore the Parties agree that the Authority shall be entitled to enforce the terms of this Clause 18 (Confidentiality). In particular, the Parties agree that the Authority shall be entitled to apply to the English Courts for relief pursuant to Clause 18.5 (Damages not the only remedy).

18.7 Freedom of Information Act

18.7.1 This Clause 18 (Confidentiality) is subject to the Parties' respective obligations under the Freedom of Information Act 2000.

18.7.2 Each Party acknowledges that the other is under an obligation to facilitate the Authority's compliance with the Freedom of Information Act 2000. If the Authority is required to provide information to a person as a result of a request made to it under the Freedom of Information Act 2000 and such information is in the possession of a Party or any of its Subcontractors, but not in the possession of the Authority, the Parties shall assist each other in

providing such information to the Authority as soon as reasonably practicable.

18.8 National Audit Office

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

19. DISPUTES

19.1 Subject to Clause 18.5, any dispute arising between the Parties in relation to this Agreement shall be referred in writing to the Authority (copied to the other Party at the same time) for determination.

19.2 The determination shall be conducted as follows:

19.2.1 the Authority will act as an expert and not as an arbitrator;

19.2.2 the Authority shall provide the Parties with an opportunity to make representations in writing;

19.2.3 the Authority shall consider any written representations and counter representations, made by or on behalf of the Parties which are received by it (and copied to the other Party at the same time) within twenty-one (21) days of the date of the referral of the Dispute;

19.2.4 the Authority shall have an unfettered discretion to determine the reference to it;

19.2.5 the determination of the Authority (the "Determination") shall be final and binding on the Parties and the Parties shall give effect to the Authority's Determination unless and until the Dispute to which it relates is finally determined in accordance with the M&O Contract Procedure or in writing and signed by the Parties;

19.2.6 for the avoidance of doubt a Party shall not be deemed to have committed a breach of contract by reason of having acted in accordance with the Authority's Determination;

19.2.7 the Authority shall be required to give reasons for its Determination;

19.2.8 if any Party is dissatisfied with the Determination, then it may on or before twenty-eight (28) Calendar Days after the day on which it received notice of such Determination refer, the Determination to be finally determined in accordance with the M&O Contract Procedure.

19.3 For the avoidance of doubt, this Clause 19 shall not prevent either Party from applying to the English Courts for relief pursuant to Clause 18.5.

20. GENERAL

20.1 Survival of Rights and Obligations

20.1.1 Survival of Provisions

The provisions of Clause 18 (Confidentiality) and any other provisions in this Agreement (including any Schedule) which are expressed to survive termination or which are required to give effect to such termination or the consequences of such termination shall survive the termination of this Agreement.

20.1.2 Rights and Obligations

Save as expressly provided in this Agreement, upon expiry or termination of this Agreement (for whatever cause) any accrued rights or obligations to which either Party may be entitled or be subject before such date shall remain in full force and effect.

20.1.3 Ceasing of Rights and Obligations

Save as provided for in this Clause 20.1, all rights and obligations of the Parties under this Agreement shall cease and be of no further force and effect upon expiry or termination of this Agreement.

20.2 Severability

If any condition, Clause or provision of this Agreement is held to be invalid, illegal or unenforceable to any extent, it shall be deemed to be severed to that extent and the remaining provisions of this Agreement shall continue in full force and effect.

20.3 Notices

20.3.1 A notice, approval, consent, electronic mail (in the case of Clause 20.3.5 only) or other communication ("**Notice**") in connection with this Agreement and the documents referred to in it must be in written form in the English language and must be delivered by hand, by first class prepaid post (or airmail if posted to or from a place outside the United Kingdom) or by facsimile transmission to the relevant address or facsimile number specified in Clause 20.3 or, for the purposes of Clause 20.3.5 only, by electronic email to an address for the time being notified for that purpose to the Party giving notice.

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

20.3.3 Each Party shall ensure that where it serves a Notice pursuant to this Agreement on the other Party it shall provide a copy of such Notice to the

Authority as soon as possible thereafter. For the purposes of this Clause 20.3 the relevant details of the Authority are:

Authority

Address []

Facsimile: []

Addressee: []

Email: []

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

Customer

Address: []

Facsimile: []

Addressee: []

Email: []

[Service Provider]

Address []

Facsimile: []

Addressee: []

Email: []

20.3.4 Any change to the address, facsimile number or to the addressee must be notified by the relevant Party to the other Party as soon as reasonably practicable by Notice given in accordance with this Clause 20.3 (Notices). The Parties' respective addresses and facsimile numbers must be within the United Kingdom.

20.3.5 If an email address has been provided pursuant to Clause 20.3, the following Notices may be sent by electronic mail:

- (A) electronic transmittal of a scanned image of an original executed Notice; and
- (B) day-to-day communication in connection with this Agreement and the documents referred to in it.

20.3.6 In the absence of evidence of earlier receipt, any Notice shall take effect from the time that it is deemed to be received in accordance with Clause 20.3 (Notices).

20.3.7 Subject to Clause 20.3 (Notices), a Notice is deemed to be received:

- (A) where delivered by hand, upon delivery at the address of the addressee;
- (B) where delivered by posted letter, on the third day after posting or, if posted to or from a place outside the United Kingdom, on the seventh day after posting;

- (C) where sent by facsimile, on production of a transmission report from the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; and
- (D) where sent by electronic mail (where applicable), on the second day after such electronic mail was sent. The place of receipt of electronic mail shall be deemed to be the postal address of the addressee given in, or amended in accordance with, Clause 20.3 (Notices).

20.3.8 A Notice received or deemed to be received in accordance with Clause 20.3 (Notices) on a day which is not a Working Day or after 5 p.m. on any Working Day, according to the local time in the place of receipt, shall be deemed to be received on the next following Working Day.

20.4 **Waiver**

Failure or delay by either Party at any time to enforce any provision of this Agreement or to require performance by the other Party of any provision of this Agreement shall not be construed as a waiver of such provision and shall not affect the validity of this Agreement or any part thereof or the right of the relevant Party to enforce any provision in accordance with its terms. Any waiver or release must be specifically granted in writing and signed by the Party granting it.

20.5 **Entire Agreement**

20.5.1 Each Party confirms that this Agreement and the documents referred to in it represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at law or by custom.

20.5.2 Each Party confirms that:

- (A) in entering into this Agreement it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out in this Agreement or the documents referred to in it; and
- (B) in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the only rights or remedies in relation to any representation, warranty, assurance, covenant, indemnity, undertaking or commitment given or action taken in connection with this Agreement or the documents

referred to in it are those contained or referred to in this Agreement or such documents, and for the avoidance of doubt and without limitation, neither Party has any other right or remedy (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in, this Agreement).

20.6 **Variation**

Notwithstanding the foregoing, no variation of this Agreement shall be effective unless the Authority has given its prior written consent and the variation is in writing (which for this purpose, does not include electronic mail) signed by or on behalf of each of the Parties. The expression "variation" includes any supplement, modification, deletion or replacement, however effected.

20.7 **Assignment and Sub-contracting**

20.7.1 Subject to Clause 20.7.2, neither Party may assign, novate or transfer, or purport to assign, novate or transfer or otherwise dispose of this Agreement without first having obtained the Authority's written consent.

20.7.2 Notwithstanding Clause 20.7.1, each Party may assign, novate or transfer or purport to assign, novate, transfer or otherwise dispose of this Agreement to the Authority or any nominee of the Authority without the consent of the other Party or any other third party.

20.7.3 No assignment, novation or other transfer of this Agreement by either Party shall incur any payment obligation or additional liability on the part of such Party.

20.8 **Change of Control**

No change in ownership, management or control of either Party shall entitle the other Party to terminate or make any variation to this Agreement.

20.9 **Contracts (Rights of Third Parties) Act 1999**

Except in relation to rights conferred herein on the Authority, no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Agreement.

20.10 **Governing Law and Jurisdiction**

20.10.1 This Agreement shall be governed by, and construed in accordance with, the laws of England and Wales.

20.10.2 Subject to Clause 19 (Disputes), if any claim, legal action or proceedings arise out of or in connection with a dispute concerning this Agreement and any matter arising there from, each Party irrevocably:

- (A) agrees to submit to the exclusive jurisdiction of the courts of England and Wales; and
- (B) waives any right that it may have to object to an action being brought in the courts of England and Wales on the grounds of inconvenient forum or to claim that those courts do not have jurisdiction.

20.11 No Partnership

Nothing in this Agreement or in any document referred to in it or any arrangement contemplated by it shall constitute either Party a partner of the other Party.

20.12 Counterparts

This Agreement may be executed in any number of counterparts each of which when executed and delivered is an original, but all the counterparts together constitute the same document.

IN WITNESS whereof this Agreement has been entered into the day and year first above written

SIGNED by [])
on behalf of [])

SIGNED BY [])
on behalf of [])

SCHEDULE A

Definitions

"Affected Party" has the meaning given in Clause 17.1;

"Affiliate" means:

- (i) the Parent Body Organisation;
- (ii) any company which has shareholdings or any other form of economic interest, either directly or indirectly, of more than thirty (30) % in the Parent Body Organisation;
- (iii) wholly owned subsidiaries of the Contractor or Parent Body Organisation;
- (iv) a company in which the Contractor and/or the Parent Body Organisation, either jointly or separately, has shareholdings or any other form of economic interest totalling more than thirty (30) % of the shares in issue;
- (v) a company with which the Contractor and/or the Parent Body Organisation, either jointly or separately, has a Partnering Arrangement in force;
- (vi) a company in which the Contractor and/or the Parent Body Organisation, either jointly or separately, has less than a thirty (30) % economic interest, but where the economic interest is of such a nature as to create the perception of a conflict of interest; or
- (vii) a company owned or controlled, directly or indirectly, to the extent of thirty (30) % or more of the outstanding equities, securities or assets by any of the companies described in (i), (ii) or (iii) above;

"Analogous Standards" means the level of duty to exercise skill and care to which a skilled, diligent and prudent contractor would reasonably and ordinarily be subject in any jurisdiction where there is experience of nuclear operations and/or decommissioning activities which have at least equivalent standards to those of the United Kingdom provided that for the purposes of assessing compliance with:

Regulatory Requirements, the only regulatory standards against which the Contractor will be judged under this Agreement will be those relating to the United Kingdom; and

Analogous Standards, any regulatory or other constraints to which the Contractor is subject and which would not reasonably be expected to constrain a contractor in the relevant jurisdiction or jurisdictions shall be taken into account.

"Asset Purchase" means the purchase of supplies, goods, materials, equipment and/or utilities (including gas, electricity, water, sewerage, heat, cable and telecommunications) and excluding

the creation, design, development or building by any Subcontractor of any supplies, goods, materials, equipment and/or utilities, and "**Asset Purchases**" shall be construed accordingly;

"**Authority**" means the Nuclear Decommissioning Authority;

"**Calendar Day**" means a period of twenty-four hours ending at twelve midnight;

"**Commencement Date**" means [the date of this Agreement];

"**Critical Site IT Systems**" has the meaning given to it in the Customer M&O Contract or the [Service Provider] M&O Contract as appropriate;

"**Customer M&O Contract**" means the Site Management and Operations Contract entered into on [●] between the Authority (1) and the Customer (2) as amended from time to time;

["**Customer Parent Body Organisation**" means the organisation owning 100% of the issued share capital in the Customer from time to time;]

["**Customer Parent Body Agreement**" means the agreement between the Authority, the Customer and the Customer Parent Body Organisation dated [] as amended from time to time;]

"**Customer Site**" means [];

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

"**Employees**" means all persons, whether part-time, full-time or self-employed, engaged by [Service Provider] wholly in the performance of [Service Provider's] obligations under the [Service Provider] M&O Contract, from time to time, and "**Employee**" shall be construed accordingly;

"**Event of Default**" means anyone of those events described as described in Clause 15.3 (Event of Default);

"**Force Majeure Event**" means any act, event or occurrence affecting any Party's performance of its obligations under this Agreement, the cause of which is not of such Party's making nor within that Party's reasonable control (having acted in accordance with Good Industry Practice), and which is not attributable to any act or failure to take preventative action consistent with the standards expected on a nuclear site by the Party concerned, including (to the extent not of that Party's making nor within that Party's reasonable control) but not limited to:

- (i) war, hostilities (whether or not war has been declared), terrorist acts, or acts of any civil or military authority;
- (ii) riot, insurrection, civil commotion, public demonstration, sabotage, or acts of vandalism;

- (iii) fire, flood, earthquake, extreme weather conditions, epidemic, or explosion;
- (iv) impact from Third Party aircraft or things falling from Third Party aircraft;
- (v) any strike, lock-out or trade dispute not involving solely the employees or subcontractors of that Party and not originating with that Party's employees or subcontractors or the employees or subcontractors of any Affiliate of that Party;
- (vi) Acts of God;
- (vii) delay in transport or communications;
- (viii) accidental damage to equipment; and
- (ix) structural shift or subsidence;

but expressly excluding:

- (a) any unlawful act of a Third Party who has gained entry to the Party's Site due to a failure of the Party to comply with the security plan or other failure to comply with its obligations under [clause 4 (Contractor's Obligations)] [part 3 (Core Obligations)] of the [Service Provider] M&O Contract or the Customer M&O Contract as applicable in the context;
- (b) any unauthorised release of ionising radiation from, or contamination by radioactivity from an occurrence involving nuclear matter on, the Party's Site or from materials in the course of transportation to or from the Party's Site save to the extent that such unauthorised release or contamination is caused by any of the events listed in (i) to (ix) of this definition;
- (c) any radioactive, chemical or biological contamination on the Party's Site or emanating from the Party's Site or matter in the course of transportation to or from the Party's Site save to the extent that such contamination is caused by any of the events listed in (i) to (ix) of this definition; and
- (d) failure to obtain or maintain a Nuclear Site Licence, any Environmental Agency or Scottish Environment Protection Agency (as applicable) licence, authorisation, permit or consent or any other material requisite licence or permit;

"Good Industry Practice" means the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider and/or customer engaged (in the United Kingdom or in any jurisdiction with Analogous Standards) in activities of a similar scope and complexity to those that are the subject of this Agreement and under the same or similar circumstances, where such

service provider and/or customer is seeking to comply with its contractual obligations and all applicable Law and Regulatory Requirements;

"Insolvency Event" means the occurrence of any of the following:

- (i) the presentation of a petition for the appointment of an administrator;
- (ii) the court making an administration order;
- (iii) the presentation of a petition for winding up;
- (iv) the passing of a resolution for winding up (other than for the purposes of a solvent reconstruction or amalgamation);
- (v) the court making an order for winding up (other than for the purposes of a solvent reconstruction or amalgamation);
- (vi) the appointment of a receiver or manager or administrative receiver,

unless, in the case of the events set out in paragraphs (iii) and (vi) above, the proceedings to which they relate are frivolous or vexatious and are dismissed, stayed or discharged within twenty-one (21) Calendar Days of their commencement;

"Internal Procedures" means, in relation to the Customer and [Service Provider], in all internal company documentation (regardless of the manner in which it is held, stored or collated) which:

- (i) in the reasonable opinion of a director of the Party constitutes a mandatory internal guideline, standard, procedure or policy;
- (ii) in the reasonable opinion of a director of the Party, relates directly or indirectly to the Party's structure, operation and management; and
- (iii) relates materially and directly to the duties imposed on the Party in accordance with [clause 4 (Contractor's Obligations)] [part 3 (Core Obligations)] of the [Service Provider] M&O Contract or [clause 4 (Contractor's Obligations)] [part 3 (Core Obligations)] of the Customer M&O Contract (as applicable) and/or the manner in which the Party chooses to fulfil its contractual, legal and regulatory obligations therein;

and **"Internal Procedure"** shall be construed accordingly;

"Invoice Date" means [●];

"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, and any

other applicable law, common law proclamation, bye-law, directive, decision, regulation, rule, notice or court ruling in each case in the United Kingdom and all applicable laws, regulations, directives, orders, decisions or other rules having the force of law in the jurisdiction (including in relation to international waters) where a Party's obligations under this Agreement are carried out;

"Long Term Force Majeure Event" has the meaning given in Clause 17.3 (Long Term Force Majeure);

"LTP" means the Lifetime Plan prepared by each of the [Service Provider] and/or the Customer pursuant to its M&O Contract, as applicable;

"M&O Contract" means the [Service Provider] M&O Contract or the Customer M&O Contract (as appropriate) and **"M&O Contracts"** shall mean both of them;

"M&O Contract Procedure" means the dispute resolution rules attached at schedule 12 to [the Customer M&O Contract] [the Service Provider M&O Contract] and at schedule 12 (Dispute Resolution Procedure) to [the Customer M&O Contract] [the Service Provider M&O Contract];

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

"Notice" has the meaning given to it in Clause 20.3.1;

"Nuclear Site Licence" means the nuclear site licence granted to the Party pursuant to Section 1 of the Nuclear Installations Act 1965 (as amended);

"Parent Body Organisation" means the [Service Provider] Parent Body Organisation or the Customer Parent Body Organisation as applicable in the context;

"Parent Body Agreement" means the Customer Parent Body Agreement or the [Service Provider] Parent Body Agreement, as applicable in the context;

"Regulators" means the Health and Safety Executive (HSE), the Environment Agency (EA), the Scottish Environment Protection Agency (SEPA), the Office for Nuclear Regulation (ONR), the Scottish Executive, the Financial Services Authority (FSA), the Pensions Regulator, the Pension Protection Fund, others specific to [Service Provider's] and/or the Customer's obligations under this Agreement and as applicable in the relevant jurisdiction (including in relation to international waters) where [Service Provider's] and/or the Customer's obligations under this Agreement are carried out and **"Regulator"** shall mean each or any one of them;

"Regulatory Requirements" means any legally enforceable requirement of any Regulator;

"[Service Provider] Parent Body Organisation" means the organisation owning 100% of the issued share capital in [Service Provider] from time to time;

"[Service Provider] Parent Body Agreement" means the agreement between the Authority, [Service Provider] and the [Service Provider] Parent Body Organisation dated [] as amended from time to time;

"[Service Provider] Site" means [];

"[Service Provider] M&O Contract" means the Site Management and Operations Contract entered into on [1st April 2005] between the Authority (1) and [Service Provider] (2) as amended from time to time;

"Services" means the goods and/or services described in Schedule B (Services);

"Site" means the [Service Provider] Site, or the Customer Site as applicable in the context;

"Subcontract" means any agreement entered into by a Party in connection with the performance of its obligations under this Agreement, including Asset Purchases;

"Subcontractor" means any person who has entered into a Subcontract with a Party in connection with the performance of that Party's obligations under this Agreement;

"Termination for Convenience" has the meaning given to it in Clause 15.10 (Termination for Convenience);

"Third Party" means any person other than the Parties, the [Service Provider] Parent Body Organisation and the Customer Parent Body Organisation;

"VAT" means Value Added Tax imposed under the Value Added Tax Act 1994 or any similar tax imposed in addition thereto or in substitution therefore;

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

SCHEDULE B

SERVICES

[Note: To be completed in relation to each service provided under this agreement in accordance with Clause 7].

SCHEDULE C

PAYMENT

[Note: To be completed as appropriate in accordance with Clause 11.1].

Appendix 3

Supply Chain Strategic Plan

Schedule 6

FINANCE

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PART 1: GENERAL

1 Total Remuneration

1.1 In respect of this Agreement, and without prejudice to any amounts payable by the Authority to the Parent Body Organisation under the Parent Body Agreement, the only amounts payable by the Authority to the Contractor for the performance of the Contractor's obligations under this Agreement shall be:

- (a) Allowable Costs (other than Recovered Costs received directly by the Contractor from an insurer or alternative funding source); and
- (b) the Fee (which shall itself comprise the PBI Fee and the Target Fee (which is subject to adjustment via the Shareline)),

(together the "**Contract Price**").

1.2 Nothing in this Schedule 6 (*Finance*) shall prevent the Parties from agreeing changes or additions to be made to the mechanism for remunerating the Contractor which are different to those set out in Paragraph 1.1 (*Total Remuneration*) above.

2 Payment Mechanics

The Authority shall make payments of the various elements comprising the Contract Price to the Contractor in accordance with the provisions of Part 2B (*Payment of Allowable Costs*) and Part 4C (*Payment of PBI Fee and Target Fee*) of this Schedule 6 (*Finance*).

3 Currency of Contract

All amounts of money in this Agreement are expressed in pounds sterling (£). If the United Kingdom joins EMU any figure expressed in "£" and "sterling" in this Agreement shall be converted into euros at the rate for conversion of sterling into euros established by the Council of the European Union pursuant to the Treaty (including compliance with rules relating to rounding in accordance with European Community regulations) and any reference to a figure in "£" or "sterling" shall mean that figure adjusted into euros.

4 Exclusive of VAT

The Contract Price is exclusive of VAT which shall be payable on the Contract Price at the rate from time to time provided by Legislation provided that a properly completed VAT invoice in respect of the amount of the relevant element of the Contract Price shall have been delivered to the Authority.

PART 2: COSTS

1 COSTS

1.1 This Part 2 (*Costs*) is divided into 2 sub-parts which set out:

- (a) the basis on which Costs are treated as Allowable Costs or Disallowable Costs (Part 2A (*Allowable and Disallowable Costs*)); and
- (b) the arrangement for payment of Allowable Costs (Part 2B (*Payment of Allowable Costs*)).

PART 2A: ALLOWABLE AND DISALLOWABLE COSTS

1 PURPOSE

This Part 2A (*Allowable and Disallowable Costs*) sets out the basis on which Costs are treated as either Allowable Costs or Disallowable Costs.

2 ALLOWABLE COSTS

- 2.1 All Costs incurred by the Contractor are "Allowable Costs" except to the extent that such Costs are Disallowable Costs.

3 ADVANCE AGREEMENTS

- 3.1 The Contractor may seek an Advance Agreement with the Authority that a particular Cost (or part of a Cost) will be treated as an Allowable Cost or that the accounting treatment that will be applied in respect of any particular Cost (or part of the Cost) will be different to that set out in Paragraph 5 (*Accounting Basis for the Determination of Costs and Category II Revenue*) below. No agreement by the Authority of an Advance Agreement overrides the limits set out in Paragraph 4.2 (*Disallowable Costs*). An Advance Agreement is (subject to Paragraph 3.3 (*Advance Agreements*) below) one:

- (a) which is expressed to be entered into for the purposes of this Paragraph 3.1;
- (b) whose subject is limited to whether a Cost or part of a Cost (which may be specified by an amount of money or by reference to the Cost of a Task or set of Tasks) is to be treated as an Allowable Cost or given an accounting treatment different to that set out in Paragraph 5 (*Accounting Basis for the Determination of Costs and Category II Revenue*) below; and
- (c) which is for a specified period that does not exceed the term of this Agreement.

- 3.2 If other consents are sought from the Authority in accordance with the relevant provisions of this Agreement (including in respect of the Socio-Economic Development Plan and Internal Procedures) then the process for the giving of any such consent shall be kept separate from the entering into of any Advance Agreement so that:

- (a) no consent nor any request for such a consent shall be included in any Advance Agreement; and
- (b) the giving of any such consent shall not constitute an Advance Agreement.

- 3.3 The Contractor shall consider proposing an Advance Agreement prior to incurring Costs that are exceptional or abnormal in size, or where there is any reasonable doubt about whether such Costs would be Allowable Costs or Disallowable Costs, or where

particular accounting treatment is required. The Authority shall determine, acting reasonably, and set out in the Advance Agreement the accounting treatment of such item in accordance with Paragraph 5 (*Accounting Basis for the Determination of Costs and Category II Revenue*) of Part 2A (*Allowable and Disallowable Costs*) for the purposes of determining Compliance with an Annual Site Funding Limit, Current Budget and/or Capital Budget.

- 3.4 Inclusion of Tasks and/or budgets in the LTP Performance Plan or other budgetary approval shall not be construed as an Advance Agreement affecting the Allowability of Costs.
- 3.5 To propose an Advance Agreement, the Contractor must submit its request in writing to the Authority. The Authority shall not unreasonably withhold its consent to an Advance Agreement and shall inform the Contractor in a timely manner (and in any case within thirty (30) Calendar Days unless otherwise agreed by the Parties, acting reasonably) whether the Advance Agreement is approved or rejected (giving reasons for any rejection).
- 3.6 An Advance Agreement shall only come into effect upon it being signed by both the Authority and the Contractor.

4 **DISALLOWABLE COSTS**

- 4.1 Subject to Paragraphs 4.1A (*Disallowable Costs*), 4.1B (*Disallowable Costs*), 4.2 (*Disallowable Costs*) and 4.3 (*Disallowable Costs*) below and except when treated otherwise under an Advance Agreement, Costs incurred by the Contractor on or after the Commencement Date, in whole or in part, and any additional incremental element of Associated Allocable Costs relating specifically to the Cost concerned, are Disallowable Costs if they are:
 - (a) Costs of investments in shares and securities (other than as may be factored in to the Nominated Staff costs set out in Appendix F (*Nominated Staff Recoverable Costs*) to this Schedule 6 (*Finance*));
 - (b) Costs of raising and servicing capital (including short-term financing) however represented, save to the extent that:
 - (i) they arise under an Approved Working Capital Facility (including for the avoidance of doubt in respect of interest, fees and other charges payable under such facility) unless they relate to interest, fees and charges incurred as a consequence of the Contractor's failure to agree an Exceptional Item, or otherwise to comply with the agreed invoicing procedures;

- (ii) they do not arise as a result of the Contractor's use of such facility in breach of Clause 16.6 (*Cashflow*) or Clause 16.11 (*Operation of Accounts*) of this Agreement;
 - (iii) they do not arise as a result of the Contractor's breach of the invoicing procedures set out in Part 2B (*Payment of Allowable Costs*) of this Schedule 6 (*Finance*); and
 - (iv) the aggregate value in any Contract Year of Costs falling within Paragraph 4.1(b)(i) (*Disallowable Costs*):
 - (A) does not exceed the Approved Working Capital Allowance for the relevant Contract Year plus the aggregate of any Authority Entitled Interest which may accrue in the relevant Contract Year; and
 - (B) exceeds the aggregate of any Authority Entitled Interest which may have accrued in that Contract Year;
- (c) Costs of and losses on:
- (i) financial hedges on instruments held to manage debt interest rate exposures;
 - (ii) financial hedges on instruments held for trading; or
 - (iii) market price and foreign currency hedges,
- save in each case where they arise under foreign currency hedges for purchases of goods and services in connection with this Agreement for which the relevant Costs are Allowable;
- (d) Extravagant Outlays (provided that the Contractor is entitled to a full written explanation when these Costs are Disallowed by the Authority);
 - (e) subscriptions and donations of a political nature (other than as may be provided for in an agreed Socio-Economic Development Plan);
 - (f) donations, including cash, property and services, regardless of recipient (other than as may be provided for in an agreed Socio-Economic Development Plan);
 - (g) Costs of research and development (including but not limited to that on which research and development tax relief can be claimed) save where this is reasonably required for the performance of the Contractor's obligations set out in the Client Specification;

- (h) marketing, advertising and selling expenses (other than as may be provided for in an agreed Socio-Economic Development Plan);
- (i) Costs paid or payable to or for the benefit of the Parent Body Organisation or any Affiliates, other than those permitted by Clause 16.3.1.13 (*Financial Restrictions*) and Clause 16.11.10 (*Payments to Parent*) of this Agreement;
- (j) Costs of the Contractor and any companies in which the Contractor, directly or indirectly, has a shareholding or any other form of economic interest arising out of mergers, business combinations and business re-organisations not covered under an Advance Agreement, including:
 - (i) mergers and acquisitions;
 - (ii) de-mergers;
 - (iii) joint ventures; and
 - (iv) raising capital;
- (k) travel Costs, subsistence and other human resources allowances in excess of those reasonably provided for in an Internal Procedure relating to human resources or which are otherwise rendered Disallowable by the operation of Appendix F (*Nominated Staff Recoverable Costs*) to this Schedule 6 (*Finance*);
- (l) appropriation of profits, transfer of profits to reserves, dividends paid or payable by the Contractor and/or corporation tax on the chargeable profits of the Contractor;
- (m) VAT, the foreign equivalent of VAT and any other Tax:
 - (i) which is charged to and recovered by the Contractor from any person as a result of any goods or services supplied by the Contractor; and
 - (ii) for which the Contractor is then liable to account to any Taxation Authority;
- (n) VAT, the foreign equivalent of VAT and any other Tax in each case:
 - (i) to the extent that the same is eligible for recovery from a Taxation Authority; and/or
 - (ii) in respect of or in connection with any Disallowable Costs;
- (o) any Cost which relates to any VAT, the foreign equivalent of VAT or any other Tax (in each case incurred by any direct or indirect supplier of the Contractor)

to the extent that the same is eligible for recovery from HM Revenue and Customs or any other Taxation Authority;

- (p) Costs of membership in social, dining or other similar organisations unless required under this Agreement, and excessive costs (as reasonably determined by the Authority) for entertainment and/or social activities;
- (q) Costs for registration, maintenance or licensing of intellectual property not owned by, or licensed to the Contractor by, the Authority, including costs of Parent IP licensed to the Contractor and/or Authority which is not Reserved Parent IP but excluding any reasonable commercial licence fee payable to a Subcontractor in accordance with a Subcontract entered into in accordance with this Agreement;
- (r) royalties or amortised costs for a licence to use intellectual property when the Contractor has a royalty-free licence or right to free use of the intellectual property, or the intellectual property has been found to be invalid or unenforceable, or the intellectual property has expired (except where the following conditions are satisfied:
 - (i) such Cost is incurred within six (6) Months after the Commencement Date;
 - (ii) the Contractor could not reasonably have known that no such royalties or costs were payable; and
 - (iii) the Contractor cannot reasonably recover any such overpayment or unnecessary payment of such royalties or costs);
- (s) fines and financial penalties (including any interest payable on such fines and financial penalties) imposed on or accepted by the Contractor or its Affiliates by a Regulator or any other relevant public body as a result of any actual or alleged breach of applicable Legislation or Regulatory Requirements (including failure to pay any Tax and the costs of the defence of any relevant Legal Proceedings and the obtaining of any out of court settlement involving, in each case, the payment of any such fines or financial penalties, provided that such costs of defence of any relevant Legal Proceedings involving the payment of any such fines or financial penalties shall not be Disallowable Costs where:
 - (i) the matters giving rise to the relevant fines or financial penalties occurred wholly prior to the Commencement Date; or

- (ii) the relevant fines or financial penalties are due to any failure of the Authority to comply with its obligations or breach of warranty by the Authority under this Agreement; or
 - (iii) the relevant fines or financial penalties are due to any defect in the Authority's title to the Sites or the existence of any third party interests in the Sites, excluding for the avoidance of doubt any fines or financial penalties arising due to non-compliance by the Contractor with the terms of any of the Property Leases in circumstances where such non-compliance could reasonably have been avoided by the Contractor acting in accordance with Good Industry Practice);
- (t) Costs arising from being (or taking active steps towards being) a claimant (or the equivalent for the relevant proceedings) in Legal Proceedings (and/or the preparation for such Legal Proceedings and/or obtaining any out of court settlement) except where:
- (i) the Authority has specifically approved such activity for the purposes of Clause 16.3 (*Financial Restrictions*) of this Agreement (such approval not to be unreasonably withheld or delayed);
 - (ii) such Legal Proceedings and/or the preparation for such Legal Proceedings is:
 - (A) reasonably commenced for the purposes of satisfying Clause 6.8 (*Necessary Consents*), Clause 29 (*Intellectual Property*) or Clause 17 (*Claims Handling*) of this Agreement;
 - (B) commenced in accordance with the Dispute Resolution Procedure;
 - (C) an attempt to commence judicial review proceedings against the Authority in connection with this Agreement; or
 - (D) commenced to challenge any threatened or actual refusal to grant, non-renewal or revocation of a Nuclear Site Licence or any other regulatory permit or consent which is essential to the Contractor's ability to operate all or any part of the Site or carry out the Commercial Operations Tasks in accordance with Legislation; or

- (iii) such Costs relate to activities which the Contractor, acting reasonably, considers urgent and necessary for the Contractor's performance of its obligations to the Authority;
- (u) Costs incurred in the defence of any Third Party Claim and which the Contractor would not have incurred if it had complied with any instructions issued by the Authority under Clause 12.4 (*Contractor's Compliance with Instructions*) of the Parent Body Agreement as incorporated by Clause 17.1 (*Claims Handling*) of this Agreement, except to the extent that the relevant Costs could not reasonably be avoided by the Contractor through adherence to the Authority's instructions under that Clause;
- (v) Costs incurred in connection with any civil Legal Proceedings brought by the Authority for violation of, or failure to comply with, Legislation by the Contractor (including its agents or employees), where a finding or ruling against the Contractor is made (or an out of court settlement is achieved, unless the Authority agrees otherwise in such settlement) or the tribunal determines otherwise, provided that such Costs shall not be Disallowable to the extent relating to Legal Proceedings in respect of an event that occurred prior to the Commencement Date;
- (w) Costs of preparing and submitting a bid or proposal and participation in any Authority procurement exercise, except where:
 - (i) the Contractor (acting otherwise than as a bidder or participant) incurs Costs as a result of preparing information on behalf of the Authority and the Contractor has submitted an Advance Agreement in order to obtain reimbursement of such Costs);
 - (ii) the Contractor is acting in response to an Authority Direction; or
 - (iii) such Costs are incurred by the Contractor in supporting Cross Estate Initiatives;
- (x) any amounts owed by the Contractor to any Third Party as a result of the disclosure of Information by the Authority pursuant to Clause 25.3 (*Disclosure by the Authority*) or any publication by the Authority whether or not in compliance with Clause 25.4 (*Publication*) to the extent that:
 - (i) the Contractor has failed to use all reasonable endeavours to mitigate the amount of the claim;
 - (ii) where, in the case of an agreement entered into on or after the Commencement Date, the Contractor has failed to obtain the

Authority's prior written consent to the entering into of the relevant agreement with an express acknowledgement from the Authority that such consent is given in the knowledge that the agreement does not allow the disclosure of Information and publication by the Authority contemplated by Clause 25 (*Confidentiality and Compliance with Legislation*) of this Agreement; and/or

- (iii) in respect of the Costs of any Legal Proceedings in relation to such disclosure or publication, the Contractor has not been authorised by the Authority to handle the defence and/or has not adhered to the Authority's instructions given pursuant to Clause 17 (*Claims Handling*) of this Agreement and/or Clause 12.6 (*Parent Body Organisation Handling*) of the Parent Body Agreement (except to the extent that the relevant Costs could not reasonably be avoided by the Contractor through inaction or adherence to the Authority's instructions);
- (y) Costs which are not covered elsewhere in this Paragraph 4.1 but are defined as Disallowable (or a term with the same or similar effect) in Subcontracts;
- (z) Costs attributable to the Nominated Staff or any Employees or any Authority Assets to the extent used by or provided to the Parent Body Organisation or any other person for any period of time for a purpose other than in fulfilment of the Contractor's obligations under this Agreement;
- (aa) Costs of pursuing or defending a claim to which Clause 12.6 (*Parent Body Organisation Handling*) of the Parent Body Agreement applies, except to the extent that such Costs are paid in accordance with Clause 12.9 (*Contribution for Third Party Claims*) of the Parent Body Agreement;
- (bb) Costs incurred in carrying out any activity (and/or any Costs which arise directly as a result of such activity being undertaken) which is not set out in the LTP Performance Plan and allocated in the LTP Performance Plan to either Phase 1 or Phase 2, or is not otherwise reasonably considered by the Contractor (at the time of carrying out such activity) to be required to enable the Contractor to perform its obligations set out in the Client Specification;
- (cc) Costs (including preparation Costs) relating to the reference of any dispute to the Dispute Resolution Procedure in the event that:
 - (i) it is agreed or determined that the Authority has acted reasonably;
 - or

- (ii) the relevant dispute is agreed or determined substantially in favour of the Authority,

provided that where a dispute is determined partly in favour of the Authority and partly in favour of the Contractor, then only that proportion of the relevant Costs which is determined (pursuant to the resolution of such dispute) to be the Contractor's responsibility (or, in the absence of such determination, which the Parties, acting reasonably, agree is appropriately the Contractor's responsibility) will be Disallowable;

- (dd) in the event of Defective Performance, those Costs that are Disallowable in accordance with Appendix I (*Liability for Costs in the event of Defective Performance*);
- (ee) Costs, including liquidated and unliquidated damages and contra charges, which are recoverable by the Contractor from one or more Third Parties but which the Contractor has not used reasonable endeavours to recover from such Third Parties;
- (ff) Costs incurred by the Contractor that fall within any Vitiating Insurance Liability to the extent that such Costs arise out of, or in consequence of, a failure by the Contractor to comply with its obligations or a breach of warranty by the Contractor under this Agreement (provided that if such failure or breach occurs during the period of one (1) Month after the Commencement Date, such Costs shall not be Disallowable unless:
 - (i) the relevant failure or breach is on the part of (A) any one or more of the Nominated Staff or (B) the Parent Body Organisation or a PBO Affiliate acting in connection with the performance of its obligations under a Subcontract or Sub-Subcontract; or
 - (ii) the Nominated Staff had a reasonable opportunity to identify, address and prevent such failure or breach);
- (gg) [Not used]
- (hh) Costs incurred as a result of the Contractor's fraud or Wilful Default;
- (ii) Costs incurred by the Contractor in relation to any insurance premium, save for:
 - (i) any premium incurred by the Contractor in taking out any insurance that the Contractor is entitled to maintain pursuant to Clause 18.1 (*Authority Insurances*), or any premium incurred by the Parent Body Organisation in taking out any insurance that the Parent Body

Organisation is entitled to maintain pursuant to Clause 6.7 (*Insurance*) of the Parent Body Agreement and invoiced to the Contractor pursuant to that Clause; and

- (ii) death in service and medical expenses to be purchased by the Contractor that are associated with the CNPP defined contribution pension scheme,

and provided for the avoidance of doubt that the Insurance Premium Contribution, being a liability to the Authority, in accordance with Paragraph 4.6 (*Disallowable Costs*) below is not considered to be a Cost for this purpose;

- (jj) interest payable to any Third Party as a consequence of late payment by the Contractor where the Contractor has been put in funds or has available working capital under an Approved Working Capital Facility (or would have had such available working capital had such working capital not been applied in meeting any Disallowable Costs);
- (kk) interest on working capital drawn down from an Approved Working Capital Facility to meet any payments other than Allowable Costs;
- (ll) any Cost incurred by the Contractor in satisfying a Subcontract or a Sub-Subcontract entered into prior to the Commencement Date as a result of the Contractor's failure to take reasonable steps post-Commencement Date to mitigate its Costs in respect of the relevant Sub Contract or Sub-Subcontract;
- (mm) following the breach of any Minimum Performance Standards (to the extent that such breach has not been agreed to be incapable of remediation and only after the Authority has issued a valid Remediation Notice pursuant to Clause 11.6 (*Defective Performance*), any Costs which are Disallowable in accordance with Paragraph 5 (*Costs of Remediation*) of Schedule 15 (*Minimum Performance Standards*);
- (nn) any Cost arising from the provision of Call-Off Support pursuant to Schedule 20 (*Call-Off Support*) (unless the Parties have agreed in accordance with Paragraph 3 (*Payment for Call-Off Support*) of Schedule 20 (*Call-Off Support*) that such Cost shall be payable by the Authority as an Allowable Cost, it being acknowledged by the Parties that payment for such Call-Off Support shall be agreed separately in accordance with the terms of such Call-Off Support agreed pursuant to Schedule 20 (*Call-Off Support*));
- (oo) any Cost arising from the mobilisation, provision and demobilisation of the Nominated Staff which is in excess of the amounts calculated using the relevant agreed rates set out in Appendix F (*Nominated Staff Recoverable*

Costs) to this Schedule 6 (*Finance*) (except to the extent that the Contractor has notified the Authority in writing in advance of any reasonable changes to such agreed rates) or which are otherwise rendered Disallowable by the operation of Appendix F (*Nominated Staff Recoverable Costs*) to this Schedule 6 (*Finance*);

- (pp) any Costs incurred due to the Contractor applying or undertaking any processes or activities in breach of Paragraph 2.7 (*No Misuse of Change Control Procedure*) of Schedule 2 (*Change Control Procedure*);
- (qq) any Costs arising directly or indirectly in relation to the CRC Order which are not Disaggregated CRC Costs;
- (rr) Costs (including Nuclear Liabilities falling within the scope of the Nuclear Indemnity equal to and below the Nuclear Indemnity Threshold but excluding all other Nuclear Liabilities) associated with any Third Party Claims made against the Contractor (including Costs incurred in the defence of any relevant Legal Proceedings, Costs payable under any finding or ruling made against the Contractor, and/or Costs payable under any out of court settlement) to the extent that such Costs arise out of, or in consequence of, a failure by the Contractor to comply with its obligations or a breach of warranty by the Contractor under this Agreement;
- (ss) all liabilities, losses, costs and expenses incurred by the Contractor arising in respect of Nuclear Liabilities falling within the scope of the Nuclear Indemnity in excess of the Nuclear Indemnity Threshold (it being acknowledged by the Parties that any such amounts that are payable by the Authority in accordance with the Nuclear Indemnity are payable pursuant to the Nuclear Indemnity and not pursuant to this Agreement);
- (tt) any augmentation, enhancement, payment of unreduced benefits or increase of benefits whether or not payable directly under an Applicable Scheme to or in respect of any Employees to the extent that either: (i) the Contractor has failed to comply with its obligations under Clause 31.11.2A.1 (*Terms and Conditions of Employment*); or (ii) in the case of severance, redundancy, voluntary retirement or early release such enhanced benefit exceeds the maximum amount provided for by Clause 31.11.2A.2 (*Terms and Conditions of Employment*); and
- (uu) any Costs allocated to Phase 2 in the LTP Performance Plan before the Contractor has obtained either the written approval of the Authority to commence the activities allocated to Phase 2 in the LTP Performance Plan

pursuant to Clause 4.2.4.1 (*Nature of Contractor's Obligations*) or an Advance Agreement in respect of such Costs.

4.1A Subject to Paragraphs 4.2 (*Disallowable Costs*) and 4.3 (*Disallowable Costs*) below, Historical Costs incurred by the Contractor, in whole or in part, and any additional incremental element of Associated Allocable Costs relating specifically to the Cost concerned, are Allowable Costs except to the extent that such Costs are:

- (a) fines and financial penalties (including any interest payable on such fines and financial penalties) imposed on or accepted by the Contractor as a result of any actual or alleged breach of applicable Legislation or Regulatory Requirements;
- (b) Costs, including liquidated and unliquidated damages and contra charges, which are recoverable by the Contractor from one or more Third Parties but which the Contractor has not used reasonable endeavours post-Commencement Date to recover from such Third Parties; or
- (c) incurred as a result of the Contractor failing to take reasonable steps post-Commencement Date in mitigating the Contractor's liability in respect of such Costs.

4.1B Subject to Paragraphs 4.2 (*Disallowable Costs*) and 4.3 (*Disallowable Costs*) below, any Costs that would be Disallowable Costs pursuant to Paragraphs 4.1 and 4.1A (*Disallowable Costs*) above but that have been recovered by the Authority or the Contractor:

- (a) as Insurance Proceeds; or
- (b) from funding procured by the Authority as an alternative to any Authority Insurance pursuant to Clause 18.1.3.2 (*Authority Insurances*),

("Recovered Costs") shall be Allowable Costs, provided that the Contractor shall not be entitled to be reimbursed such Allowable Costs by the Authority to the extent that any such amounts are recovered by the Contractor directly from the insurer (in the case of (a) above) or directly from the alternative funding source (in the case of (b) above).

4.2 Subject to Paragraph 4.3 (*Disallowable Costs*) below, in respect of any Contract Year if the aggregate value of all Costs (including any Current Costs and any Capital Costs) incurred in that Contract Year (which but for this Paragraph 4.2 (*Disallowable Costs*) would be Allowable Costs) exceeds the Annual Site Funding Limit, the Current Budget or the Capital Budget (as appropriate) for the relevant year, then Costs with an aggregate value equal to such excess shall be treated as Disallowable Costs.

- 4.3 Notwithstanding Clause 16.1 (*Funding Limits*) of this Agreement, Paragraph 4.2 (*Disallowable Costs*) above shall not apply to the extent that the Contractor can demonstrate that it has, in accordance with Good Industry Practice, managed the LTP Performance Plan for the relevant Contract Year including in particular:
- (a) the allocation of resources across;
 - (b) the scheduling of and budgeting for; and
 - (c) the monitoring and reporting of progress, and costs incurred in respect of,
- the Tasks provided for in the LTP Performance Plan in respect of all the Sites and the associated work which is therefore undertaken by the Contractor in the implementation of the LTP Performance Plan, in each case so as to avoid or (where unavoidable) minimise the extent of any such excess of Costs referred to in Paragraph 4.2 (*Disallowable Costs*) above.
- 4.4 For the purposes of Paragraph 4.3 (*Disallowable Costs*) above, in deciding whether the Contractor has taken appropriate steps to manage the LTP Performance Plan, the fact that such steps or changes may result in the Achievement of any Target Fee Payment Milestone being delayed (either temporarily or permanently) shall not be a reason for the Contractor to fail to take such steps or make such changes.
- 4.5 Where the Contractor recovers any Costs from any Subcontractor or Sub-Subcontractor, whether by means of a set off against such Subcontractor's or Sub-Subcontractor's account or otherwise, where such Costs are Allowable Costs the amount so recovered will be used to offset Allowable Costs and where such Costs are Disallowable Costs the amount so recovered shall be used to offset Disallowable Costs.
- 4.6 The following items are not considered as Costs and therefore the Contractor shall not include within any invoices submitted pursuant to this Agreement any amounts in respect of:
- (a) general reserves, contingent liabilities and provisions (including bad debt provisions);
 - (b) the amount of any debt due and payable by the Contractor to the Authority pursuant to this Agreement; and
 - (c) the amount of any payments to creditors before they are due or where the creditor is already holding funds which can be used to satisfy the liability.

5 ACCOUNTING BASIS FOR THE DETERMINATION OF COSTS AND CATEGORY II REVENUE

5.1 All Costs (including any Current Costs and any Capital Costs) and all Category II Revenue are to be determined for the purposes of the Annual Site Funding Limit, the Current Budget, the Capital Budget, and the level of any Allowable and Disallowable Costs on an accruals accounting basis in accordance with FNP-01 as if the transaction were being carried out directly by the Authority (as though the Authority were a company limited by shares under the Companies Act 2006) and as modified for the following:

- (a) depreciation, impairment, adjustments to the carrying value of goodwill, revaluations, revalorisations, amortisation, movements on nuclear provisions and profits or losses on disposals of assets are excluded;
- (b) Costs related to long-term nuclear provisions are to be recognised at the point at which the underlying goods or services are received or the Cost becomes payable, whichever is later;
- (c) Costs of creating long-term contract work-in-progress are recognised at the point at which the underlying goods or services are received or legal title has passed or the Cost becomes payable, whichever is later;
- (d) Pensions Costs are to be recognised when each payment falls due for payment according to the funding agreements between the relevant scheme trustees and the Authority; and
- (e) finance leases should be accounted for as if they were classified as operating leases in accordance with SSAP 21

except in each case as may otherwise be described in an Advance Agreement.

5.2 The Authority may determine, acting reasonably, the accounting treatment of any item of Current Costs, Capital Costs and Category II Revenue which requires the exercise of accounting judgment. The Authority must consult the Contractor before making such a determination and must explain to the Contractor in writing the reasons for its determination.

PART 2B: PAYMENT OF ALLOWABLE COSTS

1 PURPOSE

1.1 This Part 2B sets out:

- (a) the process to be adopted for the invoicing and payment of Allowable Costs to each of the Magnox Contractor and the RSRL Contractor;
- (b) a reconciliation process to ensure that the correct amount is paid to each of the Magnox Contractor and the RSRL Contractor; and
- (c) a process to ensure that, where any Costs are initially classed as Allowable Costs but subsequently become Disallowable Costs, such Costs are repaid to the Authority.

2 INVOICING AND PAYMENT PROCESS

2.1 When, in accordance with Part 7 (*Financial Limits*) of this Schedule 6 (*Finance*), the Parties are setting the funding for a forthcoming period, the Parties shall as part of such process use their reasonable endeavours to agree:

- (a) the likely amount of Allowable Costs which are to be incurred by the Contractor, and:
 - (i) the likely timetables for incurring such Allowable Costs in such forthcoming Contract Year and:
 - (ii) the Site(s) to which such Allowable Costs pertain; and
 - (iii) the extent to which such Allowable Costs pertain to Phase 1 or Phase 2;
- (b) for each Accounting Monthly invoice that is to be issued by the Contractor to the Authority during the forthcoming Contract Year, the instalments in which the Authority shall settle such invoice and the dates on which such instalments are to be paid to the Contractor by the Authority (the "**Agreed Payment Profile**");
- (c) the consequential cash flow requirements of the Contractor if it is to minimise its working capital requirements and the credit balances which it holds on the Contractor's Payments Account (the "**Agreed Cash Flow Requirement**"); and
- (d) taking into account the Agreed Cash Flow Requirement and the Agreed Payment Profile, the net allowance which should reasonably be made by the Contractor for:

- (i) those Costs to be incurred by the Contractor as a result of using an Approved Working Capital Facility to fulfil its obligations under this Agreement; LESS
- (ii) the Authority Entitled Interest which the Contractor is likely to earn in the relevant Contract Year

(such allowance being the "**Approved Working Capital Allowance**").

2.2 For the purposes of Paragraph 2.1(b) (*Invoicing and Payment Process*) above, the Parties shall structure the Agreed Payment Profiles so that:

- (a) large anticipated Allowable Costs (including payroll costs) shall be paid by the Authority to the Contractor as and when such Allowable Costs are to be incurred by the Contractor;
- (b) routine smaller Allowable Costs shall be grouped together within one or more instalments;
- (c) VAT shall be dealt with in accordance with the principles in Paragraph 5 (*VAT*) below;
- (d) the Approved Working Capital Allowance and the Authority Entitled Interest is minimised; and
- (e) Allowable Costs pertaining to Phase 1 shall be clearly distinguishable from Allowable Costs pertaining to Phase 2 and the Site(s) to which any Allowable Costs pertain shall be clearly identifiable.

2.3 If the Contractor becomes aware that any invoice (other than one covered by the Exceptional Item regime referred to in Paragraph 4 (*Exceptional Items*) of Part 2B (*Payment of Allowable Costs*) below) is likely to exceed that predicted in any of the cash flow forecasts provided for in Clause 16.6.2 (*Cashflow*) or as agreed as part of the Agreed Cash Flow Requirement, then the Contractor shall notify the Authority as soon as practicable after it becomes aware of this fact.

2.4 Within ten (10) Calendar Days of the end of each Month in which the relevant Accounting Month ended, the Contractor shall invoice the Authority for all Allowable Costs incurred during the Accounting Month just ended which are not covered by the Exceptional Item regime referred to at Paragraph 4 (*Exceptional Items*) of Part 2B (*Payment of Allowable Costs*). The amounts incurred in the relevant Accounting Month shall be determined on an accruals accounting basis in accordance with FNP01, save in respect of purchase of stock.

- 2.5 The Contractor shall invoice for Allowable Costs incurred as a result of purchasing stock on a purchased basis, so that the invoice shall show the value (excluding VAT) of actual purchases of stock during the relevant Accounting Month as opposed to the value of stock consumed in the relevant Accounting Month. As such stock shall be the property of the Authority, the relevant invoice shall treat the purchase of such stock by the Contractor on behalf of the Authority as a taxable supply.
- 2.6 Provided that:
- (a) the Contractor submits its invoices to the Authority in accordance with Paragraph 2.4 (*Invoicing and Payment Process*) of Part 2B (*Payment of Allowable Costs*) above; and
 - (b) the level of the instalments which the Authority must pay in order to settle such invoices is not greater than the level set out in the Agreed Payment Profile, the Agreed Cash Flow Requirement and any cash flow forecast requested by the Authority under Clause 16.6.2 (*Cashflow*) of this Agreement,
- then, subject to Paragraph 2.8 (*Invoicing and Payment Process*) and Paragraphs 3.6 to 3.9 (*Disputed Amounts*) below, the Authority shall pay the Contractor in accordance with the Agreed Payment Profile for the relevant invoices.
- 2.7 If the level of the instalments which the Authority must pay in order to settle an invoice is greater than that set out in the Agreed Payment Profile, the Agreed Cash Flow Requirement or any cash flow forecast requested by the Authority under Clause 16.6.2 (*Cashflow*) of this Agreement, then the Authority shall pay only the instalments of the invoice which are less than those within the Agreed Payment Profile. The Authority and the Contractor shall then use reasonable endeavours to agree an alternative payment profile for the balance of the invoice which is practicable (bearing in mind the Authority's cash flow position and its desire to seek to minimise the working capital requirements of the Contractor).
- 2.8 If the level of the instalments which the Authority must pay in order to settle an invoice is less than that set out in the Agreed Payment Profile the Authority and the Contractor shall use reasonable endeavours to agree any necessary adjustments to the Agreed Payment Profile to ensure that the Agreed Payment Profile equals the invoiced amount.
- 2.9 To the extent that Allowable Costs comprise salary costs relating to staff engaged by the Contractor (including Costs arising from the provision of Nominated Staff to the Contractor that are recoverable pursuant to Appendix F (*Nominated Staff Recoverable Costs*) of this Schedule 6 (*Finance*)), the Authority shall pay such Costs to the Contractor during the Accounting Month in which they are incurred by the Contractor, notwithstanding that such Costs shall be paid before the Contractor submits the relevant

invoice to the Authority. To receive the advance payment of such invoice, the Contractor shall be required to notify the Authority of the level of the relevant Costs at least two (2) clear Working Days in advance of the Costs being due for payment and provide the Authority with the documentation (as specified by the Authority at the start of the relevant Contract Year) required to support the Contractor's claim for such Costs.

2.10 If the Contractor fails to submit an invoice for a particular Accounting Month within ten (10) Calendar Days of the end of the relevant Month, then the dates for payment of the instalments of the relevant invoice shall be adjusted to those applicable to the invoice for the next following Accounting Month.

2.11 If during any Contract Year there is any change to:

- (a) the Annual Site Funding Limit;
- (b) the rates of interest applicable to an Approved Working Capital Facility which are outside of the control of the Contractor and/or the Parent Body Organisation;
- (c) the payment dates for any supplier; or
- (d) this Agreement

which has a material impact on the Agreed Cash Flow Requirement, the Agreed Payment Profile and/or the Approved Working Capital Allowance, then the Parties shall agree appropriate changes to the same for the remainder of the Contract Year. In the case of this Paragraph 2.11(a) and (d) above, such changes to the Agreed Cash Flow Requirement, the Agreed Payment Profile and/or the Approved Working Capital Allowance shall be addressed as part of the relevant Category 0 Change.

2.12 The Agreed Cash Flow Requirement, the Agreed Payment Profile and the Approved Working Capital Allowance for the first Contract Year, and the material financial terms of the Approved Working Capital Facility in place as at the Commencement Date, shall be as specified in Appendix E (*First Contract Year Financials*) of this Schedule 6 (*Finance*).

3 SUBMISSION OF INVOICES

3.1 The monthly invoice submitted by the Contractor under Paragraph 2.4 (*Invoicing and Payment Process*) of Part 2B (*Payment of Allowable Costs*) above shall be accompanied by:

- (a) a description of the work and/or services to which the invoice relates;
- (b) if requested by the Authority, a breakdown setting out in reasonable detail the Allowable Costs incurred and an explanation of what they relate to, including

the Site(s) to which they pertain and whether they pertain to Phase 1 or Phase 2;

- (c) if requested by the Authority, documentation supporting the sums claimed (including without limitation Subcontractor invoices, Sub-Subcontractor invoices, invoices for materials and other similar documents);
- (d) such other information and documentation as the Authority may from time to time reasonably require from the Contractor, provided that the Authority notifies the Contractor of such requirements; and
- (e) certification by the Finance Director of the Contractor (or in his absence another director of the Contractor) confirming that the amount claimed by the Contractor under the relevant invoice is properly due to the Contractor.

3.2 In respect of Allowable Costs included within an invoice issued by the Contractor, the Contractor must separately specify:

- (a) the amount exclusive of VAT or overseas VAT (or its equivalent) for which the Contractor is liable;
- (b) the amount of VAT or overseas VAT (or its equivalent) payable by the Contractor in respect of the relevant Allowable Costs; and
- (c) the amount of VAT or overseas VAT (or its equivalent) which is payable by the Contractor in respect of the relevant Allowable Costs and which is irrecoverable from the relevant authorities.

3.3 In accordance with Paragraph 4.1(n) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of this Schedule 6 (*Finance*), VAT or overseas VAT (or its equivalent) which is recoverable by the Contractor from a Taxation Authority shall not be charged to the Authority as an Allowable Cost.

3.4 The Contractor shall only charge the Authority VAT in respect of Allowable Costs properly included within the relevant invoice.

3.5 The Authority shall be entitled to require reasonable further information from the Contractor for the purposes of determining whether a Cost which has been claimed is an Allowable Cost and whether it pertains to Phase 1 or Phase 2. Subject to Paragraphs 3.6 to 3.9 (*Disputed Amounts*) below, in such circumstances the due date for payment of such Allowable Cost shall be whichever is the later of:

- (a) the date five (5) Working Days after the date on which the required information is provided by the Contractor to the Authority; or

- (b) the date on which such Allowable Cost would otherwise be reimbursed to the Contractor by the Authority under the provisions of Paragraph 2 (*Invoicing and Payment Process*) of Part 2B (*Payment of Allowable Costs*) above.

Disputed Amounts

3.6 If the Authority disputes the Contractor's entitlement to any part of the amount claimed by the Contractor and included in an invoice submitted pursuant to Paragraph 2.4 (*Invoicing and Payment Process*) of Part 2B (*Payment of Allowable Costs*) above:

- (a) the Authority shall notify the Contractor of:
 - (i) the amount that the Authority considers is due and proposes to pay in accordance with the Agreed Payment Profile;
 - (ii) the amount that the Authority disputes (the "**Disputed Amount**") and the grounds on which it is disputed; and
- (b) the Authority may withhold payment of any Disputed Amount pursuant to such notice pending agreement or determination of the Contractor's entitlement in relation to the Disputed Amount but shall pay any undisputed amounts in accordance with the Agreed Payment Profile.

3.7 Within ten (10) Working Days following receipt by the Contractor of a notice served by the Authority pursuant to Paragraph 3.6 (*Disputed Amounts*) above, the Contractor shall respond by notifying the Authority as to whether or not it agrees with the statements made in that notice. If the Contractor indicates that it does agree the Authority shall be entitled:

- (a) to retain on a permanent basis any amounts withheld pursuant to clause 3.6(b); and/or
- (b) to reclaim from the Contractor the amount of any over-payment which may have been received by the Contractor with interest on any such amount calculated in accordance with Paragraph 11.1 (*Interest*) below from the date on which over-payment was made until the date on which that amount has been paid in full and whether before or after judgment.

3.8 If the Contractor responds pursuant to Paragraph 3.7 (*Disputed Amounts*) that it does not agree with all or any of the statements made in a notice served by the Authority pursuant to Paragraph 3.6 (*Disputed Amounts*) it shall be entitled to refer the matter for resolution in accordance with the Dispute Resolution Procedure.

3.9 If, following referral to the Dispute Resolution Procedure in accordance with Paragraph 3.8 (*Disputed Amounts*), it is determined that:

- (a) the Authority has withheld any amount which the Contractor was entitled to be paid; or
- (b) the Contractor has claimed under this Part 2B (*Payment of Allowable Costs*) any amount which it was not entitled to be paid,
- (c) the Authority shall pay such amount to the Contractor or the Contractor shall pay such amount to the Authority with interest on such amount calculated in accordance with Paragraph 11.1 (*Interest*) below from the date on which payment should have been made (in the case of failure to pay by the Authority) or from the date on which over-payment was made (in the case of excessive claims by the Contractor) until the date on which all relevant amounts have been paid in full and whether before or after judgment.

4 **EXCEPTIONAL ITEMS**

4.1 When, in accordance with Part 7 (*Financial Limits*) of this Schedule 6 (*Finance*), the Parties are agreeing the Cost payment profile for a forthcoming Contract Year, the Parties shall as part of such process use reasonable endeavours to agree an exceptional item threshold (the "**Exceptional Item Threshold**") for those Allowable Costs which are unexpected or whose timing is unknown so that they cannot be taken into account in the Agreed Cash Flow Requirement. Settlement of such costs shall then be the subject of arrangements set out in this Paragraph 4 (*Exceptional Items*) of Part 2B (*Payment of Allowable Costs*). The Exceptional Item Threshold for the first Contract Year shall be as specified in Appendix E (*First Contract Year Financials*) of this Schedule 6 (*Finance*).

4.2 If:

- (a) an Allowable Cost in excess of the Exceptional Item Threshold arises during the course of a Contract Year; and
- (b) such Allowable Cost was unexpected or its timing was unknown and consequently it was not taken into account by the Parties in the Agreed Cash Flow Requirement,

then such Allowable Cost shall be deemed to be an "**Exceptional Item**".

4.3 If the Contractor becomes aware that it will incur an Allowable Cost which is an Exceptional Item, it shall as soon as reasonably practicable after becoming aware of the amount and timing of the payment for the relevant item provide the Authority with:

- (a) a VAT invoice or cost statement (if a VAT invoice is not appropriate) for the relevant Allowable Cost; and

- (b) all relevant supporting documents (including the due date for payment) and any other applicable information in such a form as the Authority may reasonably require from time to time,

(such information being "**Exceptional Item Information**").

4.4 Provided that the Authority has received all of the Exceptional Item Information which it reasonably requires:

- (a) if the Authority's cash flow position reasonably allows, then the Authority shall in respect of the relevant Exceptional Item make a payment to the Contractor's Payment Account not later than the Working Day before the due date for payment to the relevant supplier or (if later) by the date five (5) clear Working Days after the date on which the Authority receives such Exceptional Item Information; and
- (b) if the Authority's cash flow position does not reasonably allow the Authority to make the payment referred to in Paragraph 4.4(a) above, then the Authority shall reimburse the relevant Exceptional Item as soon as reasonably practicable after the date on which the Contractor makes the corresponding payment to the relevant Third Party.

4.5 In respect of any Exceptional Item, to the extent that:

- (a) the Authority's cash flow position does not reasonably allow the Authority to make the payment as described in Paragraph 4.4(a) (*Exceptional Items*) above; and
- (b) failure by the Authority to make such payment would mean that the Contractor does not have sufficient working capital available to it (including that available under an Approved Working Capital Facility) to settle the relevant Exceptional Item,

then the Authority shall not be entitled to invoke the provisions of Paragraph 4.4(b) of Part 2B (*Payment of Allowable Costs*) above.

5 **VAT**

5.1 VAT included in any Category II Revenue which is paid over to the Authority in accordance with Clause 16.8 (*Magnox Category II Revenue*) or Clause 16.9 (*RSRL Category II Revenue*) of this Agreement shall be repaid to the Contractor's Payments Account on the day before the latest date upon which the Contractor is required to pay HM Revenue & Customs the VAT element of the Contractor's invoice which gave rise to the Category II Revenue.

5.2 VAT charged to the Authority by the Contractor in respect of Allowable Costs will be paid in line with the Agreed Payment Profile.

6 **PAYMENTS ACCOUNT**

All payments by the Authority to the Contractor in respect of any Allowable Costs shall be paid by electronic transfer of funds to the Contractor's Payments Account.

7 **MONTHLY REPORTING**

7.1 Within fourteen (14) Calendar Days of the end of each Month, the Contractor shall provide a report (the "**Monthly Reconciliation Report**") in such a form and containing such information as the Authority may reasonably require from time to time.

7.2 Subject to Paragraph 7.1 (*Monthly Reporting*) above, the Monthly Reconciliation Report shall set out each of the following in respect of the Accounting Month just ended:

- (a) the funds received into and paid out from the Contractor's Payments Accounts, the Contractor's Receipts Accounts, the Joint Fee Account, the Foreign Exchange Accounts and any other accounts held by the Contractor;
- (b) the amounts received by the Contractor as Category II Revenue or otherwise;
- (c) the amounts expended by the Contractor in the proper performance of its obligations under this Agreement in respect of Allowable Costs (such details to include a detailed breakdown of the Allowable Costs incurred, an explanation of what they relate to (including the Site(s) to which they pertain and whether they pertain to Phase 1 or Phase 2) and supporting documentation in support of the Contractor's claim for reimbursement of the relevant Costs);
- (d) the amounts expended by the Contractor in respect of Disallowable Costs;
- (e) a reconciliation statement relating to invoices sent by the Contractor to the Authority in respect of Allowable Costs and cash payments made by the Contractor;
- (f) a reconciliation statement relating to the invoices sent by the Contractor to the Authority and payments made by the Authority to the Contractor's Payments Account;
- (g) any Exceptional Items charged to the Authority;
- (h) amounts of expenditure expended and/or accrued against each Funding Limit (both in respect of the relevant Accounting Month and on a year to date basis);

- (i) the amount of any Costs incurred in raising and servicing capital (including under an Approved Working Capital Facility) in the relevant Accounting Month and during the relevant Contract Year as compared to the Approved Working Capital Allowance for the relevant Contract Year;
- (j) an analysis of daily cash balances against the Agreed Cash Flow Requirement; and
- (k) in connection with Paragraphs (a) - (j) (*Monthly Reporting*) above, all relevant supporting documents and any other applicable information in such a form as the Authority may reasonably require from time to time.

7.3 The Contractor shall comply with any additional reporting requirements as set out in the appropriate FNP.

7.4 The Contractor shall further provide any information requested by the Authority that enables the Authority to comply with its State Aid reporting obligations to the Department for Business, Innovation and Skills (or any successor body).

8 ANNUAL RECONCILIATION OF ALLOWABLE COSTS

8.1 Within sixty (60) Calendar Days of the end of each Contract Year or as otherwise advised by the Authority giving reasonable notice, the Contractor shall produce information equivalent to that set out in the Monthly Reconciliation Report for the previous Contract Year (the "**Annual Reconciliation Report**") together with an audited financial statement of the Contractor.

8.2 The Parties shall then use their reasonable endeavours to agree the Annual Reconciliation Report and queries relating to the Annual Reconciliation Report identified through a review of the audited financial statements and, if they cannot agree such details within one calendar month, the Annual Reconciliation Report shall be referred for resolution under the Dispute Resolution Procedure.

8.3 Once agreed or determined in accordance with Paragraph 8.2 (*Annual Reconciliation of Allowable Costs*) above, the Annual Reconciliation Report (as the same may be agreed or determined) shall, subject to Paragraph 9 (*Ongoing Adjustments*) below, be binding on the Parties.

8.4 If the agreed or determined Annual Reconciliation Report and/or the audited financial statements show that the amounts invoiced by and paid to the Contractor by the Authority are less than the Allowable Costs incurred, then the excess shall be invoiced by the Contractor and paid by the Authority on the earlier of:

- (a) the due date for payment of the Allowable Costs; and

- (b) fourteen (14) Calendar Days after the relevant documents are agreed or determined in accordance with Paragraph 8.2 (*Annual Reconciliation of Allowable Costs*) above.

8.5 If the agreed or determined Annual Reconciliation Report and/or the audited financial statements show that the amounts invoiced and paid to the Contractor by the Authority are more than the Allowable Costs incurred, then the Contractor shall, at the option of the Authority:

- (a) issue a credit note to the Authority for such excess (including any VAT on such amount);
- (b) adjust its next invoice by an amount equal to such excess (including any VAT on such amount); or
- (c) repay such excess (including any VAT on such amount) to the Authority within fourteen (14) days of being so required to do so by the Authority.

8.6 If the agreed or determined Annual Reconciliation Report and/or the audited financial statements show that the payments made by the Contractor to the Parent Body Organisation exceed the amounts allowed under this Agreement, the Contractor shall procure that the Parent Body Organisation repays such excess to the Contractor no later than fourteen (14) Calendar Days after the relevant agreement or determination in accordance with Paragraph 8.2 (*Annual Reconciliation of Allowable Costs*) above.

9 ONGOING ADJUSTMENTS

9.1 Where it becomes apparent to the Contractor and/or the Authority that any Costs which were treated as Allowable Costs should instead be treated as Disallowable Costs (for whatever reason) or any Disallowable Costs have been invoiced incorrectly as Allowable Costs, then:

- (a) where such Costs have not been invoiced, the Contractor shall no longer be entitled to invoice for such Costs;
- (b) where such Costs have been invoiced by the Contractor but not yet reimbursed to the Contractor by the Authority, the Contractor shall, at the option of the Authority, either:
 - (i) issue a credit note to the Authority for the relevant proportion of the relevant invoice (including any VAT on such amount); or
 - (ii) adjust its next invoice by the amount which should not have been included in the previous invoice (including any VAT on such amount); and

- (c) where such Costs have been invoiced to the Authority by the Contractor and reimbursed to the Contractor by the Authority, the Contractor shall immediately issue a credit note to the Authority and repay the relevant amount (including any VAT on such amount) to the Authority no later than fourteen (14) Calendar Days after it first becomes apparent that the Disallowable Costs have been invoiced incorrectly.

9.2 Subject to Clause 37.8 (*Entire Agreement*) of this Agreement, the Authority shall (notwithstanding the termination of this Agreement or the Parent Body Agreement) be entitled to reclaim from the Contractor:

- (a) Allowable Costs which have been reimbursed by the Authority but become Disallowable Costs (for whatever reason); and
- (b) Disallowable Costs invoiced to the Authority and reimbursed by the Authority (for whatever reason)

until the expiry of three (3) years from the end of the Contract Year in which the Costs were incurred, provided that nothing in this Agreement shall impose any time limit on the Authority's ability to reclaim amounts that were fraudulently claimed by the Contractor.

9.3 Where it becomes apparent to the Contractor and/or the Authority that any Costs which were treated as Disallowable Costs should instead be treated as Allowable Costs (for whatever reason) then the Contractor shall be entitled to include the relevant Costs within a subsequent invoice and the Authority shall then settle such invoice in accordance with the invoicing arrangements referred to above. The Contractor's rights under this Paragraph in respect of any particular Costs, will, however, cease three (3) years after the end of the Contract Year in which the relevant Costs were incurred.

9.4 Where the Contractor receives any credit note relating to overpayment of Allowable Cost, then to the extent that the Contractor receives any repayment in respect of that credit note, this shall not constitute Category II Revenue. To the extent that the Contractor does not receive any payment in respect of the credit note, then the Contractor shall utilise the relevant credit note where possible and, in these circumstances the amount of the Allowable Costs payable by the Authority to the Contractor shall then be reduced by the amount of the credit note so utilised.

10 **FINAL RECONCILIATION OF ALLOWABLE COSTS**

10.1 Following the termination of this Agreement, the Authority and the Contractor shall within sixty (60) Calendar Days of the end of the Month of termination, use their reasonable endeavours to agree a final reconciliation of the amount of the Allowable Costs and the corresponding payments made and to be made by the Authority to the

Contractor in respect of Allowable Costs as if the termination occurred at the end of a Contract Year (the "**Final Reconciliation of Allowable Costs**"). If the Parties cannot agree the Final Reconciliation of Allowable Costs within such sixty (60) Calendar Day period, the matter shall be referred for determination under the Dispute Resolution Procedure.

- 10.2 If this Agreement does not terminate on 31 March, then for the purposes of the Final Reconciliation of Allowable Costs the Annual Site Funding Limit, Current Budget and Capital Budget for the final Contract Year to 31 March will be apportioned on a reasonable basis between the that portion of the Contract Year falling before termination and the remainder of the Contract Year in which termination occurred.
- 10.3 If the Final Reconciliation of Allowable Costs shows that any Allowable Costs have not been paid to the Contractor, then these shall be paid within fourteen (14) Calendar Days of the Final Reconciliation of Allowable Costs being agreed or determined in accordance with Paragraph 10.1 (*Final Reconciliation of Allowable Costs*) above.
- 10.4 If the Final Reconciliation of Allowable Costs shows that too much has been paid to the Contractor in respect of Allowable Costs, then the Contractor shall be required to repay the excess to the Authority within fourteen (14) Calendar Days of the Final Reconciliation of Allowable Costs being agreed or determined in accordance with Paragraph 10.1 (*Final Reconciliation of Allowable Costs*) above.
- 10.5 Notwithstanding the Final Reconciliation of Allowable Costs, the Contractor shall be entitled to submit an invoice in respect of the Accounting Month or part Accounting Month ending on termination. This will then be dealt with in accordance with the provisions of this Part 2B and the invoice will be included in the Final Reconciliation of Allowable Costs.

11 **INTEREST**

- 11.1 If, by operation of this Part 2 (*Costs*), the Contractor is obliged to repay money to the Authority or to issue the Authority with a credit note in respect of a Cost which it was wrongly believed was an Allowable Cost or a Cost which was initially treated as an Allowable Cost but which was subsequently recognised as a Disallowable Cost, then the Contractor shall pay the Authority, or (as the case may be) include within the relevant credit note, interest at the rate of three per cent (3%) above the Bank of England bank rate from time to time from:
- (a) the date of reimbursement of the relevant Cost by the Authority to the Contractor; or
 - (b) the date on which the Cost was recognised as a Disallowable Cost

whichever date is later, to the date on which the relevant amount is repaid or a credit note for such amount issued to the Authority.

- 11.2 If, by operation of this Part 2 (*Costs*), the Authority is obliged to pay any amount to the Contractor which the Authority determined to be a Disallowable Cost but is subsequently determined to be an Allowable Cost then the Authority shall pay the Contractor, interest at the rate of three per cent (3%) above the Bank of England bank rate from time to time on such amount from the date at which the relevant Cost would otherwise have been paid to the date on which the relevant amount is paid.
- 11.3 If, by operation of this Part 2 (*Costs*), the Contractor is obliged to pay any amount to the Authority which the Authority has reclaimed pursuant to Paragraph 3.7(b) (*Disputed Amounts*) or which it has been determined the Authority is entitled to be repaid pursuant to Paragraph 3.9(b) (*Disputed Amounts*) then the Contractor shall pay the Authority, or (as the case may be) include within the relevant credit note, interest at the rate of three per cent (3%) above the Bank of England bank rate from time to time in accordance with those Paragraphs.

PART 3: TARGET COSTS

1 PHASE 1 TARGET COST AND PHASE 2 TARGET COST

1.1 [Not used]

Phase 1 Target Cost

1.2 As at the Commencement Date, the Phase 1 Target Cost is [REDACTED] s.43(2)
[REDACTED]
[REDACTED]

Phase 2 Target Cost

1.3 As at the Commencement Date, the Phase 2 Target Cost is [REDACTED] s.43(2)
[REDACTED]
[REDACTED]

2 ADJUSTMENTS TO THE PHASE 1 TARGET COST AND PHASE 2 TARGET COST

2.1 Subject always to the provisions of Schedule 2 (*Change Control Procedure*), the Phase 1 Target Cost and the Phase 2 Target Cost shall be adjusted in accordance with this Paragraph 2 (*Adjustments to the Phase 1 Target Cost and Phase 2 Target Cost*).

Adjustments for Radioactive Waste Volumes

2.2 The provisions of Appendix C (*Adjustments for Radioactive Waste Volumes*) will be used to calculate adjustments to the Phase 1 Target Cost and/or the Phase 2 Target Cost (if any) in the event of a Material Radioactive Waste Variance.

Authority Assumptions

2.3 The Phase 1 Target Cost and Phase 2 Target Cost are based on the Authority Assumptions. Subject to Paragraphs 2.3A and 2.3B (*Authority Assumptions*) below, in the event of a Material Adverse Effect resulting directly from a change or inaccuracy in the position identified in an Authority Assumption, either Party shall be entitled to initiate a Proposed Change to address such event, and the effect on the Phase 1 Target Cost and/or the Phase 2 Target Cost shall be determined in accordance with Paragraph 6.8 (*Meeting the "No Better No Worse" objective – Required Change Events*) of Schedule 2 (*Change Control Procedure*).

2.3A The Contractor shall be entitled to a Category 0 Change pursuant to paragraph 6.14(d) of Schedule 2 (*Change Control Procedure*) of the SLCA in respect of any Material Adverse Effect to the extent that there is any change to or inaccuracy in the position identified in the Authority Assumptions, provided that:

- (a) in respect of the Authority Assumptions numbered:
- (i) 1 (*Magnox LTP*);
 - (ii) 2 (*RSRL LTP*);
 - (iii) 7 (*Wylfa*);
 - (iv) 9 (*Funding*);
 - (v) 10 (*Assumptions in Magnox LTP dated April 2013 and RSRL LTP dated April 2013*);
 - (vi) 12 (*Subcontracts, Customer Contracts and Inter SLC Service Contracts*); and
 - (vii) 14 to 20 (*Real Estate*),

such Category 0 Change is completed on the earlier of 12 (twelve) months after the Commencement Date or acceptance by the Authority of the Consolidation Report. For the avoidance of doubt, the Contractor shall not be entitled to any Category 0 Change in respect of this Authority Assumption after the earlier of 12 (twelve) months after the Commencement Date and acceptance by the Authority of the Consolidation Report; and

- (b) in respect of the Authority Assumptions numbered:
- (i) 3 (*MOP 9*);
 - (ii) 4 (*Defueling and Transfer of Spent Fuel*);
 - (iii) 5 (*GDF*);
 - (iv) 6 (*LLWR*);
 - (v) 8 (*Winfrith*);
 - (vi) 11 (*Contaminated Land, Subsoil Conditions and Asbestos*);
 - (vii) 13 (*Fossils, antiquities, human remains or ordnance*);
 - (viii) 21 (*Real Estate – Harwell and Winfrith*); and
 - (ix) 22 (*SDLT*),

such Category 0 Change is completed anytime during the Term.

2.3B A change to or inaccuracy in the position identified in any Authority Assumptions shall not entitle the Contractor to a Category 0 Change pursuant to paragraph 6.14(d)

(*Authority Acceptance and Implementation of the Proposed Change*) of Schedule 2 (*Change Control Procedure*) to this Agreement where the change to or inaccuracy in such position, either:

- (a) entitles the Contractor to an adjustment to the Phase 1 Target Cost or Phase 2 Target Cost elsewhere under this Agreement; or
- (b) is expressly identified elsewhere in this Agreement as a matter which does not entitle the Contractor to an adjustment to the Phase 1 Target Cost or Phase 2 Target Cost.

2.4 **Special Items**

At Appendix A (*Special Items*), provisional sums for inclusion in the Phase 1 Target Cost and Phase 2 Target Cost have been identified against a list of items set out therein. In the event of any difference between the actual Cost incurred in respect of a matter set out in Appendix A (*Special Items*) in a Contract Year and the provisional amount applicable to that matter in Appendix A (*Special Items*), the Phase 1 Target Cost and/or the Phase 2 Target Cost (as applicable) shall be adjusted as set out in Appendix A (*Special Items*), and the Contractor shall initiate a Proposed Change to address such adjustment. Where reasonably practicable, the Contractor shall initiate a single Proposed Change to address all such adjustments applicable to each Contract Year within ten (10) Working Days after agreement or determination of the Annual Reconciliation Report in accordance with Paragraph 8.2 (*Annual Reconciliation of Allowable Costs*) of Part 2B (*Payment of Allowable Costs*) above.

Alternative Strategies

2.5 The Authority may exercise the option to implement one or more of the Alternative Strategies (subject to doing so before any date specified in the Client Specification as a date by which the option to implement an Alternative Strategy expires has occurred).

2.6 Where the Authority exercises an option to implement an Alternative Strategy:

- (a) the Client Specification shall be amended so as to oblige the Contractor to deliver as required by such option; and
- (b) the impact of the Alternative Strategy on:
 - (i) the Phase 1 Target Cost and/or the Phase 2 Target Cost;
 - (ii) the Phase 1 Target Fee and/or the Phase 2 Target Fee;
 - (iii) the PBI Fee; and/or

- (iv) the agreed dates contained in the Client Specification or Contract Baseline for achievement of any Interim State or Interim End State, as applicable, any Milestone Delivery Date for an Authority Milestone or any other time-related obligation placed on the Contractor,

shall be determined in accordance with Paragraph 6.9 (*Meeting the "No Better No Worse" objective – Alternative Strategies*) of Schedule 2 (*Change Control Procedure*),

and the Authority shall initiate a Proposed Change to address such amendments and adjustments.

2.7 [Not used]

Special adjustment to the Phase 2 Target Cost

2.8 The Phase 2 Target Cost shall be adjusted (and any corresponding adjustments to the Contract Baseline and the Annual Site Funding Limits for Contract Years 8 to 14 shall be made) in accordance with Appendix G (*Special adjustment to the Phase 2 Target Cost*) of this Schedule 6 (*Finance*).

Adjustment for Wylfa extended generation

2.9 Subject to Paragraphs 2.10 to 2.14 (*Adjustment for Wylfa extended generation*) below, provided that the decision has been taken prior to the Commencement Date to extend electricity generation at the Wylfa Site to December 2015, the Phase 1 Target Cost shall be adjusted by an amount equal to the Allowable Costs estimated to be incurred during the Term as a result of extending electricity generation at the Wylfa Site to December 2015 (the "**Wylfa Extended Generation Actual Costs**"), provided that such amount shall not exceed the estimated costs that were incorporated into the Magnox LTP prior to the Commencement Date (as adjusted, if applicable, to present-day money values in accordance with the annual adjustment to the LTP Performance Plan for inflation in accordance with PCP-09 (*Cost Estimating*)) as Costs to be incurred by the Magnox Contractor during the Term as a result of extending electricity generation at the Wylfa Site to December 2015 (the "**Wylfa Extended Generation LTP Costs**"). The Contractor shall initiate a Proposed Change to address:

- (a) such increase to the Phase 1 Target Cost;
- (b) any corresponding adjustments to the Contract Baseline and the Annual Site Funding Limits; and

- (c) an adjustment to the Phase 1 Target Fee pro rata to the increase to the Phase 1 Target Cost and a pro rata adjustment of any relevant amounts of Allocated Target Fee for Target Fee Payment Milestones for Phase 1.

2.10 If the Contractor reasonably considers that:

- (a) the business case for extending electricity generation at the Wylfa Site to December 2015 prepared by the Magnox Contractor and approved by the Authority prior to the Commencement Date (the "**Wylfa Business Case**") was not prepared in accordance with Good Industry Practice prior to the Commencement Date (in relation to both the accuracy and the completeness of the Wylfa Business Case); or
- (b) the Wylfa Extended Generation LTP Costs are not consistent with the Wylfa Business Case,

the Contractor shall notify the Authority of the same.

2.11 Together with the notification provided pursuant to Paragraph 2.10 (*Adjustment for Wylfa extended generation*) above, the Contractor shall provide to the Authority:

- (a) its estimate of the Costs to be incurred by the Magnox Contractor during the Term as a result of extending electricity generation at the Wylfa Site to December 2015 that would have been incorporated into the Magnox LTP prior to the Commencement Date if the Wylfa Business Case had been prepared in accordance with Good Industry Practice and the Wylfa Extended Generation LTP Costs were consistent with the Wylfa Business Case (the "**Revised Wylfa Extended Generation LTP Costs**"); and
- (b) such supporting information as the Authority reasonably requires to verify the Revised Wylfa Extended Generation LTP Costs, including the methodology used to calculate the Revised Wylfa Extended Generation LTP Costs.

2.12 Where the Authority is reasonably satisfied, having regard to the information provided pursuant to Paragraphs 2.10 and 2.11 (*Adjustment for Wylfa extended generation*) above, that either 2.10(a) or 2.10(b) is true, the Phase 1 Target Cost shall be increased by an amount equalling the Wylfa Extended Generation Actual Costs provided that such amount does not exceed the Revised Wylfa Extended Generation LTP Costs and the Contractor shall initiate a Proposed Change to address:

- (a) such increase to the Phase 1 Target Cost;
- (b) any corresponding adjustments to the Contract Baseline and the Annual Site Funding Limits for any applicable Contract Years; and

- (c) an adjustment to the Phase 1 Target Fee pro rata to the increase to the Phase 1 Target Cost and a pro rata adjustment of any relevant amounts of Allocated Target Fee for Target Fee Payment Milestones for Phase 1.
- 2.13 An adjustment to the Phase 1 Target Cost, Annual Site Funding Limit and Contract Baseline pursuant to Paragraph 2.9 or 2.12 (*Adjustment for Wylfa extended generation*) above shall not include any costs to the extent that they were incurred prior to the Commencement Date or accounted for in the Phase 1 Target Cost submitted as part of the Final Tender or to the extent that such additional costs are specific to the technical solution proposed in the Final Tender and would not otherwise be incurred.
- 2.14 Any Proposed Change pursuant to Paragraphs 2.9 to 2.13 (*Adjustment for Wylfa extended generation*) above, must be completed by the Contractor within the Consolidation Phase.

PART 4: FEE

1 TARGET FEE AND PBI FEE

1.1 The Fee shall constitute 2 elements:

- (a) Target Fee, comprising:
 - (i) Phase 1 Target Fee, to be primarily used to incentivise the delivery of decommissioning deliverables constituting Phase 1 of the Client Specification and to be adjusted via the Phase 1 Shareline; and
 - (ii) Phase 2 Target Fee, to be primarily used to incentivise the delivery of decommissioning deliverables constituting Phase 2 of the Client Specification and to be adjusted via the Phase 2 Shareline; and
- (b) PBI Fee, to be primarily used to incentivise the Contractor to maintain high standards of performance throughout the duration of this Agreement.

2 SUMMARY OF PART 4 (FEE)

2.1 The remainder of this Part 4 (*Fee*) sets out how the Target Fee and the PBI Fee are calculated, invoiced and paid. It is divided into 4 sub-parts as follows:

- (a) Part 4A (*Calculation of PBI Fee*) sets out the basis on which the PBI Fee shall be calculated;
- (b) Part 4B (*Calculation of Target Fee*) sets out the basis on which the amount of Phase 1 Target Fee and Phase 2 Target Fee payable and the attendant Phase 1 Shareline or Phase 2 Shareline (as applicable) shall be calculated;
- (c) Part 4C (*Payment of PBI Fee and Target Fee*) sets out how the PBI Fee and Target Fee shall be invoiced by and paid to the Contractor; and
- (d) Part 4D (*Arrangements on Termination for Convenience*) sets out certain arrangements relating to the payment of Target Fee in the event that the Authority notifies the Contractor that this Agreement will terminate pursuant to Clause 33.1.4 (*Termination by the Authority*) or notifies the Parent Body Organisation that the Parent Body Agreement will terminate pursuant to Clause 19.8 (*Termination for Convenience*) of the Parent Body Agreement.

PART 4A: CALCULATION OF PBI FEE

1 PURPOSE

- 1.1 This Part 4A (*Calculation of PBI Fee*) sets out the basis on which the PBI Fee shall be calculated.
- 1.2 The amount of PBI Fee payable to the Contractor shall be based on the standards of performance achieved by the Contractor in each Contract Year. To achieve this, the PBI Fee shall be paid on achieving certain performance-based objectives or performance levels ("**PBI Levels**") which are agreed on an ongoing basis in accordance with this Part 4A (*Calculation of PBI Fee*) and Part 5 (*Performance Agreement Form*) of this Schedule 6 (*Finance*).

2 ESTABLISHING PBI LEVELS

- 2.1 The PBI Levels established pursuant to this Part 4A (*Calculation of PBI Fee*) may be related to any aspect of the Contractor's performance of its obligations under this Agreement.
- 2.2 The PBI Levels for the first Contract Year, and any PBI Levels that shall apply for subsequent Contract Years unless otherwise agreed in accordance with Paragraphs 2.3 and 2.4 below, shall be as set out in the PAFs comprising Appendix D (*PAFs as at Commencement Date*).
- 2.3 Each Contract Year, following the provision of the PBI Fee profile by the Contractor to the Authority pursuant to Paragraph 9 (*PBI Fee and Target Fee Profile*) of Part 7 (*Financial Limits*) of this Schedule 6 (*Finance*), the Parties shall meet to agree (each acting reasonably):
- (a) the list of subject matters for the PBI Levels for the following Contract Year (having regard to the provisions of Paragraph 2.1 (*Establishing PBI Levels*) of Part 4A (*Calculation of PBI Fee*) above);
 - (b) the amount of PBI Fee to be allocated to achievement of each such PBI Level (having regard to the provisions of Paragraph 3.4 (*Maximum PBI Fee*) below), this figure being either:
 - (i) a set amount of the PBI Fee awarded on a pass or fail basis (as assessed in terms of quantity, quality and/or timeliness); or
 - (ii) a variable amount of the PBI Fee, to be determined by reference to criteria based on time, quantity and/or quality on an incremental scale,

and furthermore taking into account the benefit to the Authority of achieving the relevant PBI Level,

provided that if the Parties fail to so agree by 24 March in the Contract Year immediately preceding the Contract Year in respect of which the PBI Levels and PBI Fee will apply, the Authority shall (acting reasonably) finally determine any such aspect that has not been so agreed, and such determination shall be binding upon the Parties.

2.4 Following agreement or determination of the matters set out in Paragraph 2.3 (*Establishing PBI Levels*) of Part 4A (*Calculation of PBI Fee*) above, the Parties shall, in accordance with the provisions of Part 5 (*Performance Agreement Form*), establish a PAF in respect of each of the PBI Levels for the forthcoming Contract Year.


3 PBI FEE

3.1 The Contractor shall be entitled to earn PBI Fee in respect of the Contract Years ending on or before the Client Specification Completion State being reached, subject to Paragraph 3.2 below.

3.2 If Achievement of the Client Specification Completion State is delayed beyond the scheduled date for such Achievement (subject to any adjustment to that date in accordance with Schedule 2 (*Change Control Procedure*), the Contractor shall not (subject to Paragraph 3.3 below) be entitled to PBI Fee beyond such date.

3.3 If Achievement of the Client Specification Completion State is delayed beyond the agreed date for Achievement of the Client Specification Completion State (subject to any adjustment to that date in accordance with Schedule 2 (*Change Control Procedure*)) the Authority shall, following discussions with the Contractor, have the right to re-model any or all of the outstanding balance of the maximum PBI Fee set out in Paragraph 3.4 below for all remaining Contract Years, proportionately to the extent of the delay beyond such scheduled date (and without any increase to the "Total Maximum PBI Fee" set out in Paragraph 3.4 below) to cover the period of any such delay.

3.4 Subject to Paragraph 3.5 (*Calculation of PBI Fee*) below, the maximum PBI Fee which can be earned by the Contractor in each Contract Year shall (subject to Paragraph 3.2 (*Maximum PBI Fee*) above) be as set out in the table below.

Contract Year	Maximum PBI Fee (£)
Contract Year 1	
Contract Year 2	
Contract Year 3	

Contract Year	Maximum PBI Fee (£)
Contract Year 4	s.43(2)
Contract Year 5	
Contract Year 6	
Contract Year 7	
Contract Year 8	
Contract Year 9	
Contract Year 10	
Contract Year 11	
Contract Year 12	
Contract Year 13	
Contract Year 14	
Total Maximum PBI Fee	

3.5 The maximum PBI Fee which can be earned by the Contractor in each Contract Year set out in the table above shall not include any PBI Fee associated with electricity generation from the Authority's operational power stations or any other PBI Fee which is agreed by the Parties to be self-funding.

4 **CHANGES TO APPORTIONMENT OF PBI FEE**

In the event that the Authority or the Contractor wishes to make any change to the apportionment of PBI Fee across PBI Levels, then such change shall be made in accordance with Schedule 2 (*Change Control Procedure*).

5 **PBI FEE CALCULATION**

5.1 Upon achieving a PBI Level the Contractor shall then become entitled to the amount of PBI Fee which the Parties have agreed (or it is otherwise determined) is to be apportioned to such PBI Level in accordance with Paragraph 2.3 (*Establishing PBI Levels*) of Part 4A (*Calculation of PBI Fee*).

6 **PBI FEE RECORDS MANAGEMENT**

PBI Fee payment documentation, together with all of the associated supporting documentation, shall be maintained by the Contractor.

7 **ADJUSTMENT OF PBI FEE ON TERMINATION**

Where this Agreement is terminated pursuant to Clause 33.1 (*Termination by the Authority*), Clause 33.2 (*Termination by the Contractor*) or on termination of the Parent Body Agreement in accordance with the terms of that agreement, subject to Paragraph 4 (*Retention of Fee Pending Transition Out*) of Part 4C (*Payment of PBI Fee and Target Fee*) below:

- (a) the maximum PBI Fee which can be earned by the Contractor (as set out in the table at Paragraph 3.4 above); and
- (b) the amount of PBI Fee to which the Contractor is entitled in accordance with Paragraph 5 above,

in any incomplete Contract Years shall, at the Authority's reasonable exercise of its discretion, be reduced, adjusted, or re-modelled proportionately to the extent that the relevant Contract Year has not been completed.

PART 4B: CALCULATION OF TARGET FEE

1 CALCULATION OF TARGET FEE AND SHARELINE

1.1 This Part 4B (*Calculation of Target Fee*) sets out the basis on which the amount of Phase 1 Target Fee and Phase 2 Target Fee payable and the attendant Phase 1 Shareline or Phase 2 Shareline (as applicable) shall be calculated. It is divided into four sections as follows:

- (a) Section A (*Phase 1 Target Fee Calculation*) sets out the basis on which the amount of Phase 1 Target Fee payable and attendant Phase 1 Shareline shall be calculated;
- (b) Section B (*Phase 2 Target Fee Calculation*) sets out the basis on which the amount of Phase 2 Target Fee payable and attendant Phase 2 Shareline shall be calculated;
- (c) Section C (*Target Fee Payment Milestone Details*) sets out the Target Fee Payment Milestones for both Phase 1 and Phase 2, and their Milestone Delivery Dates and Completion Criteria; and
- (d) Section D (*Calculation of the Retention Balance*) sets out how the balance of any Target Fee retention withheld by the Authority and released to the Contractor is calculated at the end of each Contract Quarter throughout the Term.

SECTION A: PHASE 1 TARGET FEE CALCULATION

Calculation of quarterly Target Fee payment for Phase 1

1.2 Subject to Paragraph 1.7 (*Early Achievement of Target Fee Payment Milestones*), Paragraph 1.11 (*Retention of Target Fee Pending Achievement of Site Completion Dates*) and Paragraph 4 (*Retention of Fee Pending Transition Out*) of Part 4C (*Payment of PBI Fee and Target Fee*), below, at the end of each Contract Quarter prior to Achievement of Phase 1 Completion, and at the end of the Contract Quarter immediately following Achievement of Phase 1 Completion, the Contractor shall be entitled to be paid (or, where a negative value, shall owe the Authority as a positive sum) the amount resulting from the following calculation:

$$\Sigma ATF + RB + SL - PSL$$

where:

ΣATF means the sum of the Allocated Target Fees applicable to the Target Fee Payment Milestone(s) for Phase 1 achieved during that Contract Quarter;

RB means the Retention Balance applicable at the end of the Contract Quarter (as calculated pursuant to Section D (*Calculation of the Retention Balance*) below);

SL means the Phase 1 Shareline applicable at the end of the Contract Quarter (as calculated pursuant to Paragraphs 1.6 to 1.10 (*Calculation of Phase 1 Shareline*) below); and

PSL means the Phase 1 Shareline applicable at the end of the previous Contract Quarter.

1.3 [Not used]

1.4 [Not used]

1.5 [Not used]

Calculation of Phase 1 Shareline

1.6 In respect of each Contract Quarter prior to Achievement of Phase 1 Completion, a "**Relevant Variance**" shall be calculated at the end of such Contract Quarter as follows:

- (a) subject to any further adjustments in accordance with Paragraph 1.11 (*Phase 1 True Cost Variance and Projected Cost Variance adjustments*) below, the "**Phase 1 Interim True Cost Variance**" as at the end of the Contract Quarter shall be calculated as follows:

$$ITCV = TCWP - ACWP$$

where:

ITCV means the Phase 1 Interim True Cost Variance;

TCWP means the Phase 1 Target Cost of Work Performed; and

ACWP means the Phase 1 Actual Cost of Work Performed;

- (b) the "**Phase 1 Interim Projected Cost Variance**" shall be calculated as follows:

$$IPCV = (TC - EAC) \times \%Complete$$

where:

IPCV means the Phase 1 Interim Projected Cost Variance;

TC means the Phase 1 Target Cost;

EAC means the Estimate at Phase 1 Completion calculated as at the end of the Contract Quarter; and

%Complete means the Phase 1 %Complete as at the end of the Contract Quarter;

- (c) the Relevant Variance shall be either the Phase 1 Interim True Cost Variance or the Phase 1 Interim Projected Cost Variance, being whichever of those two has a lower numerical value (by way of example, 1 being "lower" than 2, -1 being "lower" than 1 and -2 being "lower" than -1).

1.7 In respect of the Contract Quarter immediately following Achievement of Phase 1 Completion, subject to Paragraph 1.11 (*Phase 1 True Cost Variance and Projected Cost Variance adjustments*) below, the Relevant Variance shall be the Phase 1 Final True Cost Variance.

1.8 At the end of each Contract Quarter prior to Achievement of Phase 1 Completion, and at the end of the Contract Quarter immediately following Achievement of Phase 1 Completion, the Phase 1 Shareline shall be calculated as follows:

- (a) if the Relevant Variance is a negative number, the Phase 1 Shareline shall equal 25% of the Relevant Variance (and for the avoidance of doubt in such case the Phase 1 Shareline shall be a negative number);
- (b) if the Relevant Variance is zero (0), the Phase 1 Shareline shall be zero (0); or
- (c) if the Relevant Variance is a positive number and the Percentage Underspend is 15 or less, the Phase 1 Shareline shall equal 50% of the Relevant Variance; or
- (d) if the Relevant Variance is a positive number and the Percentage Underspend is greater than 15, the Phase 1 Shareline shall be calculated as follows:

$$Shareline = 0.5 \left(\frac{15TC}{100} \right) + 0.25 \left(\frac{(PU - 15)TC}{100} \right)$$

where:

PU means the Percentage Underspend; and

TC means the Phase 1 Target Cost of Work Performed (where the Phase 1 Shareline is being calculated in respect of a Contract Quarter prior to Achievement of Phase 1 Completion or pursuant to Paragraph 1.17 (*Payment of Phase 1 Target Fee on Termination*) below) or the Phase 1 Target Cost

(where the Phase 1 Shareline is being calculated in respect of the Contract Quarter immediately following Achievement of Phase 1 Completion);

- 1.9 For the purposes of Paragraph 1.8 above, the "**Percentage Underspend**" shall be calculated as follows:

$$PU = 100 \left(\frac{RV}{TC} \right)$$

where:

PU means the Percentage Underspend;

RV means the applicable Relevant Variance; and

TC means the Phase 1 Target Cost of Work Performed (where the Phase 1 Shareline is being calculated in respect of a Contract Quarter prior to Achievement of Phase 1 Completion or pursuant to Paragraph 1.17 (*Payment of Phase 1 Target Fee on Termination*) below) or the Phase 1 Target Cost (where the Phase 1 Shareline is being calculated in respect of the Contract Quarter immediately following Achievement of Phase 1 Completion).

- 1.10 The amount of any negative Phase 1 Shareline calculated in accordance with Paragraph 1.8 above shall be capped such that the cumulative amount of Allocated Target Fee in respect of all Target Fee Payment Milestones for Phase 1 and Phase 1 Completion Achieved from the Commencement Date up to the time that the Relevant Variance is calculated (less any amounts of Allocated Target Fee withheld (and not yet released) pursuant to Paragraph 1.11 (*Retention of Target Fee pending Achievement of Site Completion Dates*) of Part 4C (*Payment of PBI Fee and Target Fee*) of this Schedule 6 (*Finance*)), as adjusted by Phase 1 Shareline, is never less than zero (0).

Phase 1 True Cost Variance and Projected Cost Variance Adjustments

- 1.11 The Phase 1 Interim True Cost Variance and Phase 1 Final True Cost Variance shall, whenever calculated, be adjusted as follows:
- (a) by adding the amount of any Insurance Proceeds received by the Authority and/or the Contractor on account of any Costs included within the Phase 1 Actual Cost of Work Performed (but only to the extent that such Insurance Proceeds had not been taken into account in the Phase 1 Target Cost of Work Performed or Phase 1 Target Cost (as applicable));
 - (b) by adding the amount of any Historical Costs (and any Costs of defence of Legal Proceedings which are Allowable in accordance with Paragraph 4.1(s))

(*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) above) to the extent that such Costs:

- (i) were not included in the Phase 1 Target Cost of Work Performed or Phase 1 Target Cost (as applicable); and
 - (ii) were included in the Phase 1 Actual Cost of Work Performed); and
- (c) by deducting the amount of any liability which the Authority incurs to a Third Party as a consequence of a breach of this Agreement by the Contractor but only to the extent that (and without double recovery):
- (i) the amount deducted is limited to that for which the Authority would have been liable had it used all reasonable efforts to mitigate its liability;
 - (ii) any part of the liability recovered through Insurance Proceeds or that would have been recovered but for any vitiation of insurance by the Authority will not be deducted; and
 - (iii) such liability incurred by the Authority to a Third Party has not been reimbursed by the Contractor pursuant to the indemnity at Clause 19.2 (*Contractor's Indemnities*) of this Agreement.

1.12 If any part of any liability which the Authority incurs to a Third Party as a consequence of a breach of this Agreement by the Contractor would have been a Disallowable Cost had it been incurred by the Contractor and has been paid or reimbursed by the Authority to a Third Party, it will not be taken into account for the purposes of Paragraph 1.11(c) (*Phase 1 True Cost Variance Adjustments*) above, but the Authority will be entitled to set off the amount in question against any sums due to the Contractor under this Agreement.

1.13 When applying Paragraph 1.11(c) (*Phase 1 True Cost Variance and Projected Cost Variance Adjustments*), no account shall be taken (for the purposes of such application) of any Insurance Proceeds which have not actually been received by the Authority by the date on which it is necessary to determine the application of the relevant Paragraphs (the "**Determination Date**"). If any Insurance Proceeds of the type referred to in those Paragraphs are received by the Authority after the Determination Date, then the Parties shall make such payments between themselves as may be necessary to put them in the position that they would have occupied had the Insurance Proceeds been received prior to the Determination Date.

Calculation of the Estimate at Phase 1 Completion

1.14 For the purposes of calculating the Phase 1 Shareline pursuant to Paragraphs 1.6 to 1.10 (*Calculation of Phase 1 Shareline*) above, the Estimate at Phase 1 Completion calculated by the Contractor shall:

- (a) be calculated in accordance with Good Industry Practice;
- (b) be calculated in accordance with PCP-09 (*Cost Estimating*) as supplemented by the PCP-M Contractor Annexe, provided that the Estimate at Phase 1 Completion shall be calculated on a P50 estimating basis and shall include as a separate line item the Contractor's forecast of annual inflation for all remaining Contract Years up to and including the Contract Year in which the Phase 1 Scheduled Completion Date falls, such forecast to be not less than 2% per annum;
- (c) be in a format and a level of detail that is sufficient to demonstrate to the Authority's reasonable satisfaction that the Estimate at Phase 1 Completion is accurately underpinned;
- (d) take into account and include clear values for the Phase 1 Actual Cost of Work Performed, the Phase 1 %Complete, any accruals, and the Budgeted Cost of Work Scheduled for activities not yet undertaken; and
- (e) be consistent with activities, schedule and estimated costs pertaining to Phase 1 shown in the LTP Performance Plan.

1.15 The Estimate at Phase 1 Completion shall, whenever calculated, be adjusted as follows:

- (a) by deducting the amount of any Insurance Proceeds received by the Authority and/or the Contractor on account of any Costs included within the Estimate at Phase 1 Completion (but only to the extent that such Insurance Proceeds had not been taken into account in the Phase 1 Target Cost); and
- (b) by deducting the amount of any Historical Costs (and any Costs of defence of Legal Proceedings which are Allowable in accordance with Paragraph 4.1(s) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) above) to the extent that such Costs:
 - (i) were not included in the Phase 1 Target Cost; and
 - (ii) were included in the Estimate at Phase 1 Completion.

1.16 The Estimate at Phase 1 Completion shall be considered to be a report required by Schedule 6 (*Finance*) for the purposes of applying the provisions of Clause 14.1 (*Reporting and Reviewing*)).

Payment of Phase 1 Target Fee on termination

1.17 Where this Agreement is terminated prior to the Achievement of Phase 1 Completion pursuant to Clause 33.1 (*Termination by the Authority*), Clause 33.2 (*Termination by the Contractor*) or on termination of the Parent Body Agreement in accordance with the terms of that agreement, subject to Paragraph 4 (*Retention of Fee Pending Transition Out*) of Part 4C (*Payment of PBI Fee and Target Fee*), below, and provided that all amounts that are due and payable to the Authority by the Parent Body Organisation or the Contractor under or in connection with this Agreement or the Parent Body Agreement have been paid, the Contractor shall be entitled to be paid (or, where a negative value, shall owe the Authority as a positive sum) the amount resulting from the calculation set out in Paragraph 1.2 (*Calculation of quarterly Target Fee payment for Phase 1*) provided that for the purposes of such calculation:

- (a) " Σ ATF" means the sum of the Allocated Target Fees applicable to the Target Fee Payment Milestone(s) for Phase 1 Achieved between the end of the preceding Contract Quarter and the date of termination;
- (b) for the purposes of calculating the Retention Balance, the Additional Quarterly Retention shall be zero (0) and the Site Completion Release shall be:
 - (i) where the Authority has notified the Contractor that this Agreement will terminate pursuant to Clause 33.1.4 (*Termination by the Authority*) or has notified the Parent Body Organisation that the Parent Body Agreement will terminate pursuant to Clause 19.8 (*Termination for Convenience*) of the Parent Body Agreement, the sum of:
 - (A) all amounts of Allocated Target Fee withheld pursuant to Paragraph 1.11 (*Retention of Target Fee pending Achievement of Site Completion Dates*) of Part 4C (*Payment of PBI Fee and Target Fee*) of this Schedule 6 (*Finance*) which, in accordance with the columns headed "Site" of the tables at Appendix K (*Target Fee Payment Milestones*) of this Schedule 6 (*Finance*), pertain to a Site for which the Site Completion (or Site Substantial Completion Date) was achieved between the end of the preceding Contract Quarter and the date of termination); and
 - (B) the Additional Site Releases calculated in accordance with Paragraph 4 (*Release of retention for incomplete*

Sites) of Part 4D (*Arrangements on Termination for Convenience*) of this Schedule 6 (*Finance*); or

- (ii) in all other cases, all remaining amounts of Allocated Target Fee withheld pursuant to Paragraph 1.11 (*Retention of Target Fee pending Achievement of Site Completion Dates*) of Part 4C (*Payment of PBI Fee and Target Fee*) of this Schedule 6 (*Finance*);
- (c) for the purposes of calculating the Phase 1 Shareline, the Relevant Variance (including the Phase 1 Interim True Cost Variance, the Estimate at Phase 1 Completion and the Phase 1 %Complete) shall be calculated as at the date of termination; and
- (d) Paragraph 1.10 (*Calculation of Phase 1 Shareline*) above shall not apply and the amount of any negative Phase 1 Shareline calculated in accordance with this Paragraph 1.17 (*Payment of Phase 1 Target Fee on termination*) above shall be capped at the cumulative amount of:
 - (i) Allocated Target Fee in respect of all Target Fee Payment Milestones for Phase 1 and Phase 1 Completion Achieved from the Commencement Date up to the time that the Relevant Variance is calculated; and
 - (ii) the Loss of Target Fee Amount (if any) payable in accordance with Clause 19.13 (*Payments on Termination*) and Schedule 2 (*Payments on Termination*) of the Parent Body Agreement, to the extent relating to Target Fee Payment Milestones for Phase 1.

SECTION B: PHASE 2 TARGET FEE CALCULATION

Calculation of quarterly Target Fee payment for Phase 2

- 1.18 Subject to Paragraph 1.7 (*Early Achievement of Target Fee Payment Milestones*), Paragraph 1.11 (*Retention of Target Fee Pending Achievement of Site Completion Dates*) and Paragraph 4 (*Retention of Fee Pending Transition Out*) of Part 4C (*Payment of PBI Fee and Target Fee*), below, at the end of each Contract Quarter prior to Achievement of Phase 2 Completion, and at the end of the Contract Quarter falling on Achievement of Phase 2 Completion, the Contractor shall be entitled to be paid (or, where a negative value, shall owe the Authority as a positive sum) the amount resulting from the following calculation:

$$\Sigma ATF + RB + SL - PSL$$

where:

ΣATF means the sum of the Allocated Target Fees applicable to the Target Fee Payment Milestone(s) for Phase 2 achieved during that Contract Quarter;

RB means:

- (a) for any Contract Quarter in which the Contractor is entitled to be paid (or is required to pay) an amount calculated in accordance with Paragraph 1.2 (*Calculation of quarterly Target Fee payment for Phase 1*) above, zero (0); or
- (b) for any other Contract Quarter, the Retention Balance applicable at the end of the Contract Quarter (as calculated pursuant to Section D (*Calculation of the Retention Balance*) below);

SL means the Phase 2 Shareline applicable at the end of the Contract Quarter (as calculated pursuant to Paragraphs 1.22 to 1.25 (*Calculation of Phase 2 Shareline*) below); and

PSL means the Phase 2 Shareline applicable at the end of the previous Contract Quarter.

1.19 [Not used]

1.20 [Not used]

1.21 [Not used]

Calculation of Phase 2 Shareline

1.22 In respect of each Contract Quarter prior to Achievement of Phase 2 Completion, a "**Relevant Variance**" shall be calculated at the end of such Contract Quarter as follows:

- (a) subject to any further adjustments in accordance with Paragraph 1.26 (*Phase 2 True Cost Variance and Projected Cost Variance adjustments*) below, the "**Phase 2 Interim True Cost Variance**" as at the end of the Contract Quarter shall be calculated as follows:

$$ITCV = TCWP - ACWP$$

where:

ITCV means the Phase 2 Interim True Cost Variance;

TCWP means the Phase 2 Target Cost of Work Performed; and

ACWP means the Phase 2 Actual Cost of Work Performed;

- (b) the "**Phase 2 Interim Projected Cost Variance**" shall be calculated as follows:

$$IPCV = (TC - EAC) \times \%Complete$$

where:

IPCV means the Phase 2 Interim Projected Cost Variance;

TC means the Phase 2 Target Cost;

EAC means the Estimate at Phase 2 Completion calculated as at the end of the Contract Quarter; and

%Complete means the Phase 2 %Complete as at the end of the Contract Quarter;

- (c) the Relevant Variance shall be either the Phase 2 Interim True Cost Variance or the Phase 2 Interim Projected Cost Variance, being whichever of those two has a lower numerical value (by way of example, 1 being "lower" than 2, -1 being "lower" than 1 and -2 being "lower" than -1).

In respect of the Contract Quarter immediately following Achievement of Phase 2 Completion, subject to Paragraph 1.26 (*Phase 2 True Cost Variance and Projected Cost Variance adjustments*) of Part 4B (*Calculation of Target Fee*) of Schedule 6 (*Finance*) below, the Relevant Variance shall be the Phase 2 Final True Cost Variance.

1.23 At the end of each Contract Quarter prior to Achievement of Phase 2 Completion, and at the end of the Contract Quarter falling on Achievement of Phase 2 Completion, the Phase 2 Shareline shall be calculated as follows:

- (a) if the Relevant Variance is a negative number, the Phase 2 Shareline shall equal twenty five per cent (25%) of the Relevant Variance (and for the avoidance of doubt in such case the Phase 2 Shareline shall be a negative number);
- (b) if the Relevant Variance is zero (0), the Phase 2 Shareline shall be zero (0); or
- (c) if the Relevant Variance is a positive number and the Percentage Underspend is 15 or less, the Phase 2 Shareline shall equal fifty per cent (50%) of the Relevant Variance; or
- (d) if the Relevant Variance is a positive number and the Percentage Underspend is greater than 15, the Phase 2 Shareline shall be calculated as follows:

$$\text{Shareline} = 0.5 \left(\frac{15TC}{100} \right) + 0.25 \left(\frac{(PU - 15)TC}{100} \right)$$

where:

PU means the Percentage Underspend; and

TC means the Phase 2 Target Cost of Work Performed (where the Phase 2 Shareline is being calculated in respect of a Contract Quarter prior to Achievement of Phase 2 Completion or pursuant to Paragraph 1.17 (*Payment of Target Fee on Termination*) below) or the Phase 2 Target Cost (where the Phase 2 Shareline is being calculated in respect of the Contract Quarter falling on Achievement of Phase 2 Completion);

- 1.24 For the purposes of Paragraph 1.23 above, the "**Percentage Underspend**" shall be calculated as follows:

$$PU = 100 \left(\frac{RV}{TC} \right)$$

where:

PU means the Percentage Underspend;

RV means the applicable Relevant Variance; and

TC means the Phase 2 Target Cost of Work Performed (where the Phase 2 Shareline is being calculated in respect of a Contract Quarter prior to Achievement of Phase 2 Completion or pursuant to Paragraph 1.32 (*Payment of Phase 2 Target Fee on Termination*) below) or the Phase 2 Target Cost (where the Phase 2 Shareline is being calculated in respect of the Contract Quarter falling on Achievement of Phase 2 Completion).

- 1.25 The amount of any negative Phase 2 Shareline calculated in accordance with Paragraph 1.23 above shall be capped such that the cumulative amount of Allocated Target Fee in respect of all Target Fee Payment Milestones for Phase 2 and Phase 2 Completion Achieved from the Commencement Date up to the time that the Relevant Variance is calculated (less any amounts of Allocated Target Fee withheld (and not yet released) pursuant to Paragraph 1.11 (*Retention of Target Fee pending Achievement of Site Completion Dates*) of Part 4C (*Payment of PBI Fee and Target Fee*) of this Schedule 6 (*Finance*)), as adjusted by Phase 2 Shareline, is never less than zero (0).

Phase 2 True Cost Variance and Projected Cost Variance adjustments

- 1.26 The Phase 2 Interim True Cost Variance and Phase 2 Final True Cost Variance shall, whenever calculated, be adjusted as follows:
- (a) by adding the amount of any Insurance Proceeds received by the Authority and/or the Contractor on account of any Costs included within the Phase 2 Actual Cost of Work Performed (but only to the extent that such Insurance Proceeds had not been taken into account in the Phase 2 Target Cost of Work Performed or Phase 2 Target Cost (as applicable));
 - (b) by adding the amount of any Historical Costs (and any Costs of defence of Legal Proceedings which are Allowable in accordance with Paragraph 4.1(s) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) above) to the extent that such Costs:
 - (i) were not included in the Phase 2 Target Cost of Work Performed or Phase 2 Target Cost (as applicable); and
 - (ii) were included in the Phase 2 Actual Cost of Work Performed); and
 - (c) by deducting the amount of any liability which the Authority incurs to a Third Party as a consequence of a breach of this Agreement by the Contractor but only to the extent that (and without double recovery):
 - (i) the amount deducted is limited to that for which the Authority would have been liable had it used all reasonable efforts to mitigate its liability;
 - (ii) any part of the liability recovered through Insurance Proceeds or that would have been recovered but for any vitiation of insurance by the Authority will not be deducted; and
 - (iii) such liability incurred by the Authority to a Third Party has not been reimbursed by the Contractor pursuant to the indemnity at Clause 19.2 (*Contractor's Indemnities*) of this Agreement.
- 1.27 If any part of any liability which the Authority incurs to a Third Party as a consequence of a breach of this Agreement by the Contractor would have been a Disallowable Cost had it been incurred by the Contractor and has been paid or reimbursed by the Authority to a Third Party, it will not be taken into account for the purposes of Paragraph 1.26(c) (*Phase 2 True Cost Variance Adjustments*) above, but the Authority will be entitled to set off the amount in question against any sums due to the Contractor under this Agreement.
- 1.28 When applying Paragraph 1.26(c)(ii) (*Phase 2 True Cost Variance Adjustments*), no account shall be taken (for the purposes of such application) of any Insurance Proceeds

which have not actually been received by the Authority by the date on which it is necessary to determine the application of the relevant Paragraphs (the "**Determination Date**"). If any Insurance Proceeds of the type referred to in those Paragraphs are received by the Authority after the Determination Date, then the Parties shall make such payments between themselves as may be necessary to put them in the position that they would have occupied had the Insurance Proceeds been received prior to the Determination Date.

Calculation of the Estimate at Phase 2 Completion

1.29 For the purposes of calculating the Phase 2 Shareline pursuant to Paragraphs 1.22 to 1.25 (*Calculation of Phase 2 Shareline*) above, the Estimate at Phase 2 Completion calculated by the Contractor shall:

- (a) be calculated in accordance with Good Industry Practice;
- (b) be calculated in accordance with PCP-09 (*Cost Estimating*) as supplemented by the PCP-M Contractor Annexe, provided that the Estimate at Phase 2 Completion shall be calculated on a P50 estimating basis and shall include as a separate line item the Contractor's forecast of annual inflation for all remaining Contract Years up to and including the Contract Year in which the Phase 2 Scheduled Completion Date falls, such forecast to be not less than 2% per annum;
- (c) be in a format and a level of detail that is sufficient to demonstrate to the Authority's reasonable satisfaction that the Estimate at Phase 2 Completion is accurately underpinned;
- (d) take into account and include clear values for the Phase 2 Actual Cost of Work Performed, the Phase 2 %Complete, any accruals, and the Budgeted Cost of Work Scheduled for activities not yet undertaken; and
- (e) be consistent with activities, schedule and estimated costs pertaining to Phase 2 shown in the LTP Performance Plan.

1.30 The Estimate at Phase 2 Completion shall, whenever calculated, be adjusted as follows:

- (a) by deducting the amount of any Insurance Proceeds received by the Authority and/or the Contractor on account of any Costs included within the Estimate at Phase 2 Completion (but only to the extent that such Insurance Proceeds had not been taken into account in the Phase 2 Target Cost); and
- (b) by deducting the amount of any Historical Costs (and any Costs of defence of Legal Proceedings which are Allowable in accordance with Paragraph 4.1(s)

(*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) above) to the extent that such Costs:

- (i) were not included in the Phase 2 Target Cost; and
- (ii) were included in the Estimate at Phase 2 Completion.

1.31 The Estimate at Phase 2 Completion shall be considered to be a report required by Schedule 6 (*Finance*) for the purposes of applying the provisions of Clause 14.1 (*Reporting and Reviewing*)).

Payment of Phase 2 Target Fee on termination

1.32 Where this Agreement is terminated prior to Achievement of Phase 2 Completion pursuant to Clause 33.1 (*Termination by the Authority*), Clause 33.2 (*Termination by the Contractor*) or on termination of the Parent Body Agreement in accordance with the terms of that agreement, subject to Paragraph 4 (*Retention of Fee Pending Transition Out*) of Part 4C (*Payment of PBI Fee and Target Fee*), below, and provided that all amounts that are due and payable to the Authority by the Parent Body Organisation or the Contractor under or in connection with this Agreement or the Parent Body Agreement have been paid, the Contractor shall be entitled to be paid (or, where a negative value, shall owe the Authority as a positive sum) the amount resulting from the calculation set out in Paragraph 1.18 (*Calculation quarterly Target Fee payment for Phase 2*) provided that for the purposes of such calculation:

- (a) " Σ ATF" means the sum of the Allocated Target Fees applicable to the Target Fee Payment Milestone(s) for Phase 2 Achieved between the end of the preceding Contract Quarter and the date of termination;
- (b) for the purposes of calculating the Retention Balance (and only where no payment is being made pursuant to Paragraph 1.17 (*Payment of Phase 1 Target Fee on termination*)), the Additional Quarterly Retention shall be zero (0) and the Site Completion Release shall be:
 - (i) where the Authority has notified the Contractor that this Agreement will terminate pursuant to Clause 33.1.4 (*Termination by the Authority*) or has notified the Parent Body Organisation that the Parent Body Agreement will terminate pursuant to Clause 19.8 (*Termination for Convenience*) of the Parent Body Agreement, the sum of:
 - (A) all amounts of Allocated Target Fee withheld pursuant to Paragraph 1.11 (*Retention of Target Fee pending Achievement of Site Completion Dates*) of Part

4C (*Payment of PBI Fee and Target Fee*) of this Schedule 6 (*Finance*) which, in accordance with the columns headed "Site" of the tables at Appendix K (*Target Fee Payment Milestones*) of this Schedule 6 (*Finance*), pertain to a Site for which the Site Completion Date (or Site Substantial Completion Date) was achieved between the end of the preceding Contract Quarter and the date of termination); and

(B) the Additional Site Releases calculated in accordance with Paragraph 4 (*Release of retention for incomplete Sites*) of Part 4D (*Arrangements on Termination for Convenience*) of this Schedule 6 (*Finance*); or

(ii) in all other cases, all remaining amounts of Allocated Target Fee withheld pursuant to Paragraph 1.11 (*Retention of Target Fee pending Achievement of Site Completion Dates*) of Part 4C (*Payment of PBI Fee and Target Fee*) of this Schedule 6 (*Finance*);

(c) for the purposes of calculating the Phase 2 Shareline, the Relevant Variance (including the Phase 2 Interim True Cost Variance, the Estimate at Phase 2 Completion and the Phase 2 %Complete) shall be calculated as at the date of termination; and

(d) Paragraph 1.25 (*Calculation of Phase 2 Shareline*) above shall not apply and the amount of any negative Phase 2 Shareline calculated in accordance with this Paragraph 1.32 (*Payment of Phase 2 Target Fee on termination*) above shall be capped at the cumulative amount of:

(i) Allocated Target Fee in respect of all Target Fee Payment Milestones for Phase 2 and Phase 2 Completion Achieved from the Commencement Date up to the time that the Relevant Variance is calculated; and

(ii) the Loss of Target Fee Amount (if any) payable in accordance with Clause 19.13 (*Payments on Termination*) and Schedule 2 (*Payments on Termination*) of the Parent Body Agreement, to the extent relating to Target Fee Payment Milestones for Phase 2.

SECTION C: TARGET FEE PAYMENT MILESTONE DETAILS

2 TARGET FEE PAYMENT MILESTONES

Target Fee Payment Milestones for Phase 1

- 2.1 The Target Fee Payment Milestones for Phase 1, their Milestone Delivery Dates, their completion criteria, and the associated Phase 1 Target Fee payable (subject to adjustment in accordance with the provisions of this Part 4B (*Calculation of Target Fee*)), together with the Phase 1 Target Fee payable (also subject to adjustment in accordance with the provisions of this Part 4B (*Calculation of Target Fee*)) in respect of Achievement of Phase 1 Completion, shall be as set out in the table headed "Phase 1" in Appendix K (*Target Fee Payment Milestones*) to this Schedule 6 (*Finance*).

Target Fee Payment Milestones for Phase 2

- 2.2 The Target Fee Payment Milestones for Phase 2, their Milestone Delivery Dates, their completion criteria, and the associated Phase 2 Target Fee payable (subject to adjustment in accordance with the provisions of this Part 4B (*Calculation of Target Fee*) and Paragraph 3 (*Adjustment of the Phase 2 Target Fee*) of Part 8 (*Indexation*), together with the Phase 2 Target Fee payable (also subject to adjustment in accordance with the provisions of this Part 4B (*Calculation of Target Fee*) and Paragraph 3 (*Adjustment of the Phase 2 Target Fee*) of Part 8 (*Indexation*)) in respect of Achievement of Phase 2 Completion, shall be as set out in the table headed "Phase 2" in Appendix K (*Target Fee Payment Milestones*) to this Schedule 6 (*Finance*).

Authority Milestones and non-Authority Milestones

- 2.3 Of the Target Fee Payment Milestones set out in the tables at Appendix K (*Target Fee Payment Milestones*) to this Schedule 6 (*Finance*):
- (a) the Target Fee Payment Milestones in bold text and with a grey background are "Authority Milestones"; and
 - (b) the Target Fee Payment Milestones in non-bold text and with a white background are not "Authority Milestones".

Milestone Delivery Dates

- 2.4 The Milestone Delivery Dates specified in the tables at Appendix K (*Target Fee Payment Milestones*) to this Schedule 6 (*Finance*) are the dates on which the Target Fee Payment Milestones are scheduled to be Achieved as at the Commencement Date. Failure to Achieve a Target Fee Payment Milestone by the relevant Milestone Delivery Date shall not of itself constitute a Contractor Default, but:

- (a) the Contractor shall notify the Authority in advance if it proposes to make any Proposed Change to the projected date for Achievement of an Authority Milestone in the LTP Performance Plan; and
- (b) a delay in the Achievement of an Authority Milestone may constitute failure to achieve a Minimum Performance Standard in accordance with Schedule 15 (*Minimum Performance Standards*).

Completion criteria

- 2.5 Subject to Paragraph 2.6 (*Completion criteria*) below, the completion criteria and evidence of completion for each Target Fee Payment Milestone shall be the completion criteria and evidence of completion specified in the column headed "Completion Criteria / Evidence of Completion" in the relevant table at Appendix K (*Target Fee Payment Milestones*), as further developed and underpinned by the relevant Performance Agreement Form agreed pursuant to Section B (*Performance Agreement Forms for Target Fee Payment Milestones*) of Part 5 (*Performance Agreement Form*) of this Schedule 6 (*Finance*).
- 2.6 The purpose of the Performance Agreement Forms agreed pursuant to Section B (*Performance Agreement Forms for Target Fee Payment Milestones*) of Part 5 (*Performance Agreement Form*) of this Schedule 6 (*Finance*) shall be to develop and underpin the completion criteria and evidence of completion specified in the column headed "Completion Criteria / Evidence of Completion" in the relevant table at Appendix K (*Target Fee Payment Milestones*) Schedule 6 (*Finance*) to satisfy the objective that Achievement of the Target Fee Payment Milestones demonstrates progress towards delivery of the Client Specification. Such forms shall be used to clarify, define and confirm specific completion criteria based on the generic completion criteria in Appendix K (*Target Fee Payment Milestones*).

SECTION D: CALCULATION OF THE RETENTION BALANCE

- 2.7 At the end of each Contract Quarter, the Retention Balance shall be calculated as follows:

$$RB = SCR - AQR$$

where:

RB means the Retention Balance;

SCR means the Site Completion Release; and

AQR means the Additional Quarterly Retention.

- 2.8 For the purposes of Paragraph 2.7 (*Calculation of the Retention Balance*) above, subject to Paragraphs 1.17 (*Payment of Phase 1 Target Fee on termination*) and 1.32 (*Payment of Phase 2 Target Fee on termination*) of Part 4B (*Calculation of Target Fee*) of this Schedule 6 (*Finance*), the "**Site Completion Release**", means all amounts of Allocated Target Fee withheld pursuant to Paragraph 1.11 (*Retention of Target Fee pending Achievement of Site Completion Dates*) of Part 4C (*Payment of PBI Fee and Target Fee*) of this Schedule 6 (*Finance*) which, in accordance with the columns headed "Site" of the tables at Appendix K (*Target Fee Payment Milestones*) to this Schedule 6 (*Finance*), pertain to a Site for which the Site Completion Date (or Site Substantial Completion Date) was achieved during the relevant Contract Quarter).
- 2.9 For the purposes of Paragraph 2.7 (*Calculation of the Retention Balance*) above, subject to Paragraphs 1.17 (*Payment of Phase 1 Target Fee on termination*) and 1.32 (*Payment of Phase 2 Target Fee on termination*) of Part 4B (*Calculation of Target Fee*) of this Schedule 6 (*Finance*), the "**Additional Quarterly Retention**" means any amount of Target Fee applicable to Target Fee Payment Milestones Achieved during the relevant Contract Quarter which is withheld by the Authority pursuant to Paragraph 1.11 (*Retention of Target Fee pending Achievement of Site Completion Dates*) of Part 4C (*Payment of PBI Fee and Target Fee*) of this Schedule 6 (*Finance*) (and which is in addition to any amount withheld pursuant to that Paragraph in respect of Target Fee Payment Milestones Achieved during any previous Contract Quarters).

PART 4C: PAYMENT OF PBI FEE AND TARGET FEE

1 PURPOSE

This Part 4C (*Payment of PBI Fee and Target Fee*) sets out how the PBI Fee and Target Fee shall be invoiced by and paid to the Contractor. It is divided into three sections as follows:

- (a) Section A (*Payment of PBI Fee*) sets out payment terms applicable to the PBI Fee;
- (b) Section B (*Payment of Target Fee*) sets out payment terms applicable to the Target Fee; and
- (c) Section C (*General Fee Payment Terms*) sets out payment terms applicable to both the PBI Fee and Target Fee.

SECTION A: PAYMENT OF PBI FEE

Invoicing and Payment of PBI Fee

- 1.1 In each Contract Year, the Contractor shall submit PBI Fee invoices for PBI Fee that it is entitled to be paid in accordance with Part 4A (*Calculation of PBI Fee*) and the agreed Performance Agreement Forms for that Contract Year. Such invoices shall set out:
 - (a) a description of the PBI Level or Levels that have been achieved;
 - (b) such documentation as is required to evidence achievement of the relevant PBI Level(s) in accordance with the relevant Performance Agreement Form(s).
 - (c) previous payments submitted pursuant to this Paragraph 1.3 during the relevant Phase;
 - (d) value of payment including VAT; and
 - (e) a single-sheet form (the format of which to be agreed between the Parties) summarising the information provided under (a) to (d) above and approved by the Managing Director of the Magnox Contractor and/or the RSRL Contractor.
- 1.2 If the documentation submitted under Paragraph 1.1 (*Invoicing and Payment of PBI Fee*) above results in the Authority not approving the request, the Authority shall notify the Contractor in writing of its reasons within twenty (20) Working Days from the date of receipt of the request.
- 1.3 If the documentation submitted under Paragraph 1.1 (*Invoicing and Payment of PBI Fee*) above results in the Authority agreeing the calculation and the supporting documentation, the Authority shall notify the Contractor to this effect and the Contractor

shall submit a VAT invoice. The Authority shall, within thirty (30) Calendar Days of receipt of a correct VAT invoice relating to the relevant approved PBI Fee request, pay to the Contractor an amount equal to the approved PBI Fee.

Reclaiming PBI Fee

- 1.4 If the Authority pays the Contractor PBI Fee in respect of the satisfaction of a PBI Level and following such payment it is discovered that the PBI Level has not been satisfied, the Authority shall be entitled to repayment of the relevant PBI Fee.
- 1.5 At the same time as making any repayment under Paragraph 1.4 (*Reclaiming PBI Fee*) above, the Contractor shall be required to pay to the Authority interest on the amount repaid calculated from the date on which the relevant amount was paid to the Contractor to the date of repayment at the rate of three per cent (3%) above the Bank of England bank rate from time to time.
- 1.6 Subject to Clause 37.8 (*Entire Agreement*) of this Agreement, the Authority's rights under Paragraphs 1.4 and 1.5 (*Reclaiming PBI Fee*) above shall (notwithstanding termination of this Agreement) continue for a period of three (3) years from the end of the Contract Year in which the relevant PBI Level was agreed to apply, provided that nothing in this Agreement shall impose any time limit on the Authority's ability to reclaim amounts that were fraudulently claimed by the Contractor.

SECTION B: PAYMENT OF TARGET FEE

Estimate of Phase 1 Target Fee and/or Phase 2 Target Fee

- 1.1 For budgeting purposes for each Contract Year, the Authority and the Contractor shall, following the provision of the Target Fee profile by the Contractor to the Authority pursuant to Paragraph 9 (*PBI Fee and Target Fee Profile*) of Part 7 (*Financial Limits*) of this Schedule 6 (*Finance*), agree the estimated amount of Phase 1 Target Fee (including the estimate of Phase 1 Shareline) and/or Phase 2 Target Fee (including the estimate of Phase 2 Shareline) which the Contractor is likely to earn in respect of the relevant Contract Year.
- 1.2 Notwithstanding Paragraph 1.1 (*Estimate of Phase 1 Target Fee and/or Phase 2 Target Fee*) above, if the relevant estimate of Phase 1 Target Fee and/or Phase 2 Target Fee has not been determined by 24 March in the Contract Year immediately preceding the Contract Year in respect of which the Target Fee Payment Milestones will apply, the Authority shall be entitled, acting reasonably, to determine such matters as it considers appropriate.

Invoicing and Payment of Target Fee

- 1.3 At the end of each Contract Quarter in which Achievement of one or more Target Fee Payment Milestones takes place, or on the date on which Phase 1 Completion or Phase 2 Completion takes place, the Contractor shall submit a Target Fee invoice setting out:
- (a) a description of the Target Fee Payment Milestone(s) that have been Achieved;
 - (b) such documentation as is required to evidence Achievement of the relevant Target Fee Payment Milestone(s) in accordance with the completion criteria and evidence of completion specified for such Target Fee Payment Milestone in the relevant table at Appendix K (*Target Fee Payment Milestones*) to Schedule 6 (*Finance*), and the relevant Performance Agreement Form;
 - (c) in the case of Target Fee Payment Milestone(s) for Phase 1, details of the calculations set out at Paragraphs 1.2 (*Calculation of quarterly Target Fee payment for Phase 1*) to 1.10 (*Calculation of Phase 1 Shareline*) and, in the case of Target Fee Payment Milestone(s) for Phase 2, details of the calculations set out at Paragraphs 1.18 (*Calculation of quarterly Target Fee payment for Phase 2*) to 1.25 (*Calculation of Phase 2 Shareline*) of Part 4B (*Calculation of Target Fee*) of this Schedule 6 (*Finance*);
 - (d) such supporting information as the Authority reasonably requires to verify the Estimate at Phase 1 Completion and/or Estimate at Phase 2 Completion (as applicable), including:
 - (i) the methodology used to calculate the Estimate at Phase 1 Completion and/or Phase 2 Completion (as applicable) and the steps taken by the Contractor to ensure the accuracy of such calculation;
 - (ii) the extent to which Cost information for any Tasks that have already been carried out has been used or determined not to be appropriate (as the case may be); and
 - (iii) an identification and explanation of any material differences between the Estimate at Phase 1 Completion and the Phase 1 Target Cost, and/or the Estimate at Phase 2 Completion and the Phase 2 Target Cost (as applicable);
 - (e) previous payments submitted pursuant to this Paragraph 1.3 during the relevant Phase;
 - (f) value of payment including VAT; and

- (g) a single-sheet form (the format of which to be agreed between the Parties) summarising the information provided under (a) to (f) above and approved by the Managing Director of the Magnox Contractor and/or the RSRL Contractor,
- provided that where Paragraph 1.6 (*Calculation of Shareline if Target Fee Payment Milestones are not Achieved*) below applies, the invoice may be in the form of a credit.
- 1.4 If the documentation submitted under Paragraph 1.3 (*Invoicing and Payment of Target Fee*) above results in the Authority not approving the request, the Authority shall notify the Contractor in writing of its reasons within fifteen (15) Calendar Days from the date of receipt of the request.
- 1.5 If the documentation submitted under Paragraph 1.3 (*Invoicing and Payment of Target Fee*) above results in the Authority agreeing the calculation and the supporting documentation, the Authority shall notify the Contractor to this effect and the Contractor shall submit a VAT invoice. The Authority shall, within thirty (30) days of receipt of a correct VAT invoice relating to the relevant approved Fee request, pay to the Contractor an amount equal to the approved Target Fee.

Calculation of Shareline if Target Fee Payment Milestones are not Achieved

- 1.6 If, at the end of a Contract Quarter in which any Target Fee Payment Milestone(s), or Phase 1 Completion or Phase 2 Completion are due to be Achieved, and in the cases of Phase 1 Completion and Phase 2 Completion only, on the date falling at the end of each successive three-Month period thereafter, such Achievement has not taken place, then:
- (a) the calculations required by Paragraphs 1.2 (*Calculation of quarterly Target Fee payment for Phase 1*) to 1.10 (*Calculation of Phase 1 Shareline*) or Paragraphs 1.18 (*Calculation of quarterly Target Fee payment for Phase 2*) to 1.25 (*Calculation of Phase 2 Shareline*) of Part 4B (*Calculation of Target Fee*) above (as relevant) shall be undertaken, and, for the purposes of such calculations only:
- (i) the relevant Target Fee Payment Milestone(s) or the Phase 1 Completion or Phase 2 Completion (as the case may be) shall be deemed to have been Achieved on the date on which such Achievement was due; and
- (ii) the value of the relevant Allocated Target Fee for such Target Fee Payment Milestone(s) or the Phase 1 Completion or Phase 2 Completion (as the case may be) shall be deemed to be zero (0),

(and, for the avoidance of doubt, operation of this Paragraph 5.2 shall not constitute actual Achievement of such Target Fee Payment Milestone or Phase 1 Completion or Phase 2 Completion, or otherwise relieve the Contractor from any obligations in respect of it); and

- (b) if the calculations undertaken pursuant to Paragraphs 1.2 (*Calculation of quarterly Target Fee payment for Phase 1*) to 1.10 (*Calculation of Phase 1 Shareline*) or Paragraphs 1.18 (*Calculation of quarterly Target Fee payment for Phase 2*) to 1.25 (*Calculation of Phase 2 Shareline*) of Part 4B (*Calculation of Target Fee*) above show that the Contractor owes the Authority any sum of money, the Contractor shall submit the invoice as required by Paragraph 1.3 (*Target Fee – Invoicing Procedures*) above (in the form of a credit note), notwithstanding the fact that such Target Fee Payment Milestone(s) or Phase 1 Completion or Phase 2 Completion (as the case may be) have not been Achieved, provided that a further invoice shall be submitted pursuant to Paragraph 1.3 (*Target Fee – Invoicing Procedures*) at the end of the Contract Quarter in which actual Achievement of the Target Fee Payment Milestone in question or Phase 1 Completion or Phase 2 Completion takes place.

Early Achievement of Target Fee Payment Milestones

- 1.7 Where the Contractor has reason to believe that it will Achieve a Target Fee Payment Milestone earlier than the relevant Milestone Delivery Date, the Contractor shall notify the Authority of the same as soon as is reasonably practicable. If a Target Fee Payment Milestone is Achieved earlier than the relevant Milestone Delivery Date, the Authority may, but shall have no obligation to, pay the Allocated Target Fee in respect of such Target Fee Payment Milestone earlier than the date on which such Allocated Target Fee would be payable if the Target Fee Payment Milestone was Achieved on the relevant Milestone Delivery Date.

Late Achievement of Target Fee Payment Milestones

- 1.8 Subject to the provisions of Part 4B (*Calculation of Target Fee*) and this Part 4C (*Payment of PBI Fee and Target Fee*) of this Schedule 6 (*Finance*), the Contractor shall remain entitled to earn the Allocated Target Fee payable on Achievement of any Target Fee Payment Milestone (subject to this being before the termination of this Agreement or the Parent Body Agreement) notwithstanding that such Target Fee Payment Milestone is not Achieved by the Milestone Delivery Date or the scheduled date for Achievement specified in the LTP Performance Plan.
- 1.9 [Not used]
- 1.10 [Not used]

Retention of Target Fee pending Achievement of Site Completion Dates

- 1.11 Notwithstanding the foregoing provisions of this Part 4C (*Payment of PBI Fee and Target Fee*), the Authority shall withhold up to ten per cent (10%) of the Accumulated Site Target Fee payable in respect of each Site (except to the extent that such Accumulated Site Target Fee pertains to Target Fee Payment Milestones Achieved during the period between notification by the Authority to the Contractor that this Agreement will terminate pursuant to Clause 33.1.4 (*Termination by the Authority*) or to the Parent Body Organisation that the Parent Body Agreement will terminate pursuant to Clause 19.8 (*Termination for Convenience*) of the Parent Body Agreement) and the date of termination of this Agreement.
- 1.12 Subject to Paragraph 1.13 (*Retention of Target Fee pending Achievement of Site Completion Dates*) below, any withholding that shall be made by the Authority under Paragraph 1.11 (*Retention of Target Fee pending Achievement of Site Completion Dates*) above in respect of a Site shall continue until released in accordance with Paragraphs 2.7 to 2.9 (*Calculation of the Retention Balance*) of Part 4B (*Calculation of Target Fee*) of this Schedule 6 (*Finance*).
- 1.13 Where this Agreement is terminated pursuant to Clause 33.1 (*Termination by the Authority*), Clause 33.2 (*Termination by the Contractor*) or on termination of the Parent Body Agreement in accordance with the terms of that agreement, any withholding that shall be made by the Authority under Paragraph 1.11 (*Retention of Target Fee pending Achievement of Site Completion Dates*) above in respect of a Site shall continue until released in accordance with Paragraph 1.17 (*Payment of Phase 1 Target Fee on termination*) and/or Paragraph 1.32 (*Payment of Phase 2 Target Fee on termination*) of Part 4B (*Calculation of Target Fee*) of this Schedule 6 (*Finance*).

Reclaiming Target Fee

- 1.14 If the Authority pays the Contractor Target Fee adjusted by Shareline in respect of satisfaction of any Target Fee Payment Milestone, Phase 1 Completion or Phase 2 Completion and it transpires that:
- (a) the Contractor has not satisfied such Target Fee Payment Milestone, Phase 1 Completion or Phase 2 Completion; or
 - (b) the amount of Target Fee adjusted by Shareline paid to the Contractor was calculated incorrectly,

the Authority shall be entitled to repayment of the relevant amount of Target Fee as adjusted by Shareline which should not have been paid to the Contractor.

- 1.15 At the same time as making any repayment under Paragraph 1.14 (*Reclaiming Target Fee*) above, the Contractor shall be required to pay to the Authority interest on the amount repaid calculated from the date on which the relevant amount was paid to the Contractor to the date of repayment at a rate of three per cent (3%) above the Bank of England bank rate from time to time.
- 1.16 The Authority's rights under Paragraphs 1.14 and 1.15 (*Reclaiming Target Fee*) above shall (notwithstanding termination of this Agreement) continue for a period of three (3) years following the relevant payment of Target Fee, provided that nothing in this Agreement shall impose any time limit on the Authority's ability to reclaim amounts that were fraudulently claimed by the Contractor.

SECTION C: GENERAL FEE PAYMENT TERMS

2 FEE RECONCILIATION

- 2.1 Not more than sixty (60) Working Days after the end of each Contract Year and achievement of Phase 1 Completion and Phase 2 Completion, the Contractor shall submit to the Authority a fee report ("**Fee Reconciliation Report**") along with all relevant supporting evidence, in hard copy format (or electronic copy where relevant and available), which for the relevant Contract Year contains the following information, and any additional information as may be requested by the Authority from time to time:
- (a) PBI Fee earned;
 - (b) PBI Fee not earned, broken down as follows:
 - (i) PBI Fee not earned and no longer earnable in accordance with the provisions of any relevant PAF governing payment of PBI Fee; and
 - (ii) PBI Fee not earned but which it has previously been agreed can be carried over to the next Contract Year;
 - (c) Target Fee earned, broken down as follows:
 - (i) Target Fee Payment Milestones achieved in the relevant Contract Year; and
 - (ii) Target Fee Payment Milestones achieved prior to their respective dates for Achievement specified in Paragraph 2 (*Target Fee Payment Milestones*) of Part 4B (*Calculation of Target Fee*) above, and supporting evidence that such payment remains within the relevant funding limits as set out in Part 7 (*Financial Limits*) of this Schedule 6 (*Finance*); and

(d) Target Fee not earned but which can be carried over to subsequent Contract Years.

2.2 The Contractor shall provide the Authority with reasonable access to all information within the Contractor's possession or control and all reasonable assistance required by the Authority for the purposes of conducting a review of the Fee Reconciliation Report.

2.3 If the Authority does not agree with any aspect of the Fee Reconciliation Report it shall raise the same with the Contractor, and any resulting dispute shall be dealt with in accordance with the Dispute Resolution Procedure.

3 PROJECT FUNDING ON TERMINATION OF THE PARENT BODY AGREEMENT

3.1 To the extent that this Agreement is not terminated on the termination of the Parent Body Agreement, then a new Contract Year shall be deemed to commence on the date following the date of such termination.

3.2 For the purposes of Paragraph 3.1 (*Project Funding on Termination of the Parent Body Agreement*) above the Contractor shall propose an equitable apportionment of the Annual Site Funding Limit (for the purposes of determining the level of the funding for the two parts of the Contract Year in which the termination occurs) based on progress as against the costs, scope and schedule in the then current Contract Year of the LTP Performance Plan. The Contractor shall seek the consent of the Authority to such apportionment (such consent not to be unreasonably withheld or delayed). In the absence of agreement between the Contractor and the Authority the matter shall be determined in accordance with the provisions of Clause 36 (*Disputes*).

4 RETENTION OF FEE PENDING TRANSITION OUT

4.1 Notwithstanding the foregoing provisions of this Part 4C (*Payment of PBI Fee and Target Fee*), the Authority shall be entitled to withhold up to s.43(2) s.43(2) (Indexed) (excluding VAT) of the Fee payable to the Contractor in respect of each of the Contract Years which fall wholly or partly after the Authority notifies the Contractor that this Agreement is to be terminated and/or the Parent Body Agreement is to be terminated provided that the maximum aggregate amount that the Authority shall be entitled to withhold at any one time under this Paragraph 4.1 shall not exceed s.43(2) s.43(2) (Indexed) in aggregate (excluding VAT).

4.2 Any withholding that shall be made by the Authority under Paragraph 4.1 (*Retention of Fee Pending Transition Out*) above shall continue until such time as the Contractor and the PBO shall have complied to the reasonable satisfaction of the Authority with Clause 20 (*Transition Out*) of the Parent Body Agreement.

4.3 The provisions of Paragraphs 4.1 and 4.2 above shall not apply to the expiry of this Agreement on reaching the Client Specification Completion State.

4.4 In the event of termination pursuant to Clauses 33.1.4 (*Termination by the Authority*) or 33.2 (*Termination by the Contractor*), the Authority shall pay interest on any amounts withheld pursuant to Paragraphs 4.1 and 4.2 above calculated at the rate of three per cent (3%) above the Bank of England bank rate from time to time for the period of such withholding.

5 **VAT**

5.1 Any VAT which is payable on any PBI Fee or Target Fee shall not be required to be paid by the Authority on the date on which the relevant PBI Fee or Target Fee is otherwise payable and shall instead be paid by the Authority to the Contractor's Payments Account on the later of:

- (a) the Working Day before the day on which the Contractor is required to account to HM Revenue and Customs for the relevant VAT; and
- (b) the fifth (5th) Working Day after the date on which the Contractor informs the Authority of the date on which the Contractor is required to account to HM Revenue and Customs for the relevant VAT.

6 **ACCOUNT TO WHICH FEE PAID**

6.1 All payments of PBI Fee and Target Fee including any payments on account of PBI Fee and Target Fee (in each case as adjusted pursuant to this Part 4C (*Payment of PBI Fee and Target Fee*)) shall be paid to the Joint Fee Account.

PART 4D: ARRANGEMENTS ON TERMINATION FOR CONVENIENCE

Agreement of Termination State for each Site

1 Where the Authority has notified the Contractor that this Agreement will terminate pursuant to Clause 33.1.4 (*Termination by the Authority*) or has notified the Parent Body Organisation that the Parent Body Agreement will terminate pursuant to Clause 19.8 (*Termination for Convenience*) of the Parent Body Agreement, the Parties shall meet to agree (each acting reasonably) the following matters based on the date on which the Authority has notified the Contractor that this Agreement will terminate (the "**Planned Termination Date**"):

- (a) a specification of the physical state of each Site to be achieved by the Planned Termination Date (the "**Termination State**") (in the format and level of detail of the specifications of the Interim States and Interim End State in the Client Specification) which, subject to Paragraph 2 (*Proposed Changes to achieve Termination States*) below, is consistent with:
 - (i) the Target Fee Payment Milestones scheduled in the LTP Performance Plan (as at the date of the notice of termination) to be achieved on or before the Planned Termination Date;
 - (ii) the requirements of the Client Specification that the Contractor is required to comply with during the period between the date of the notice of termination and the Planned Termination Date; and
 - (iii) the Work Activities scheduled in the LTP Performance Plan (as at the date of the notice of termination) to be carried out or completed on or before the Planned Termination Date;
- (b) the criteria for achievement of the Termination State for each Site and the evidence required to demonstrate satisfaction of such criteria;
- (c) for each Site, the scope, nature and BCWS of the Work Activities scheduled in the LTP Performance Plan to be carried out or completed prior to the Planned Termination Date (and that have not yet been undertaken) that do not contribute directly to the Achievement of any Target Fee Payment Milestone(s) scheduled to be Achieved by the Planned Termination Date (the "**Residual Scope**"); and
- (d) for each Site, the Assured Retention, calculated in accordance with Paragraph 4 below.

Proposed Changes to achieve Termination States

2 In connection with the agreement of the matters described in Paragraph 1 (*Agreement of Termination State for each Site*), the Authority shall be entitled to propose Termination States that are not consistent with (a)(i), (ii) and (iii) of that Paragraph (including any Termination States that require or entail:

- (a) a change to the Required Delivery Date or completion criteria for any Target Fee Payment Milestones;
- (b) a change to the Client Specification;
- (c) the reprioritisation or rescheduling of Work Activities scheduled in the LTP Performance Plan to be carried out or completed on or before the Planned Termination Date;
- (d) the advancement of Work Activities in the LTP Performance Plan that were scheduled to be carried out or completed after the Planned Termination Date; and/or
- (e) the deferral of Work Activities in the LTP Performance Plan that were scheduled to be carried out or completed on or before the Planned Termination Date),

provided that any such proposal shall be an Authority Proposed Change and shall be dealt with in accordance with the Change Control Procedure (and, subject to the provisions of the Change Control Procedure, it shall be the objective of any such Proposed Change that the Contractor is in no better and no worse position in relation to the Contract Documents than it would have been if such Proposed Change were not implemented).

3 Unless otherwise agreed by the Parties pursuant to a Change initiated in accordance with Paragraph 2 (*Proposed Changes to achieve Termination States*) above, nothing in this Part D (*Payment of Fee on Termination*) shall relieve Contractor of any obligations under this Agreement.

Release of retention for incomplete Sites

4 For the purposes of Paragraph 1 above, the "**Assured Retention**" for each Site shall be the lesser of the amounts calculated in accordance with (a) and (b) below (provided that the Assured Retention shall never be less than zero (0)):

$$(a) \quad AR = SR \left(\frac{\sum ATF_{Accumulated}}{\sum ATF_{Site}} \right)$$

$$(b) \quad AR = SR - (4.22\% \times BCWSRS)$$

where:

AR means Assured Retention;

SR means the "**Site Retention**", which means the amount of Allocated Target Fee withheld pursuant to Paragraph 1.11 (*Retention of Target Fee pending Achievement of Site Completion Dates*) of Part 4C (*Payment of PBI Fee and Target Fee*) of this Schedule 6 (*Finance*)) pertaining to the relevant Site;

Σ *ATF**Accumulated* means Accumulated Site Target Fee for the relevant Site as at the date of the notice of termination;

Σ *ATF**Site* means, in respect of the relevant Site, the sum of all Allocated Target Fee amounts in respect of Target Fee Payment Milestones pertaining to that Site (as set out in the columns headed "Site" of the tables at Appendix K (*Target Fee Payment Milestones*)) to this Schedule 6 (*Finance*)); and

BCWSRS means the BCWS of the Residual Scope for the Site agreed pursuant to Paragraph 1(c) above.

- 5 If in respect of a Site the Contractor has not achieved the Termination State by the Planned Termination Date, the "**Additional Site Release**" in respect of that Site for the purposes of Paragraph 1.17(b)(i)(B) (*Payment of Phase 1 Target Fee on termination*) of Part 4B (*Calculation of Target Fee*) of this Schedule 6 (*Finance*) shall be calculated as follows:

$$\text{Additional Site Release} = \text{Assured Retention} + (\text{Residual Scope Retention} \times \% \text{Complete})$$

where:

Assured Retention is calculated in accordance with Paragraph 4 above;

Residual Scope Retention means the Site Retention less the Assured Retention; and

%Complete means the Residual Scope %Complete.

PART 5: PERFORMANCE AGREEMENT FORM

SECTION A – PERFORMANCE AGREEMENT FORMS FOR PBI LEVELS

1 PERFORMANCE AGREEMENT FORM

1.1 At the same time as agreeing any PBI Levels in accordance with Paragraph 2.3 (*Establishing PBI Levels*) of Part 4A (*Calculation of PBI Fee*), the Parties shall complete a Performance Agreement Form (a "**PAF**") in substantially the same form as that attached at Appendix B (*Performance Agreement Form*) for each such PBI Level, which shall be prepared initially by the Contractor and shall specify:

- (a) the factual basis for achievement of the relevant PBI Level, and specific benefits to be derived from achievement of the PBI Level;
- (b) any criteria and metrics for validation, acceptance and valuation of performance of the PBI Level, such criteria including (as relevant) but not limited to:
 - (i) the scope of Tasks;
 - (ii) the time within which the Tasks must be carried out; and
 - (iii) the budget within which the Tasks must be carried out;
 - (iv) the standards to which the Tasks will be carried out; and
 - (v) the realisation of any benefits specified as flowing from the accomplishment of the Tasks; and
- (c) the timing and frequency of any invoicing and payment of PBI Fee following achievement of the PBI Level.

1.2 The criteria for deciding whether a PBI Level has been satisfied shall be deemed to include the criterion that the Tasks which are the subject of that PBI Level must be completed in accordance with any standards specified in the PAF, the LTP Performance Plan or the Detailed Project Plans as applicable.

1.3 The Contractor and the Authority shall endeavour to agree the relevant PAF at the same time as agreeing the corresponding PBI Level.

1.4 Notwithstanding Paragraph 1.3 (*Performance Agreement Form*) above, if the relevant PAF for a PBI Level has not been determined by 24 March in the Contract Year immediately preceding the Contract Year in respect of which the PBI Level will apply, the Authority shall be entitled, acting reasonably, to determine such content of the

relevant PBI Level as it considers appropriate, and such determination shall be binding on the Parties.

- 1.5 In respect of each Contract Year, the PAFs for each PBI Level for that Contract Year as agreed by the Authority and the Contractor or determined by the Authority under this Paragraph 1 (*Performance Agreement Form*) shall be the PAFs for the PBI Levels for the relevant Contract Year.

2 **PBI LEVELS**

The PBI Levels and associated PAFs as agreed at the Commencement Date are those set out in Appendix D (*PAFs as at Commencement Date*).

3 **PERFORMANCE MONITORING, VALIDATION AND REPORTING**

- 3.1 The Authority shall monitor achievement of the relevant PBI Levels, and shall assess the Contractor's performance of the Tasks and other obligations in light of the criteria specified in the PAF for the relevant PBI Levels.

- 3.2 The Authority shall actively monitor the Contractor's progress against the PAFs via Contractor reports and on-the-job assessment in achieving PBI Levels.

- 3.3 The Contractor shall be required to prepare and submit performance reports relating to the achievement of (or delay or failure to achieve) PBI Levels in a manner in accordance with Schedule 13 (*Reporting*) and timetable satisfactory to the Authority (acting reasonably) and in particular must:

- (a) maintain an adequate and accurate system for the proper calculation and collection of Costs information and other data relating to assumptions, resources, work scope and progress required to assess compliance with the LTP Performance Plan under the terms of this Agreement;
- (b) update and maintain that system as necessary; and
- (c) train all required Employees in the use and maintenance of the system.

- 3.4 The Contractor's system for the calculation of data to assess compliance with this Paragraph 4 (*Performance Monitoring, Validation and Reporting*) of Part 5 (*Performance Agreement Form*) shall be subject to the Authority's right to audit under Clause 15 (*Inspection and Audit*).

4 **PBI LEVELS RECORDS MANAGEMENT**

The Contractor shall maintain an electronic master copy of all PBI Levels and associated documentation. This will include, but is not limited to, all changes to PAFs in Appendix D (*PAFs as at Commencement Date*) and PBI Levels whether approved or

unapproved, all PAFs, the calculation of PBI Fee on a cumulative basis and the invoicing of PBI Fee against calculation of PBI Fee. It shall also include the calculation of fee earned to date but not yet available for invoicing at the Authority's year end.

SECTION B – PERFORMANCE AGREEMENT FORMS FOR TARGET FEE PAYMENT MILESTONES

5 PERFORMANCE AGREEMENT FORM

5.1 For the purposes of Paragraphs 2.5 and 2.6 (*Completion criteria*) of Section C (*Target Fee Payment Milestone Details*) of Part 4B (*Calculation of Target Fee*) above, each Contract Year, following the provision of the Target Fee profile by the Contractor to the Authority pursuant to Paragraph 9 (*PBI Fee and Target Fee Profile*) of Part 7 (*Financial Limits*) of this Schedule 6 (*Finance*), the Parties shall meet to agree (each acting reasonably), for each Target Fee Payment Milestone scheduled to be Achieved in the next Contract Year:

- (a) the detailed requirements, conditions or outputs to be met in order to satisfy the completion criteria for the relevant Target Fee Payment Milestone in Appendix K (*Target Fee Payment Milestones*) to this Schedule 6 (*Finance*); and
- (b) the detailed evidence required to demonstrate the satisfaction of such completion criteria.

5.2 For each such Target Fee Payment Milestone, the Parties shall complete a Performance Agreement Form (a "**PAF**") in substantially the same form as that attached at Appendix B (*Performance Agreement Form*), which shall be prepared initially by the Contractor, to record the matters agreed pursuant to Paragraph 5.1 (*Performance Agreement Form*) above.

5.3 If the relevant PAF for a Target Fee Payment Milestone has not been determined by 24 March in the Contract Year immediately preceding the Contract Year during which the Target Fee Payment Milestone is scheduled to be Achieved, the Authority shall be entitled, acting reasonably, to determine such content of the relevant PAF as it considers appropriate, and such determination shall be binding on the Parties.

6 PAFS AS AT THE COMMENCEMENT DATE

The PAFs agreed at the Commencement Date for Target Fee Payment Milestones scheduled to be Achieved in the first Contract Year are those set out in Appendix D (*PAFs as at Commencement Date*).

7 **PERFORMANCE MONITORING, VALIDATION AND REPORTING**

- 7.1 The Authority shall monitor Achievement of each Target Fee Payment Milestone, and shall assess the Contractor's performance of the Tasks and other obligations contributing to Achievement of the Target Fee Payment Milestone in light of the detailed criteria specified in the PAF for the relevant Target Fee Payment Milestone.
- 7.2 The Authority shall actively monitor the Contractor's progress against the PAFs via Contractor reports and on-the-job assessment in Achieving Target Fee Payment Milestones.
- 7.3 The Contractor shall be required to prepare and submit performance reports relating to the Achievement of (or delay or failure to Achieve) Target Fee Payment Milestones in a manner in accordance with Schedule 13 (*Reporting*) and timetable satisfactory to the Authority (acting reasonably) and in particular must:
- (a) maintain an adequate and accurate system for the proper calculation and collection of Costs information and other data relating to assumptions, resources, work scope and progress required to assess compliance with the LTP Performance Plan under the terms of this Agreement;
 - (b) update and maintain that system as necessary; and
 - (c) train all required Employees in the use and maintenance of the system.
- 7.4 The Contractor's system for the calculation of data to assess compliance with this Paragraph 3 (*Performance Monitoring, Validation and Reporting*) of Part 5 (*Performance Agreement Form*) shall be subject to the Authority's right to audit under Clause 15 (*Inspection and Audit*).

8 **TARGET FEE PAYMENT MILESTONE RECORDS MANAGEMENT**

- 8.1 The Contractor shall maintain an electronic master copy of all Target Fee Payment Milestones and associated documentation. This will include, but is not limited to, all changes to PAFs in Appendix D (*PAFs as at Commencement Date*) and detailed completion criteria whether approved or unapproved, all PAFs, the calculation of Target Fee (as adjusted by Shareline) on a cumulative basis and the invoicing of Target Fee (as adjusted by Shareline). It shall also include the calculation of fee earned to date but not yet available for invoicing at the Authority's year end.

PART 6: PERIODIC REVIEWS

1 The Contractor, in conjunction with the Authority and with support of Third Party specialists where appropriate, shall conduct the reviews referred to below.

2 ESTIMATE AT COMPLETION REVIEW

2.1 In order to assist the Authority in the exercise of its right of inspection and audit pursuant to Clause 15 (*Inspection and Audit*), the Contractor shall ensure that at all times the Estimate at Phase 1 Completion and the Estimate at Phase 2 Completion are up to date with respect to trending and that there is sufficient detailed information available to the Authority such that the Authority is able to carry out a review of performance to date, verification of trends and effectively review the Contractor's estimate of forecast performance to completion of Phase 1 and Phase 2, both individually and as a whole.

3 WORKING CAPITAL REVIEW

3.1 On an annual basis (but subject to Paragraph 3.2 (*Working Capital Review*) below) the working capital requirements shall be reviewed by the Contractor to establish:

- (a) the likely working capital requirements for the forthcoming period with the aim of setting a maximum value for the Approved Working Capital Facility; and
- (b) relevant benchmarks to demonstrate that the Approved Working Capital Facility costs and interest rates are competitive, in accordance with Clause 16.4 (*Benchmarking — Working Capital Facilities*) of this Agreement.

3.2 In the event that the Contractor becomes aware of the rates for facilities reducing or increasing materially, the Contractor is to promptly inform the Authority and is to conduct the review of working capital requirements on an earlier date to be agreed with the Authority.

4 TIMING OF REVIEWS

4.1 The timing of the above reviews shall be as agreed between the Contractor and Authority, each acting reasonably, where appropriate taking into account the Authority's CSR schedule with Government.

PART 7: FINANCIAL LIMITS

Annual Site Funding Limit

- 1 The Annual Site Funding Limit for each Contract Year up to Contract Year 14 shall be the value allocated to such Contract Year in the table below, as may be varied in accordance with the remainder of this Part 7 (*Financial Limits*):

Contract Year 1
(Commencement Date to 31
March 2015)

Annual Site Funding Limit:



Contract Year 2 (1 April
2015 to 31 March 2016)

Annual Site Funding Limit:



Contract Year 3 (1 April
2016 to 31 March 2017)

Annual Site Funding Limit:



Contract Year 4 (1 April
2017 to 31 March 2018)

Annual Site Funding Limit:



Contract Year 5 (1 April
2018 to 31 March 2019)

Annual Site Funding Limit:



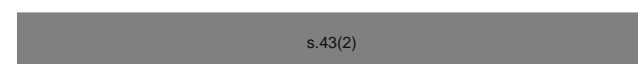
Contract Year 6 (1 April
2019 to 31 March 2020)

Annual Site Funding Limit:



Contract Year 7 (1 April
2020 to 31 March 2021)

Annual Site Funding Limit:



	s.43(2)
Contract Year 8 (1 April 2021 to 31 March 2022)	Annual Site Funding Limit: s.43(2)
Contract Year 9 (1 April 2022 to 31 March 2023)	Annual Site Funding Limit: s.43(2)
Contract Year 10 (1 April 2023 to 31 March 2024)	Annual Site Funding Limit: s.43(2)
Contract Year 11 (1 April 2024 to 31 March 2025)	Annual Site Funding Limit: s.43(2)
Contract Year 12 (1 April 2025 to 31 March 2026)	Annual Site Funding Limit: s.43(2)
Contract Year 13 (1 April 2026 to 31 March 2027)	Annual Site Funding Limit: s.43(2)
Contract Year 14 (1 April 2027 to 31 March 2028)	Annual Site Funding Limit: s.43(2)

Annual Site Funding Limits for Contract Years 1 to 7

- 1A The amounts identified as the Annual Site Funding Limits in the table appearing above at Paragraph 1 (*Annual Site Funding Limit*) shall be adjusted pursuant to Paragraphs 2.9 to 2.13 (*Adjustment for Wylfa extended generation*) of Part 3 (*Target Costs*) of this Schedule 6 (*Finance*).
- 2 Three (3) months prior to the commencement of Contract Year 2 (referred to in the table above), and three (3) months prior to the commencement of each Contract Year thereafter up to and including Contract Year 7, the Contractor shall provide to the Authority its proposed Annual Site Funding Limit for the following Contract Year and an estimate of the Annual Site Funding Limit for the two (2) succeeding Contract Years (up to and including Contract Year 7 only), provided that unless otherwise agreed by the Authority such figures shall not exceed the amounts identified as the Annual Site Funding Limits for the relevant Contract Years in the table appearing above at Paragraph 1 (*Annual Site Funding Limit*) (as adjusted pursuant to Paragraph 1A above).
- 3 For Contract Year 1, the Annual Site Funding Limit shall be the amount identified as the Annual Site Funding Limit for Contract Year 1 in the table appearing above at Paragraph 1 (*Annual Site Funding Limit*). For each of Contract Years 2 to 7, the Annual Site Funding Limit shall be the amount identified as the Annual Site Funding Limit for the relevant Contract Year in the table appearing above at Paragraph 1 (*Annual Site Funding Limit*), or:
- (a) such lesser figure as may be proposed by the Contractor in accordance with Paragraph 2 above; or
 - (b) such higher figure as may be proposed by the Authority.

Annual Site Funding Limits for Contract Years 8 to 14

- 4 The amounts identified as the Annual Site Funding Limits for Contract Years 8 to 14 in the table appearing above at Paragraph 1 (*Annual Site Funding Limit*) above shall be adjusted annually pursuant to Appendix G (*Special adjustment to the Phase 2 Target Cost*).
- 5 Three (3) months prior to the commencement of Contract Year 8, and three (3) months prior to the commencement of each Contract Year thereafter, the Contractor shall provide to the Authority its proposed Annual Site Funding Limit for the following Contract Year and an estimate of the Annual Site Funding Limit for the two (2) succeeding Contract Years, provided that unless otherwise agreed by the Authority such figures shall not exceed the amounts agreed as the Annual Site Funding Limits for the relevant Contract Years pursuant to the final adjustment made pursuant to Appendix G (*Special adjustment to the Phase 2 Target Cost*).

- 6 The Annual Site Funding Limit for each of Contract Years 8 to 14 shall be the amounts identified as the Annual Site Funding Limits for the relevant Contract Years pursuant to the final adjustment made pursuant to Appendix G (*Special adjustment to the Phase 2 Target Cost*), or:
- (a) such lesser figure as may be proposed by the Contractor; or
 - (b) such higher figure as may be proposed by the Authority.

Annual Site Funding Limits for Contract Years after Contract Year 14

- 7 If Achievement of the Client Specification Completion State is delayed beyond the agreed date for Achievement of the Client Specification Completion State (subject to any adjustment to that date in accordance with Schedule 2 (*Change Control Procedure*)) the Annual Site Funding Limits for any Contract Years after Contract Year 14 shall be such figures as may be agreed between the Parties.

Cost Profile

- 8 The Contractor shall provide to the Authority, together with the information to be provided pursuant to Paragraphs 2 and 5 (*Annual Site Funding Limit*) above, such details of the Costs estimated to be incurred by the Contractor in the forthcoming Contract Year as are sufficient to enable the Parties to agree the matters set out in Paragraph 2.1 (*Invoicing and Payment Process*) of Part 2B (*Payment of Allowable Costs*) of this Schedule 6 (*Finance*).

PBI Fee and Target Fee Profile

- 9 The Contractor shall provide to the Authority three (3) Months prior to the commencement of each Contract Year or following a Category 0 Change, a PBI Fee and Target Fee profile which shall cover the following:
- (a) the PBI Fee allocated to the following Contract Year and each subsequent Contract Year;
 - (b) the Month during which each remaining Target Fee Payment Milestone is expected to be Achieved and the Allocated Target Fee allocated to each such Target Fee Payment Milestone;
 - (c) the start and end date (Month and Year) of when work is expected to be conducted in respect of each Target Fee Payment Milestone, Phase 1 Completion and Phase 2 Completion, as the case may be;
 - (d) for each Target Fee Payment Milestone reference to whether the work progressed against Achievement of the relevant Target Fee Payment

Milestone, Phase 1 Completion or Phase 2 Completion, as the case may be, is expected to be on a linear or non-linear basis. In the case of the latter, a profile of projected delivery against the relevant Target Fee Payment Milestone, Phase 1 Completion or Phase 2 Completion, as the case may be, by Contract Year in percentage terms;

- (e) the total projection of PBI Fee and Target Fee to be earned over the Term (excluding Shareline).

Funding of the Shareline

10 The amount of any positive Shareline adjustment to Target Fee payable to the Contractor in each Contract Year will be funded from within the Annual Site Funding Limit for that Contract Year and the Annual Site Funding Limit may be supplemented in accordance with the following:

- (a) in the event of there being a positive Relevant Variance, the Contractor must make provision for payment to itself of any positive adjustment to Target Fee due to the addition of Shareline in the relevant Contract Year, to the extent that such positive adjustment to Target Fee does not represent recovery by the Contractor of negative Shareline arising from any previous negative Relevant Variance; and
- (b) if in consecutive calculations of the Shareline the Relevant Variance moves from a positive value to a lower positive value, or moves from a positive value to a negative value, then the Contractor will be able to use any related:
 - (i) repayment by the Contractor of Shareline; or
 - (ii) negative adjustment to Target Fee,

to supplement the Annual Site Funding Limit in the current or the immediately following Contract Year, limited to the extent that the amount repaid or forming the subject of such negative adjustment has been funded from the Annual Site Funding Limit in the current or previous Contract Years; and provided that the maximum amount that may be carried forward to supplement the Annual Site Funding Limit for the immediately following Contract Year is two million pounds (£2,000,000). Notwithstanding any other provision of this Agreement, references to the Annual Site Funding Limit are to the Annual Site Funding Limit as so supplemented.

Insurance Proceeds

11 The Contractor shall be entitled to supplement the Annual Site Funding Limit in the current or immediately following Contract Year by adding:

- (a) the amount of any Insurance Proceeds (or funding procured by the Authority as an alternative to any Authority Insurances pursuant to Clause 18.1.3.2 (*Authority Insurances*)) received by the Contractor in a Contract Year; and
- (b) the amount of any Insurance Proceeds (or funding procured by the Authority as an alternative to any Authority Insurances pursuant to Clause 18.1.3.2 (*Authority Insurances*)) received by the Authority in respect of Allowable Costs paid to the Contractor in a Contract Year.

Any references to the Annual Site Funding Limit are to the Annual Site Funding Limit as so supplemented.

PART 8: INDEXATION

1 CPI INDEXATION

Unless otherwise stated, items in this Agreement which are expressed to be "Indexed" shall be dealt with in accordance with the provisions of Clause 1.2.15 (*Interpretation*) of this Agreement.

2 AD HOC ADJUSTMENTS FOR INFLATION

2.1 The following items shall be subject to periodic review by the Authority and, subject to the Authority behaving reasonably and responsibly in doing so, shall be subject to amendment by the Authority to reflect general inflation on no less than twenty (20) Working Days' written Notice:

- (a) monetary thresholds contained in the PCPs;
- (b) the monetary amount included in the definition of "Dispute or Claim Negotiation";
- (c) the monetary amount set out in Clause 31.7.1.3.1 (*Notice to Authority of Disputes*);
- (d) the value of the Licence Fee; and
- (e) the monetary amounts set out in Schedule 4 (*Commercial*) and Schedule 5 (*Subcontracting and Procurement*).

3 ADJUSTMENT OF THE PHASE 2 TARGET FEE

3.1 In the event that Actual Phase 1 Inflation is greater than Estimated Phase 1 Inflation, the Phase 2 Target Fee (and any relevant amounts of Allocated Target Fee) shall be adjusted in accordance with the following formula:

$$P2TF_1 = P2TF_0 \left(\frac{APII}{EPII} \right)$$

where:

$P2TF_1$ means the Phase 2 Target Fee as adjusted by this Paragraph 3.1;

$P2TF_0$ means the Phase 2 Target Fee prior to adjustment by this Paragraph 3.1;

$APII$ means Actual Phase 1 Inflation; and

$EPII$ means Estimated Phase 1 Inflation.

- 3.2 For the purposes of Paragraph 3.1 (*Adjustment of the Phase 2 Target Fee*) above, "**Actual Phase 1 Inflation**" shall be calculated as follows:

$$APII = \frac{Index_1}{Index_0}$$

where:

APII means Actual Phase 1 Inflation;

Index₀ means the value of the Index published for the month immediately prior to the Commencement Date; and

Index₁ means the value of the Index published for the month immediately prior to the commencement of Contract Year 8.

- 3.3 For the purposes of Paragraph 3.1 (*Adjustment of the Phase 2 Target Fee*) above, "**Estimated Phase 1 Inflation**" shall be 1.126.

Appendix A

Special Items

The following rates and values have been used to calculate provisional amounts included in the Phase 1 Target Cost and Phase 2 Target Cost as at the Commencement Date. For the purposes of calculating any adjustments to the Phase 1 Target Cost or Phase 2 Target Cost pursuant to Paragraph 2.4 (*Special Items*) of Part 3 (*Target Costs*) of this Schedule 6 (*Finance*):

(a)

(b)

(c)

(d)

s.43(2)

(iii)

(iv)

(v)

(vi)

s.43(2)

(e)

s.43(2)

Pages 92 through 104 redacted for the following reasons:

Appendix B

Performance Agreement Form

SECTION A – PAF FOR PBI LEVELS

Fiscal Year _____

SECTION I - PERFORMANCE OBJECTIVE AND RELATED INFORMATION			
Performance Objective:	WBS Element No(s):	Target Cost of Work Performed Under This PBI Level: £	PBI Fee Associated With This Objective: £
NOTE: Any changes to cost, schedule, or scope requires a Proposed Change to be processed, and a revised Performance Agreement Form.			
SECTION II - PERFORMANCE BASED INDICATOR			
Short Title:			
Objective:			
Justification for This PBI Level:			
SECTION III - PARTIAL FEE EARNINGS SCHEDULE (WHERE APPLICABLE)			
Where there is value to the Authority for partial completion of the objective, list the elements for which partial PBI Fee/Target Fee may be earned, the percentage of PBI Fee/Target Fee available for completion of each element, and the schedule by which the PBI Fee/Target Fee may be earned. (Schedule identifies point(s) at which PBI Fee/Target Fee may be earned - does not define completion.)			

SECTION IV - Performance Requirements

DEFINE COMPLETION:

Specify performance elements and describe indicators of success (quality/progress). Include baseline documents/data against which completion documentation should be compared.

DEFINITIONS:

COMPLETE DOCUMENTATION:

(In addition to the Interim and/or Final Notice of Completion form) the document(s) that should be submitted; data that should be available; and actions to be taken by evaluator to determine actual performance to the requirements stated above.

ASSUMPTIONS: State assumptions related to a PBI Level, if any.

SIGNATURES	DATE SIGNED		
Contractor			
Authority – Head of Programme			
Authority – Head of Contracts			

SECTION B – PAF FOR TARGET FEE PAYMENT MILESTONES

Fiscal Year _____

SECTION I – TARGET FEE PAYMENT MILESTONE AND RELATED INFORMATION						
Target Fee Payment Milestone:	WBS Element No(s):	Target Cost of Work Performed Under This Target Fee Payment Milestone:	Target Fee	Allocated Target Fee Associated With This Target Fee Payment Milestone:	Target Fee	Target Fee
		£		£		
NOTE: Any changes to cost, schedule, or scope requires a Proposed Change to be processed, and a revised Performance Agreement Form.						
SECTION II – DETAILED COMPLETION CRITERIA						
SECTION III – DETAILED EVIDENCE OF COMPLETION						

SECTION IV – Completion Criteria and Evidence of Completion

DEFINE COMPLETION:

Specify completion criteria and evidence of completion. Include baseline documents/data against which completion documentation should be compared.

DEFINITIONS:

COMPLETE DOCUMENTATION:

(In addition to the Interim and/or Final Notice of Completion form) the document(s) that should be submitted; data that should be available; and actions to be taken by evaluator to determine actual performance to the requirements stated above.

ASSUMPTIONS: State assumptions related to Target Fee Payment Milestone, if any.

SIGNATURES	DATE SIGNED		
Contractor			
Authority – Head of Programme			
Authority – Head of Contracts			

Appendix C

Adjustments for Radioactive Waste Volumes

Adjustment for variance in Raw Radioactive Waste volumes

1 If at any time during the Term the Contractor reasonably considers there to be a material variance between:

- (a) the volumes of Raw Radioactive Waste actually retrieved and forecast to be retrieved by the Contractor across all Sites (or present on the Sites at the Commencement Date but agreed with the relevant Regulator(s) to be left in situ) in the course of taking the Sites from their respective states at the Commencement Date to their respective Interim States or Interim End State (as applicable), as measured and estimated by the Contractor in accordance with Paragraph 8 (*Measuring Raw Radioactive Waste*) below; and
- (b) the corresponding volumes of Raw Radioactive Waste identified in the Magnox and RSRL Radioactive Waste inventory data (dated 9 August 2013 and referenced "Disc 034") that was provided by the Authority on 9 August 2013 for use in preparing the Final Tender (the "**Magnox and RSRL 2013 Radioactive Waste Inventory**"),

(including any material variance in the volumes of Raw Radioactive Waste at, within, or at specific locations within, individual Sites and/or any material variance in the volumes of Raw Radioactive Waste in each Radioactive Waste category) (a "**Material Radioactive Waste Variance**"), the Contractor shall notify the Authority together with such supporting evidence as the Authority reasonably requires to verify such Material Radioactive Waste Variance. For the avoidance of doubt, notwithstanding Paragraph 2(b) below, subject to Paragraph 2(c) below a Material Radioactive Waste Variance may take into account actual or forecast variances arising at any time during the Term and shall not be limited to variances within the current Contract Year.

2 Where the Authority is reasonably satisfied, having regard to the information provided pursuant to Paragraph 1 (*Adjustment for variance in Raw Radioactive Waste volumes*) above, that there is a Material Radioactive Waste Variance, the Phase 1 Target Cost and/or Phase 2 Target Cost shall be adjusted in accordance with Paragraph 3 (*Adjustment for variance in Raw Radioactive Waste volumes*) below and the Contractor shall submit a Proposed Change to address such adjustment, provided that:

- (a) no adjustment shall be made to the Phase 1 Target Cost or Phase 2 Target Cost unless the net increase or decrease to the Phase 1 Target Cost and/or Phase 2 Target Cost calculated in accordance with Paragraph 3 (*Adjustment*

for variance in Raw Radioactive Waste volumes) is equal to or greater than twenty five thousand pounds (£25,000) (Indexed);

- (b) unless otherwise agreed by the Parties, no more than one (1) adjustment shall be made pursuant to this Appendix C (*Adjustments for Radioactive Waste volumes*) in any Contract Year;
- (c) the adjustment to the Phase 1 Target Cost made pursuant to Paragraph 6 (*Final adjustments for actual variance in Radioactive Waste volumes*) below shall be the last adjustment to the Phase 1 Target Cost made pursuant to this Appendix C (*Adjustments for Radioactive Waste volumes*), and any further adjustments made pursuant to this Appendix C (*Adjustments for Radioactive Waste volumes*) shall be to the Phase 2 Target Cost only;
- (d) in determining whether it is reasonably satisfied that there is a Material Radioactive Waste Variance, the Authority shall be entitled to consider (without limitation):
 - (i) [Not used]
 - (ii) whether and to what extent any actual or forecast variance(s) relating to incomplete waste retrieval Project(s) are verified or supported by the state of completion of such Project(s) including:
 - (A) the volume and rate of retrievals of Raw Radioactive Waste to date and the forecast volume and rate of retrievals of Raw Radioactive Waste to completion of the Project(s);
 - (B) progress of the Project(s) against the schedule for completion of such Project(s); and
 - (C) the likelihood of any subsequent adjustments being made pursuant to this Appendix C (*Adjustments for Radioactive Waste Volumes*) as a result of the same waste retrieval Project(s), and the materiality of such adjustments,

provided that, in the case of (C) above, the Authority shall not defer making a determination as to whether it is reasonably satisfied that there is a Material Radioactive Waste Variance on the basis that there could be a subsequent downwards adjustment to the volumes of Raw Radioactive Waste retrieved and forecast to be retrieved in a future Contract Year.

- 3 (a) Subject to Paragraph 3(b) below, for the purposes of Paragraph 2 (*Adjustment for variance in Raw Radioactive Waste volumes*) above, the Phase 1 Target Cost and/or Phase 2 Target Cost (as applicable) shall be increased or decreased in accordance with the following calculation:

$$TC + WVCI - PWVCI$$

Where:

TC means the Phase 1 Target Cost or Phase 2 Target Cost (as applicable);

WVCI means the Waste Variance Cost Impact calculated in accordance with Paragraph 4 (*Adjustment for variance in Raw Radioactive Waste volumes*) below (with any cost saving being expressed as a negative value);

PWVCI means the Waste Variance Cost Impact calculated in accordance with Paragraph 4 (*Adjustment for variance in Raw Radioactive Waste volumes*) below the previous time an adjustment was made pursuant to this Appendix C (*Adjustments for Radioactive Waste volumes*).

- (b) If, when taken together with all adjustments previously made pursuant to this Appendix C (*Adjustments for Radioactive Waste volumes*), the adjustment calculated in accordance with Paragraph 3(a) above would result in the Phase 1 Target Cost and/or Phase 2 Target Cost being lower than it would have been if no such adjustments had been made, then the Phase 1 Target Cost and/or the Phase 2 Target Cost shall be adjusted so that it is equal to the amount it would have been if no adjustments had been made pursuant to this Appendix C (*Adjustments for Radioactive Waste Volumes*).
- 4 For the purposes of Paragraph 3 (*Adjustment for variance in Raw Radioactive Waste volumes*), the "**Waste Variance Cost Impact**" means, in respect of Phase 1 and/or Phase 2, an amount equal to the Allowable Costs (including any incremental Associated Allocable Cost) that have been and/or will be incurred or saved as a result of the Material Radioactive Waste Variance, provided that any calculation of the Allowable Costs that have been or will be incurred for the purposes of this Appendix C (*Adjustments for Radioactive Waste volumes*) shall not include any increase in Allowable Costs to the extent that such increase is attributable to:
- (a) an increase in volumes of Raw Radioactive Waste resulting from the Contractor's Radioactive Waste management strategy after the Commencement Date that:

- (i) would not have occurred if the Contractor had implemented a different Radioactive Waste management strategy after the Commencement Date; and
 - (ii) does not represent Value for Money;
- (b) a failure by the Contractor after the Commencement Date to reasonably mitigate any increase in the Allowable Costs that have been or will be incurred by the Contractor as a result of such Material Radioactive Waste Variance;
- (c) a failure by the Contractor after the Commencement Date to comply with:
- (i) the Contractor's obligations in respect of Requirement 4 (*Integrated Waste Management*) of Part 2 – Section 2 (*Detailed Specification*) of the Client Specification; or
 - (ii) Good Industry Practice, the Authority Policies and Procedures, and all applicable Legislation and Regulatory Requirements relating to the measurement or forecasting of Radioactive Waste volumes, categorisation of Radioactive Waste, implementation of the Waste hierarchy, and overall reduction of Radioactive Waste volumes arising in the course of performing the Contractor's obligations set out in the Client Specification;
- (d) a failure by the Contractor after the Commencement Date to act reasonably (including consideration of Value for Money) to drive Radioactive Waste down the waste categories (ILW to LLW to VLLW to excluded/exempt); or
- (e) a failure by the Contractor after the Commencement Date to act reasonably in its claim with regard to how and/or when the Radioactive Waste is packaged.
- 5 Any adjustment to the Phase 1 Target Cost and/or Phase 2 Target Cost pursuant to this Appendix C (*Adjustments for Radioactive Waste Volumes*) shall be inclusive of all Costs incurred by the Contractor that relate to any Tasks required to be undertaken to address any increase or decrease in Radioactive Waste volumes.

Final adjustments for actual variance in Radioactive Waste volumes

- 6 On Achievement of Phase 1 Completion, a final adjustment to the Phase 1 Target Cost shall be made in accordance with this Appendix C (*Adjustments for Radioactive Waste volumes*).
- 7 On Achievement of Phase 2 Completion, a final adjustment to the Phase 2 Target Cost shall be made in accordance with this Appendix C (*Adjustments for Radioactive Waste volumes*).

Measuring Raw Radioactive Waste

8 To measure and estimate volumes of Raw Radioactive Waste for the purposes of this Appendix C *Adjustments for Radioactive Waste volumes*, the Contractor shall (to the extent reasonably practicable, including, as far as reasonably practicable, verification of its accuracy) use data that is otherwise generated or acquired by or on behalf of the Contractor in the course of complying with its obligations under this Agreement, including but not limited to:

- (a) UK Radioactive Waste Inventory submissions;
- (b) internal inventory updates to support the LTP Performance Plan;
- (c) the annual Waste Inventory Form;
- (d) the Joint Waste Management Plans;
- (e) ILW processing information for hazard baseline reports;
- (f) consignment information provided to waste management suppliers, including LLWR and the Contractor's own ILW stores; and
- (g) submissions made to Regulators.

To the extent that such data is available, the Contractor shall not be required to develop or apply any methodology for measuring and estimating volumes of Raw Radioactive Waste for the purposes of this Appendix C (*Adjustments for Radioactive Waste volumes*) by any other means. The Contractor shall not apply such other methodology for the purposes of this Appendix C (*Adjustments for Radioactive Waste volumes*) unless agreed by the Authority in advance (acting reasonably).

Appendix D

PAFs as at Commencement Date

Appendix E

First Contract Year Financials

SLCs:	Magnox Limited and Research Sites Restoration Limited
Period of Contract Year:	1 September 2014 – 31 March 2015

Exceptional Item Threshold

£5,000,000

Working Capital Facility Agreement Terms

Facility	s.43(2)
Interest receivable	
Interest payable	
Net interest receivable	
Commitment fee	
Net amount payable by the Authority	

Agreed Cash Flow Requirement, Agreed Payment Profile and Approved Working Capital Allowance

The Agreed Cash Flow Requirement, Agreed Payment Profile and Approved Working Capital Allowance in respect of the Approved Working Capital Facility for the first Contract Year (2014/2015) are set out in the following:

- “Combined Magnox and RSRL cashflow for SLCA – 130814 v1” issued under correspondence number T1-14-TA-CFP-0041. The combined forecast is based on forecasts provided by the SLCs w/c 11/8/14.

Appendix F

Nominated Staff Recoverable Costs

- 1 The Contractor shall be entitled to recover its Costs arising from the provision of the Nominated Staff by the Parent Body Organisation or other Seconding Employer in accordance with the principles set out in this Appendix F.
- 2 Costs arising from the provision of Nominated Staff to the Contractor by the Parent Body Organisation or other Seconding Employer are included within the Phase 1 Target Cost and the Phase 2 Target Cost, and accordingly there shall be no adjustment of the Phase 1 Target Cost or the Phase 2 Target Cost on the grounds that such Costs exceed or fall short of the amount for such Costs that is assumed in the formulation of the Phase 1 Target Cost and Phase 2 Target Cost.
- 3 For the purposes of Paragraph 4.1(oo) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of this Schedule 6 (*Finance*) the following principles shall apply, and Costs falling outside of these principles shall be Disallowable:
 - 3.1 Subject to Paragraph 3.8 below, the Contractor shall be entitled to recover as Allowable Costs the amounts as set out in the table below for the relevant Nominated Staff Member per NS Support Month. Subject to the provisions of Paragraph 3.4 (*Nominated Staff Recoverable Costs*) below, such rates shall be reduced on a pro rata basis where the relevant Nominated Staff member works less than an NS Support Month in support of the activities of the Contractor or otherwise in support of the activities required to perform the Contractor's obligations set out in the Client Specification.

Status	Cost per NS Support Month (£) – UK assignees		
	Unaccompanied	Accompanied	Family
Level 1 (UK)	s.43(2)		
Level 2 (UK)			
Level 3 (UK)			
Level 4 (UK)			
Level 5 (UK)			
Level 6 (UK)			
Level 7 (UK)			

Level 8 (UK)	s.43(2)
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Status	Cost per NS Support Month (£) – Ex-pat assignees		
	Unaccompanied	Accompanied	Family
Level 1 (Exp)	s.43(2)		
Level 2 (Exp)			
Level 3 (Exp)			
Level 4 (Exp)			
Level 5 (Exp)			

3.1A The Contractor shall be entitled to recover as Allowable Costs the costs of travel and subsistence incurred by Nominated Staff in the course of working in support of the activities of the Contractor or otherwise in support of the activities required to deliver the Client Specification, provided that:

- (a) such costs are not in excess of those reasonably provided for in an Internal Procedure relating to human resources and are not otherwise Disallowable under the terms of this Agreement; and
- (b) such costs have not been agreed by the Parties to be included in the amounts paid for each NS Support Month or the amounts paid for the mobilisation or demobilisation of Nominated Staff.

3.2 Subject to Paragraph 3.8 below, the Contractor shall be entitled to recover as Allowable Costs the amounts set out in the table below for the mobilisation of Nominated Staff.

Status	Mobilisation Costs (£)	
	UK assignee	Ex-pat assignee
Unaccompanied	s.43(2)	
Married Accompanied		
Family		

3.3 Subject to Paragraph 3.8 below, the Contractor shall be entitled to recover as Allowable Costs the amounts set out in the table below for the demobilisation of Nominated Staff.

Status	Demobilisation Costs (£)	
	UK assignee	Ex-pat assignee
Unaccompanied	s.43(2)	
Married Accompanied		
Family		

3.4 The "Family" rates in the table at Paragraph 3.1 above are based on an assumption that the relevant assignee (where applicable) has either:

- (a) two (2) children at day school; or
- (b) one (1) child at boarding school.

If an assignee has fewer or more children at day school and/or boarding school, the Parties will agree a fair and reasonable adjustment to the above rates.

3.5 The "Family" rates in the tables at Paragraphs 3.2 and 3.3 above are based on an assumption that the relevant assignee, where applicable, is accompanied by two (2) children. If an assignee is accompanied by fewer or more children, the Parties will agree a fair and reasonable adjustment to the above rates.

3.6 The sums paid for each NS Support Month (pro-rated where relevant) and for mobilisation and demobilisation costs shall include:

- (a) all benefits, including car allowances, bonuses, pensions, severance allowances, medical cover and insurances;
- (b) administration of payroll burdens;
- (c) [Not used]
- (d) mobilisation and demobilisation costs (including redundancy payments, payments in lieu of notice and costs of relocation); and
- (e) all Seconding Employer overheads, financing, profit and other burdens,

arising out of the provision of the Nominated Staff to the Contractor, but shall not (unless otherwise agreed by the Parties) include costs of travel and subsistence incurred by Nominated Staff in the course of working in support of the activities of the Contractor or otherwise in support of the activities required to perform the Contractor's obligations set out in the Client Specification.

- 3.7 Up to a maximum of 35 (thirty five) Working Days of leave plus all public holidays may be taken by a member of Nominated Staff in any Contract Year without this resulting in any reduction of the rate payable under Paragraph 3.1 (*Nominated Staff Recoverable Costs*) above.
- 3.8 Any reasonable Costs arising from the mobilisation, provision and demobilisation of Nominated Staff in excess of the amounts set out in the tables at Paragraphs 3.1, 3.2 or 3.3 (*Nominated Staff Recoverable Costs*) above shall be recoverable by the Contractor as Allowable Costs, provided that:
- (a) such Costs are not otherwise Disallowable under the terms of this Agreement;
 - (b) the Contractor has given reasonable Notice in advance to the Authority of such Costs during the term of this Agreement (such Notice to include full details of the items set out in Paragraph 3.6 above to the extent that such costs are proposed to be incurred)); and
 - (c) where the Parent Body Agreement has terminated any such amounts are payable in accordance with Clause 19.13 (*Payments on Termination*) and Schedule 2 (*Payments on Termination*) of the Parent Body Agreement.

Appendix G

Special adjustment to the Phase 2 Target Cost

Approval of the Estimate at Phase 2 Completion and Phase 2 Cost Profile

- 1 Three (3) months prior to the commencement of each Contract Year that commences (i) after completion of the Consolidation Phase and (ii) prior to the date falling twelve (12) Months before the Phase 2 Projected Commencement Date, the Contractor shall provide to the Authority:
- (a) the Estimate at Phase 2 Completion, calculated as at such date in accordance with Paragraphs 1.29 and 1.30 (*Calculation of the Estimate at Phase 2 Completion*) of Part 4B (*Calculation of Target Fee*) of this Schedule 6 (*Finance*); and
 - (b) an annual apportionment of the Allowable Costs comprising the Estimate at Phase 2 Completion, consistent with the activities, schedule and estimated costs pertaining to Phase 2 in the LTP Performance Plan (the "**Phase 2 Cost Profile**"), provided that unless otherwise agreed by the Authority:
 - (i) the Phase 2 Cost Profile shall not apportion any Allowable Costs pertaining to Phase 2 to Contract Years earlier than Contract Year 8 or later than Contract Year 14; and
 - (ii) the total annual apportionment of Allowable Costs in any Contract Year, including both:
 - (A) Costs within the Phase 2 Cost Profile; and
 - (B) (if applicable) any Costs pertaining to Phase 1 in the LTP Performance Plan that are scheduled in the LTP Performance Plan to be incurred during Contract Year 8 onwards),(the "**Proposed ASFL**") shall not exceed the Annual Site Funding Limit for such Contract Year specified in Paragraph 1 (*Annual Site Funding Limit*) of Part 7 (*Funding Limits*) of this Schedule 6 (*Finance*) by more than five per cent (5%);
 - (c) such supporting information as the Authority reasonably requires to verify the Estimate at Phase 2 Completion, Phase 2 Cost Profile and Proposed ASFL, including:

- (i) the methodology used to calculate the Estimate at Phase 2 Completion, Phase 2 Cost Profile and the Proposed ASFL and the steps taken by the Contractor to ensure the accuracy of such calculation;
- (ii) the extent to which Cost information for any Tasks that have already been carried out has been used or determined not to be appropriate (as the case may be);
- (iii) an identification of any material variance between the Estimate at Phase 2 Completion and the Phase 2 Target Cost as at such date and explanation of how this reflects Good Industry Practice and Value for Money; and
- (iv) an identification of any material variance between the Phase 2 Cost Profile (and, if different, the Proposed ASFL) and the indicative Annual Site Funding Limits specified in Paragraph 1 (*Annual Site Funding Limit*) of Part 7 (*Funding Limits*) of this Schedule 6 (*Finance*) as at such date and explanation of how this reflects Good Industry Practice and Value for Money.

- 2 Within twenty (20) Working Days (or such other period as the Parties may agree) of receipt of the Estimate at Phase 2 Completion, Phase 2 Cost Profile and Proposed ASFL in accordance with Paragraph 1 (*Approval of the Estimate at Phase 2 Completion and Phase 2 Cost Profile*) above, the Authority may request such additional information as is reasonable to enable it to verify the Estimate at Phase 2 Completion, Phase 2 Cost Profile and Proposed ASFL and/or to request any clarification of the information provided by the Contractor.
- 3 The Contractor shall provide the information requested by the Authority pursuant to Paragraph 2 (*Approval of the Estimate at Phase 2 Completion and Phase 2 Cost Profile*) above within twenty (20) Working Days of receipt of such request for information.
- 4 The Authority shall assess the Estimate at Phase 2 Completion, Phase 2 Cost Profile and Proposed ASFL and shall approve or (if one or more of the grounds specified in Paragraph 5 (*Approval of the Estimate at Phase 2 Completion and Phase 2 Cost Profile*) below has been met) reject the Estimate at Phase 2 Completion, Phase 2 Cost Profile and Proposed ASFL within twenty (20) Working Days (or such other period as the Parties may agree, acting reasonably, having regard to the value, volume, nature and impact of the changes to the Estimate at Phase 2 Completion, Phase 2 Cost Profile and Proposed ASFL throughout the preceding Contract Year) of the later of:

- (a) receipt by the Authority of the Estimate at Phase 2 Completion, Phase 2 Cost Profile and Proposed ASFL; or
 - (b) receipt by the Authority of the additional information or clarification requested by the Authority pursuant to Paragraph 2 (*Approval of the Estimate at Phase 2 Completion and Phase 2 Cost Profile*) above.
- 5 The grounds on which the Authority may reject the Estimate at Phase 2 Completion, Phase 2 Cost Profile or Proposed ASFL are:
 - (a) that the Authority is not satisfied (acting reasonably) that the Estimate at Phase 2 Completion has been calculated in accordance with Paragraphs 1.29 and 1.30 (*Calculation of the Estimate at Phase 2 Completion*) of Part 4B (*Calculation of Target Fee*) of this Schedule 6 (*Finance*);
 - (b) that the Contractor has failed to comply with the requirements of Paragraphs 1(c) or 3 (*Approval of the Estimate at Phase 2 Completion and Phase 2 Cost Profile*) above or Paragraph 9 (*No misuse of procedure for special adjustment to the Phase 2 Target Cost*); or
 - (c) that the Phase 2 Cost Profile and/or Proposed ASFL does not comply with the requirements of Paragraph 1(b) (*Approval of the Estimate at Phase 2 Completion and Phase 2 Cost Profile*) above.
- 6 Any rejection of the Estimate at Phase 2 Completion, Phase 2 Cost Profile and Proposed ASFL under Paragraph 4 (*Approval of the Estimate at Phase 2 Completion and Phase 2 Cost Profile*) above shall be by Notice to the Contractor, and shall specify the ground(s) on which the Estimate at Phase 2 Completion, Phase 2 Cost Profile and Proposed ASFL have been rejected.
- 7 If the Authority has rejected the Estimate at Phase 2 Completion, Phase 2 Cost Profile and Proposed ASFL in accordance with Paragraph 4 (*Approval of the Estimate at Phase 2 Completion and Phase 2 Cost Profile*) above, the Contractor shall resubmit the Estimate at Phase 2 Completion, Phase 2 Cost Profile and Proposed ASFL for approval by the Authority in accordance with Paragraph 1 (*Approval of the Estimate at Phase 2 Completion and Phase 2 Cost Profile*) above.
- 8 If the Authority has approved the Estimate at Phase 2 Completion, Phase 2 Cost Profile and Proposed ASFL in accordance with Paragraph 4 (*Approval of the Estimate at Phase 2 Completion and Phase 2 Cost Profile*) above:
 - (a) the Phase 2 Target Cost shall be adjusted to equate to the Estimate at Phase 2 Completion; and

(b) the Contract Baseline and Annual Site Funding Limits for any Contract Years in which Allowable Costs have been apportioned under the Phase 2 Cost Profile shall be adjusted in accordance with the Proposed ASFL,

and the Contractor shall initiate a Proposed Change in respect of the Phase 2 Target Cost, Contract Baseline and Annual Site Funding Limits to address such adjustment.

No misuse of procedure for special adjustment to the Phase 2 Target Cost

- 9 The Contractor shall not use or attempt to use the procedure set out in this Appendix G (*Special adjustment to the Phase 2 Target Cost*) to do anything that, if it were done in respect of a Change or Proposed Change, would constitute a breach of its obligations under Paragraph 2.7 (*No Misuse of Change Control Procedure*) of Schedule 2 (*Change Control Procedure*).

Appendix H
Contract Baseline

Appendix I

Liability for Costs in the event of Defective Performance

1 Subject to Paragraph 3 below, where the Contractor has undertaken work that amounts to Defective Performance, the following Costs shall be Disallowable:

- (a) the Costs of work carried out in undertaking any part or element of any component of the LTP Performance Plan (or any activity necessarily ancillary thereto) or any other work undertaken to advance performance of the Contractor's obligations set out in the Client Specification which is defective due to the Defective Performance, to the extent that:
 - (i) such work has not been made good as a result of work carried out to remedy the Defective Performance; and
 - (ii) such Costs are wasted by reason of the Defective Performance;
- (b) the Costs of work carried out to remedy the Defective Performance; and
- (c) the Costs of work that would have been carried out notwithstanding the Defective Performance to the extent that such Costs have been increased by the Defective Performance,

to the extent that such costs are not Recovered Costs, and provided that any Costs will in any case be Disallowable if they fall into one of the categories of Disallowable Costs set out in Part 2A (*Allowable and Disallowable Costs*) of this Schedule 6 (*Finance*), independently of whether or not they relate to Defective Performance.

2 Where the Contractor has undertaken work that amounts to Defective Performance, the following Costs shall be Allowable:

- (a) Recovered Costs;
- (b) the Costs of work carried out in undertaking any part or element of any component of the LTP Performance Plan (or any activity necessarily ancillary thereto) or any other work undertaken to advance delivery of the Client Specification which is defective due to Defective Performance, to the extent that:
 - (i) such work has been made good as a result of work carried out to remedy the Defective Performance; or
 - (ii) such Costs are not otherwise wasted by reason of the Defective Performance; and

(c) the Costs of work that would have been carried out notwithstanding the Defective Performance to the extent that such Costs are not increased by the Defective Performance.

3 Any Costs which would be Disallowable pursuant to Paragraph 1 above, but which:

(a) arise as a result of Defective Performance occurring at a Site prior to the relevant Site Completion Date; and

(b) are incurred after the expiry of three (3) years after such Site Completion Date (or, in respect of any claim by the Authority in relation to the recovery or non-payment of such Disallowable Costs which was commenced before three (3) years after the relevant Site Completion Date, after such time as that claim has been settled or withdrawn),

shall be Allowable.

4 Without prejudice to Paragraph 1 above, in the event of Defective Performance, where the Authority has issued a valid Remediation Notice pursuant to Clause 11.6 (*Defective Performance and Remediation*), the Costs incurred in preparing a Remediation Plan aimed at addressing such Defective Performance shall be Disallowable Costs.

Appendix J

Authority Assumptions

Technical Authority Assumptions

Magnox LTP

- 1 Subject to paragraph 9 (*Wylfa*), that as at the Commencement Date, the scope and schedule of services, operations, projects and activities that have been carried out or completed by or on behalf of the Magnox Contractor at each Magnox Site prior to the Commencement Date are consistent in all material respects with the scope and schedule of services, operations, projects and activities planned in the version of the Magnox LTP dated April 2013 to be carried out by or on behalf of the Magnox Contractor at each Magnox Site prior to 1 September 2014.

RSRL LTP

- 2 That as at the Commencement Date, the scope and schedule of services, operations, projects and activities that have been carried out or completed by or on behalf of the RSRL Contractor at each RSRL Site prior to the Commencement Date are consistent in all material respects with the scope and schedule of services, operations, projects and activities planned in the version of the RSRL LTP dated April 2013 to be carried out by or on behalf of the RSRL Contractor at each RSRL Site prior to 1 September 2014.

MOP 9

- 3 That the extant Magnox Operating Programme is MOP9.

Defueling and Transfer of Spent Fuel

- 4 That the implementation of MOP 9 by Sellafield SLC results in a reprocessing rate of 500 TeU/yr and that defueling and shipping of Spent Magnox Fuel to Sellafield will be required to sustain this rate of reprocessing. Provided that the Contractor shall not be entitled to a Category 0 Change pursuant to this Authority Assumption to the extent that:
 - (a) any change in the reprocessing rate at Sellafield has been caused or contributed to by the Contractor; or
 - (b) there is a non-availability of flasks due to a failure by the Contractor, Subcontractor or Sub-Subcontractor to maintain such flasks.

GDF

- 5 That a national Geological Disposal Facility (GDF) will start receiving Higher Activity Waste from England and Wales in 2040.

LLWR

- 6 That the Low Level Waste Repository will be available to the Contractor for disposal of LLW in accordance with the Low Level Waste Repository's conditions for acceptance for the duration of the Term. This includes disposal of LLW asbestos (under the Low Level Waste Repository's waste variation system) whilst it remains BAT to dispose of LLW asbestos.

Wylfa

- 7 That the Contractor has prior to the Commencement Date taken whatever steps as are necessary (including changes to the version of the Magnox LTP dated 2013) to enable Wylfa to generate electricity until December 2015.

Winfrith

- 8 That with regard to the Client Specification Requirement to restore the Winfrith Site to its Interim End State (Requirement 1.3.5 of Part 2 – Section 2: Detailed Specification – Table 3 of Schedule 1 (*Client Specification*)) assume that for the purposes of complying with the Evidence of Completion limbs [iii] and [iv] for Requirement 1.3.5(a), it will be acceptable to the Regulators that the public will have access to the Site whilst it remains a Nuclear Licensed Site. Please note that this Authority Assumption does not relieve the Contractor from its obligation to comply with all other elements of the Evidence of Completion for Requirement 1.3.5(a) and all Client Specification Requirements in relation to the Winfrith Site.

Commercial Authority Assumptions

Funding

- 9 That, notwithstanding the amount of costs incurred by the Contractor and funded by the Authority up to the date immediately preceding the Commencement Date, the funding available for the first Contract Year is not less than the Annual Site Funding Limit for the first Contract Year Specified in Part 7 (*Funding Limits*) of Schedule 6 (*Finance*) of the SLCA.

Assumptions in Magnox LTP dated April 2013 and RSRL LTP dated April 2013

- 10 That unless otherwise specifically disclosed by the Authority to members of the Parent Body Organisation prior to issue of the ITSFT, the assumptions and material risks expressly identified in the version of the Magnox LTP dated April 2013 and the version of the RSRL LTP dated April 2013 have been determined and up-dated in accordance with Good Industry Practice.

Contaminated Land, Subsoil Conditions and Asbestos

- 11 That there is no land contamination on or emanating from any Site, adverse subsoil conditions (including artificial obstructions) or asbestos on any Site, **except to the extent that** such contamination, adverse subsoil conditions (including artificial obstructions) or asbestos
- (a) have been specifically disclosed by the Authority to members of the Parent Body Organisation prior to issue of the ITSFT; or
 - (b) in the case of adverse subsoil conditions (including artificial obstructions), can be ascertained prior to the Final Tender from publicly available information or it would have been reasonable for a contractor acting in accordance with Good Industry Practice to take into account in its Final Tender; or
 - (c) are referred to (including by reference document) in the version of the Magnox LTP dated April 2013 or version of the RSRL LTP dated April 2013; and
 - (d) where the Contractor is relying upon this assumption after the Consolidation Phase, would have been physically identified by a contractor acting in accordance with Good Industry Practice and Value for Money who had reviewed the risk of such contamination, adverse subsoil conditions (including artificial obstructions) or asbestos being present during the Consolidation Phase and taken appropriate action.

This assumption shall not apply to adverse subsoil conditions that are due to or caused by weather conditions.

Subcontracts, Customer Contracts and Inter SLC Service Contracts

- 12 That, unless otherwise specifically disclosed by the Authority to members of the Parent Body Organisation prior to the issue of the ITSFT, all Subcontracts, Customer Contracts, Inter SLC Service Contracts and other Third Party arrangements that affect the Contractor and have a remaining value from the Commencement Date up to expiry of such contracts in excess of £100,000 have:
- (a) been disclosed to members of the Parent Body Organisation; or
 - (b) been entered into by the parties on standard terms and conditions or terms and conditions that are consistent with Good Industry Practice.

Fossils, antiquities, human remains or ordnance

- 13 Assume that objects on or at any of the Sites that are fossils, antiquities, human remains or ordnance have been disclosed to members of the Parent Body Organisation prior to issue of the ITSFT.

Real estate

For the purposes of the real estate assumptions only, the following terms shall have the meanings ascribed below:

"**SDLT**" means stamp duty land tax;

- 14 That where any easement right or privilege is expressed to be terminable by one or more third party or the Authority, no notice to terminate has been received by the Authority or served by the Authority.
- 15 That the Authority does not hold any of its legal interests in the Sites on trust for any other person, save to the extent implied by law in light of existing occupational rights and interests of Magnox Contractor and RSRL Contractor.
- 16 That there are no mortgages, charges (legal or equitable), specific or floating or debentures, rent charges, liabilities to maintain roadways outside of the Sites, liens (whether for costs or to an unpaid seller or otherwise), annuities or trusts (whether for securing money or otherwise) affecting the Sites.
- 17 That the Magnox Property Leases (and if applicable any Magnox Property Licence (as such term is defined in the Transition Agreement) entered into pursuant to Clause 7.3 of the Transition Agreement) demise all of the land and grant all of the rights required for Magnox Contractor to comply with its nuclear site licences and to operate and decommission the relevant Sites in accordance with the Magnox LTP dated April 2013.
- 18 That the subsisting RSRL Property Leases demise all of the land and grant all of the rights required for RSRL Contractor to comply with its nuclear site licences and to operate and decommission the relevant Sites in accordance with the RSRL LTP dated April 2013.
- 19 That compliance with the tenant covenants conditions and obligations in the Magnox Property Leases and the RSRL Property Leases will not put Magnox Contractor or RSRL Contractor respectively in breach of their obligations under this Agreement.
- 20 That all of the costs and expenses associated with compliance by the tenant with the tenant covenants, conditions and obligations set out in the Magnox Property Leases and the RSRL Property Leases have been included within the Magnox LTP dated April 2013 and the RSRL LTP dated April 2013.

Real Estate – Harwell and Winfrith

- 21 That there are no material inconsistencies between the substantive provisions of the RSRL Property Leases and the substantive provisions of the Magnox Property Leases.

SDLT

- 22 That the SDLT payable on the grant of the Magnox Property Leases: (a) will be assessed on the principal rent payable thereunder as the only consideration (monetary or otherwise) for the grant of the Magnox Property Leases. Neither the obligation to account the underlease rents in clause 4.2 of the Magnox Property Leases nor the value of the works to be undertaken by Magnox Contractor on the Magnox Sites under the Site Licence Company Agreement or otherwise will be assessed as consideration for the grant of the Magnox Property Leases for SDLT purposes; and (b) will not exceed £5,000 in aggregate for the grant of the Magnox Property Leases.

Pages 132 through 143 redacted for the following reasons:

s.43(2)

Appendix L

Phase 1 Completion and Phase 2 Completion

- 1 For the purposes of this Agreement, "**Phase 1 Completion**" means satisfaction of the following requirements:
 - (a) Achievement of all Target Fee Payment Milestones identified as pertaining to Phase 1 in Appendix K (*Target Fee Payment Milestones*) to this Schedule 6 (*Finance*) (the "**Milestone Requirements**");
 - (b) to the extent that the Detailed Requirements in Table 3 of the Client Specification are identified in Table 3 as pertaining to Phase 1 only (the "**Phase-Specific Requirements**"), compliance with and completion of such Phase-Specific Requirements (in accordance with the Evidence of Completion in Table 3);
 - (c) to the extent that the Detailed Requirements in Table 3 of the Client Specification are identified in Table 3 as pertaining to both Phase 1 and Phase 2 and impose obligations on the Contractor to progress or complete Tasks throughout the Term (the "**Project Requirements**"), the extent of completion of such Project Requirements (in accordance with the Evidence of Completion in Table 3) as would be achieved by successfully undertaking all the Tasks (or parts of Tasks) allocated to Phase 1 in the LTP Performance Plan; and
 - (d) to the extent that the Detailed Requirements in Table 3 of the Client Specification are identified in Table 3 as pertaining to both Phase 1 and Phase 2 and impose obligations on the Contractor that are periodic or continuous throughout the Term (including but not limited to the Key Enablers) (the "**Ongoing Requirements**"), compliance with or satisfaction of such Ongoing Requirements (in accordance with the Evidence of Completion in Table 3) until such time as the Contractor has successfully completed (a), (b) and (c) above.

- 2 For the purposes of this Agreement, "**Phase 2 Completion**" means satisfaction of the following requirements:
 - (a) Achievement of all Target Fee Payment Milestones identified as pertaining to Phase 2 in Appendix K (*Target Fee Payment Milestones*) to this Schedule 6 (*Finance*) (the "**Milestone Requirements**");
 - (b) to the extent that the Detailed Requirements in Table 3 of the Client Specification are identified in Table 3 as pertaining to Phase 2 only (the "**Phase-Specific Requirements**"), compliance with and completion of such Phase-

Specific Requirements (in accordance with the Evidence of Completion in Table 3);

- (c) to the extent that the Detailed Requirements in Table 3 of the Client Specification are identified in Table 3 as pertaining to both Phase 1 and Phase 2 and impose obligations on the Contractor to progress or complete Tasks throughout the Term (the "**Project Requirements**"), the extent of completion of such Project Requirements (in accordance with the Evidence of Completion in Table 3) as would be completed by successfully undertaking all the Tasks (or parts of Tasks) allocated to Phase 2 in the LTP Performance Plan; and
- (d) to the extent that the Detailed Requirements in Table 3 of the Client Specification are identified in Table 3 as pertaining to both Phase 1 and Phase 2 and impose obligations on the Contractor that are periodic or continuous throughout the Term (including but not limited to the Key Enablers) (the "**Ongoing Requirements**"), compliance with or satisfaction of such Ongoing Requirements (in accordance with the Evidence of Completion in Table 3) until such time as the Contractor has successfully completed (a), (b) and (c) above.

Schedule 7

EMPLOYMENT

Part 1 – Magnox

Magnox Nominated Staff

The appointment durations of the following table provide the minimum time from the Commencement Date that each of the Magnox Nominated Staff is proposed to be in post. The Contractor shall be required to comply with the provisions of Paragraph 2.1.9 (*Employees and Nominated Staff*) of Schedule 15 (*Minimum Performance Standards*) in relation to the requirement to maintain the Magnox Nominated Staff for the period set out in the column entitled "Appointment Duration" in the table below.

Position	Name	Secondment start date	Secondment end date	Appointment Duration	Level
s.40					

Pages 2 through 47 redacted for the following reasons:

s.40 & s.43(2)

Schedule 8

INTELLECTUAL PROPERTY

INDEX

Part A – IP Management Systems

- 1 IP management within project approval processes
- 2 Procurement process
- 3 Marking of documents and other forms of information
- 4 Exploitation of innovations
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- 6 Release of information
- 7 Approval process for Parent Body Organisation access to Authority IP
- 8 Process for importing and tracking introduced Parent Body Organisation IP
- 9 Notification of Developed IP
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Part B – Guidance on the choice of IP Ts&Cs in Subcontracts

- 1 Introduction
- 2 Authority ownership of Subcontractor created Developed IP
- 3 Subcontractor ownership of Subcontractor created Developed IP
- 4 Declaration and rights to use Subcontractor Background IP
- 5 Use of Developed IP by the Subcontractor
- 6 Related entities
- 7 Authority's access to and use of information

Part C – Special Parent IP

Part A

IP Management Systems

1 IP MANAGEMENT WITHIN PROJECT APPROVAL PROCESSES

- 1.1 The Contractor's process for entering into Subcontracts must be agreed with the Authority and must include the following principles:
- 1.1.1 Reviews to establish whether the Authority (and hence the Contractor) has (or, where permitted under Part B (*Guidance on the choice of IP Ts & Cs in Subcontracts*) of this Schedule 8 has licensed to it) sufficient IP rights to enable the project to deliver to time and cost.
 - 1.1.2 Activities needed to ensure that information will not be disseminated or used in breach of contractual obligations (the databases described later in this Schedule will aid in this process).
 - 1.1.3 Reviews to enable the Contractor to flag to the Authority any arising innovations that could have application outside of the Site or the Authority environment that should be considered for patenting or licensing.
 - 1.1.4 Reviews to establish the IP rights that should be secured under any Subcontracts let by the Contractor in relation to the project that are necessary either for the needs of the project, or to comply with this Schedule (i.e. that sufficient rights are secured to enable use of the Subcontract deliverables across the Authority's estate in accordance with Clause 29.4 (*Authority's Rights to IP developed by or on behalf of the Contractor and/or Subcontractors*)).
 - 1.1.5 Reviews to establish if there are any Third Party IP rights that either the project needs to license, or are needed to comply with this Schedule (i.e. that sufficient rights are secured, where necessary, to enable use of the project's deliverables across the Authority's estate).
- 1.2 The Contractor will be accountable for ensuring that these IP criteria are applied, and that consequential actions and decisions are recorded and available for review by the Authority.

2 PROCUREMENT PROCESS

- 2.1 For Subcontracts where there will be Developed IP, and/or where rights will be secured to Subcontractor-owned Background IP and/or Subcontractor-licensed Background IP (as defined in Clause 29.4.8 (*Licence to the Authority of IP Licensed to the*

Subcontractor)), then as a minimum the Contractor's procurement process should involve the following:

- 2.1.1 The procurement strategy relating to the Subcontract must consider and identify the desirable ownership and rights to each of (as relevant) Developed IP, Background IP and Third Party IP, so that this can be reflected in the ITT (or equivalent).
 - 2.1.2 Where appropriate the ITT should request information on:
 - 2.1.2.1 the tenderer's track record of innovation and knowledge transfer to its customers; and
 - 2.1.2.2 plans for identifying what will be Developed IP and undertaking knowledge transfer to the Contractor; and
 - 2.1.2.3 plans for identifying any Background IP and Third Party IP necessary for the use and/or exploitation of Developed IP arising from the Subcontract by the Authority, the Contractor or any Third Party.
 - 2.1.3 Where appropriate the procurement process should:
 - 2.1.3.1 take due account of the tenderer's track record of innovation, knowledge transfer and identifying Developed IP; and
 - 2.1.3.2 give feedback to winners and losers to reinforce the importance of innovation and IP management to the Contractor.
 - 2.1.4 Notification of Developed IP by the Subcontractor should be treated as a key contract deliverable, with Subcontractors required to make a null report if they believe there is no Developed IP to report. Where the Authority has limited rights to use a Subcontract's deliverables then the description of the IP supplied should be sufficiently accurate to uniquely identify the results to which such restrictions apply.
 - 2.1.5 A clear internal dissemination route should exist for such notified IP to ensure it is shared within the Contractor, including with any individual(s) within the Contractor who has responsibility for the management, protection and/or exploitation of IP.
- 2.2 Without prejudice to any legal rights and remedies which a Subcontractor may have, the Contractor should establish an appeals system for Subcontractors that believe their IP rights have been infringed by the Contractor, other SLCs or their subcontractors or that the IP provisions of their Subcontracts are not in the interest of the Authority. If this

appeal process should fail to resolve such issues then they should be referred to the Authority's Head of Contracts.

3 MARKING OF DOCUMENTS AND OTHER FORMS OF INFORMATION

- 3.1 To ensure that Parent Body Organisation, Subcontractor and Third Party information is not shared or disseminated in breach of obligations of confidence, standardised markings and/or electronic tags should be attached to information to which there are limitations on the Authority freedom to use.

[Such marking needs to be discussed and agreed, but the following system of labelling may be appropriate.

LIMITED RIGHTS : There are restrictions on [specific SLC]'s ability to use internally and disseminate externally – see agreement xxxx by organisation yyy.

LIMITED RIGHTS : There are no restrictions on [specific SLC]'s ability to use internally, but there are restrictions on its dissemination and/or licensing – see agreement xxxx with organisation yyy.

LIMITED RIGHTS : There are restrictions on the Authority's ability to use internally and disseminate externally – see agreement xxxx by organisation yyy.

LIMITED RIGHTS : There are no restrictions on the Authority's ability to use internally, but there are restrictions on its external dissemination and/or licensing – see agreement xxxx with organisation yyy.]

- 3.2 Where a Subcontractor is supplying information to which there are restrictions on use then there should be a contractual requirement placed on the Subcontractor to apply these markings. The Contractor shall operate such systems as are required to ensure markings are only applied by Subcontractors as appropriate.

4 EXPLOITATION OF INNOVATIONS

- 4.1 The Authority intends to create and operate a central electronic IP register of innovations, with controlled access (the "**Authority's IP Register**"). On creation of the Authority's IP Register, the Authority will notify the Contractor. The Contractor shall notify the Authority of (and, with effect from the notification that the Authority's IP Register has been created, use this register to capture) potentially patentable innovations, whether or not such innovations have been created by the Contractor.

- 4.2 Where an innovation is owned by the Authority and Clause 29.4.15 (*Protection of Developed IP*) of this Agreement applies:

- 4.2.1 The Contractor will evaluate the merits of patenting each innovation and make a recommendation on the action to be taken to the Authority.
- 4.2.2 The Authority may seek input from the Contractor before deciding whether a patent should be filed and the Contractor will provide this input.
- 4.2.3 Where the Authority decides:
 - 4.2.3.1 not to patent, but instead to publish the innovation to prevent third party patenting, then the Contractor will follow the Authority's reasonable instructions in relation to the publication of the innovation; or
 - 4.2.3.2 to patent, the Contractor will manage the patenting process in accordance with the instructions given by the Authority which the Contractor will seek at the following decision points:
 - 4.2.3.2.1 within three (3) months of the invention being notified;
 - 4.2.3.2.2 nine (9) months after first filing;
 - 4.2.3.2.3 a reasonable time before international filings are due (in the case of Patent Cooperation Treaty (PCT) applications, at PCT application, PCT Chapter II, Regional/National phase);
 - 4.2.3.2.4 a reasonable time before grant fees are due;
 - 4.2.3.2.5 a reasonable time before renewals; and
 - 4.2.3.2.6 when abandonment is proposed for any reason, including the anticipated failure to win a worthwhile grant.
- 4.2.4 The Contractor shall record the decisions reached, and the associated justification, (and, once notified that it is available under Paragraph 4.1 (*Exploitation of Innovations*) above of this Part A, will enter these onto the Authority's IP Register).
- 4.2.5 To promote consistency across the Authority's estate, the Contractor shall obtain the Authority's prior written approval to any scheme in relation to the making of ex-gratia rewards to inventors if that scheme will apply in respect of Developed IP. Without prejudice to sections 40 and 41 of the Patents Act 1977, no such rewards may be made without the Authority's prior approval.

5 REGISTER OF CONTRACTUAL IP RIGHTS

5.1 The Contractor will create and maintain a searchable database to capture the IP rights and obligations arising:

5.1.1 in relation to Developed IP developed by the Contractor and/or a Sub-Contractor;

5.1.2 in relation to Subcontractor-licensed Background IP (as defined in Clause 29.4.8 (*Licence to the Authority of IP Licensed to the Subcontractor*)), Parent IP, Background IP and Third Party IP licensed to the Authority;

5.1.3 under Subcontracts entered into by the Contractor;

5.1.4 under any licence agreements (in or out) entered into by the Contractor or Subcontractor which impact the Developed IP or any rights granted to or to be procured for the Authority under this Agreement; and

5.1.5 under any non-disclosure agreements entered into by the Contractor or Subcontractor which impact the Developed IP or any rights granted to or to be procured for the Authority under this Agreement

(the "**Contractor's IP Database**") and shall, make available to the Authority such information from the Contractor's IP Database as the Authority may reasonably request. The specification of the Contractor's IP Database must be approved in advance by the Authority.

5.2 The Contractor's IP Database must enable rights and obligations to be tracked, and in particular the Contractor's IP Database must ensure that:

5.2.1 the internal owner of the agreement is confirmed on a not-less than annual basis;

5.2.2 the internal owners (and others as appropriate) are reminded of time limited obligations / events (e.g. licence expiry, contract expiry, etc); and

5.2.3 a record is taken of any contract deliverables that the Authority has limited rights to use (including any notifications of Developed IP supplied by Subcontractors).

6 RELEASE OF INFORMATION

6.1 Other than to meet the requirements of any applicable Legislation and as permitted under this Agreement, and subject to the requirements of Clause 25 (*Confidentiality and Compliance with Legislation*) and Paragraph 7.1 below (*Approval Process for Parent Body Organisation Access to Authority IP*), the Contractor must not release Authority-

owned information, Authority IP (other than Parent Body IP already held by the Parent Body Organisation) and/or Developed IP to the Parent Body Organisation without the Authority's consent. Information, records or documentation released to Nominated Staff (and/or Parent Body Organisation secondees) is for use solely for their work under this Agreement (and/or the Parent Body Agreement) and the Contractor shall procure that they must not be used otherwise or retained by any member of Nominated Staff after their term as a member of Nominated Staff (or their secondment, as relevant) terminates.

6.2 Unless restricted by any applicable Legislation and as permitted under this Agreement, and subject to the requirements of Clause 25 (*Confidentiality and Compliance with Legislation*), the Contractor may release Authority-owned information to Subcontractors and other partners and collaborators solely for the purpose of enabling the Contractor to discharge their contractual obligations under this Agreement without the Authority's consent and without recording the material being released. This includes the submission of documents to universities and other learned bodies to support the gaining of professional qualifications and similar purposes, where the documents are not to be made publicly available.

6.3 Other than in the case of the public release of information (under Paragraph 6.4 (*Release of Information*) below), or information release to Subcontractors under Paragraph 6.2 (*Release of Information*) above, all information releases must be recorded and this record be available for inspection by the Authority (such releases must take place under a confidentiality agreement which places on the recipient the same obligations of confidentiality as are placed on the Contractor under the terms of Clause 25 (*Confidentiality and Compliance with Legislation*) of this Agreement, and these confidentiality agreements must be recorded by the Contractor in accordance with Paragraph 5 (*Register of Contractual IP Rights*) of Part A (*IP Management Systems*) of this Schedule 8.

6.4 The Contractor shall operate a formal system for approving the public release of Authority-owned information, designed to ensure that:

6.4.1 commercially sensitive or valuable information is not released other than in accordance with the requirements of this Agreement;

6.4.2 the Authority does not lose the opportunity to seek patent protection by early publication of technical information;

6.4.3 to ensure the Contractor complies with any contractual obligations not to release Parent Body Organisation, Subcontractor or Third Party information – this will be aided through the use of the Contractor's IP Database and the Parent IP Register (as defined below in Paragraph 8.2 (*Process for Importing*

and Tracking Introduced Parent Body Organisation IP) of Part A (IP Management Systems) of this Schedule 8);

6.4.4 to ensure all communications are consistent with the Authority's strategic and communications objectives; and

6.4.5 to ensure that UK Protectively Marked Information (Top Secret, Secret, Confidential or Restricted) or information relating to proliferation or sensitive technologies, are protected.

The specification of the above system must be approved in advance by the Authority.

6.5 All released IP must be accompanied with a clear statement setting out the circumstances in which the information was released, the purpose for which the information can be used, any restrictions on its use, publication or development, and a requirement to cite Authority ownership.

7 APPROVAL PROCESS FOR PARENT BODY ORGANISATION ACCESS TO AUTHORITY IP

7.1 Where the Parent Body Organisation believes it is in the Authority's interest for it to be granted rights to:

7.1.1 Contractor-created Developed IP;

7.1.2 Developed IP created by the Contractor's Subcontractors;

7.1.3 improvements made to IP owned by or licensed to the Parent Body Organisation; and

7.1.4 any other IP owned by the Authority

then it should make a request to the Authority. The Authority shall consider the merits of such a request, and may negotiate terms and grant rights at its sole discretion.

8 PROCESS FOR IMPORTING AND TRACKING INTRODUCED PARENT BODY ORGANISATION IP

8.1 As described in this Agreement and the Parent Body Agreement all IP introduced by the Parent Body to which the Authority has limited rights of use must be identified and tracked by the Contractor and the Parent Body Organisation otherwise the Authority shall be entitled to consider it to be available for its use, exploitation and licensing without restriction.

8.2 The Authority intends to create and operate a central electronic IP register, with controlled access, to record any Parent IP to which the Authority has rights, including

the nature of those rights and any restrictions (the "**Parent IP Register**"). On creation of the Parent IP Register, the Authority will notify the Contractor.

- 8.2.1 The Contractor must procure that the Parent Body Organisation notifies the Contractor of any such Parent IP, and the Contractor must notify the Authority of such information (and, with effect from the notification that the Parent IP Register has been created, enter such information on the Parent IP Register).
 - 8.2.2 The Authority will review and sanction the description to ensure it provides a sufficiently robust description.
 - 8.2.3 The Authority will review and check the rights recorded are consistent with those granted under the Parent Body Agreement or other agreement.
 - 8.2.4 The Authority may, if appropriate, seek to negotiate greater (or reduced) rights from the Parent Body Organisation.
- 8.3 The Contractor shall operate systems to ensure that introduced Parent IP, to which the Authority has limited rights is marked using the system of markings/metadata indicated in Paragraph 3 (*Marking of Documents and Other Forms of Information*) of Part A (*IP Management Systems*) of this Schedule 8 above.

9 NOTIFICATION OF DEVELOPED IP

- 9.1 The Contractor must notify the Authority of any Developed IP which is created, and in particular the Contractor must identify to the Authority:
- 9.1.1 potentially patentable innovations; and
 - 9.1.2 Developed IP that can be licensed outside of the Authority's estate – and whether there are any specific exploitation or licensing opportunities
- regardless of whether such IP arises from work carried out by the Contractor or its Subcontractors.
- 9.2 The Contractor's IP Database will serve as the method of notification for patentable innovations. The Contractor shall put in place a system that must be agreed in advance with the Authority, to report Developed IP to the Authority.

10 SYSTEMS TO MONITOR THIRD PARTY PATENTS TO HELP AVOID THEIR INFRINGEMENT

- 10.1 Third Party published patents will be monitored by the Contractor:
- 10.1.1 to help ensure that valid Third Party patent rights are not infringed;
 - 10.1.2 to enable the grant of restrictive patents to be opposed where possible; and

- 10.1.3 as a source of market intelligence.
- 10.2 The system adopted by the Contractor should involve as a minimum the following elements:
 - 10.2.1 the identification of search parameters in the areas of technical or commercial relevance;
 - 10.2.2 a review of the search terms on an annual basis;
 - 10.2.3 the performance of searches of published European Patents, United Kingdom or US patents using these search parameters not less frequently than every three months;
 - 10.2.4 the distribution of information on patents so identified, to suitably qualified and experienced individuals in relevant technical and commercial areas;
 - 10.2.5 a system to ensure any potential infringement is tracked and responded to appropriately – reporting such issues to the Authority; and
 - 10.2.6 the Contractor must notify the Authority and seek the Authority's prior approval before undertaking any course of action which the Contractor intends to mount to oppose or secure rights under a published patent in respect of this Agreement.

11 COMMERCIAL GUIDANCE 02

- 11.1 The Contractor shall follow Annex 2 (*Commercial Guidance 02*) to this Schedule 8.

Pages 11 through 36 redacted for the following reasons:

s.43(2)

Schedule 9

INFORMATION TECHNOLOGY

Part A – Magnox Critical Site IT Systems

The table below sets out the Magnox Critical Site IT Systems, which may be varied in accordance with this Agreement from time to time.

Pages 2 through 6 redacted for the following reasons:

s.43(2) & s.24

Schedule 10

INSURANCE

- Part 1 Synopsis of Authority Insurances**
- Part 2 Insurance Procedures**
- Appendix 1 Magnox Register of Insurances 2014**
- Appendix 2 RSRL Register of Insurances 2014**
- Appendix 3 Claims Handling**
- Appendix 4 Insurance Premium Contributions**

PART 1 – SYNOPSIS OF AUTHORITY INSURANCES

- 1.1 The document entitled "Insurance Cover Summary 2014 For Magnox Ltd" dated May 2014 (the ***Magnox Register of Insurances***) is attached at Appendix 1 and the document entitled "Insurance Cover Summary 2014 For Research Sites Restoration Ltd" dated May 2014 (the ***RSRL Register of Insurances***) is attached at Appendix 2. The Magnox Register of Insurances and the RSRL Register of Insurances describe the Authority Insurances that are in force and effect until 31 March 2015.

Pages 3 through 8 redacted for the following reasons:

s.43(2)

Schedule 11

AUTHORITY DELIVERABLES

1 AUTHORITY DELIVERABLES

1.1 In accordance with Clause 12.1 (*Dependency Events*) of this Agreement, the Authority shall provide the following items and services to the Contractor:

- (a) the Authority Insurances subject to and in accordance with Clause 18; and
- (b) access to the Authority Assets,

each being an "**Authority Deliverable**" and together, the "**Authority Deliverables**".

2 AUTHORITY INSURANCES

2.1 The Authority shall procure the Authority Insurances subject to and in accordance with Clause 18.1 (*Authority Insurances*) and Schedule 10 (*Insurance*) of this Agreement.

2.2 The Contractor shall comply with its obligations in respect of the Authority Insurances as set out in Clause 18.2 (*Acknowledgement by Contractor*) of this Agreement.

3 AUTHORITY ASSETS

3.1 The Authority shall provide the Contractor with access to and use of the Authority Assets in accordance with Clause 6 (*Asset Management*) of this Agreement.

Schedule 12

DISPUTE RESOLUTION PROCEDURE

1 INTERPRETATION AND CONSTRUCTION

Defined terms in this Dispute Resolution Procedure shall have the meanings given to them in Clause 1.1 (*Definitions*) of this Agreement and, unless the context otherwise requires, the following terms shall have the meanings given below solely for the purposes of the Dispute Resolution Procedure:

"Relevant Agreement" means whichever of this Agreement, the Parent Body Agreement or a Property Lease (as applicable) a Dispute has arisen under, and **"Relevant Agreements"** shall be construed accordingly;

"Claimant" has the meaning given in Rule 4.2 (*Adjudication*);

"Construction Act Dispute" means a Dispute that is subject to the provisions of the HGCRAs;

"Customer" means a counterparty to a Customer Contract;

"Customer Dispute" means a dispute where the subject matter of the dispute is a Customer Contract;

"Date of Appointment" has the meaning given in Rule 4.3 (*Adjudication*);

"Date of Referral" has the meaning given in Rule 4.5 (*Adjudication*);

"Dispute" means any dispute or difference or claim arising out of or in connection with this Agreement, the Parent Body Agreement or a Property Lease including, but not limited to, any question regarding its existence, interpretation, validity, construction or termination but excluding any dispute or difference between the Magnox Contractor and the RSRL Contractor;

"Dispute Notice" has the meaning given in Rule 3.1 (*Senior Representatives*);

"LCIA" means the London Court of International Arbitration;

"LCIA Rules" has the meaning given in Rule 6.2 (*Arbitration*);

"HGCRAs" means the Housing Grants Construction and Regeneration Act 1996;

"Non-Construction Act Dispute" means any Dispute other than a Construction Act Dispute;

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

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

"Related Dispute" means any dispute or Third Party Claim to which the Authority is a party in which issues of fact or law arise which are substantially the same as or connected with one or more issues of fact or law which arise in another Dispute;

"Request for Arbitration" has the meaning given in Rule 7.1 (*Joinder and Consolidation*);

"Respondent" has the meaning given to it in Rule 4.2 (*Adjudication*);

"Rule" means a paragraph in this Dispute Resolution Procedure and the expression **"Rules"** shall be construed accordingly;

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

"Senior Representative Settlement Agreement" has the meaning given in Rule 3.3 (*Senior Representatives*);

"Subcontract Dispute" means a dispute where the subject matter of the dispute is a Subcontract or a Sub-Subcontract;

"TeCSA" means the Technology and Construction Solicitors Association;

"Tribunal" means a single Arbitrator or a tribunal of three Arbitrators appointed in accordance with Rule 6 (*Arbitration*).

2 OUTLINE OF THE DISPUTE RESOLUTION PROCEDURE

2.1 Save as otherwise expressly provided in the Relevant Agreement, in the event a Dispute arises:

2.1.1 the Parties to the Dispute shall seek to resolve the Dispute by convening a meeting of the Senior Representatives of the Parties to the Dispute in accordance with Rule 3 (*Senior Representatives*);

2.1.2 if the Senior Representatives are unable to resolve the Dispute in accordance with Rule 3 (*Senior Representatives*):

- 2.1.2.1 the Parties may at any time refer the Dispute to mediation in accordance with Rule 5 (*Mediation*);
- 2.1.2.2 any Party may at any time before any Construction Act Dispute is finally settled by arbitration refer such Construction Act Dispute to adjudication in accordance with Rule 4 (*Adjudication*);
- 2.1.2.3 any Party may at any time refer a Non-Construction Act Dispute to adjudication in accordance with Rule 4 (*Adjudication*) unless any such Non-Construction Act Dispute has already been referred to arbitration in accordance with Rule 6 (*Arbitration*) and/or mediation in accordance with Rule 5 (*Mediation*) and such mediation is ongoing;
- 2.1.2.4 in the event that the Dispute is not otherwise settled, compromised or resolved in accordance with these Rules, any Party may refer the Dispute to arbitration in accordance with Rule 6 (*Arbitration*).

2.2 Notwithstanding any other provision of these Rules, any Party may at any time:

- 2.2.1 refer a Construction Act Dispute to adjudication in which case the adjudication procedure set out in Rule 4 (*Adjudication*) shall apply;
- 2.2.2 apply to or bring a claim in the English Courts for:
 - 2.2.2.1 an order restraining a Party from doing any act or compelling a Party to do any act;
 - 2.2.2.2 a judgment to enforce a Senior Representative Settlement Agreement, the decision of an adjudicator, or an arbitral award; or
 - 2.2.2.3 for judicial review; and/or
- 2.2.3 serve a Request for Arbitration so as to prevent the expiry of any applicable limitation period.

3 SENIOR REPRESENTATIVES

- 3.1 Any Party may refer any Dispute to the Dispute Resolution Procedure by notice in writing to all other Parties to the Dispute (a "**Dispute Notice**"). The Dispute Notice shall include the following details:
 - 3.1.1 the subject matter of the Dispute and the issues to be resolved;
 - 3.1.2 the position the referring Party believes is correct and the referring Party's reasons for that position;

- 3.1.3 the identity of the other Parties to the Dispute;
 - 3.1.4 the identity of the referring Party's Senior Representative;
 - 3.1.5 copies of any documents in the referring Party's possession which the referring Party considers to be important and relevant; and
 - 3.1.6 a statement of the determination, remedy or recourse which the referring Party seeks.
- 3.2 The Parties to the Dispute shall procure that the Senior Representatives of each Party to the Dispute shall meet during the period within fifteen (15) Working Days from date of service of the Dispute Notice, and if necessary shall meet more than once, to seek to resolve the Dispute by agreement.
- 3.3 Any agreement reached by the Senior Representatives which resolves the Dispute must be in writing and signed by the Senior Representative of each Party to the Dispute (the "**Senior Representative Settlement Agreement**").
- 3.4 If the Senior Representatives of the Parties to the Dispute are unable to resolve the Dispute within fifteen (15) Working Days of the date of service of the Dispute Notice (or within such further time as the Senior Representatives of the Parties to the Dispute may agree in writing) then any Party to the Dispute may refer the Dispute to adjudication and/or arbitration in accordance with these Rules and/or the Parties may agree to refer the Dispute to mediation in accordance with these Rules.
- 3.5 Unless the Parties to the Dispute otherwise agree in writing, referring expressly to this Rule 3.5, all Senior Representatives' meetings shall be held on a without prejudice basis and all communications prior to and during any such meeting (including any concessions, waivers or agreements (other than a Senior Representative Settlement Agreement) made by a Party in the course of discussions pursuant to this Rule 3) and all documents produced for, used in or made available for any such meeting, and are not otherwise available, known or subject to other obligations of disclosure, are privileged and shall not be disclosable or raised by the Parties in any subsequent Legal Proceedings. Any Party may enforce the terms of a Senior Representative Settlement Agreement in arbitration and cite evidence of, and incidental to, any such Senior Representative Settlement Agreement in such proceedings (other than matters which are confidential or privileged in accordance with the above).

4 ADJUDICATION

- 4.1 Any Party to a Dispute may notify the other Parties to the Dispute of its intention to refer such Dispute to an adjudicator by written notice (a "**Notice of Intention to seek Adjudication**"). The Notice of Intention to seek Adjudication shall include:

- 4.1.1 the nature and a brief description of the Dispute and the Parties involved (including as appropriate their addresses for service of any notices);
 - 4.1.2 details of where, when and/or how the Dispute has arisen;
 - 4.1.3 the nature of the redress sought;
 - 4.1.4 the identity and terms of appointment of any proposed Adjudicator.
- 4.2 The Party or Parties receiving the notice (the "**Respondent(s)**") shall notify in writing the Party giving the notice (the "**Claimant**") within two (2) Calendar Days of service of the Notice of Intention to seek Adjudication, whether or not the appointment of the proposed Adjudicator is agreed, and in default of agreement the Respondent(s) shall propose an alternative person to act as Adjudicator. If the identity and terms of appointment of the Adjudicator are not agreed within three (3) Calendar Days of service of the Notice of Intention to seek Adjudication, the Claimant shall apply in writing to TeCSA to nominate and determine the terms of appointment of an Adjudicator within two (2) Calendar Days of the matter being referred to TeCSA and in accordance with these Rules.
- 4.3 The Adjudicator shall within one (1) Working Day of receipt of the proposed appointment or nomination confirm his appointment (the "**Date of Appointment**") in writing to the Parties to the Dispute stating:
- 4.3.1 his willingness and availability to act;
 - 4.3.2 that he has no interest in the Dispute; and
 - 4.3.3 that he does not have a conflict of interests with any of the Parties.
- 4.4 Within seven (7) Calendar Days of service of the Notice of Intention to seek Adjudication, the Claimant shall serve on the Adjudicator a submission which shall include the following:
- 4.4.1 the subject matter of the Dispute and the issues to be resolved;
 - 4.4.2 a detailed statement of the facts, including relevant dates, names of personnel involved (if any) and references to specific parts of relevant documents;
 - 4.4.3 the position the Claimant believes is correct and the Claimant's reasons for that position;
 - 4.4.4 copies of all the documents which the Claimant considers to be important and relevant; and

- 4.4.5 a statement of the determination, remedy or recourse which the Claimant seeks.
- 4.5 Under these Rules the date on which the Adjudicator and the other Parties receive the Claimant's submission shall be the date on which the Construction Act Dispute is referred to the Adjudicator ("**Date of Referral**").
- 4.6 The Respondent(s) shall be entitled (but not obliged) to submit a written response to the Adjudicator and copies of any documents the Respondent(s) intend(s) to rely on within fourteen (14) Calendar Days of service of the Notice of Intention to seek Adjudication or ninety (90) Calendar Days of service of the Notice of Intention to seek Adjudication in the case of Non-Construction Act Disputes.
- 4.7 Any communication or submission between a Party and the Adjudicator shall be communicated contemporaneously also to all other Parties to the Dispute.
- 4.8 In the case of Construction Act Disputes, the Adjudicator shall reach a decision within twenty eight (28) Calendar Days of the Date of Referral. This period of twenty eight (28) Calendar Days may be extended by up to fourteen (14) Calendar Days by the Adjudicator with the consent of the Claimant or longer if agreed by all Parties to the adjudication. In the case of Non-Construction Act Disputes, the Adjudicator shall reach a decision within one hundred and twenty (120) Calendar Days of the Date of Referral or longer if agreed by all Parties to the adjudication.
- 4.9 The Adjudicator shall:
- 4.9.1 act fairly and impartially;
 - 4.9.2 establish the timetable and procedure for the adjudication;
 - 4.9.3 reach his decision in accordance with the applicable Legislation in relation to the Dispute referred to him;
 - 4.9.4 if requested by one of the Parties to the Dispute, provide reasons for his decision, which shall be communicated to all Parties to the adjudication; and
 - 4.9.5 render his decision as an Adjudicator for the purposes of the HGCR in relation to Construction Act Disputes. The Arbitration Act 1996 and the law relating to arbitrators and arbitrations shall not apply to the Adjudicator or his decision or the procedure by which he reaches his decision in relation to any adjudication whether a Construction Act Dispute or a Non-Construction Act Dispute.

- 4.10 In determining any Dispute referred to him for a decision the Adjudicator shall at his absolute discretion take the initiative in ascertaining the facts and the law as he considers necessary in respect of the referral which may include:
- 4.10.1 considering any written representations, statements and experts' reports submitted to him by the Parties;
 - 4.10.2 if requested by any Party affording the Parties the opportunity to address him in a meeting or meetings at which all Parties to the Dispute referred to him must be present;
 - 4.10.3 requiring the Parties to produce to him and to all other Parties to the Dispute copies of any documents relevant to the Dispute (save any which would be privileged from production in court proceedings);
 - 4.10.4 instructing an expert and/or taking counsel's opinion as to any matter raised in the adjudication, but he shall not be entitled to delegate any decision to such expert or counsel; and
 - 4.10.5 opening up, reviewing and revising any opinion certificate, instruction, determination or decision of whatsoever nature given or made under the Relevant Agreement.
- 4.11 If a Party, without showing sufficient cause, fails to comply with any request, direction or timetable of the Adjudicator made in accordance with his powers, or fails to produce any document or written statement requested by the Adjudicator, or fails to comply with any other procedural requirement relating to the adjudication, the Adjudicator may:
- 4.11.1 continue the adjudication in the absence of that Party or of the document or written statement requested;
 - 4.11.2 draw such inferences from that failure to comply as circumstances may, in the Adjudicator's opinion, justify; and
 - 4.11.3 make a decision on the basis of the information before him attaching such weight as he thinks fit to any evidence submitted to him outside any period he may have requested or directed.
- 4.11A After reaching his decision, the Adjudicator shall be permitted to correct his decision so as to remove any clerical or typographical errors arising by accident or omission.
- 4.12 The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless such act or omission is in bad faith, and any employee, agent or advisor of the Adjudicator is similarly protected from liability.

- 4.13 The Adjudicator may resign at any time on giving notice in writing to the Parties to the Dispute. The Adjudicator must resign where the Dispute is the same or substantially the same as one which has previously been referred to adjudication, and a decision has been taken in that adjudication. Where the Adjudicator ceases to act under this Rule or where the Adjudicator is unwilling or unable to act or continue to act:
- 4.13.1 the Claimant may serve a fresh Notice of Intention to seek Adjudication and request an Adjudicator to act in accordance with this Rule 4; and
- 4.13.2 if requested by the new Adjudicator and insofar as is reasonably practicable, the Parties shall supply him with copies of all documents which they had made available to the previous Adjudicator.
- 4.14 Any decision of the Adjudicator is binding upon the Parties to the Dispute unless and until the Dispute to which it relates is finally determined by Arbitration in accordance with Rule 6 (*Arbitration*), or by written agreement of the Parties.
- 4.15 If any Party does not comply with the decision of the Adjudicator any other Party to the adjudication shall be entitled to take proceedings in the English Courts to secure enforcement of the decision pending any final determination of the Dispute.
- 4.16 Each Party to the adjudication shall be liable for such proportion of the fees and reasonable expenses of the Adjudicator, and those of any person employed or engaged by the Adjudicator to assist him in the adjudication, as the Adjudicator shall in his absolute discretion direct.

5 MEDIATION

- 5.1 Subject to Rule 2 (*Outline of the Dispute Resolution Procedure*), the Parties to the Dispute may at any time agree to seek settlement of that Dispute by mediation in accordance with the LCIA Mediation Procedure current at the time of the referral to mediation, and such procedure is deemed to be incorporated by reference into this Rule 5.

6 ARBITRATION

- 6.1 Subject to Rule 2 (*Outline of the Dispute Resolution Procedure*), a Party may not refer a Dispute to arbitration:
- 6.1.1 unless that Dispute has first been referred to the Parties' Senior Representatives in accordance with Rule 3 (*Senior Representatives*); or
- 6.1.2 if the Parties have agreed to seek settlement of the Dispute by mediation, until the mediation process has been completed.

- 6.2 Subject to Rule 2 (*Outline of the Dispute Resolution Procedure*), any Dispute shall be referred to and finally resolved by arbitration under the LCIA Rules (the "**LCIA Rules**"), which are deemed to be incorporated by reference into this Rule 6.
- 6.3 There shall be either one or three arbitrators. The number of arbitrators for a Dispute shall be agreed by the Senior Representatives during the period set aside for their meetings or, failing such agreement, shall be determined by the LCIA Court, which shall take account of the value and complexity of the Dispute and any Related Dispute and the number of Parties to the Dispute and any Related Dispute.
- 6.4 The seat, or legal place, of arbitration shall be London.
- 6.5 The language to be used in the arbitral proceedings shall be English.
- 6.6 The Parties shall not be entitled to call any individual who was previously appointed as an Adjudicator or Mediator in connection with any aspect of the Dispute, in accordance with Rules 4 (*Adjudication*) or 5 (*Mediation*), to act as witness in the arbitration.

7 JOINDER AND CONSOLIDATION

- 7.1 A request for arbitration by a Party under these Rules (a "**Request for Arbitration**") may be in respect of a Dispute and/or a Related Dispute.
- 7.2 A Party served with a Request for Arbitration may at any time before the Tribunal is appointed, serve a Request for Arbitration in respect of any Related Dispute. In that case the arbitration of the Related Dispute shall be referred to the same Tribunal and consolidated with the arbitration of the Dispute in the original Request for Arbitration.
- 7.3 After a Tribunal has been appointed, any Party to the arbitration may serve a further Request for Arbitration in respect of any Related Dispute referring it to the same Tribunal as that appointed for the arbitration of the Dispute in the original Request for Arbitration. In that case the Tribunal shall have discretion as to whether the Related Dispute is consolidated with the arbitration of the Dispute in the original Request for Arbitration. In exercising its discretion the Tribunal shall consider:
- 7.3.1 whether any evidentiary hearing on the merits of the Dispute in the original Request for Arbitration has begun;
 - 7.3.2 whether the Dispute in the original Request for Arbitration has already been finally determined as to liability; and
 - 7.3.3 any written representations made in accordance with Rule 7.4 (*Joinder and Consolidation*).

- 7.4 Any Party to the Related Dispute or to the Dispute in the original Request for Arbitration, shall be entitled to make a written representation to the Tribunal as to whether any evidentiary hearing on the merits of the Dispute in the original Request for Arbitration has begun and/or as to whether the Dispute in the original Request for Arbitration has already been finally determined as to liability, within seven (7) Calendar Days of the referral of the Related Dispute to the Tribunal.
- 7.5 If following seven (7) Calendar Days of the referral of the Related Dispute to the Tribunal, the Tribunal considers in its absolute discretion that:
- 7.5.1 any evidentiary hearing on the merits of the Dispute in the original Request for Arbitration has not begun; and/or
- 7.5.2 the Dispute in the original Request for Arbitration has not already been finally determined as to liability
- it may order the consolidation of the Related Dispute with the arbitration of the Dispute in the original Request for Arbitration.
- 7.6 A Party that receives more than one Request for Arbitration for Disputes which constitute Related Disputes may give notice requiring that they be referred to the same Tribunal and consolidated in accordance with Rule 7 (*Joinder and Consolidation*). The Contractor shall exercise this right if requested to do so by the Authority following service by the Authority of a Request for Arbitration where the Contractor has also received a Request for Arbitration in a Subcontract Dispute or a Customer Dispute (as applicable) in accordance with this Dispute Resolution Procedure.
- 7.7 If a Dispute arises between the Contractor and the Authority, whether or not commenced by the Authority, and the Contractor is of the opinion that a Related Dispute exists between the Authority and another SLC, the Contractor shall be entitled to request that the Authority procure (subject to any discretion of the Tribunal and to the right of the Parties to make representations to the Tribunal as to how that discretion should be exercised) that the Related Dispute be referred to the same Tribunal and that Related Dispute be consolidated with the arbitration of the Dispute in the original Request for Arbitration. If such a request is made, the Authority shall not unreasonably withhold its agreement to make the referral to the Tribunal, upon Notice to the Contractor.

Schedule 13

REPORTING

Reporting Requirements

The Contractor shall comply with all reporting requirements identified in this Agreement including specifically the provision of the reports identified in the table below to the Authority.

Where the frequency of any report is not specified in the relevant source of requirement specified below, the Contractor shall submit the relevant report at the frequency specified below. References to Months in the table below are to calendar months, provided that where the frequency of a report is expressed by reference to a "period", "period" shall mean the 4-week or 5-week accounting period of the Contractor (as agreed annually with the Authority prior to the start of each Contract Year) that corresponds with the relevant calendar month (or, where the reporting requirement is quarterly, that corresponds with the last calendar month of the quarter). During the Consolidation Phase, any obligation to submit a report within 6 Working Days of a period end may be satisfied by submission of that report within 8 Working Days of the period end.

The reporting requirements are categorised by subject matter as follows:

- (a) Finance;
- (b) Progress/performance reporting;
- (c) Sanction and validation;
- (d) Baseline management and change control;
- (e) Integrated waste management;
- (f) Site restoration, land and property;
- (g) HSSSEQ;

- (h) People;
- (i) Assets;
- (j) Information and knowledge management;
- (k) Socio economics;
- (l) Public and stakeholder engagement and communications;
- (m) Inter SLC Service Contracts;
- (n) International relations;
- (o) Integrated Management System;
- (p) Call-Off Support;
- (q) Liabilities and risk management; and
- (r) Strategy.

<u>Ref</u>	<u>Specific subject</u>	<u>Name of report</u>	<u>Report or data only</u>	<u>Frequency</u>	<u>Source of requirement</u>	<u>Description</u>
<u>Finance</u>						
	Cost Invoicing and Reporting	Invoice (Allowable Costs) and Supporting Information	Report	Monthly (within 10 Calendar Days of Month end)	SLCA Schedule 6, Part 2B, Para 2.4 and 3.1	Invoice for Allowable Costs incurred in the relevant Accounting Month, together with supporting information specified in Schedule 6 Part 2B, Para 3.1, certified by Finance Director.
		Monthly Reconciliation Report	Report	Monthly (within 14 Calendar Days of Month end)	SLCA Schedule 6, Part 2B, Para 7.1	Financial report showing amounts received and paid out, breakdown of Allowable and Disallowable Costs incurred, reconciliation of invoices and

<u>Ref</u>	<u>Specific subject</u>	<u>Name of report</u>	<u>Report or data only</u>	<u>Frequency</u>	<u>Source of requirement</u>	<u>Description</u>
						cash, expenditure against funding limits, etc. (content described in Schedule 6, Part 2B, Para 7.1).
		Annual Reconciliation Report	Report	Annually (within 60 days of Contract Year end)	SLCA Schedule 6, Part 2B, Para 8.1	Financial report showing amounts received and paid out, breakdown of Allowable and Disallowable Costs incurred, reconciliation of invoices and cash, expenditure against funding limits, etc. (content described in Schedule 6, Part 2B, Para 7.1 and 8.1).
	Fee Invoicing and Reporting	PBI Fee and Target Fee profiles	Report	Annually (3 Months prior to commencement of each Contract Year)	SLCA Schedule 6, Part 7, Para 5	PBI Fee and Target Fee profiles for (content described in Schedule 6, Part 7, Para 5).
		PAFs for PBI Levels	Report	Annually (following provision of the PBI Fee profile)	SLCA Schedule 6, Part 4A, Para 2.3 and Part 5, Section A	Proposed PAFs in connection with meeting with Authority to agree the PBI Fee arrangements for following Contract Year.
		PAFs for Target Fee Payment Milestones	Report	Annually (following provision of the Target Fee profile)	SLCA Schedule 6, Part 4C, Section C, Para 2.5 and Part 5, Section B	Proposed PAFs in connection with meeting with Authority to agree the detailed completion criteria/evidence of completion for Target Fee Payment Milestones arrangements for following Contract Year.
		Invoice (Target Fee) and Supporting Information	Report	Quarterly (after the end of each Contract Quarter)	SLCA Schedule 6, Part 4C, Section B, Para 1.3	Target Fee invoice for Target Fee Payment Milestones Achieved during the previous Contract Quarter together with supporting information as specified in Schedule 6, Part 4C, Section B, Para 1.3 (including details of quarterly Shareline calculation).

<u>Ref</u>	<u>Specific subject</u>	<u>Name of report</u>	<u>Report or data only</u>	<u>Frequency</u>	<u>Source of requirement</u>	<u>Description</u>
		Invoice (PBI Fee) and Supporting Information	Report	As agreed in the relevant PAF(s)	SLCA Schedule 6, Part 4C, Section A, Para 1.1	PBI Fee invoice for PBI Levels achieved, together with supporting information as specified in Schedule 6, Part 4C, Section A, Para 1.1.
		Fee Reconciliation Report	Report	Annually (within 60 Working Days of Contract Year end and Achievement of Phase 1 Completion and Phase 2 Completion)	SLCA Schedule 6, Part 4C, Para 2.1	Fee Reconciliation Report, along with supporting evidence (including PBI Fee earned and not earned, Target Fee earned and not earned), covering PBI Fee and Target Fee including Shareline.
		PBI Level Reporting	Report	As agreed by the Parties for each PBI Level	SLCA Schedule 6, Part 5, Para 3.3	Performance reports relating to the achievement of (or delay or failure to achieve) PBI Levels.
		Target Fee Payment Milestone Reporting	Report	As agreed by the Parties for each Target Fee Payment Milestone	SLCA Schedule 6, Part 5, Para 7.3	Performance reports relating to the achievement of Target Fee Payment Milestones.
	Accounting	Statutory reporting and representation pack	Report	Within 15 Working Days after 31 December and 31 March in each Contract Year	FNP-02, Para 4.1	Requirements as issued by the Authority prior to the start of the interim and Contract Year-end processes.
		Annual financial business plan pack	Report	Annually (September, or as otherwise agreed)	FNP-02, Para 4.1	Requirements as issued by the Authority at the start of each planning process.

<u>Ref</u>	<u>Specific subject</u>	<u>Name of report</u>	<u>Report or data only</u>	<u>Frequency</u>	<u>Source of requirement</u>	<u>Description</u>
		Audited financial statements of the Magnox Contractor and RSRL Contractor	Report	Annually (within 60 Calendar Days after close of statutory accounting period)	SLCA 14.3.3	Copies of audited financial statements prepared in accordance with the Accounting Standards for the period.
	Funding	Proposed ASFL	Report	Annually (3 Months prior to commencement of each Contract Year from Contract Year 2 onwards)	SLCA Schedule 6, Part 7, Para 1	ASFL proposal for forthcoming Contract Year and ASFL estimate for succeeding two Contract Years.
		Proposed Agreed Payment Profile, Agreed Cash Flow Requirement and Approved Working Capital Allowance	Report	Annually (when setting funding in accordance with Schedule 6, Part 7)	SLCA Schedule 6, Part 2B, Para 2 SLCA Schedule 6, Part 7, Para 7	Proposed Agreed Payment Profile, Agreed Cash Flow Requirement and Approved Working Capital Allowance, and sufficient details of the costs estimated to be incurred by the Contractor, to enable the Parties to agree those documents for the forthcoming Contract Year.
		Scenario Impact Assessments	Report	On request by the Authority	PCP-11 Para 11.5	Scenario information from Contractor to inform spending reviews, the development of high-level strategic scenarios to demonstrate the impacts against different potential futures.
		Cash Flow Report	Report	Monthly (by the first day of the Month to which the report relates)	SLCA 16.6.2 FNP-02, Para 4.1 FNPR-04	Monthly forecast of daily cash flows to and from the Authority for the following 2 Months, and a rolling forecast of Monthly cash flows to and from the Authority for the following 12 Months, in a form determined by the Authority and notified to the Contractor.

<u>Ref</u>	<u>Specific subject</u>	<u>Name of report</u>	<u>Report or data only</u>	<u>Frequency</u>	<u>Source of requirement</u>	<u>Description</u>
		Portfolio Management	Report	Monthly (6 Working Days after period end)	PCP-07, Para 7.3.5.1 PCP-13, Para 13.4	YTD BCWS, BCWP and ACWP with year end estimates by site, forecast EAC, summary and actions and trend log and deferral log.
		NDA Variance Commentary	Report	Monthly (6 Working Days after period end)	SLCA 14.1.2	Actual DEL versus Budget (Year to Date and LBE versus Budget).
	Tax	Tax Pack for Authority Owner Books	Report	Within 15 Working Days after 31 December and 31 March in each Contract Year	SLCA 16.15.2.3 FNP-02, Para 4.1	Tax pack in respect of accounting records maintained by the Contractor on behalf of the Authority, in a form required by the Authority.
		Contractor Audit Plan	Report	Annually (draft to be provided in February and final plan to be provided by the end of April)	ADP-02, Para 4.2	Draft internal audit plan provided to the Authority prior to the plan being finalised through an appropriate governance forum within the Contractor.
	Inspection and Audit	Quarterly Internal Audit Review Report	Report	Quarterly (within two weeks prior to the Authority's quarterly audit committee for which dates will be provided at the start of each financial year)	ADP-02, Para 4.4	Internal audit review report, which: <ul style="list-style-type: none"> describes progress against Contractor's annual audit plan; summarises the findings of audit work performed during the last quarter; outlines the work planned in the forthcoming quarter; provides brief summary details of any fraud or bribery investigations and ongoing actions or issues; and provides an update on tracking of

<u>Ref</u>	<u>Specific subject</u>	<u>Name of report</u>	<u>Report or data only</u>	<u>Frequency</u>	<u>Source of requirement</u>	<u>Description</u>
						management actions and audit close-out .
		Annual Internal Audit Report	Report	Annually (after 31 March and before 30 April)	ADP-02, Para 4.3	Annual internal audit report, which: <ul style="list-style-type: none"> • summarises the activities undertaken during the last year and findings; • summarises the effectiveness of the internal audit function; and • contains a statement of assurance and exclusions.
	Other	Budget Pack	Report	Annually (on or before 30 April)	FNP-02, Para 4.1	Annual financial reporting pack using pro forma pack.
		Losses and Special Payments	Report	Monthly (at least 1 Working Day before Monthly finance review meeting)	FNP-02, Para 3.1, 4.5 FNP-09SLCA Schedule 6, Part 2B, Para 7	Detail of the financial impact of any items covered by the definition of Losses and Special Payments per the Treasury requirements for the management of public money (MPM).
		Contractual Claims Report	Report	Monthly (at least 1 Working Day before Monthly finance review meeting)	FNP-02, Para 3.1, 4.5	Detail of any claims (including the financial impact / potential financial impact) made by Sub-contractors or other third parties.

<u>Ref</u>	<u>Specific subject</u>	<u>Name of report</u>	<u>Report or data only</u>	<u>Frequency</u>	<u>Source of requirement</u>	<u>Description</u>
		SLC Financial KPI Template	Report	Monthly (at least 1 Working Day before Monthly finance review meeting)	SLCA 14.1.2	<p>Magnox/RSRL SLC Internal Finance Department KPIs shared with the Authority to demonstrate compliance and control. Graphs and tables detailing:</p> <ul style="list-style-type: none"> • value of outstanding timesheets; • cash and Forecast Performance; • GRIR due more than 90 days; • Interest Payable; • Manual Accruals; • Overdue unapproved expense card transactions; and • Finance highlights / issues
<u>Progress and Performance Reporting</u>						
	Day 6 Deliverables	NDA SLC Flash Report	Report	Monthly (6 Working Days after period end)	<p>PCP-13 Para, 13.4.1</p> <p>PCP-10, Para 10.6</p> <p>Client Specification, Part 2, Section 2, Requirement 6.1</p>	<p>High-level summary of SLC performance, including:</p> <ul style="list-style-type: none"> • NDA Operating Plan Targets; • Nuclear Safety Security, Safeguards and Environmental Division (NSSSED) submissions; • HSSSEQ report; and • risk and opportunity reporting. <p>Template (provided by the Authority) to be completed in accordance with PCP-13.4.</p>

<u>Ref</u>	<u>Specific subject</u>	<u>Name of report</u>	<u>Report or data only</u>	<u>Frequency</u>	<u>Source of requirement</u>	<u>Description</u>
		Major Projects Report	Report	Monthly (6 Working Days after period end)	PCP-13, Para 13.4.2	Report on major projects identified by the Authority. Template (provided by the Authority) to be completed in accordance with PCP-13.
		Priority Programme Report	Report	6 monthly (6 Working Days after period end)	PCP-13 Para 13.4.3	Report on priority programmes identified by the Authority. Template (provided by the Authority) to be completed in accordance with PCP-13.
		Exceptions for NDA Flash Report	Report	Monthly (12 Working Days after period end)	PCP-13 Para 13.5.1	Summary of material amendments to NDA Flash Report data, or re-issue of NDA Flash Report highlighting material amendments, that have arisen during the SLC's performance management cycle.
	Day 12 Deliverables	SLC Performance Report	Report	Monthly (12 Working Days after period end)	PCP-7 PCP-10, Para 10.6 PCP-13, Para 13.5.2 SLCA Schedule 2, Para 3.4 SLCA Schedule 5, Para 4.1 and 4.2	Combination of reports that are generated and used by the Contractor for internal reporting To include: <ul style="list-style-type: none"> reports and submissions required in connection with baseline management (PCP-07); risk and opportunity reporting

<u>Ref</u>	<u>Specific subject</u>	<u>Name of report</u>	<u>Report or data only</u>	<u>Frequency</u>	<u>Source of requirement</u>	<u>Description</u>
					SLCA Schedule 5, Para 5 SLCA 14.1.2	(PCP-10, Para 10.6); <ul style="list-style-type: none"> the Change Control Log (SLCA Sch 2 Para 3.4); other reports as required by NDA (SLCA 14.1.2)
		Subcontract and Procurement Report	Report	Quarterly (10 Working Days after period end)	SLCA Schedule 5, Para 5 PCP-13, Para 13.5.3 PCP-07, Para 7.3.16	Updated rolling 12-month procurement plan and subcontract and procurement report based on the rolling 12-month procurement plan.
		Quarterly Business Review Report	Report	Quarterly (1 week before business review meetings held in accordance with PCP-13, Para 13.6)	PCP-13, Para 13.6	Business review report focussing on strategic issues Content of report driven by agenda issued by the Authority

<u>Ref</u>	<u>Specific subject</u>	<u>Name of report</u>	<u>Report or data only</u>	<u>Frequency</u>	<u>Source of requirement</u>	<u>Description</u>
	Minimum Performance Standards	Minimum Performance Standards	Report	Quarterly (1 week before business review meetings held in accordance with PCP-13, Para 13.6)	PCP-13, Para 13.6	Report against each of the Minimum Performance Standards specified in Schedule 15 to be included in quarterly business review report above
		PBO Minimum Performance Standards	Report	Annually (at the start of each Contract Year)	PBA Schedule 5 and Schedule 9, Paragraph 4	Report in respect of the PBO Minimum Performance Standards.
<u>Sanction and Validation</u>						
	Sanction Schedules	Rolling Work Activity Sanction Schedules	Report	Quarterly (or Monthly if the plan for the next 6 Months has changed or new activities have been added)	SLCA Schedule 3, Para 9 PCP-17.4.7	Rolling 12-Month Work Activity Sanction Schedules (the RSS) in relation to: <ul style="list-style-type: none"> • Work Activities that fall within the scope of the Schedule of Delegated Authority; and • Work Activities that do not fall within the scope of the Schedule of Delegated Authority.
<u>Baseline Management and Change Control</u>						
	Consolidation	Change Control Programme	Report	Monthly during Consolidation Phase (12 Working Days after period end)	SLCA Schedule 2, Appendix B, Para 5	Programme specifying the nature, Category and schedule of Proposed Changes to be made to the Magnox LTP and the RSRL LTP during the Consolidation Phase. (Included within the SLC Performance Reports.)

<u>Ref</u>	<u>Specific subject</u>	<u>Name of report</u>	<u>Report or data only</u>	<u>Frequency</u>	<u>Source of requirement</u>	<u>Description</u>
		Consolidation Report	Report	On completion of Consolidation Phase	SLCA Schedule 2, Appendix B, Para 7.2	Report on consolidation of existing LTPs into LTP performance Plan incorporating Final Tender (content described in Para 7.2)
	Baseline Management	LTP Performance Plan Electronic Data Submission (EDS)	Data only	Monthly (6 Working Days after period end)	PCP-02	Electronic cost and resource data by site for progress reporting. Standard pro forma data files and accompanying information completed in accordance with PCP-02.
		Contract Baseline Electronic Data Submission (EDS)	Data only	Quarterly (6 Working Days after period end)	PCP-02	Electronic cost and resource data by site for progress reporting. Standard pro forma data files and accompanying information to be completed in accordance with PCP-02.
		Inflation (Price Data)	Data only	Quarterly (within 10 Working Days after period end)	PCP-09, Para 9.2.7	Quarterly spot price data to support Authority's estate-wide inflation assessment. Format is updated on a frequent basis to support Franklin & Andrews report to the Authority.
		Technical Baseline and Underpinning Research and Development (TBURD) (including technology map, process wiring	Report	On completion of the Consolidation Phase and then annually (on or before 31 May)	PCP-07, Para 7.3.12 EGG-10	Technical underpinning and short, medium and long-term R&D requirements to deliver IES report, as set out in EGG-10

<u>Ref</u>	<u>Specific subject</u>	<u>Name of report</u>	<u>Report or data only</u>	<u>Frequency</u>	<u>Source of requirement</u>	<u>Description</u>
		diagrams, research and development table and annual technology report)				
<u>Integrated Waste Management</u>						
	Integrated Waste Management	Waste Inventory Form	Report	Annually (on or before 31 May)	Client Specification, Part 2 - Section 2, Requirement 4.1 (and Evidence of Completion [i]) EGG-01	Information on Radioactive Wastes to allow production of the UK Radioactive Waste Inventory (as described by Part 2 - Section 2, Requirement 4.1), approved in line with the Contractor's Integrated Management System.
		Integrated Waste Strategy	Report	On completion of the Consolidation Phase; thereafter at least every three years, with a review and update of the Integrated Waste Strategy action plan in the intervening years (see ENG-01)	Client Specification, Part 2 - Section 2, Requirement 4.2 (and Evidence of Completion [i]) ENG-01	Strategy describing the Sites' integrated approach to waste management; waste streams and expected discharges from current and future operations and actions required to improve the Sites' approach to waste management.
<u>Land and property</u>						
	Property Management	Property Management Report	Report	Quarterly (as agreed by the Parties)	Client Specification, Part 2 - Section 2, Requirement 5.2 (and Evidence of Completion [i])	Report on progress of de-licensing where commercial or socio-economic benefit can be realised, approved in line with the Contractor's Integrated Management System.
		Surplus Land And Property Assets Report	Report	Within two years of the Commencement Date, and annually thereafter	Client Specification, Part 2 - Section 2, Requirement 5.2.1	Assessment report of existing nuclear land and property assets that could be declared surplus to requirements.

<u>Ref</u>	<u>Specific subject</u>	<u>Name of report</u>	<u>Report or data only</u>	<u>Frequency</u>	<u>Source of requirement</u>	<u>Description</u>
					(and Evidence of Completion [i])	
	Land quality management	Land Quality Status Report	Report	Within 12 Months of the Commencement Date and following any re-issue of the Authority guidance 2011-03-31 - LQM Reporting Guidance NLWS_LLWR_10 Issue 2.	Client Specification, Part 2 - Section 2, Requirement 1.2(g)	Report on the status of land quality, the Site LQM Plan and likely waste arising with time.
		Site Restoration Road Map	Report	Periodic (as reasonably required by the Authority)	SLCA 14.1.2	A visual representation of site lifetime plans, to help the strategy development community identify risks and opportunities in LTPs that would benefit from strategic guidance, identify opportunities for sharing lessons learned between sites, and enable exploration of alternative futures.
<u>HSSSEQ</u>						
		HSSSEQ Continuous Improvement Report	Report	Annually (within 5 weeks after the end of each Contract Year)	Client Specification, Part 2 - Section 2, Requirement 6.1 (and Evidence of Completion [i])	Report approved in line with the Contractor's Integrated Management System that demonstrates continuous improvements in HSSSEQ performance for all specified requirements 6.1(a)-6.1(aa) of Part 2 - Section 2.
		Hazard Baseline	Report	On completion of the Consolidation Phase; thereafter a full submission in April and update in October, concurrent with the SLC Performance Report for the preceding period	EGG-06 PCP-07, Para 7.3.9	Report of the hazard baseline, which assists the Authority and the Contractor to prioritise Work Activities and to demonstrate delivery with respect to hazard reduction and waste conversion, and disposal.

<u>Ref</u>	<u>Specific subject</u>	<u>Name of report</u>	<u>Report or data only</u>	<u>Frequency</u>	<u>Source of requirement</u>	<u>Description</u>
	HSSSEQ					
		Annual Environmental Sustainability Data	Data only	Annually (concurrent with the April SLC Flash Report)	PCP-13, Para 13.7.3	Environmental sustainability data as required so the Authority can maintain oversight of estate environmental sustainability for reporting to DECC.
		HSSSEQ Highlights	Report	Weekly (Initial report on Friday followed by final update at 09.00 on Monday)	HSSSEQ Internal Procedures	Short briefs on highlights and incidents in previous week.
<u>People</u>						
	People	Annual Resource Plan	Report	On completion of the Consolidation Phase and then annually on or before 31 March	Client Specification, Part 2 - Section 2, Requirement 6.3 (and Evidence of Completion [i])	Annual resource plan meeting the specified requirements 6.3(a)-(c) of Part 2 - Section 2.
		Annual Resource Plan Effectiveness Report	Report	Monthly (as agreed by the Parties)	Client Specification, Part 2 - Section 2, Requirement 6.3 (and Evidence of Completion [ii])	Report of sufficient management information to demonstrate the effectiveness of the annual resource plan.
		Staff Metrics	Report	Monthly (as agreed by the Parties)	SLCA 14.1.2	Details of actual staffing as against planned staffing, including a range of relevant staff metrics, such as; vacancies, attrition, sickness, training and

<u>Ref</u>	<u>Specific subject</u>	<u>Name of report</u>	<u>Report or data only</u>	<u>Frequency</u>	<u>Source of requirement</u>	<u>Description</u>
						similar
		PBO Manpower Cost Tracker	Report	Monthly (as agreed by the Parties)	SLCA 31.3A SLCA 14.1.2	Cost recharge summary showing names of PBO employees servicing the Contractor with YTD planned versus actual hours recharged and actual versus budgeted hours recharged.
		Top 10 Highest Severance Costs for Period	Report	Monthly (as agreed by the Parties)	SLCA 14.1.2	Report showing the 10 largest severance costs for the period (cost, reason for redundancy, payback period).
		Restructuring dashboard presentation	Report	Monthly (as agreed by the Parties)	SLCA 14.1.2	Employee numbers v MODP (where relevant) Release costs Employment cost savings Employee numbers forecast QBR employee redundancy numbers, cost reductions and release costs
<u>Assets</u>						
	Critical Assets	Critical Asset Report (Dashboard)	Report	Quarterly (as agreed by the Parties)	Client Specification, Part 2 - Section 2, Requirement (and Evidence of Completion [i])	A one-page presentation, underpinned by the Contractor's asset management plans, that identifies the most important Authority Assets to delivery of programmes at the Sites, with emphasis on those that may present the greatest

<u>Ref</u>	<u>Specific subject</u>	<u>Name of report</u>	<u>Report or data only</u>	<u>Frequency</u>	<u>Source of requirement</u>	<u>Description</u>
					PCP-13, Para 13.5.4	<p>risk (threat and opportunity) to delivery.</p> <p>The presentation:</p> <ul style="list-style-type: none"> is based on analysis of performance to date, and forecasts the impact of this on future performance of assets, costs to manage assets and asset risk (threats and opportunities); focuses on reporting the status of critical assets required to deliver contracted outcomes, but also recognises programme requirements beyond the contract term; and presents early forecasting of changes to programmes as a result of asset threats and opportunities and recognises significant trends outside the highest risk (threat and opportunity) assets. <p>The format and style are subject to change, as agreed by the Parties, to match programme changes.</p>
	Disposals	Asset Disposal Report	Report	Ad hoc (within 10 Working Days of sale or disposal of an Authority Asset that the Contractor is entitled to dispose of pursuant to Clause 6 (<i>Asset Management</i>))	SLCA 6.7.7	Report detailing the sale or disposal of the Authority Asset.

<u>Ref</u>	<u>Specific subject</u>	<u>Name of report</u>	<u>Report or data only</u>	<u>Frequency</u>	<u>Source of requirement</u>	<u>Description</u>
<u>Information and Knowledge Management</u>						
	Information Risk	Information Risk Management Report	Report	Within 12 Months of the Commencement Date, and annually thereafter	Client Specification, Part 2 - Section 2, Requirement 6.7 (b)	<p>The reports required to comply with:</p> <ul style="list-style-type: none"> the Authority's Information Risk Management Policy (ITP09); HMG Security Policy Framework; and the Information Assurance Maturity Model (IAMM) annual assessment <p>to the Authority's Senior Information Risk Owner to allow reporting across the Authority estate, to enable the Authority to fulfil its legal obligations and to inform its declared information risk appetite.</p>
	Compliance	Reports on compliance with information security, assurance, risk management and governance	Report	Various	Client Specification, Part 2 - Section 2, Requirement 6.7 (and Evidence of Completion [i])	Reports evidencing compliance with Requirements 6.7(a)-(e) of Part 2 - Section 2, as required by PCP-M, approved in line with the Contractor's Integrated Management System.
	Archives	Report on Contract for the Management of the Southern Nuclear Archive	Report	Every six Months (until transfer to National Nuclear Archive) (as agreed by the Parties)	Client Specification, Part 2 - Section 2, Requirement 6.7.2 (and Evidence of Completion [i])	Report on contract management and effectiveness, approved in line with the Contractor's Integrated Management System.

<u>Ref</u>	<u>Specific subject</u>	<u>Name of report</u>	<u>Report or data only</u>	<u>Frequency</u>	<u>Source of requirement</u>	<u>Description</u>
<u>Socio Economics</u>						
	Socio Economics	Socio Economic Development Plan	Report	Annually (within 45 Calendar Days after 1 April each Contract Year)	SLCA 9.2 Client Specification, Part 2 - Section 2, Requirement 6.8	3-year rolling Socio-Economic Development Plan, approved in line with the Contractor's Integrated Management System.
<u>Public and Stakeholder Engagement and Communications</u>						
	Communications Planning	Communications Plan	Report	Annually (as agreed by the Parties)	Client Specification, Part 2 - Section 2, Requirement 6.9 (and Evidence of Completion [i])	Communications plan evidencing compliance with Requirement 6.9, as required by PCP-M, approved in line with the Contractor's Integrated Management System.
		Communications Planning Tool	Report	Monthly (as agreed by the Parties)	Client Specification, Part 2 - Section 2, Requirement 6.9 (and Evidence of Completion [ii])	Updated version of the Communications Planning Tool, or its equivalent.
<u>Inter SLC Service Contracts</u>						
	Inter SLC Service Contracts	Inter SLC Service Contract Schedule	Report	Annually (on anniversary of Commencement Date) and as and when any Inter SLC Service Contracts are amended or created	SLCA 23.4	Schedule containing details of all Inter SLC Service Contracts.

<u>Ref</u>	<u>Specific subject</u>	<u>Name of report</u>	<u>Report or data only</u>	<u>Frequency</u>	<u>Source of requirement</u>	<u>Description</u>
<u>International Relations</u>						
	International Relationships	International Relationship Routes and Agreements Report	Report	Annually (as agreed by the Parties)	Client Specification, Part 2 - Section 2, Requirement 6.11 (and Evidence of Completion [i])	Report summarising how the Contractor has utilised the Authority's international relationship routes and agreements, approved in line with the Contractor's Integrated Management System.
	Overseas Engagement	Overseas Engagement Report	Report	Ad hoc (following direct engagement with overseas counterpart organisations).	Client Specification, Part 2 - Section 2, Requirement 6.11 (and Evidence of Completion [ii])	Report on direct engagement with overseas counterpart organisations.
<u>Integrated Management System</u>						
	Internal Procedures	Log reporting all significant changes to all Internal Procedures	Report	Monthly (as agreed by the Parties) where any significant changes have been made	SLCA 8.3.3	Log reporting any significant changes to Internal Procedures contained in the Contractor's Integrated Management System.
		Performance Metrics Report	Report	Annually (from provision of first report within 12 Months after the Commencement Date)	SLCA 8.9	Annual report of metrics to measure and assess performance of key aspects of the Integrated Management System.
<u>Call-Off Support</u>						
	Call-Off Support	Record of Call-Off Support	Report	Annually (at the start of each Contract Year)	SLCA Schedule 20, Para 4	Report of containing details of Call-Off Support provided and any sums paid by

<u>Ref</u>	<u>Specific subject</u>	<u>Name of report</u>	<u>Report or data only</u>	<u>Frequency</u>	<u>Source of requirement</u>	<u>Description</u>
						the Authority pursuant to Schedule 20.
<u>Liabilities and Risk Management</u>						
	Non-NDA Liability Management	Management Report	Report	Periodic (as reasonably required by the Authority)	Client Specification, Part 2 - Section 2, Requirement 5.3 (and Evidence of Completion [ii])	Report on delivery and renegotiation of contracts for the management of third party liabilities, approved in line with the Contractor's Integrated Management System.
	Risk Management	Risks and Opportunities relative to nuclear provision	Report	Six Monthly (on or before 31 March and 31 December)	PCP-10, Para 10.6.3	The nuclear provision is (primarily) now calculated by the Authority. The SLCs are required to identify risks and opportunities against the existing provision (i.e. potential cost increases or decreases) in order to inform the 'uncertainty range' around the provision. Submission to the Authority of low-probability, high-impact risks reported in accordance with templates.
<u>Strategy</u>						
	Strategy	Strategic Dashboard	Report	8 times a year (at half-quarter intervals)		Three-part dashboard comprising updates on strategy implementation and strategy development and the Strategic Decision Calendar.

Schedule 14

FREEDOM OF INFORMATION

PART 1 – FREEDOM OF INFORMATION ACT REQUEST PROTOCOL

- 1 This Protocol covers requests for information that the Contractor holds on behalf of the Authority. When requests are received by the Contractor, it shall follow its Internal Procedures relating to enquiry handling.
- 2 If the information request, in the view of the Contractor, would not be considered to be a request made under the FOIA or the EIR and is a straightforward general or business enquiry, the Contractor shall respond directly to the applicant and, where appropriate, provide the information requested.
- 3 For more complex requests which, in the view of the Contractor, would be considered to be requests made under the FOIA or the EIR if they were directed to the Authority, the Contractor's FOI Officer, appointed pursuant to Clause 26.1.5 (*Freedom of Information Act*) of this Agreement, shall ensure that a copy of the request is sent as soon as reasonably practicable (and in any event no more than five (5) working days after receipt by the Contractor) to the Authority FOI mailbox (enquiries@nda.gov.uk) marked for the attention of the "Information Access Manager" or his/her deputy.
- 4 The Contractor shall ensure that the applicant is advised by the Contractor's FOI Officer or deputy that the Contractor is not a public authority as defined in the FOIA and therefore is not obliged to respond to the request. The Contractor shall also ensure that the applicant is also be advised that the request is being passed to the Authority.
- 5 Following receipt of the request by the Authority, the Authority's Information Access Manager, or his/her deputy, shall contact the Contractor's FOI Officer to discuss the appropriate response to the request.
- 6 The Authority's Information Access Manager will be responsible for acknowledging receipt of requests and keeping legally admissible records of requests made and responses sent on the Authority's Electronic Document Records Management System.
- 7 The Contractor shall co-operate fully with the Authority in the supply of information requested by the Authority within the timescales set out in the relevant Legislation.
- 8 The Authority shall consult with the Contractor for its views on disclosure, for example on the applicability of any exemptions under the FOIA or EIR. The Authority shall take these views into account, but reserves the right to apply exemptions and the public interest test, at its sole discretion and in accordance with the relevant Legislation.

- 9 The Authority shall provide copies of all draft answers to the Contractor who shall be given an opportunity to provide any further comment to the Authority before a final response is sent by the Authority to applicants.
- 10 Copies of final answers sent by the Authority shall be copied to the Contractor's FOI Officer for the Contractor's records.
- 11 The Contractor and the Authority shall keep each other informed of any changes to relevant personnel and contact information.

PART 2 – AUTHORITY GUIDANCE IN RESPECT OF FREEDOM OF INFORMATION REQUESTS

1 BACKGROUND

- 1.1 SLCs run by PBOs which are privately owned (i.e. not UK public authorities) are not legally obliged to provide information under the terms of the Freedom of Information Act 2000 (FOI). However under the terms of the SLC Agreement the Contractor is contractually obliged to assist the Authority in meeting its legal obligations.
- 1.2 This means that all valid Freedom of Information and Environmental Information requests received by SLCs have to be dealt with in accordance with the Protocol in Part 1 (*Freedom of Information Act Request Protocol*). Each SLC has a nominated FOI lead who will liaise with the Authority to ensure compliance.
- 1.3 It is important to recognise those requests which the SLC should deal with and those that should be referred to the Authority, as by law valid FOI and EIR requests should be responded to promptly and not take more than a maximum of twenty (20) working days. The Contractor should still respond to general and business enquiries from the public.

2 SO HOW DO YOU DISTINGUISH BETWEEN DAY TO DAY BUSINESS ENQUIRIES, GENERAL ENQUIRIES AND VALID FOI OR EIR REQUESTS?

- 2.1 Requests for information that can be provided without any question – such as recruitment, publications, leaflets, press releases and the text of public meetings – should be treated as business as usual.

3 As a rule of thumb:

- 3.1 if any information requested is held and needs to be actively considered before release then the request should be formally treated as an FOI or EIR request; and
- 3.2 if it seems likely that the requested information cannot be disclosed, it should be treated as a request for information.

4 Valid FOI requests:

- 4.1 must be received in written format (email, fax, letter etc.);
- 4.2 must contain contact information;
- 4.3 must adequately describe the information required. If the description is not clear then you should still contact the Authority and we will contact the applicant and ask them to provide us with more information or clarification. (While we are waiting for them to respond the twenty (20) day count stops); and

4.4 remember that the correspondent doesn't need to mention the words FOI or EIR to make it a valid request under the FOIA or EIR.

5 The key distinguishing factors between FOI requests and everyday business enquiries are:

5.1 They require some investigation to produce an answer;

5.2 The information requested isn't in the public domain;

5.3 The Authority/SLC would be the only source of this information;

5.4 The Authority/SLC does not currently publish the information requested, or intend to do so in the future.

6 Valid EIR requests:

6.1 can be received both in verbal and in written format;

6.2 relate specifically to the environment e.g. soil, air, water; or

6.3 anything which affects the environment such as emissions, waste and discharges.

7 REQUESTS FROM THE MEDIA

All requests from the media must be referred to the Communications department and handled in line with your own Communications Procedures.

8 INVALID REQUEST

Applicants do not need to be aware of their rights under the EIR or FOI Act, but the Authority is under a legal obligation to inform applicants of their rights and to assist them in making valid requests. We must also have consideration for disability discrimination legislation and assist anyone with a disability to make their request valid for example by offering to write down a request and send it to them for verification. The Contractor must assist the Authority to meet these obligations and so any invalid requests should be given due consideration and the applicant given assistance to make a valid request or be redirected to the Authority.

Please make sure that you pass any valid FOI/EIR requests to The Contractor FOI Coordinator promptly.

Schedule 15

MINIMUM PERFORMANCE STANDARDS

1 PURPOSE

This Schedule defines the minimum performance standards to be achieved by the Contractor during the Term in relation to the elements listed below (being together the "**Minimum Performance Standards**").

2 MINIMUM PERFORMANCE STANDARDS

2.1 Subject to Paragraph 3 (*Termination and Remediation*) and Paragraph 4 (*Inflation*) below, if any of the circumstances listed in Paragraphs 2.1.1 to 2.1.14 occurs at any time during the Term, it shall constitute failure to achieve a Minimum Performance Standard but, without prejudice to any other obligation of the Contractor under this Agreement, failure to achieve a Minimum Performance Standard shall not of itself constitute a Contractor Default. For the avoidance of doubt, references to the Phase 1 Target Cost or Phase 2 Target Cost below are references to the Phase 1 Target Cost or Phase 2 Target Cost as adjusted from time to time in accordance with the Change Control Procedure.

Performance Metrics

2.1.1 The Estimate at Phase 1 Completion is an amount which is greater than the Phase 1 Target Cost plus 20%.

2.1.1A At any time prior to completion of the Consolidation Phase, the Estimate at Phase 2 Completion is an amount which is:

2.1.1A.1 greater than 60% of the Phase 1 Target Cost; or

2.1.1A.2 greater than the Phase 2 Target Cost plus 10%.

2.1.1B At any time following completion of the Consolidation Phase and prior to the date on which the final adjustment to the Phase 2 Target Cost has been made pursuant to Appendix G (*Special adjustment to the Phase 2 Target Cost*) of Schedule 6 (*Finance*) the Estimate at Phase 2 Completion is an amount which is greater than 66% of the Phase 1 Target Cost (provided that any increase in the Estimate at Phase 2 Completion occurring prior to completion of the Consolidation Phase shall not be included in any calculation of the increase in the Estimate at Phase 2 Completion for the purposes of this Paragraph 2.1.1B).

2.1.1C At any time following completion of the Consolidation Phase, during the twelve (12) Month period following an adjustment to the Phase 2 Target Cost pursuant to Appendix G (*Special adjustment to the Phase 2 Target Cost*) of Schedule 6 (*Finance*) (or, if shorter, the period between such adjustment and the subsequent adjustment pursuant to that Appendix) the Estimate at Phase 2 Completion is greater than the Phase 2 Target Cost plus 5% (provided that any increase in the Estimate at Phase 2 Completion occurring prior to completion of the Consolidation Phase shall not be included in any calculation of the increase in the Estimate at Phase 2 Completion for the purposes of this Paragraph 2.1.1C).

2.1.1D At any time following the date on which the final adjustment to the Phase 2 Target Cost has been made pursuant to Appendix G (*Special adjustment to the Phase 2 Target Cost*) Schedule 6 (*Finance*) the Estimate at Phase 2 Completion is an amount which is greater than the Phase 2 Target Cost plus 20%.

2.1.2 Any of the following:

2.1.2.1 the Phase 1 Projected Completion Date is five hundred and forty (540) Calendar Days later than the Phase 1 Scheduled Completion Date;

2.1.2.2 the Phase 2 Projected Completion Date is five hundred and forty (540) Calendar Days later than the Phase 2 Scheduled Completion Date; or

2.1.2.3 the date in the LTP Performance Plan on which an Authority Milestone is projected to be Achieved is two hundred and seventy (270) Calendar Days later than the date in the Contract Baseline on which such Authority Milestone is scheduled to be Achieved (as may be changed from time to time in accordance with the Change Control Procedure).

Capability

2.1.3 The Contractor is unable to demonstrate that:

2.1.3.1 it is reasonably likely to maintain capability such that Phase 1 Completion and Phase 2 Completion can be achieved on or prior to the dates on which the period of Calendar Days set out at Paragraph 2.1.2 (*Performance Metrics*) above expire; or

- 2.1.3.2 it is reasonably likely that there will be sufficient capability to maintain and operate the Sites post-Phase 2 Completion (or post-termination of this Agreement where the Parent Body Agreement has been terminated) in accordance with the Contractor's plan for operating and maintaining the Sites post-Phase 2 Completion (or post-termination of this Agreement where the Parent Body Agreement has been terminated).

HSSSE

2.1.4 The Contractor:

- 2.1.4.1 materially fails to comply with the HSSSE Internal Procedures, unless the Contractor can demonstrate (on a case-by-case basis) that in the circumstances it was Good Industry Practice not to comply with the HSSSE Internal Procedures;

- 2.1.4.2 fails to carry out the HSSSE Obligations in accordance with Good Industry Practice;

- 2.1.4.3 fails to maintain the HSSSE Trend and Issues Log in accordance with Good Industry Practice and to identify, categorise, record and monitor any events, incidents, issues and trends (including in relation to Regulatory compliance) relating to health, safety, security, safeguards and the environment in the HSSSE Trend and Issues Log (including the status and description of such events, incidents, issues and trends); or

- 2.1.4.4 fails to report to the Authority any material non-compliance with the HSSSE Internal Procedures;

2.1.5 A work-related fatality occurs on or off a Site and, in direct relation to such fatality:

- 2.1.5.1 following a subsequent HSE investigation or inspection an enforcement decision is taken by the HSE against the Contractor (including but not limited to service of an improvement or prohibition notice, withdrawal of any approvals, variation of any licence conditions or exemptions, issue of a formal caution or prosecution); or

- 2.1.5.2 there is a successful prosecution against the Contractor under the Corporate Manslaughter and Homicide Act 2007,

and such decision or prosecution is accepted by the Contractor or upheld by a court of competent jurisdiction.

Socio Economic Requirements

2.1.6 The Contractor materially fails to comply with the socio-economic requirements described at Clause 9 (*Socio Economic Development*) of this Agreement and the Contractor's obligations at Requirement 6.8 of Schedule 1 (*Client Specification*).

Employees and Nominated Staff

2.1.7 The Contractor materially fails to comply with its obligations under Clause 31.11 (*Terms and Conditions of Employment*) or Clause 31.12 (*Trade Union Agreements*) of this Agreement.

2.1.8 Subject to Clause 31 (*Employees*) of this Agreement, the Contractor materially fails to maintain Nominated Staff in their posts for the relevant Minimum Secondment Periods.

2.1.9 The Contractor materially fails to implement and comply with the Nominated Staff Plan.

Supply Chain

2.1.10 The Contractor materially fails to implement and comply with the Supply Chain Strategic Plan.

2.1.11 [Not used]

2.1.12 [Not used]

2.1.13 [Not used]

Reporting

2.1.14 There are one or more instances of reporting which deliberately materially misrepresent the Contractor's position with respect to:

2.1.14.1 Performance Metrics, as defined in Paragraph 2.1.1 to 2.1.2 (*Performance Metrics*) above;

2.1.14.2 HSSSE, as defined in Paragraphs 2.1.4 and 2.1.5 (*HSSSE*) above;

2.1.14.3 socio-economic requirements as defined in Paragraph 2.1.6 (*Socio Economic Requirements*) above;

2.1.14.4 Defective Performance; or

2.1.14.5 the mass or volumes (as applicable) of waste measured by the Contractor pursuant to Appendix C (*Adjustments for waste volumes*) of Schedule 6 (*Finance*),

such that, without deliberate material misrepresentation, such reporting would have identified a failure to comply with one or more of the Minimum Performance Standards other than that set out in this Paragraph 2.1.14, or

2.1.14.6 in the case of Paragraph 2.1.14.4, would have led to Costs being Disallowable rather than Allowable Costs, or

2.1.14.7 in the case of Paragraph 2.1.14.5, would not have resulted in an increase in the Phase 1 Target Cost or the Phase 2 Target Cost that has been made.

3 TERMINATION AND REMEDIATION

3.1 A failure by the Contractor to achieve a Minimum Performance Standard occurring within nine (9) Months after the Commencement Date shall not entitle the Authority to terminate this Agreement for Contractor Default pursuant to Clause 11.14.3.2 (*Defective Performance and Remediation*), and the relevant Costs incurred by the Contractor shall not constitute Disallowable Costs pursuant to Paragraph 4.1(mm) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), unless:

3.1.1 The failure to comply with the Minimum Performance Standard was a failure on the part of:

3.1.1.1 one or more members of Nominated Staff; or

3.1.1.2 a PBO Affiliate acting in connection with the performance of its obligations under a Subcontract or Sub-Subcontract; or

3.1.2 the failure to comply with the Minimum Performance Standard was not a failure on the part of a person or persons specified in Paragraph 3.1 (*Termination and Remediation*) and the Nominated Staff had a reasonable opportunity to identify, address and avoid such failure.

3.2 [Not used]

4 INFLATION

4.1 The occurrence of any of the circumstances listed in Paragraphs 2.1.1 to 2.1.1C (*Performance Metrics*) shall not constitute failure to achieve a Minimum Performance Standard to the extent that such occurrence is attributable directly to a variance

between the rate of inflation over the course of any Contract Year (as indicated by the inflation assessment carried out by the Authority (and contributed to by the Contractor) pursuant to PCP-09 (*Cost Estimating*), as supplemented by the PCP-M Contractor Annexe, and the allowance for inflation specified for that Contract Year in the Contract Baseline.

5 COSTS OF REMEDIATION

5.1 Unless otherwise agreed between the Parties, or determined pursuant to the Dispute Resolution Procedure, a breach of the Minimum Performance Standards specified in paragraphs 2.1.1, 2.1.1A, 2.1.1B, 2.1.1C and 2.1.1D and 2.1.2 shall be capable of remediation and, where required by the Authority pursuant to Clause 11.6 (*Defective Performance and Remediation*), shall be subject to the remediation procedure set out in Clauses 11.6 to 11.15 (*Defective Performance and Remediation*). Where in such circumstances the Authority has issued a valid Remediation Notice pursuant to Clause 11.6 (*Defective Performance and Remediation*), the Costs incurred in preparing a Remediation Plan aimed at addressing the subject matter of such Remediation Notice shall be Disallowable Costs.

5.2 Unless otherwise agreed between the Parties, or determined pursuant to Dispute Resolution Procedure, a breach of the Minimum Performance Standards specified in paragraphs 2.1.3, 2.1.4, 2.1.5, 2.1.6, 2.1.7, 2.1.8, 2.1.9, 2.1.10 and 2.14 shall be capable of remediation and, where required by the Authority pursuant to Clause 11.6, shall be subject to the remediation procedure set out in Clauses 11.6 to 11.15 (*Defective Performance and Remediation*). Where the Authority has issued a valid Remediation Notice pursuant to Clause 11.6 (*Defective Performance and Remediation*), the following Costs shall be Disallowable:

5.2.1 Costs incurred in preparing a Remediation Plan aimed at addressing the subject matter of such Remediation Notice;

5.2.2 Costs of identifying, reviewing and revising any relevant Internal Procedures so as to address any deficiency in such Internal Procedures relating to such breach provided that (save to the extent included in 5.2.3 below) the foregoing does not include any Costs incurred in implementing any such revised Internal Procedures; and/or

5.2.3 carrying out any supplemental training required specifically to avoid repetition of such breach,

provided that any Costs of remediation incurred prior to the issue of a valid Remediation Notice or otherwise envisaged by the Internal Procedure as part of the normal course of

managing matters falling within the scope of that Internal Procedure shall be Allowable Costs.

Schedule 16

PROPERTY

Part A – Not used

Part B (*Template Magnox Property Leases*)

England and Wales Template Lease

**LEASE
of
The freehold land registered under title
number [] and known as []**

NUCLEAR DECOMMISSIONING AUTHORITY (1)

and

MAGNOX LIMITED (2)

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LAND REGISTRY PRESCRIBED CLAUSES

LR1. Date of lease	[] 20[]
LR2. Title number(s)	<p>LR2.1 Landlord's title number(s)</p> <p>[●]</p> <p>LR2.2 Other title numbers</p> <p>[●] or [None]</p>
LR3. Parties to this lease	<p>Landlord</p> <p>NUCLEAR DECOMMISSIONING AUTHORITY (established under section 1 of the Energy Act 2004) whose principal place of business is at Herdus House, Westlakes Science & Technology Park, Moor Row, Cumbria CA24 3HU</p> <p>Tenant</p> <p>MAGNOX LIMITED whose registered office is at [](Co. Regn. No. 02264251)</p>
LR4. Property	Has the same meaning as the definition of the "Premises" in clause 1 of this lease.
In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.	
LR5. Prescribed statements etc.	None
LR6. Term for which the Property is leased	Has the same meaning as the definition of the "Term" in clause 1 of this lease.
LR7. Premium	None
LR8. Prohibitions or restrictions on disposing of this lease	This lease contains a provision that prohibits or restricts dispositions.

<p>LR9. Rights of acquisition etc.</p>	<p>LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land</p> <p>None</p> <p>LR9.2 Tenant's covenant to (or offer to) surrender this lease</p> <p>None</p> <p>LR9.3 Landlord's contractual rights to acquire this lease</p> <p>None</p>
<p>LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property</p>	<p>None</p>
<p>LR11. Easements</p>	<p>LR11.1 Easements granted by this lease for the benefit of the Property</p> <p>The easements as specified in Schedule 2 to this lease</p> <p>LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property</p> <p>The easements as specified in Schedule 3 to this lease.</p>
<p>LR12. Estate rent charge burdening the property</p>	<p>None</p>
<p>LR13. Application for standard form of restriction</p>	<p>None</p>
<p>LR14. Declaration of trust where there is more than one person comprising the Tenant</p>	<p>Not applicable</p>

THIS LEASE made on the date and between the parties specified in the Land Registry Prescribed Clauses

BETWEEN:

(1) **The Landlord**; and

(2) **The Tenant**

WITNESSES as follows:

WHEREAS

1 DEFINITIONS

In this lease the following expressions have the following specified meanings (subject to any particular interpretation required by clause 2):

"1954 Act" means the Landlord and Tenant Act 1954;

"Adjoining Property" means any land or buildings neighbouring adjoining or adjacent to the Premises belonging to the Landlord (excluding the Premises);

"Conducting Media" means pipes, drains (including drainage ditches), sewers, mains, ducts, gutters, watercourses, wires, cables (including fibre optic cables) and any other conducting media including any fixings, louvres, cowls and other covers, manholes, junction boxes and other ancillary works and mechanisms existing at the date hereof and hereafter any installed during the Term;

"Constabulary" means the Civil Nuclear Police Authority;

"Contract" means a Site Licence Company Agreement dated [] and made between (1) Nuclear Decommissioning Authority (2) Magnox Limited and (3) Research Sites Restoration Limited relating to the Premises together with other premises, including any variation or extension thereof;

"Delicensed" means no longer subject to a Nuclear Site Licence in the name of the Tenant;

"EA" means the Environment Agency as defined in Section 1 of the Environment Act 1995 and its statutory successor from time to time performing the same function;

"Enactment" means every Act of Parliament and European Union Law directive and regulation and any other law effective in England and/or Wales (in each case existing and future);

"Environment" means any and all living organisms (including, without limitation, man), ecosystems, property and the media of air (including, without limitation, air in buildings) natural or man-made structures, below or above ground water (as defined in Section 104(1) of the Water Resources Act 1991 and within drains and sewers), buildings and land;

"HSE" means the Health and Safety Executive (being the body corporate established by Section 10 of the Health and Safety at Work etc Act) or any successor statutory or other authority performing or carrying out or having the same regulatory functions under the Nuclear Installations Act 1965 as the Health and Safety Executive has at the date of this lease;

"Licensed Site" means any part of the Premises that is from time to time subject to a Nuclear Site Licence;

"Mast" means a weather monitoring or meteorological survey mast which is in such location from time to time agreed by the Landlord and the Tenant the location of which on the date of this lease is shown [●] on Plan [●];;

"New Demise" means an area (or areas) of land which the Landlord (acting reasonably and in consultation with the Tenant) considers that the Tenant should have demised to it in order for the Tenant to be able to properly perform its obligations under the Contract, which for the avoidance of doubt shall include as a minimum such part or parts of the Premises and/or other land as shall be subject from time to time to a Nuclear Site Licence in the name of the Tenant together with such ancillary land as shall be required to enable the Tenant to comply with its obligations in the said Nuclear Site Licence;

"New Lease" means a lease to be granted by the Landlord to the Tenant in respect of the New Demise for a term equal to the residue of the Term of this lease at the date of the grant of the New Lease and otherwise on like terms mutatis mutandis to those contained in this lease (including clause 9) and includes any additional rights which the Landlord (acting reasonably and in consultation with the Tenant) considers necessary for the Tenant's use and enjoyment of the New Demise for the Permitted Use;

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

"ONR" means the Office for Nuclear Regulation or any body having responsibility for nuclear safety in the United Kingdom which substantially replaces it from time to time;

"Order" means the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003;

"Party" means the Landlord and/or the Tenant (as appropriate);

"Permitted Part" means any part of the Premises previously approved by the Landlord (such approval not to be unreasonably withheld);

"Permitted Use" means any of:

- (a) the uses of the Premises referred to in a designating direction applicable to the Premises made by the Secretary of State for Trade and Industry on 3 December 2004 as modified at any time or such other designating direction made under the Energy Act 2004 as may apply to the Premises at any time;
- (b) any use of the Premises in accordance with the rights and obligations set out in the Contract; and
- (c) any use of the Premises in accordance with any obligations established by any Regulatory Requirements.

"Planning Law" means every Enactment for the time being in force relating to the use, development and occupation of land and buildings and every planning permission, statutory consent and agreement made under any Enactment;

"Plan 1" [[and]"Plan 2"] [and "Plan 3"] means the plan[s] attached to this lease and so marked;

"Premises" means the premises described in Schedule 1 and all additions, alterations and improvements made to them but excludes:

- (a) tenant's fixtures and fittings; and
- (b) any tenant's plant whether within or outside the boundaries of the Premises, not acquired or installed under the Contract (and/or any prior similar contract);

"Public Authority" means any Secretary of State and any government department public, local, regulatory, fire or any other authority or institution having functions which extend to the Premises or their use and occupation and any court of law and the companies or authorities responsible for the supply of water gas and electricity or any of them and any of their duly authorised officers;

"Regulators" means the HSE, the EA, the ONR, [the Financial Services Authority ("FSA") and the Office of Gas and Electricity Markets ("OFGEM")] [Natural Resources Wales] and others specific to commercial operations or the Tenant's use of the Premises for the Permitted Use and local authorities and the expression **"Regulator"** shall mean each or any one of them;

"Regulatory Requirements" means any legally enforceable requirement of any Regulator;

"Shared Media" means Conducting Media used in common by the Landlord and the Tenant;

"Stipulated Rate" means a yearly rate three per cent above either the base rate of Lloyds TSB Bank plc or such other bank (being for the time being generally recognised as a clearing bank in the London market) as the Landlord may from time to time nominate or if the base rate cannot be ascertained then such other rate as the Landlord may reasonably specify (and so that wherever there is reference in this lease to the payment of interest at the Stipulated Rate such interest shall be calculated on a daily basis and compounded with quarterly rests on the usual quarter days);

"Subcontract" means any agreement entered into by the Tenant or any Subcontractor of the Tenant in connection with the performance of the Tenant's obligations under the Contract;

"Subcontractor" means any person who has entered into any Subcontract;

"Term" means 35¹ years from and including the date of this Lease;

"Third Party Rights" means:

- (a) [all rights granted or reserved in favour of [Network Rail Infrastructure Limited (or its predecessors in title)] [pursuant to ● dated ●]²; [and]
- (b) all rights of access from time to time enjoyed by the EA (or its statutory predecessors in title) in respect of the monitoring station [shown edged ● on Plan [●]] and the Regulators; and
- (c) the Title Matters,

and the expression **"Third Party Right"** shall mean any one of the above rights as the context shall require;

"Title Matters" means any matters which are described in Schedule 4 [or which are contained or referred to in any document or registered title listed in Schedule 4];

"Underlease Rents" means any sums payable to the Tenant by each tenant, licensee or other occupier of the whole or any part of the Premises under any lease, licence, tenancy or other document or arrangement permitting occupation of the whole or any

¹ 35 Year Term to be assumed unless good site specific reason to the contrary.

² This is only applicable where there is a local rail hub which is not part of the Premises.

part of the Premises whether subsisting today or granted by the Tenant at any time during the Term;

"Underleases" means the occupational leases, licences, tenancies and other similar arrangements in respect of any part of the Premises which are subsisting today and listed in Schedule 5 or which may be granted by the Tenant during the Term and the term "Underlease" shall mean any one of them (as appropriate);

"VAT" means Value Added Tax as referred to in the Value Added Tax Act 1994 (or any tax of a similar nature which may be substituted for or levied in addition to it);

"Working Day" means any day (other than a Saturday or Sunday) on which clearing banks in the United Kingdom are open to the public for the transaction of business.

2 INTERPRETATION

2.1 The Land Registry Prescribed Clauses and the Schedules shall form part of this lease and all terms defined in the Land Registry Prescribed Clauses or the Schedules bear the meanings stated.

2.2 Any reference to any law (whether or not specifically named) shall include any modification or re-enactment of it for the time being in force and any order, instrument, plan, regulation, permission or direction made or issued under it or under any law replaced by it or deriving validity from it.

2.3 A reference to laws in general is to all local, national and directly applicable supra-national laws in force for the time being taking account of any amendment, extension application or re-enactment and includes any sub-ordinate laws for the time being in force made under them and all orders, notices, codes of practice and guidance made under them.

2.4 Any covenant on the part of the Landlord or the Tenant not to do any act or thing shall be construed as well as a covenant not to allow any such act or thing to be done.

2.5 Any approval of the Landlord or words to similar effect means an approval in writing signed by or on behalf of the Landlord and given before the act requiring approval.

2.6 If, in order to comply with any obligation in this lease, the Landlord or the Tenant is under a duty to obtain the consent of a third party such obligation shall be deemed to be subject to the obtaining of such consent which the party in question shall use its reasonable endeavours to obtain except where otherwise specified in this lease.

2.7 In the event of any Regulator refusing to consent to an application of the Tenant (where such application is required to be made under this lease or any Regulatory

Requirement) then the Landlord shall be deemed to be acting reasonably in also refusing to give its consent.

- 2.8 Any right of entry by one Party on to the Premises or the Adjoining Property shall be taken to be a right for the relevant party and their properly authorised agents and contractors to enter with such materials and equipment as necessary subject to the provisions of this lease.
- 2.9 Any right of (or covenant to permit) the Landlord to enter the Premises shall also be construed (subject always to the provisions of this lease) as entitling the Landlord or any tenant, licensee or occupier of any part of the Adjoining Property to remain on the Premises with or without equipment and permitting such right to be exercised by all persons authorised by any of them;
- 2.10 Any entry on to land subject to any Nuclear Site Licence shall be in compliance with any conditions properly imposed by and under the supervision of the holder of the relevant Nuclear Site Licence.
- 2.11 Where the context so requires words importing the singular include the plural and vice versa.
- 2.12 The titles or headings appearing in this lease are for reference only and do not affect its construction.
- 2.13 Where a Party comprises more than one person, any covenants and obligations of that Party take effect as joint and several covenants and obligations.
- 2.14 If there is any conflict or inconsistency between this lease and the Contract the provisions of the Contract shall prevail.
- 2.15 If any provision of this lease is or becomes void, illegal or unenforceable that provision shall be severed from the remainder of this lease which shall remain valid and enforceable.
- 2.16 All sums payable pursuant to this lease shall be exclusive of VAT which shall where chargeable be paid in addition.

3 DEMISE AND RENTS

The Landlord **DEMISES** unto the Tenant **ALL THAT** the Premises **TOGETHER WITH** ([insofar as the Landlord has title to grant the same³] and **SUBJECT TO** the provisions of clause 4.8) the easements and rights specified in Schedule 2 (exercisable in common

³ NDA to consider whether to specify in Schedule 2 to which specific rights this qualification applies to. To be considered when individual site leases are populated; the intention being only to qualify rights in this way if it is not clear that the NDA has the legal/technical ability to grant them

with the Landlord and all others with its authority or otherwise from time to time entitled thereto) **EXCEPT** and **RESERVED** to the Landlord and all other persons authorised by the Landlord from time to time during the Term or otherwise from time to time entitled thereto the easements and rights specified in Schedule 3 **TO HOLD** the Premises unto the Tenant for the Term (together with and except and reserved as aforesaid) **SUBJECT** to and with the benefit of the Underleases (so far as the same are still subsisting and capable of taking effect) and **SUBJECT FURTHER** to all rights easements covenants stipulations and other matters affecting the Premises (including but not limited to all Third Party Rights so far as they are in existence and capable of taking effect) **YIELDING AND PAYING:**

FIRSTLY yearly and proportionally for any part of a year the rent of £1,000 by one annual payment to be made in advance on 1 April each year (the first such payment or a proportionate part of it to be made on the date of this lease);

SECONDLY as additional rent on demand (in addition and without prejudice to the Landlord's right of re-entry and any other right of the Landlord) interest at the Stipulated Rate on any sum owed by the Tenant to the Landlord whether as rent or otherwise which is not:

- (a) received in cleared funds by the Landlord on the due date (or in the case of money due only on demand within seven days after the date of demand) calculated for the period commencing on the due date for payment and ending on the date the sum (and the interest) is received in cleared funds by the Landlord; or
- (b) demanded (or if tendered is for the time being refused) by the Landlord in circumstances where it is prudent for it not to demand or accept any payment having regard to any breach of any of the Tenant's obligations under this lease calculated for the period commencing on the date the payment would have been due in the absence of those circumstances (on the assumption in the case of money due only on demand that the Landlord would have made the demand as soon as it was entitled to do so) and ending on the date the sum (and the interest) is subsequently received in cleared funds by the Landlord.

AND THIRDLY as additional rent all VAT for which the Landlord is or may become liable to account to HM Revenue & Customs (or other relevant body to whom account has for the time being to be made) on the supply by the Landlord to the Tenant under or in connection with the provisions of this lease or the interest created by it and of any other supplies whether of goods or services such rent thirdly reserved to be due for payment contemporaneously with the other rents or sums to which it relates,

PROVIDED ALWAYS THAT in the event that any aforementioned rights easements covenants and stipulations and other matters affecting the Premises referred to in this clause 3 result in the Tenant incurring additional cost under the Contract or this Lease, any such additional cost shall be an "Allowable Cost" (as that term is defined in the Contract) under the Contract.

4 TENANT'S COVENANTS

The Tenant covenants with the Landlord:

4.1 Rent

To pay the rents reserved by clause 3 of this lease on the days and in the manner set out in clause 3 without deduction or set-off.

4.2 Underlease rents

To pay the Underlease Rents to the Landlord (by electronic transfer to such bank as the Landlord may from time to time nominate) within 20 Working Days of the Underlease Rents being received in cleared funds by the Tenant.

4.3 VAT

Wherever the Tenant is required to pay any amount to the Landlord hereunder by way of reimbursement or indemnity to pay to the Landlord in addition an amount equivalent to any VAT incurred by the Landlord save to the extent that the Landlord obtains credit for such VAT incurred by the Landlord pursuant to sections 24, 25 and 26 of the Value Added Tax Act 1994 or any regulations made thereunder.

4.4 Outgoings

(a) Save where the Landlord has chosen to pay the same and has informed the Tenant in writing of its intention to do so, to pay all rates, taxes, charges and other outgoings now or at any time during the Term assessed, charged or imposed upon the Premises or upon their owner or occupier (and a reasonable and proper proportion determined by the Landlord attributable to the Premises of any rates, taxes, charges and other outgoings now or at any time during the Term assessed, charged or imposed upon the Premises in common with other premises or upon the owners or occupiers thereof) excluding (without prejudice to the rent thirdly reserved at clause 3) any tax payable by the Landlord as a direct result of any actual or implied dealing with the reversion of this lease or of the Landlord's receipt of income under this lease.

(b) To the extent that to do so would not be inconsistent with the provisions of the Contract, to take all reasonably practicable steps to mitigate as much as

reasonably possible the liability for all taxes, rates and other similar charges assessed, charged or imposed upon the Premises and to assist and co-operate with the Landlord in achieving any mitigation where applicable.

- (c) To pay all charges for water, gas and electricity (including meter rents) consumed at the Premises during the Term other than any consumed and paid directly by any tenant, licensee or occupier of the Premises or any Permitted Part.
- (d) To pay to the Landlord on demand a reasonable proportion (to be determined in the Landlord's discretion, save for manifest error) of any costs of maintenance, repair and/or renewal of any pipe, wire, cable or other conduit or footpath, road or accessway or any other structure or thing which is situated outside the Premises but which serves the Premises in common with any Adjoining Property.

4.5 Compliance with Enactments

To comply with the requirements of all Enactments and of every Public Authority and Regulator (including the proper execution of any works carried out at the Premises) in respect of the Premises or their use, the occupation or employment of personnel in them and any work being carried out to them.

4.6 Notices

Forthwith to give to the Landlord notice of (and a certified copy of) any notice, permission, direction, requisition, order or proposal made by any Public Authority or Regulator.

4.7 Repair

To keep the Premises in a condition that is consistent with the Tenant's obligations under the Contract.

4.8 To permit entry

To permit the Landlord at all times to enter the Premises:

- (a) for any necessary or reasonable purpose; and/or
- (b) to exercise the rights reserved to the Landlord contained in Schedule 3

PROVIDED ALWAYS THAT the Landlord shall not exercise any such right to enter the Premises in any way which would contravene the terms of any Nuclear Site Licence or prevent the Tenant from complying with the terms of any Nuclear Site Licence and shall comply with any proper regulations notified in writing by the Tenant to the Landlord at

any time relating to the Licensed Site (in its capacity as the holder of a Nuclear Site Licence for the Licensed Site) which the Tenant agrees shall not (subject to the above) materially adversely affect the exercise of the Landlord's rights under this lease or otherwise.

4.9 Entry onto Adjoining Property

Where any part of the Adjoining Property is subject to any Nuclear Site Licence or other regulatory instrument or regime that imposes controls on rights of access and security, not to exercise any right to enter the Adjoining Property for any purpose described in Schedule 2 (without prejudice to any rights of entry for any other purpose) in any way which would contravene the terms of any Nuclear Site Licence or other regulatory instrument or regime and at all times to comply with any proper regulations made by any tenant, licensee or occupier at any time of the relevant part of the Adjoining Property which have been notified to the Tenant or of which the Tenant is otherwise aware (in its capacity as the holder of a Nuclear Site Licence or other regulatory instrument or being subject to such regulatory regime) relating to that part of the Adjoining Property and which have been notified to the Tenant.

4.10 Encroachments

Unless authorised otherwise by the Landlord (the Landlord acting in its absolute discretion) or necessary in order to discharge the Tenant's obligations under the Contract or in order to comply with any Nuclear Site Licence:

- (a) to preserve all rights of light and other easements belonging to the Premises and not to give any acknowledgement that they are enjoyed by consent; and
- (b) not to do or omit to do anything which might subject the Premises to the creation of any new easement and to give notice to the Landlord forthwith on the Tenant becoming aware of any encroachment which might have that effect.

4.11 Alterations

Save to the extent required to facilitate the achievement of the Tenant's obligations under the Contract or in order to comply with any Nuclear Site Licence, not to carry out any works to build or construct any new building or structure on the Premises without the approval of the Landlord (such approval not to be unreasonably withheld or delayed).

4.12 Use

To use the Premises or any chattels in or on them only for the Permitted Use.

4.13 Alienation

- (a) Not to assign, mortgage, charge, hold on trust for another or underlet or in any other manner (subject to clause 4.13(e)) part with possession of the whole or any part of the Premises or agree to do so except that the Tenant may (subject to complying with the terms of any necessary Regulatory Requirements, including obtaining the consent of ONR where required):
 - (i) underlet any Permitted Part if it first complies with the conditions of clause 4.13(b); and/or
 - (ii) assign the whole of the Premises to any person to whom the Tenant's obligations under the Contract have been lawfully assigned, novated or otherwise transferred.

- (b) Not to underlet any Permitted Part (being referred to in this sub-clause as the "premises") except:
 - (i) to a person who before the underletting has covenanted with the Landlord not to assign the whole of the premises without the Landlord's consent (which shall not be unreasonably withheld or delayed) and shall have given an unqualified covenant not to assign part of the premises nor to mortgage, charge, hold on trust for another, underlet or in any other manner part with possession of the whole or any part of the "premises" or share the occupation of the premises or any part of them;
 - (ii) by reserving as a yearly rent the then open market rack rental value of the premises without payment or receipt of a fine or premium, such rent to be approved by the Landlord (such approval not to be unreasonably withheld or delayed)) PROVIDED THAT the Tenant shall not be required to underlet at the open market rack rental value where the proposed undertenant is a contractor or subcontractor of the Tenant and will be occupying the proposed underlet premises solely to discharge its contractual duties to the Tenant and will not be carrying out any activities to or for the benefit of anyone other than the Tenant (or anyone else lawfully in occupation of the proposed underlet premises during the term of the proposed underlease) and in such circumstances the proposed alternative underlease rent (whether nil or otherwise) shall require the consent or approval of the Landlord (such consent not to be unreasonably withheld);

- (iii) by an underlease in the form attached at Schedule 6 with such amendments as are approved in writing by the Landlord (such approval not to be unreasonably withheld or delayed);
 - (iv) with the Landlord's approval (which is not to be unreasonably withheld or delayed);
 - (v) by an underlease which excludes sections 24 to 28 inclusive of the 1954 Act in accordance with section 38A of the 1954 Act.
- (c) To take all practicable steps to enforce the observance and performance by every undertenant and their respective successors in title with the provisions of any underlease and not to waive any breach of those provisions nor vary the terms of any underlease nor (without the Landlord's approval which shall not be unreasonably withheld or delayed) accept any surrender of any underlease.
- (d) If the premises demised by any underlease are so destroyed or damaged so as to be substantially unfit for occupation and use by the undertenant, the Tenant shall serve on the undertenant a notice to terminate the underlease immediately following any request to do so by the Landlord.
- (e) Not to part with or share the occupation of the Premises or any part of them (otherwise than as permitted by clauses 4.13(a)-(d) above) except that the Tenant may (subject to complying with the terms of any Regulatory Requirement including obtaining the consent of ONR where required) share occupation of the Premises or any part of them without the need for Landlord's consent with authorised Subcontractors (where the Landlord has granted its consent to a Subcontract pursuant to but only to the extent required by the Contract and such sharing of occupation of the Premises is required in order to effect the performance of the Contract in respect of the Premises), the Constabulary or any other guard force agreed by ONR as part of the site security plan for the Premises PROVIDED THAT the Tenant does not grant the person sharing occupation exclusive possession (so that such entity occupies as licensee only without creating any relationship of landlord and tenant but in such sharing an authorised Subcontractor may allow its own sub-contractors to share possession with it subject to the same requirements (mutatis mutandis) as those contained in this clause 4.13(e)) nor otherwise transfer or create a legal estate and the Tenant shall upon request notify the Landlord of the identity of each entity in occupation.

4.14 Registration

Within ten working days after any disposition or devolution of this lease or of any estate or interest in or derived out of it (including any sharing of occupation of it in accordance with clause 4.13(e)) to give notice in duplicate of the relevant transaction to the Landlord for registration with a certified copy of the relevant instrument.

4.15 Payment of cost of notices consents etc

To pay on demand all expenses (including professional and any other fees or costs) incurred by the Landlord in and incidental to:

- (a) the preparation and service of a notice under section 146 Law of Property Act 1925 or in contemplation of any proceedings under section 146 or 147 of that Act notwithstanding that forfeiture is avoided otherwise than by relief granted by the court; and
- (b) every step taken during or 12 months following the expiry of the Term in connection with the enforcement of the Tenant's obligations under this lease;

4.16 Costs for landlord's consent

To pay on demand all reasonable and proper expenses (including professional and any other fees or costs) incurred by the Landlord in and incidental to every application for approval or consent under this lease, even if the application is withdrawn or properly refused, such costs to be regarded by the Landlord as "Allowable Costs" (as that term is defined in the Contract) in respect of applications properly made in accordance with this Lease.

4.17 Defective premises

To give notice forthwith to the Landlord of any defect in the Premises which might give rise to:

- (a) an obligation on the Landlord to do or refrain from doing anything in relation to the Premises; or
- (b) any duty of care or the need to discharge such duty imposed by the Defective Premises Act 1972 or otherwise;

and to display and maintain all notices which the Landlord or any Regulator may from time to time require to be displayed at the relevant part or parts of the Premises in relation to their state of repair and condition.

4.18 Yield up

- (a) At the expiry of sooner determination of the Term:
 - (i) to yield up the Premises in a condition that is consistent with the Tenant's obligations under the Contract;
 - (ii) to make an application to the Land Registry for the cancellation of any notice of, or relating to, this lease or any document supplemental or collateral to it and, on request, to supply the Landlord with a copy of the application.
- (b) For the purpose of securing the Tenant's obligation in clause 4.18(a)(ii) the Tenant irrevocably appoints the Landlord and its successors in title severally as attorney of the Tenant and in its name (and with power to appoint the Landlord's solicitors as substitute attorney) to make any application referred to in that clause at the Tenant's cost but only if the Tenant is in breach of the obligation to apply itself.

4.19 Covenants and Third Party Rights

- (a) To comply with all covenants, stipulations and other matters affecting the Premises and not to interfere with any rights, easements or other matters affecting the Premises or the Adjoining Property.
- (b) To comply with all obligations on the Landlord relating to Third Party Rights (in so far as they affect the Premises) and not to do anything that may interfere with any Third Party Rights.
- (c) To allow any person authorised by the Third Party Rights to enter the Premises in accordance with the terms of the relevant Third Party Rights.

4.20 Land Registry

To the extent that the grant (or any transfer) of this lease and of any right appurtenant to it requires to be completed by registration pursuant to the Land Registration Act 2002 in order to operate at law, to comply with the relevant registration requirements and, as soon as practicable, to provide the Landlord's solicitors with a copy of an official copy of the relevant register evidencing compliance with them. The Landlord shall, if reasonably requested by the Tenant, use reasonable endeavours to assist the Tenant in responding to any requisitions raised by the Land Registry in connection with such registration (the Landlord bearing its own and the Tenant's reasonable and proper costs in this regard).

5 LANDLORD'S COVENANT

The Landlord covenants with the Tenant:

5.1 Quiet Enjoyment

That for so long as the Tenant observes and performs the Tenant's covenants and obligations in this lease the Tenant may peaceably hold and enjoy the Premises without any unlawful interruption by the Landlord or any person rightfully claiming through under or in trust for it.

5.2 Nuclear Site Licence Compliance

Not to do or omit to do anything on the Adjoining Property which will cause the Tenant to be in breach of the Nuclear Site Licence for the Licensed Site and to cease (as soon as reasonably practicable following receipt of written notice from the Tenant to do so and specifying the relevant activities giving rise to the same and the nature and extent of the relevant perceived breach) any activities of the Landlord on the Adjoining Property which will or are likely to put the Tenant in breach of the Nuclear Site Licence for the Licensed Site.

5.3 Conducting Media and Entry to the Premises

To make good as soon as reasonably practicable (and to the Tenant's reasonable satisfaction) any damage caused by the Landlord to:

- (a) any Conducting Media situated on the Adjoining Property and properly serving the Premises; and/or
- (b) the Premises in exercise of the Landlord's right of entry at clause 4.8 of this lease.

6 PROVISOS

PROVIDED ALWAYS and it is hereby agreed and declared that:

6.1 Easements and use

Subject to the provision of clause 5.2, the Landlord may develop or concur with or suffer or permit any development of or the implementation of any use on any Adjoining Property notwithstanding the effect of the development or the use on the Premises and neither the Tenant nor the Premises shall be entitled to any easement or right other than those easements and rights expressly granted by this lease and nothing herein contained or implied shall give the Tenant the benefit of or the right to enforce or to have enforced or to prevent the release or modification of any right, easement,

covenant, condition or stipulation (other than those expressly contained in this lease) or to prevent or restrict the development or use of any Adjoining Property.

6.2 Service of notices

(a) Unless otherwise stated in this lease any notice, request or other communication to be made by one Party to the other under or in connection with this lease shall be in writing and shall be delivered personally or sent by first class post or courier to that other Party as follows:

(i) if to the Tenant to:

Address: Berkeley Centre, Berkeley, Gloucestershire, GL13 9PB

(marked for the attention of the General Counsel, Legal Department with a copy to the Estates Department); and

(ii) if to the Landlord to:

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

(marked for the attention of the Head of Legal with a copy to the Head of Property Services)

or such other persons and addresses as may at any time be notified in writing by one Party to the other.

(b) Unless otherwise stated in this lease, a notice, request or other communication under or in connection with this lease shall be deemed delivered:

(i) if delivered personally, when left at the address referred to in clause 6.2(a) above; and

(ii) if sent by first class mail, two Working Days after the date of posting.

6.3 No warranty as to use

Nothing contained in this lease shall constitute or be deemed to constitute a warranty by the Landlord that the Premises are authorised under Planning Law to be used for the Permitted Use or are otherwise fit for any specific purpose.

6.4 Exclusion of Landlord and Tenant Act 1954

(a) The Landlord served on the Tenant a notice dated [] in accordance with section 38A(3)(a) of the 1954 Act.

- (b) A [statutory] declaration dated [] was made by [] being a person duly authorised by the Tenant in accordance with paragraph [3]⁴ [4]⁵ of Schedule 2 to the Order.
- (c) The provisions of sections 24 to 28 (inclusive) of the 1954 Act are excluded in relation to the tenancy created by this lease.
- (d) There is no agreement for the grant of this lease.

6.5 Jurisdiction

This lease shall be governed by and construed in accordance with the law of England and Wales.

6.6 Dealings with the reversion

- (a) Subject to clause 6.6(c), the Landlord shall not assign, transfer or lease the whole or any part of its reversionary interest in the Premises SAVE THAT the Landlord may assign or transfer the whole of its reversionary interest in the Premises to an assignee or transferee who has either:

- (i) also taken an assignment, novation or transfer of the Landlord's obligations under the Contract; or
- (ii) covenanted directly with the Tenant that it will observe and perform the Landlord's obligations under the Contract,

insofar as they affect and/or are applicable to the Premises.

- (b) The Landlord agrees to the following restriction being entered in the Landlord's registered title[s] to the reversionary interest in the Premises (registered under title number[s] []):

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any charge is to be registered without a certificate signed by the proprietor for the time being of the estate registered under title number[s] [] or their conveyancer[s] that the provisions of clause 6.6(a) of the lease dated [] between the Nuclear Decommissioning Authority and Magnox Limited have been complied with or that they do not apply to the disposition."

- (c) The restriction on dealing at clause 6.6(a) and the restriction on title referred to at clause 6.6(b) shall not apply to an assignment or transfer of the whole of the Landlord's reversionary interest (whether by virtue of any Enactment or any

⁴ Applies to Simple Declaration

⁵ Applies to Statutory Declaration

scheme pursuant to any Enactment or otherwise) to a public body or bodies having the same or substantially the same function as the Landlord as at the date of this Lease, being:

- (i) a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975; and/or
- (ii) any other public body whose obligations under this Lease are unconditionally guaranteed by the Landlord or a Minister of the Crown.

6.7 Limitation of Landlord's liability

If a person who is the Landlord of this lease lawfully assigns the reversion immediately expectant on the determination of the Term, either by transfer of the reversion or by the grant of a term of years in reversion to this lease, that person:

- (a) is released from the Landlord's obligations under this lease; and
- (b) ceases to be entitled to the benefit of the Tenant's obligations under this lease as from the completion of the assignment or grant, save for any antecedent breaches.

6.8 Relocation of Conducting Media

- (a) Subject to the provisions of clause 5.2, the Landlord may by giving not less than two months' prior notice in writing addressed to the Tenant, notify the Tenant that the Landlord (at its own cost) is to relocate any Conducting Media on, over or passing through the Adjoining Property which serve (whether shared or exclusively) the Premises provided that:
 - (i) the written notice shall give full details of the Conducting Media which the Landlord wishes to be relocated or repositioned and an alternative location or route for the Conducting Media;
 - (ii) prior to such relocation the Landlord has installed, constructed or erected alternative or replacement Conducting Media which serves the Premises;
 - (iii) prior to such relocation the Landlord has engaged with all appropriate Regulators and complied with all Enactments and Regulatory Requirements in respect of such relocation (where necessary);
 - (iv) no interruption (other than temporary) to the free passage and running of services through the Conducting Media shall occur during such operations;

- (v) no disruption (other than temporary) to the Tenant's use and enjoyment of the Premises for the Permitted Use shall occur during such operations;
- (vi) the Landlord will procure that so far as practicable any diverted or relocated apparatus is constructed prior to the disconnection of the Conducting Media in its original or previous position to the intent that any period of disconnection may be kept as short as practicable;
- (vii) the Landlord its agents and contractors shall during the works or diversion at the Tenant's request consult with the Tenant as to the manner and timing of the works of diversion and have reasonable regard to all reasonable recommendations of the Tenant in order to better safeguard and protect the services derived via the Conducting Media and minimise any period of disruption and to accord with the Tenant's reasonable security arrangements;
- (viii) any damage caused to the Tenant's property the Premises or the Conducting Media shall be forthwith made good by the Landlord to the Tenant's reasonable satisfaction and the Landlord shall pay to the Tenant on demand an amount equal to losses damages claims proceedings and expenses arising directly therefrom and incurred by the Tenant;
- (ix) such Conducting Media is no less functional and commodious to the Tenant (and the Landlord agrees to use reasonable endeavours to ensure that such Conducting Media is no more expensive to the Tenant) as the Conducting Media which the Landlord is seeking to relocate and has sufficient capacity at the time of the relocation for the Permitted Use being constructed to at least the lower of:
 - (A) equivalent load bearing capacity to those which are being replaced; and/or
 - (B) such load bearing capacity as reasonably required by the Tenant at the time of the relocation;
- (x) there is no material difference between the Tenant's use of the Conducting Media within the Adjoining Property prior to such relocation and the Tenant's use of such relocated Conducting Media after such relocation; and
- (xi) prior to such relocation the Landlord has made such connections to the relocated Conducting Media as the Tenant reasonably requires.

- (b) The Tenant may relocate any Conducting Media on, over or passing through the Premises which serve (whether shared or exclusively) the Adjoining Property provided that:
 - (i) prior to such relocation the Tenant has installed, constructed or erected alternative or replacement Conducting Media which serve the Adjoining Property;
 - (ii) prior to such relocation the Tenant has engaged with all appropriate Regulators and complied with all Enactments and Regulatory Requirements in respect of such relocation (where necessary);
 - (iii) such Conducting Media are at least as functional and commodious to the Landlord as the Conducting Media which the Tenant is seeking to relocate and have sufficient capacity at the time of the relocation for the Landlord's use or intended use of the Adjoining Property;
 - (iv) no interruption (other than temporary) to the free passage and running of services through the Conducting Media shall occur during such operations
 - (v) there is no material difference between the Landlord's use of the Conducting Media at the Premises prior to such relocation and the Landlord's use of such relocated Conducting Media after such relocation; and
 - (vi) the Tenant has made such connections to the relocated Conducting Media as the Landlord reasonably requires.
- (c) The rights and obligations of the parties relation to the Conducting Media prior to such relocation shall continue to apply to the Conducting Media as relocated or re-positioned.
- (d) Where both Parties cease the use of the Shared Media at or about the same time the cost of removal and making safe in accordance with all relevant Enactments, Regulatory Requirements and requirements of all Public Authorities shall be shared according to each Party's respective use of them.

7 TERMINATION OF THE CONTRACT

This lease shall determine upon the later of (i) expiry or sooner determination of the Tenant's appointment as the contractor under the Contract and (ii) the date which the whole of the Premises are Delicensed, but such termination shall be without prejudice

to the rights of the Landlord and the Tenant with regard to antecedent breaches of the obligations contained in this lease.

8 TERMINATION AFTER DELICENSING

8.1 If at any time during the Term any part of the Premises shall be Delicensed and no longer reasonably required by the Tenant to perform its obligations under the Contract the Landlord may thereafter serve notice on the Tenant to terminate this lease as to the part of the Premises that has been Delicensed whereupon this lease shall determine as to such part of the Premises but without prejudice to the rights of the Landlord and the Tenant with regard to antecedent breaches of the obligations contained in this lease.

8.2 Unless the notice served by the Landlord under clause 8.1 determines this lease in respect of the whole of the Premises it shall include a plan delineating the part of the Premises to which it applies.

8.3 On or prior to the termination of this lease in respect of part of the Premises pursuant to clause 8.1 the Landlord and the Tenant shall (each at its own cost and acting reasonably) as soon as reasonably practicable enter into a deed of variation granting to the other such rights over the remainder of the Premises or the part of the Premises in respect of which this lease has been determined (as the case may be) as shall be required for the Tenant's reasonable use and enjoyment of the remaining part of the Premises for the Permitted Use in accordance with the Contract

9 VARIATION OF THE PREMISES

9.1 Landlord's notice to determine

Subject to clause 9.2(a) and 9.2(c) the Landlord may at any time serve not less than six months' notice (or such other period of notice as is previously agreed between the parties) on the Tenant to terminate this lease and on the expiry of the notice this lease shall immediately determine but without prejudice to the rights of the Landlord and the Tenant with regard to antecedent breaches of the obligations contained in this lease.

9.2 Lease of New Demise

- (a) With the notice under clause 9.1 the Landlord shall serve notice requiring the Tenant to accept the grant of the New Lease and such notice shall be accompanied by a description of the site of the New Demise.
- (b) The Landlord and the Tenant agree and declare that the provisions of sections 24 to 28 (inclusive) of the 1954 Act are to be excluded in relation to the tenancy to be created by the New Lease.

- (c) Prior to the service of a notice under clause 9.1 the Landlord shall serve on the Tenant a notice in accordance with section 38A(3)(a) of the 1954 Act in relation to the New Lease.
- (d) On receipt of the notice served under clause 9.2(c) the Tenant shall either (whichever is applicable):
 - (i) within 14 days of receipt of such notice make a statutory declaration in accordance with paragraph 4 of Schedule 2 to the Order and serve it on the Landlord; or
 - (ii) not less than 14 days and not more than 21 days of receipt of such notice make a declaration in accordance with paragraph 3 of Schedule 2 to the Order and serve it on the Landlord.
- (e) The New Lease shall be completed (and the Tenant shall execute a counterpart of it) simultaneously with the determination of the Term on the expiry of the Landlord's notice under clause 9.1.

9.3 Title to New Demise

- (a) The Landlord shall use best endeavours to deduce title to the New Demise to the Tenant.
- (b) The Tenant shall raise no objection to or requisition on the Landlord's title to the New Demise provided that such title does not include any restrictions which would prevent the Tenant from carrying on the Permitted Use.
- (c) Subject to clause 9.3(b) the New Demise shall be let:
 - (i) together with and including any additional rights which the Landlord (acting reasonably and in consultation with the Tenant) considers necessary for the Tenant's use and enjoyment of the New Demise for the Permitted Use; and
 - (ii) subject to and as the case may be with the benefit of the matters contained or referred to in the property register, proprietorship register and the charges register (other than charges to secure the repayment of money) of title thereto or (if the New Demise is unregistered) such matters benefiting and affecting the New Demise (other than charges to secure the repayment of money).
- (d) The New Demise shall be let subject to:-
 - (i) all matters registrable by any competent authority pursuant to statute;

- (ii) all requirements including (whether or not subject to confirmation) any notice, order or proposal of any competent authority;
 - (iii) all matters disclosed or reasonably to be expected to be disclosed by searches or as the result of enquiries formal or informal and whether made in person by writing or orally by or for the Tenant or which a prudent tenant ought to make;
 - (iv) all notices served by the owner or occupier of any adjoining or neighbouring property;
 - (v) any matters which are unregistered interests which override registered dispositions under schedule 3 to the Land Registration Act 2002;
 - (vi) such unregistered interests as may affect the Premises to the extent and so long as they are preserved by the transitional provisions of schedule 12 of the Land Registration Act 2002;
 - (vii) all Third Party Rights subsisting and capable of taking effect immediately prior to the grant of the New Lease;
 - (viii) any unexpired underleases or other occupational leases licences tenancies and other similar arrangements relating to the New Demise and which are subsisting immediately prior to the grant of the New Lease
- (e) The Landlord shall not be required to provide the New Demise with vacant possession.

9.4 Costs

In the event that the grant of the New Lease results in the Tenant incurring additional cost under the Contract or this Lease, the Landlord and the Tenant hereby agree and declare that any such additional cost shall be an "Allowable Cost" (as that term is defined in the Contract) under the Contract.

10 CONFIDENTIALITY⁶

10.1 Confidential Information

Subject to clauses 10.3 to 10.10 below (inclusive), each Party shall hold in confidence all documents, materials and other information, whether technical or commercial, supplied by or on behalf of the other Party (including all documents and information

⁶ Confidentiality provisions to be aligned with the confidentiality provisions in the final form of Contract

supplied in the course of any dispute resolution procedure to which a dispute is referred in accordance with this lease) and shall not, except with the written agreement of the other Party, publish or otherwise disclose them other than as expressly provided for in this lease unless or until the recipient Party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of this lease, whereupon to the extent that it is in the public domain this obligation shall cease.

10.2 Tenant right to request confidentiality

The Tenant may at any time request in writing, stating reasons, that the Landlord keeps particular information confidential and does not disclose it to third parties. The Tenant may further request in writing at any time that, where the Landlord discloses Information (as defined in clause 10.3) under clause 10.3, the Landlord shall make representations to the recipient of that Information as to the desirability of keeping such Information confidential. Any such request by the Tenant shall be accompanied by a document setting out the requested representations. The Landlord shall reasonably consider whether to make such representations.

10.3 Disclosure by the Landlord

The Landlord having reasonably considered any request made by the Tenant under clause 10.2 may disclose any and all information acquired by it under this lease save for information which is judged by ONR to be security sensitive (unless the recipient of information pursuant to this clause 10.3 holds all relevant security clearances) (the "**Information**") to:

- (a) the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, Greater London Landlord or any department, officer, agent, representative, employee, consultant or adviser of any of them;
- (b) the Regulators;
- (c) the extent required by applicable Law or pursuant to an order of any court of competent jurisdiction;
- (d) bidders who have pre-qualified to participate in any relevant forthcoming tender process upon obtaining an undertaking of confidentiality equivalent to that contained in clause 10.1;
- (e) insurers upon obtaining an undertaking of confidentiality equivalent to that contained in clause 10.1;

- (f) professional advisers, upon obtaining an undertaking of confidentiality equivalent to that contained in clause 10.1;
- (g) consultees under the Energy Act 2004; and/or
- (h) any department, officer, agent, representative, employee, consultant or adviser of any of the entities referred to in clauses 10.3(a) to 10.3(g) above subject, in any case where the entity in question would be required to provide an undertaking of confidentiality equivalent to that contained in clause 10.1, to obtaining such an undertaking of confidentiality.

10.4 So far as is practicable, the Landlord shall give the Tenant reasonable notice of any proposed disclosure under clause 10.3.

10.5 Notwithstanding the provisions of clause 10.1, the Landlord may with the approval of the Tenant (not to be unreasonably withheld or delayed) further disclose the Information to any person not referred to in clause 10.3.

10.6 Any determination as to whether it is reasonable for the Tenant to withhold its approval to disclosure under clause 10.5 above shall have regard to:

- (a) compliance with the Landlord's statutory functions and duties, including in particular the promotion of effective competition and value for money;
- (b) relevant Government policy;
- (c) the requirement to maintain security;
- (d) the public interest; and
- (e) the requirement to maintain openness and transparency.

10.7 Publication

The Landlord having considered any request made by the Tenant under clause 10.2 may publish in such form and at such times as it sees fit such information as the Landlord reasonably requires to publish having regard to the list of considerations set out in clause 10.6 above, including information it includes in its respective annual report.

10.8 The Landlord shall give the Tenant reasonable notice of any proposed publication under clause 10.7.

10.9 Disclosure by the Tenant

The Tenant may disclose without the approval of the Landlord any and all information acquired by it under or pursuant to this lease save for information which is judged by

ONR to be security sensitive (unless the recipient of information under this clause 10.9 holds all relevant security clearances) to:

- (a) the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, Greater London Authority or any other local authority;
- (b) the Regulators;
- (c) the extent required by applicable Law or pursuant to an order of any court of competent jurisdiction;
- (d) insurers, upon obtaining an undertaking of confidentiality equivalent to that contained in clause 10.1;
- (e) professional advisers, upon obtaining an undertaking of confidentiality equivalent to that contained in clause 10.1; and
- (f) any department, officer, agent, representative, employee, consultant or adviser of any of the entities referred to in sub-clauses (a) to (e) above subject, in any case where the entity in question would be required to provide an undertaking of confidentiality equivalent to that contained in clause 10.1, to obtaining such an undertaking of confidentiality.

10.10 Freedom of Information Act

This clause 10 is subject to the parties' respective obligations under the Freedom of Information Act 2000, as amended.

11 DISPUTES

- 11.1 If there is any dispute between the Landlord and Tenant relating to this lease the parties shall seek to settle the matter in accordance with the dispute management procedure set out in clause [36] (Disputes) of the Contract.

12 NEW TENANCY

This lease is a new tenancy for the purposes of the Landlord and Tenant (Covenants) Act 1995.

13 EXCLUSION OF THIRD PARTY RIGHTS

Each party confirms that no term of this lease is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this lease.

EXECUTED AND DELIVERED as a deed on the above date.

Schedule 1

The Premises

The land and buildings known as [] being the land shown edged [red] on Plan [] (which comprises part of the land in title number [] including the Mast).⁷

⁷ The demise for each site will follow the most up to date LROP plans, plus any additional land required for access and services as appropriate; Maentwrog and Traws may be demised under one lease – tbc.

Schedule 2

Easements and rights granted⁸

- 1 [The right to use, maintain, operate and decommission (together with all necessary rights of access to them at reasonable times on giving the Landlord or any tenant, licensee or occupier of any Adjoining Property reasonable prior notice (save in cases of emergency)) the boreholes which the Tenant needs at any time for the proper operation and regulation of the Premises [the location of which on the date of this lease are shown ● on Plan. [●]]⁹

- 2 [The right to use, maintain, operate and decommission (together with all necessary rights of access to them at reasonable times on giving the Landlord or any tenant, licensee or occupier of any Adjoining Property reasonable prior notice (save in cases of emergency)) air monitoring stations which the Tenant needs at any time for the proper operation and regulation of the Premises [the location of which on the date of this lease are shown ● on Plan. [●]].¹⁰

- 3 The right to enter the Adjoining Property on reasonable prior notice to Landlord or any tenant, licensee or occupier of any relevant part of the Adjoining Property (and where any such part of the Adjoining Property is subject to a Nuclear Site Licence the holder of that licence and all appropriate Regulators) and carry out such works as are necessary to remove any contamination found on the Adjoining Property as a result of the Tenant exercising any of the rights referred to at paragraphs 1 and 2 above and which can be shown to be attributable to or emanating from the Premises subject to the Tenant agreeing with the Landlord (and where such part of the Adjoining Property is subject to a Nuclear Site Licence the holder of that licence and the relevant Regulator(s)) in advance (save where the Tenant is already obliged under the Contract to carry out such works) the scope and programme of such works (such agreement not to be unreasonably withheld) and the Tenant making good any damage so caused to the Adjoining Property to the reasonable satisfaction of the Landlord or any tenant licensee or occupier of any Adjoining Property following removal of such contamination.

- 4 The right to the free and uninterrupted passage and running of [public utilities] [water, sewage, gas and electricity] to and from the Premises in and through the conduits laid at the date of this lease or at any time during the perpetuity period in, over or under the

⁸ The rights granted in this Schedule are an indicative list from other site leases already in existence. To be agreed whether any other rights necessary for operational reasons are required.

⁹ These boreholes are not always defined in any specific grant and are commonly on the adjoining land of the NDA. Once the Adjoining Property is subject to a lease to a new operator, these boreholes will need to be dealt with by an express reservation in the lease of the Adjoining Property as well as obligations to preserve those that there are or move them in agreement with Magnox and the NDA. There will therefore likely be plans showing the locations when this lease is granted. Rights needed for regulatory and health physics purposes.

¹⁰ As above

Adjoining Property as are required by the Tenant for the proper operation of the Premises for the Permitted Use and rights of access at reasonable times on giving the Landlord and any tenant, licensee or occupier of the relevant part of the Adjoining Property reasonable prior notice (save in cases of emergency) to repair, maintain, replace and decommission those conduits.

5 To the extent that the Landlord is able to grant them, the rights to use, operate, maintain and decommission the pipelines demised by a lease [dated [] made between (1) [] and (2) []] [*and any other outfall pipeline lease*] (the "**Pipeline Lease[s]**") together with all necessary rights of access to them at reasonable times on giving the Landlord and the landlord of such Pipeline Lease[s] reasonable prior written notice (or such other notice period as is specified for access in the Pipeline Lease[s]) **PROVIDED THAT** the Tenant shall comply with all covenants, conditions, provisos and restrictions on the exercise of such rights in accordance with the Pipeline Lease[s].¹¹

6 [*Rights of access to the sewerage pumping station*]¹²

7 [The right to install, maintain, replace, upgrade and remove any apparatus necessary for the proper operation of the Premises or the Mast together with all necessary rights of access to it at reasonable times on giving the Landlord reasonable prior notice (save in cases of emergency).]

8 The right to pass and repass to and from the Premises with or without vehicles for all purposes connected with the proper operation of the Premises for the Permitted Use over and along the roads, footpaths and accessways designated by the Landlord for such use at any time within the Adjoining Property **SUBJECT TO** the Tenant paying a fair proportion of the cost of maintaining such roads, footpaths and accessways.

9 [The right to pass and repass [to and from the Premises] on foot only [for all purposes connected with the operation of the Premises] along the footbridge shown edged ● on Plan [●].]

10 [The right to use, maintain and operate (together with all necessary rights of access to them at reasonable times on giving the Landlord reasonable prior notice (save in cases

¹¹ The NDA commonly has rights regarding outfall pipelines which can be active and non-active. These are commonly over Crown Estate foreshore and if so will commonly have a Regulating Lease of a strip of foreshore between mean high and low water marks, together with a lease of an easement relating to the pipeline itself. Such rights as the NDA has in respect of these pipelines should benefit the Tenant.

¹² Wylfa has a publicly maintained sewerage pumping station which is used by the Site and the public generally. Current use and rights to access to maintain or monitor this station need to be incorporated if there are any. Other sites may have similar arrangements. Provisions to be tailored to each Site

of emergency)) the railway sidings shown [] on Plan [] as required by the Tenant for the proper operation of the Premises for the Permitted Use]¹³.

- 11 The right to use (together with all necessary rights of access to it at reasonable times and giving the Landlord reasonable prior notice (save in cases of emergency)) the facility known as [] Reservoir as required by the Tenant for the proper operation of the Premises the location of which is shown edged [] on Plan [].
- 12 The right of support and protection for the Premises from the Adjoining Property.

¹³ This is unlikely to be required as any rail access should be included within the demise but rail connectivity should be considered for each Site

Schedule 3

Exceptions and reservations

- 1 The right to develop, construct, build, alter or extend (whether vertically or laterally) any building in, on, under or over any Adjoining Property notwithstanding that the access of light or air to the Premises and their lights, windows and openings may be affected PROVIDED THAT any such development, construction, building, alteration or extension shall not materially interfere with or disrupt the Tenant's use of the Premises for the Permitted Use;
- 2 The right at all times to enter upon the Premises as often as may be necessary for all the purposes for which the Tenant covenants in this lease to permit entry PROVIDED THAT the Landlord complies with any proper regulations notified in writing by the Tenant to the Landlord at any time relating to the Licensed Site (in its capacity as the holder of a Nuclear Site Licence for the Licensed Site) which the Tenant agrees shall not (subject to the above) materially adversely affect the exercise of the Landlord's rights under this lease or otherwise;
- 3 The right to construct and inspect, maintain, repair and renew and to make connections to and use (which for the avoidance of doubt includes the free passage and running of services and utilities through) pipes, wires, cables and other conduits in, on or under the Premises for the benefit of any Adjoining Property;
- 4 The right of support and protection for the Adjoining Property from the Premises;
- 5 The right to relocate any Conducting Media under clause 6.8 of this lease;
- 6 All rights of light, air and other easements and rights (but without prejudice to those expressly granted by this lease) enjoyed by the Premises from or over any Adjoining Property all such rights being reserved for the benefit of the [Adjoining Property]/[the land comprised in title number[s] []]¹⁴; and
- 7 Subject to compliance with the requirements of clause 4.8, the right to pass and repass to and from the Adjoining Property with or without vehicles for all purposes connected with the Landlord's use and enjoyment of the Adjoining Property over and along the roads, footpaths and accessways designated for such use by the Tenant at any time and which are within the Premises,

PROVIDED THAT the Landlord shall not exercise any of the above rights in such a way which would contravene the terms of any Nuclear Site Licence

¹⁴ Second alternative to be used if there is land locally that should benefit from these reservations that is not registered with the main site title number

Schedule 4

Title Matters

1 Title Number [] [(other than any mortgage or financial charge)]

Date

Document

Parties

2 Unregistered interests which override registered dispositions under schedule 3 to the Land Registration Act 2002

3 All other covenants, easements, restrictions or other matters which affect the Premises

Schedule 5

Schedule of Underleases

Date	Parties	Building

Schedule 6

Form of Underlease

THE COMMON SEAL of **NUCLEAR
DECOMMISSIONING AUTHORITY**
was affixed in the presence of:

)
)
)

Director

Director/Secretary

SIGNED as a Deed by
MAGNOX LIMITED
acting by a director and its secretary
or two directors:

)
)
)
)

Director

Director/Secretary

England and Wales Template Underlease

Underlease

of

[]

MAGNOX LIMITED

and

[]

and

[]

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PARTICULARS

Part A - Land Registry Prescribed Clauses

<Incorporate where relevant. Delete or amend corresponding definitions in clause 1 as necessary>

LR1	DATE OF LEASE	[]
LR2	TITLE NUMBER(S)	
LR2.1	Landlord's title number(s)	[]
LR2.2	Other title numbers	[]
LR3	PARTIES TO THIS LEASE	
	"Landlord"	MAGNOX LIMITED (registered company number 2264251) whose registered office is at []
	"Tenant"	[of] / [] [a company incorporated in [England and Wales] and whose registered office is at [] (Company Registration Number [])
	"Guarantor"	[[of] / [] [a company incorporated in [England and Wales] and whose registered office is at [] (Company Registration Number [])] [or] [None]
LR4	PROPERTY	The premises described at clause 1.1 and defined as the Demised Premises including all or any part of such property and all improvements made to it

In the case of a conflict between this clause and the remainder of this Lease then, for the purposes of registration, this clause shall prevail.

LR5	PRESCRIBED STATEMENTS ETC.	
LR5.1	Statements prescribed under rules 179 (dispositions in favour of a charity) 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003	None
LR5.2	This Lease is made under, or by reference to, provisions of:	Not applicable
LR6	TERM FOR WHICH THE PROPERTY IS LEASED	
	The "Term" is as follows:	[] years from and including [] [] to and including []
LR7	PREMIUM	[None] [or] [[plus VAT of]]
LR8	PROHIBITIONS OR RESTRICTIONS ON DISPOSING OF THIS LEASE	This Lease contains a provision that prohibits or restricts dispositions.
LR9	RIGHTS OF ACQUISITION ETC.	
LR9.1	Tenant's contractual rights to renew this Lease to acquire the reversion or another lease of the Property, or to acquire an interest in other land	None

LR9.2	Tenant's covenant to (or offer to) surrender this Lease	[None] [or] [The [covenant][offer] set out in [clause [] paragraph of Part [] of the Schedule]
LR9.3	Landlord's contractual rights to acquire this Lease	[None] [or] [The rights set out in [clause] [] paragraph of Part of the Schedule]
LR10	RESTRICTIVE COVENANTS GIVEN IN THIS LEASE BY THE LANDLORD IN RESPECT OF LAND OTHER THAN THE PROPERTY	[None] [or] [The restrictive covenants set out in []]
LR11	EASEMENTS	
LR11.1	Easements granted by this Lease for the benefit of the Property	[None] [or] [The easements set out in Part A of the Schedule]
LR11.2	Easements granted or reserved by this Lease over the Property for the benefit of other property	[None] [or] [The easements set out in Part B of the Schedule]
LR12	ESTATE RENT CHARGE BURDENING THE PROPERTY	None
LR13	APPLICATION FOR STANDARD FORM OF RESTRICTION	[None] [or] [The Parties to this Lease apply to enter

"Tenant's Use" [] / [the Tenant's operational use of the Demised Premises for:

- (a) the decommissioning of plant and machinery associated with naturally occurring radionuclides ("NORM" work); and
- (b) the appropriate storage of NORM feedstock at appropriate locations; and
- (c) such other use in respect of which:
 - (i) the Tenant has obtained the Landlord's prior written consent (which may be withheld where the Landlord in its absolute discretion considers it appropriate); and
 - (ii) all necessary consents have been obtained pursuant to any relevant Enactments
 - (iii) the Tenant has obtained the consent of the ONR where required as a condition of any Site Licence]

<Second alternative is appropriate for particular type of decommissioning activity only>

["Agreement for Lease" for [dated made between [/the Landlord] [and] [/the Tenant] [and] []]
[none]

"Notice" dated served by the Landlord on the Tenant pursuant to section 38A(3)(a) of the 1954 Act in relation to the tenancy created by this Lease [a copy of which Notice is annexed to this Lease]

"Declaration" [statutory] declaration made in accordance with section 38(3)(b) of the 1954 Act on by [the Tenant] [] who was duly authorised by the Tenant to do so] acknowledging service of the Notice [not less than 14 days] before [the grant of this Lease] [the Agreement for Lease was entered] [a copy of which Declaration is annexed to this Lease]

["Break Date[s]" []

["Break Notice Date[s]" [] [months before [the] [each] Break Date]

<Relevant where Demised Premises is part of a building only>

["**Building Service Charge**"] means a service charge calculated and payable in respect of the Building Services in accordance with Part D of the Schedule];

<Relevant where Demised Premises is part of a building only>

["**Building Services**"] means those of the Services described in paragraph 2.2 of Part D of the Schedule];

<Relevant where Demised Premises is part of a building only>

["**Common Parts**"] means the areas of the Building being [the toilets kitchen and conference room] which are shown edged [in green] on [Plan 1]]];

<Relevant where Demised Premises is part of a building only>

"**Conducting Media**" means pipes drains (including drainage ditches) sewers mains ducts gutters watercourses wires cables (including fibre optic cables) conducting media including any fixings louvres cowls and other covers manholes junctions boxes and other ancillary works and mechanisms existing at the date hereof and installed at any time hereafter during the Term;

"**Demised Premises**" means all that [internal premises being []] / land including the building(s) and other structures thereon (excluding the airspace above the highest point of any such building or structure and the subsoil below)] and also the Landlord's fixtures [and those items listed on the Fixtures and Fittings Schedule (which shall be deemed to be the property of the Landlord)] thereon known as [] which [premises / land] is shown edged [red] on [Plan 1] excluding any Conducting Media save for any that serve the Demised Premises [which premises shall include:

- (a) the plaster linings and other interior coverings and facing material of the columns within the said premises and of the walls within and bounding them from other parts of the Building;
 - (b) the floor screed and other fixed floor coverings and all materials lying between the structural floor slab and the floor surface;
 - (c) the ceilings including all materials forming part of them lying below the lower surface of the structural ceiling slab;
 - (d) all non-load bearing walls and partitions lying within the said premises;
 - (e) the doors and door frames within and on the boundaries of the said premises;
- and

(f) the window glazing and window frames lying within the said premises];

"Dedesignated" means no longer designated under section 1 of the Energy Act 2004;

"EA" means the Environment Agency as defined in section 1 of the Environment Act 1995 and its statutory successor from time to time performing the same function;

"Enactment" means every Act of Parliament directive and regulation now or hereafter to be enacted or made and all subordinate legislation whatsoever deriving validity therefrom and all common law and guidance notes and codes of practice which are of mandatory effect;

"Environment" means any land, including without limitation, surface land and sub-surface strata and made ground, sea bed or river bed under any water as defined below and any natural or man-made structures above or below ground, water, including, without limitation, coastal and inland waters, surface waters and ground waters and water in drains and sewers; and air, including, without limitation, air within buildings and other natural or man-made structures above or below ground;

"Estate" means (subject to clause 6.4 of the Superior Lease) the land and buildings demised to the Superior Landlord's by the Superior Lease;

"Estate Rules and Regulations" means any regulations published from time to time by the Superior Landlord in the interests of good estate management and relating to the Retained Estate;

"Estate Services" means those of the Services described in paragraph 2.1 of Part D of the Schedule;

"Estate Service Charge" means a service charge calculated and payable in respect of the Estate Services in accordance with Part D of the Schedule;

"Expiry of the Term" means the expiration or sooner determination of the Term including by way of surrender;

["Fixtures and Fittings Schedule" means the schedule dated [] annexed to this Lease and marked "Fixtures and Fittings Schedule");

<Check if relevant>

["Guarantor" [means the party [of the [fourth] part / named in the Particulars] (if any) and] includes its successors in title and assigns;]

["Guarantor's Declaration" means a [statutory] declaration made in accordance with section 38(3)(b) of the 1954 Act on [] by [the Guarantor] [

who was duly authorised by the Guarantor to do so] acknowledging service of the Notice [not less than 14 days] before [the grant of this Lease] [the Agreement for Lease was entered] [a copy of which Declaration is annexed to this Lease]];

["**Guarantor's Notice**" means a notice dated [] served by the Landlord on the Guarantor pursuant to section 38A(3)(a) of the 1954 Act in relation to the tenancy to be entered into by the Guarantor pursuant to Part F of the Schedule [a copy of which Notice is annexed to this Lease];

"**Group Company**" means a company which is a member of the same group of companies within the meaning of Section 42 of the 1954 Act;

"**Hazardous Materials**" means any and all materials or substances of any form, whether natural or artificial, which alone or in combination with any other substance are or may be harmful or prejudicial to the health of any human or other living organism or the Environment, including, without limitation, any noxious, toxic, offensive, hazardous, infectious or radioactive substances, organisms or gases, and any oils, petroleum or petroleum products, electricity or heat;

"**Health and Safety Executive**" or "**HSE**" means the body corporate established by section 10 of the Health and Safety at Work etc. Act 1974 and its statutory successor from time to time performing the same function;

"**Insurance Cost**" means in respect of each year of the Term the aggregate of the amount which the Superior Landlord may expend:

- (a) in effecting and maintaining insurance against the occurrence of the Insured Risks in relation to the Demised Premises in such sum as in the Superior Landlord's opinion represents its then full current replacement cost with such allowance as the Superior Landlord from time to time considers appropriate in respect of related liabilities and expenses (including without limitation liability to pay any fees or charges on the submission of an application for planning permission and costs which might be incurred in complying with any Enactment in carrying out any replacement work and sums in respect of architects' engineers' and quantity surveyors' and other professional fees and incidental expenses incurred in relation to any works of debris removal and of replacement and all VAT); and
- (b) in effecting and maintaining any insurance relating to the property owners' liability and the employer's liability of the Landlord in relation to the Demised Premises and anything done therein; and

- (c) in professional fees relating to insurance including fees for insurance valuations carried out at reasonable intervals and all fees and expenses payable to advisers in connection with effecting and maintaining insurance policies and claims;

"Insurance Sum" means in respect of each year of the Term the aggregate of:

- (a) an amount equivalent to the Insurance Cost for the relevant period; and
- (b) the amount which the Superior Landlord may expend in effecting and maintaining insurance against three years loss of the rents first and secondly hereinafter reserved with any addition to the amount insured as the Superior Landlord may decide in respect of VAT; and
- (c) (without prejudice to all other provisions of this Lease relating to the use of the Demised Premises and the vitiation of any policy of insurance) any amount which the Superior Landlord may expend in paying all additional premiums and loadings on any policy or policies of insurance required to be paid as a result of anything done or omitted by the Landlord or the Tenant; and
- (d) an amount equivalent to the total of all excess sums which the insurers are not liable to pay out on any insurance claim in respect of the Demised Premises and which the Superior Landlord may have expended in replacing the damaged or destroyed parts of the Demised Premises; and
- (e) any tax charged on any premium for any such insurance;

"Insured Risks" means loss damage or destruction whether total or partial caused by fire lightning explosion riot civil commotion strikes labour and political disturbances and malicious damage aircraft and aerial devices (other than hostile aircraft and devices) and articles accidentally dropped from them storm tempest flood bursting or overflowing of water tanks and pipes impact earthquake and accidental damage to underground water oil and gas pipes or electricity wires and cables subsidence ground slip and heave and such other risks or perils against the occurrence of which the Superior Landlord may from time to time in its absolute discretion deem it desirable to insure subject to such exclusions and limitations as are from time to time imposed by the insurers and subject also to the exclusion of such of the risks specifically hereinbefore mentioned as the Superior Landlord may in its discretion decide where insurance cover in respect of the risk in question is not for the time being available in the London insurance market on reasonable terms;

"Landlord" [means the party of the first part and] includes (as the context so admits) the estate owner or owners for the time being of any reversionary interest expectant on the termination of the Term whether mediate or not;

"Landlord's Estate" means the Landlord's establishment in [] being part of the Estate the current extent of which is shown edged [red] on [Plan 2] or such smaller area as may result from a surrender of part of the previous demised by the Superior Lease;

"Nuclear Installation" means a nuclear reactor or an installation prescribed under section 1 of the Nuclear Installations Act 1965;

"Nuclear Matter" means nuclear matter as the same is defined in section 26 of the Nuclear Installations Act 1965 which constitutes surface radiological contamination;

"ONR" means the Office for Nuclear Regulation or any successor body having responsibility for nuclear safety in the United Kingdom which substantially replaces it from time to time;

"Order" means the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003;

"Party" means the Landlord [or] the Tenant [or] [the Guarantor];

[**"Plan 1"** **"Plan 2"** and **"Plan 3"** means the plans annexed to this Lease and marked accordingly;]

"Planning Acts" means the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990, the Planning (Consequential Provisions) Act 1990, and the Planning and Compensation Act 1991 and any other town and country planning or related legislation;

"Public Authority" means any Secretary of State and any government department public local regulatory fire or any other authority or institution (including the ONR, HSE and the EA) having functions which extend to the Demised Premises or their use and occupation and any court of law and the companies or authorities responsible for the supply of water gas and electricity or any of them and any of their duly authorised officers;

"Quarter Days" means 1 January 1 April 1 July and 1 October;

[**"radioactive waste"** means radioactive waste as the same is defined by section 2 of the Radioactive Substances Act 1993;]

<Only relevant where the tenant is involved in decommissioning activities on site>

"Regulatory Requirements" means any legally enforceable requirement of any Regulator;

"Regulators" means the HSE, the EA and ONR and **"Regulator"** shall mean each or any one of them;

"Rent" means [the greater of] the yearly rent of [] Pounds and [[] Pence] (£[]) [and the sum calculated in accordance with Part C of the Schedule];

"Retained Estate" means the part of the Superior Landlord's establishment known as [] the current extent of which is shown edged [blue] on [Plan 2] or such smaller area as may result from a sale or sales or other disposal of part or parts thereof from time to time by the Superior Landlord together with such additional immediately adjoining land as the Superior Landlord may from time to time acquire to form part thereof excluding the Estate;

"Retained Estate Costs" means the costs of maintenance of access and other services over through and along the Retained Estate which charges are payable by the Superior Landlord in accordance with clause 3 of the Headlease;

"Review Date[s]" means [] and every [] anniversary of that date]

"RICS Code of Measuring Practice" means the Royal Institution of Chartered Surveyors Code of Measuring Practice 6th Edition (2007);

"Secretary of State " means the Secretary of State for Energy and Climate Change of 3 Whitehall Place, London, SW1A 2AW and his successor in title;

"Schedule of Condition" means the schedule of condition prepared by [] and dated [] a copy of which is annexed to this Lease;]

<Check whether relevant>

"Service Charge" means the Estate Service Charge [the Building Service Charge] and the Utilities Service Charge;

"Services" means together the Estate Services [the Building Services] and the Utilities Services;

"Shared Media" means Conducting Media used in common by the Landlord and the Tenant;

"Site Licence" means a licence granted under section 1 of the Nuclear Installations Act 1965 in respect of the Demised Premises and for the whole or part of the Adjoining Property;

"Site Rules and Regulations" means any regulations published from time to time by the Landlord in the interests of good estate management and relating to the Estate;

"Stipulated Rate" means a yearly rate three per cent above the Base Rate (and so that whenever there is reference in this Lease to the payment of interest at the Stipulated Rate such interest shall be calculated on a daily basis and compounded with quarterly rests on the Quarter Days);

"Superior Lease" means the lease under which the Landlord holds the Demised Premises together with other property dated [] made between the Nuclear Decommissioning Authority ("**the Superior Landlord**") (1) and the Landlord (2) for a term of [] years from and including [];

"Suspension Notice" means a notice given by the Landlord to the Tenant pursuant to the provisions of clause 6.14;

"Tenant" means the party of the second part and includes its successors in title and assigns;

"Tenant Safety Requirements" means the safety requirements stipulated by the Landlord and/or the holder of the Site Licence as applying to the Tenant in respect of this Lease pursuant to the arrangements described in the document known as [] (as provided to the Tenant from time to time) or such other safety requirements which may be required in respect of the Demised Premises for the purpose of ensuring compliance with the provisions of the Nuclear Installations Act 1965 and/or the Site Licence;

["Tenant's Use" means []];

["Term" [means [] years from and including [] to and including [] and] [includes any extension holding over or continuation of the Term whether by common law holding over or otherwise]]];

"Termination Notice" means a notice given by the Landlord to the Tenant pursuant to the provisions of clause 6.14;

"Third Party Determination" means third party determination in accordance with clause 6.16;

["UKAEA" means United Kingdom Atomic Energy Authority of Culham Science Centre, Abingdon, Oxfordshire OX14 3DB;]

"Utilities" means any water, steam, electricity, gas, sewage, radio, television, telephone, telecommunications, computer and other like utility services and supplies;

"Utilities Service Charge" means a service charge calculated and payable in respect of Utilities in accordance with Part D of the Schedule;

"Utilities Services" means those of the Services described in paragraph 2.3 in Part D of the Schedule;

"VAT" means value added tax as defined in the Value Added Tax Act 1994 and any tax of a similar nature substituted for, or levied in addition to, such value added tax; and

"Working Day" means any day, other than a Saturday or Sunday, on which clearing banks in the United Kingdom are open to the public for the transaction of business.

1.2 [The Particulars and all schedules shall form part of this Lease and all terms defined in the Particulars or those schedules bear the meanings stated]

1.3 Any reference to a statute (whether specifically named or not) shall include any amendment or re-enactment of it for the time being in force, and all instruments, orders, notices, regulations, directions, bye-laws, permissions and plans for the time being made, issued or given under it, or deriving validity from it.

1.4 A covenant by either party not to do (or omit) any act or thing also operates as a covenant not to permit or suffer it to be done (or omitted) and to prevent (or as the case may be to require) it being done.

[Commentary: This clause must not be amended as this is an ONR requirement]

1.5 If in order to comply with any obligation in this Lease the Landlord or the Tenant is under a duty to obtain the consent of a third party such obligation shall be deemed to be subject to the obtaining of such consent which the party in question shall use its reasonable endeavours to obtain except where otherwise specified in this Lease.

1.6 Where the context so requires words importing the singular include the plural and vice versa.

1.7 Any right of entry by one party on to the Demised Premises or the Adjoining Property shall be taken to be a right for the relevant party their properly authorised agents and contractors to enter with such materials and equipment as necessary subject to the provisions of this Lease and any entry on to land within the Site Licence shall be in compliance with any reasonable conditions imposed by and under the supervision of the Landlord.

1.8 The titles or headings appearing in this Lease are for reference only and shall not affect its construction.

- 1.9 Where a party comprises more than one person covenants and obligations of that party take effect as joint and several covenants and obligations.
- 1.10 The expression or 'the Superior Landlord' shall wherever the context so admits include its successors in title.
- 1.11 Any reference to any right or easement exercisable by the Landlord including the rights and easements specified in part B of the schedule shall be deemed to include the exercise of such right or easement by the Superior Landlord or any mortgagee of the Landlord or of the Superior Landlord.
- 1.12 In every case where there is an obligation on the part of the Tenant to obtain consent or approval from the Landlord there shall be deemed to be included an obligation to obtain consent and approval from the Superior Landlord and from any mortgagee of the Landlord and of the Superior Landlord and the Landlord shall be entitled to withhold the giving of its consent or approval until the consent or approval of the Superior Landlord and any such mortgagee has first been granted.
- 1.13 In every case where there is provision for repayment to the Landlord by the Tenant of any expenses incurred by the Landlord then in the event of any expenses being incurred by the Superior Landlord there shall be deemed to be included a similar covenant by the Tenant to repay any expenses incurred by the Superior Landlord.
- 1.14 Any indemnities in favour of the Landlord shall be deemed to incorporate indemnities in favour of the Superior Landlord.
- 1.15 All rights of entry exercisable by the Landlord or the Superior Landlord or any mortgagee or persons authorised by the Landlord or the Superior Landlord shall extend to and include their respective surveyors servants contractors agents licensees and workpeople with or without plant appliances and materials.

2 DEMISE

In consideration of the Rent hereby reserved and the covenants by the Tenant and the conditions hereinafter contained the Landlord **HEREBY DEMISES** unto the Tenant the Demised Premises **TOGETHER WITH** the rights for the Tenant as set out in Part A of the Schedule in common with all others having the like right insofar as such matters are capable of benefiting the Demised Premises and insofar as the Landlord is able to grant the same **EXCEPTING AND RESERVING** unto the Landlord and to all other persons from time to time entitled thereto the rights set out in Part A of the Schedule **TO HOLD** the same unto the Tenant **FOR** the Term **SUBJECT** to the covenants rights easements wayleaves stipulations and other matters as are presently subsisting insofar as such matters affect the Demised Premises **YIELDING AND PAYING** therefore:

- 2.1 **FIRST** yearly (and proportionately for part of a year) the Rent by equal quarterly payments to be made in advance on the Quarter Days in every year the first such payment or proportionate part thereof (being a proportionate part of the Rent from [] to the [] anniversary of that date after deduction of the quarterly instalments of such yearly rent payable on the intervening Quarter Days) to be made on the date hereof;
- 2.2 **SECOND** as additional rent from time to time the Insurance Sum payable in accordance with clause 3.2
- 2.3 **THIRD** as additional rent from time to time the Estate Service Charge payable in accordance with Part D of the Schedule
- 2.4 **[FOURTH** as additional rent from time to time the Building Service Charge payable in accordance with Part D of the Schedule]

<Only relevant where Demised Premises is part of a building>

- 2.5 **[FOURTH/FIFTH]**as additional rent from time to time the Utilities Service Charge payable in accordance with Part D of the Schedule
- 2.6 **[FOURTH/FIFTH/SIXTH]** as additional rent on demand interest payable in accordance with clause 3.4
- 2.7 **[[FOURTH/FIFTH/SIXTH/SEVENTH]** as additional rent on demand all rates taxes charges and other outgoings payable in accordance with clause 3.6]

3 TENANT'S COVENANTS

The Tenant covenants with the Landlord and where appropriate with the holder of any Site Licence:

3.1 Rent

To pay the Rent on the days and in the manner set out in clause 2 without deduction or set off and (unless for the time being the Landlord shall have required in writing to the contrary) to pay the Rent (together with any VAT thereon) by banker's standing order to such bank as the Landlord may from time to time nominate or by such other method as the Landlord shall reasonably specify in writing from time to time.

3.2 Insurance Charge

To pay the Insurance Sum on demand

3.3 Service Charge

To pay the Service Charge on the days and in the manner set out in Part D of the Schedule and to observe and perform the covenants and obligations on the part of the tenant set out in Part D of the Schedule

3.4 Interest

To pay interest at the Stipulated Rate on any sum owed by the Tenant to the Landlord whether as rent or otherwise which is not:

- (a) received in cleared funds by the Landlord on the due date (or in the case of money due only on demand within seven days after the date of demand) calculated for the period commencing on the due date for payment and ending on the date the sum (and the interest) is received in cleared funds by the Landlord; or
- (b) demanded (or if tendered is for the time being refused) by the Landlord in circumstances where it is prudent for it not to demand or accept any payment having regard to a breach of any of the Tenant's obligations under this Lease calculated for the period commencing on the date the payment would have been due in the absence of those circumstances (on the assumption in the case of money due only on demand that the Landlord would have made the demand as soon as it was entitled to do so) and ending on the date the sum (and the interest) is subsequently received by the Landlord provided that if it transpires that the Tenant is not in breach of its obligations under this Lease then no such interest shall be payable.

3.5 VAT

Wherever the Tenant is required to pay any amount to the Landlord hereunder by way of reimbursement or indemnity to pay to the Landlord in addition an amount equivalent to any VAT incurred by the Landlord save to the extent that the Landlord obtains credit for such VAT pursuant to sections 24 25 and 26 Value Added Tax Act 1994 or any regulations made thereunder.

3.6 Outgoings

To pay all charges for all Utilities and/or consumables (including meter rents) supplied to or used in the Demised Premises during the Term and to pay all rates taxes charges and other outgoings whatsoever now or hereafter assessed charged or imposed upon the Demised Premises or upon that owner or occupier and attributable to the Demised Premises or upon the Demised Premises in common with other premises (or upon the owners or occupiers thereof) excluding any corporation tax capital gains tax income tax

or other tax payable by the Landlord as a direct result of any actual or deemed dealing with the reversion of this Lease or of the Landlord's income from it.

3.7 Compliance with Enactments etc.

- (a) To comply with all Regulatory Requirements and the requirements of all Enactments and of every Public Authority (including the due and proper execution of any works) in respect of the Demised Premises their use and occupation the employment of personnel in them and any work being carried out to them (whether the requirements are imposed upon the owner lessee or occupier) and not to do or omit anything by which the Landlord may become liable or by which the Landlord's existing liability may be increased to make any payment or do anything under any Regulatory Requirement Enactment or requirement of a Public Authority or the Site Licence.
- (b) To comply with the terms of any Site Licence (in so far as it relates to the Demised Premises) and to ensure that nothing is done by the Tenant on the Demised Premises or on the Adjoining Property which may jeopardise compliance with the terms of the Site Licence.
- (c) To comply at all times with the Estate Rules and Regulations and the Site Rules and Regulations.

3.8 Planning

- (a) Save to the extent that the Tenant has to make any such application in order to comply with:
 - (i) the Site Licence in so far as it relates to the Demised Premises;
 - (ii) its obligations in this Lease;
 - (iii) the requirements of ONR and/or the HSE

the Tenant shall not make any application for planning permission or for other consents required under the Planning Acts in respect of the Demised Premises without the prior written consent of the Landlord and (if required by the Site Licence) the ONR.

- (b) At its own expense to obtain and (if appropriate) renew any planning permission and any other consent and serve all necessary notices required for the carrying out by the Tenant of the Tenant's Use.

- (c) To notify the Landlord not less than five (5) Working Days prior to the submission of any application (and to provide any accompanying details) for any planning permission or other consents required under the Planning Acts.

3.9 Safety of buildings and equipment etc.

- (a) To keep the Demised Premises including the buildings and any plant and equipment sited thereon in a safe and secure state and condition in accordance with good practice and working methods from time to time accepted in the nuclear industry.
- (b) Not to do or omit any act or thing whereby support from the Demised Premises (and all buildings and structures on over in or under it) for the Adjoining Property (and all buildings and structures on over in or under it) is or may be withdrawn or diminished.
- (c) Not to permit the unauthorised escape discharge or leaching of any Hazardous Material from the Demised Premises into the Adjoining Property or any other adjoining or neighbouring land or premises.

3.10 Repair

- (a) To keep in good repair and condition the Demised Premises (damage by any of the Insured Risks excepted to the extent that the insurance money shall not have been rendered irrecoverable or insufficient because of some act or default of the Tenant or of any person deriving title under or through it or their respective servants agents or invitees) and to replace the Landlord's fixtures and fittings in the Demised Premises which may have become beyond repair [provided that without prejudice to clause 3.10(a) the Tenant shall not be obliged to keep the parts of the buildings on the Demised Premises that the Tenant is obliged by this clause 3.10 to repair (including any Shared Media) in any better state of repair and condition than is evidenced by the Schedule of Condition]
- (b) To ensure that the Adjoining Property shall not suffer any physical damage arising from any disrepair of the Demised Premises.
- (c) To keep the parts of the Demised Premises that have not been built upon tidy and clear of rubbish.
- (d) To keep the interior of the Demised Premises maintained to a good standard of decorative order and finish [provided that the Tenant shall not be obliged to keep the interior of the Demised Premises in any better state of decorative order and finish than is evidenced by the Schedule of Condition].

- (e) If there is any defect or want of repair in the parts of the Demised Premises that the Tenant is obliged by this clause 3.10 to repair or in any of the Shared Media in the Demised Premises promptly to comply with any notice of such defect or want of repair served by the Landlord on the Tenant and if the Tenant shall fail to comply with such notice within a reasonable period having regard to the nature of the defect to permit the Landlord to enter the Demised Premises to remedy the defect or want of repair and in that event such proper costs of repair shall be borne by the Tenant insofar as they relate to the Demised Premises and reimbursed to the Landlord (as a debt due) within 5 Working Days of demand and if such costs relate to the Shared Media such costs shall be shared between the Landlord and the Tenant in accordance with user of the relevant Shared Media.

3.11 Alterations

- (a) Save as provided in clause 3.11(b) below not to carry out any alterations to the Demised Premises without the prior written consent of the Landlord.
- (b) Not to carry out any internal non structural alterations without the Landlord's prior written consent which is not to be unreasonably withheld or delayed.
- (c) At the Expiry of the Term to remove such alterations and additions made to the Demised Premises by the Tenant which the Landlord reasonably requires to be removed and in such respect if required to do so by the Landlord to restore and make good the Demised Premises in a proper and workmanlike manner to the condition and design that existed before the alterations or additions were made with all services properly sealed off to the Landlord's satisfaction provided that the Tenant shall not be required to reinstate any alterations and/or additions that it has made to the Demised Premises under any obligation pursuant to any Enactment.

3.12 Rights of entry onto the Adjoining Property

Not to enter onto the Adjoining Property to exercise any of the rights hereby granted except in accordance with the following conditions:-

- (a) to cause as little interference as possible to the Landlord and any other tenants licensees or occupiers of the Adjoining Property and forthwith to remedy any damage caused to the Adjoining Property or the contents thereof to the reasonable satisfaction of the Landlord and to pay the Landlord an amount equal to the cost of remedying any damage caused to the Adjoining Property by reason of such entry which is not remedied by the Tenant and;

- (b) to comply with all regulations regarding entry to the Adjoining Property made by the Landlord and notified to the Tenant from time to time.

3.13 Notices

Forthwith to give to the Landlord notice of (and a certified copy of) any notice permission direction requisition order or a proposal made by any competent authority and without delay to comply in all respects at the Tenant's cost with the provisions thereof.

3.14 Entry by the Landlord and the holder of any Site Licence

- (a) To permit the Landlord and the holder of any Site Licence at reasonable times on reasonable prior written notice (except in an emergency) to enter the Demised Premises in order to:
 - (i) examine their state of repair;
 - (ii) ascertain that the covenants and conditions of this Lease have been observed;
 - (iii) take any measurement or valuation of the Demised Premises;
 - (iv) carry out surveys within and around the Demised Premises in connection with any proposed de-licensing of the area of the Estate in which the Demised Premises are situated;
 - (v) rebuild renew cleanse alter test maintain repair inspect decommission and make connections to any part of the Demised Premises the Estate or the Retained Estate including the Conducting Media;
 - (vi) rebuild renew remove alter decommission or demolish any Adjoining Property where there is no reasonably practicable alternative to carrying out such work other than by gaining access to the Demised Premises;
 - (vii) enable the Landlord and the holder of any Site Licence to monitor control and direct the activities of the Tenant to the extent necessary to ensure that the Tenant's activities conform with the conditions of the Site Licence applicable to the Premises or the Landlord's Estate and with the requirements or conditions imposed by any Public Authority and such right shall be exercisable also by inspectors of the ONR, the HSE or the EA in the course of their duties (whether or not accompanied by representatives of the Landlord) and the Tenant shall

permit any such entry pursuant to this clause 3.14(a)(vii) to take place at any time without notice;

- (viii) give effect to any other necessary or reasonable purpose;
- (ix) exercise the rights described in Part B of the Schedule.

PROVIDED THAT the Landlord and all others authorised to enter the Demised Premises for such purposes shall comply with the requirements of clauses 3.15(b) and 3.15(c).

- (b) Except in respect of access by the ONR, HSE or the EA, any person entering the Demised Premises shall cause as little inconvenience as possible to the Tenant and the activities carried out at the Demised Premises and shall cause as little damage as possible to the Demised Premises and the Tenant's fixtures and fittings and shall make good as soon as practicable at its own cost all damage so caused to the reasonable satisfaction of the Tenant and (subject to clause 3.14 of this Lease) the person entering shall keep confidential all information regarding the Tenant's or other occupier's business that is obtained and shall not disclose any such information save to the extent that disclosure may be required under any Enactment and any works that the Landlord is required to carry out to the Demised Premises are done as quickly and efficiently as reasonably practicable.
- (c) Except in respect of access by the ONR, HSE or the EA, any such right shall be exercised by the person in all cases first consulting with the security staff of the Tenant and in attendance of the Demised Premises and (save in the case of emergency only) shall be effected at reasonable hours only after giving reasonable notice which shall be at least 48 hours prior written notice to the Tenant and shall at all times comply with the Tenant's Entry Requirements.

3.15 Encroachments, obstruction and overloading

- (a) To preserve all rights of light and other easements belonging to the Demised Premises and not to give any acknowledgement that they are enjoyed by consent.
- (b) Not to do or omit anything which might subject the Demised Premises to the creation of any new easement and to give notice to the Landlord forthwith of any encroachment which might have that effect.
- (c) Not to discharge any Hazardous Materials into any Conducting Media serving the Demised Premises other than in accordance with any consents or licences required for such discharge or the Tenant Safety Requirements or as varied

between the Landlord and the Tenant and to keep such Conducting Media clear and functioning properly insofar as they are within the Demised Premises or (if outside the Demised Premises) up to and including the agreed hand-over point.

- (d) Not to obstruct any requisite notice erected on the Demised Premises including any erected by the Landlord in accordance with its powers under this Lease and not to obstruct any premises adjoining the Demised Premises or any means of escape.
- (e) Not to overload or cause undue strain to the services of the Demised Premises beyond the loadings and tolerances existing at the date of this Lease or notified to the Tenant in writing and not to suspend any weight from the ceilings or walls of the Demised Premises which would exceed such loadings and tolerances.
- (f) Not to stop-up or darken the windows and other openings of the Demised Premises.

3.16 User

- (a) Not to use the Demised Premises
 - (i) Otherwise than for the Tenant's Use;
 - (ii) For a sale by action or for any public meeting or any illegal offensive or immoral trade business or activity or for residential purposes; or
 - (iii) For any works involving the emission of ionising radiation other than naturally occurring radiation or for any purposes involving the bringing on or keeping of radioactive materials or other Hazardous Substances at the Demised Premises within the scope of any relevant enactments.
- (b) [Not to use the external areas of the Demised Premises for any purposes except ancillary parking and access to buildings on the Demised Premises as appropriate in accordance with the rights granted under this Lease unless otherwise permitted by this Lease]

<Check whether relevant>

3.17 Covenants affecting reversion

To perform and observe all the covenants restrictions provisions and stipulations affecting the Demised Premises and not to interfere with any rights easements or other matters affecting the Demised Premises.

3.18 Regulations

- (a) To comply with any regulations made or varied from time to time by the Landlord and/or the holder of the Site Licence and notified in writing to the Tenant with regard to the safe and efficient running and management of the Demised Premises and the Adjoining Property including (but without prejudice to the generality of the foregoing) regulations relating to security arrangements at the point(s) of access to the Adjoining Property and traffic control signs parking no waiting areas speed limits and safety arrangements or otherwise.
- (b) To conform (together with its agents, servants and all persons authorised by it) in all respects with the Tenant Safety Requirements.
- (c) To observe any restrictions on freedom of movement and access imposed on the Tenant its agents, employees and visitors upon freedom of movement and access to the Demised Premises required to demonstrate the effectiveness of emergency plans on a licensed nuclear site in accordance with the provisions of the Nuclear Installations Act 1965.
- (d) To take all reasonable steps at all times during the Term to maintain the security of the Demised Premises against entry by unauthorised persons.

3.19 [Decommissioning and radioactive waste management liabilities

- (a) Not to undertake (or omit to undertake) any operation or carry out (or omit to carry out) any act in or on the Demised Premises which may materially increase the eventual decommissioning or radioactive waste management costs in respect of the Demised Premises or any building that forms part of the Demised Premises or to install any new plant or equipment or alter any existing plant or equipment in such a way as to increase such costs without the prior approval in writing of the Landlord and the holder of any Site Licence (the giving of such approval being in the Landlord and the holder of any Site Licence's absolute discretion) and to comply with the terms of any agreement from time to time in force between the Landlord and the Tenant and any agreement from time to time in force between the holder of any Site Licence and the Tenant governing decommissioning and waste management liabilities]

3.20 Contamination

- (a) To decontaminate remediate or take such action as the Landlord may require to remove Hazardous Materials from the Demised Premises or which may or is migrating leaching or escaping from the Demised Premises.

- (b) Not to allow Hazardous Substances to migrate escape or be discharged from the Demised Premises and in the event that such migration escape or discharge does occur the Tenant shall indemnify the Landlord and the Superior Landlord against all costs claims damages expenses and any other liabilities arising out of or in connection with such migration escape or discharge.

3.21 Alienation

- (a) Subject to clause 6.16 and except as expressly permitted by clauses 3.21(f) or by consent given pursuant to clauses 3.21(b) 3.21(c) or 3.21(f) or 3.21(g) not to transfer assign convey underlet licence charge part with or share possession or occupation of the whole or any part of the Demised Premises or hold the Lease as trustee agent or otherwise for the benefit of any third party
- (b) Not to assign (or agree to assign) the whole of the Demised Premises without the consent of the Landlord (not to be unreasonably withheld) and the consent of the ONR provided that (without prejudice to the Landlord's right to withhold consent or to impose other conditions where it is reasonable to do so) for the purposes of Section 19 (1A) of the Landlord and Tenant Act 1927
 - (i) the Landlord may withhold consent in the following circumstances:
 - (A) if the prospective assignee is a Group Company of the Tenant or
 - (B) if in the reasonable opinion of the Landlord the prospective assignee is not of sufficient financial standing to enable it to comply with the Tenant's covenants in this Lease
 - (ii) the Landlord may give its consent subject to all or any of the following conditions:
 - (A) the prospective assignee covenants with the Landlord to pay the Rent and observe and perform the Tenant's covenants in this Lease during the residue of the Term or until released pursuant to the 1995 Act
 - (B) the Tenant enters into an authorised guarantee agreement within the meaning of the 1995 Act in such terms as the Landlord may reasonably require
 - (C) if the Landlord reasonably requires such other guarantor or guarantors acceptable to the Landlord guarantee(s) to the Landlord the due performance of the prospective assignee's

obligations in such terms as the Landlord may reasonably require

(D) any security for the Tenant's obligations under this Lease which the Landlord holds immediately before the assignment is continued or renewed in each case on such terms as the Landlord may reasonably require in respect of the Tenant's liability under the authorised guarantee agreement referred to in clause 3.21(b)(ii)(B), and

(E) any sum due from the Tenant to the Landlord under this Lease is paid and any material breach of the Tenant's covenants in this Lease is remedied

(c) Not to underlet (or agree to underlet) the whole of the Demised Premises without the consent of the Landlord (not to be unreasonably withheld) and the consent of the ONR and in any event not unless:

(i) the prospective undertenant has covenanted with the Landlord to observe and perform:

(A) the lessee's obligations in the underlease, and

(B) the Tenant's covenants in this Lease (except for payment of the Rent)

during the term of the underlease or until released pursuant to the 1995 Act

(ii) if the Landlord reasonably requires a guarantor or guarantors acceptable to the Landlord has guaranteed the performance by the undertenant of the covenant at 3.21(c)(i) above in such terms as the Landlord may reasonably require

(iii) no premium is given or taken for the grant of the underlease

(iv) any rent free period or other financial inducement given to the prospective undertenant is no greater than is usual at the time in all the circumstances

(v) the rent payable under the underlease is not less than whichever is the greater of the Rent then payable under this Lease and the best rent reasonably obtainable for the underlease without a premium

(vi) the underlease is by deed and:

- (A) is consistent with this Lease
 - (B) contains a rent reviewable at the same times and on the same terms as the Rent
 - (C) contains undertenants covenants with the Landlord (as well as the underlessor) that (save as permitted under subclause (D) below) it will not assign underlet charge or part with or share possession or occupation of the whole or any part of the underlet premises
 - (D) contains undertenants covenants with the Landlord (as well as the underlessor) not to assign or charge the whole or underlet the whole or part of the underlet premises without the consent of the Landlord (not to be unreasonably withheld) and the consent of the ONR, and
 - (E) has the consent of the Landlord (not to be unreasonably withheld) and the consent of the ONR
- (vii) before any underlease is completed (or if earlier before the Tenant becomes contractually bound to take it) the underlease is validly excluded from sections 24 to 28 inclusive of the 1954 Act and the Tenant promptly produces to the Landlord adequate evidence of such valid exclusion
- (d) Not without the consent of the Landlord (not to be unreasonably withheld) and the consent of the ONR to:
- (i) vary the terms of any underlease;
 - (ii) agree any review of the rent under any underlease; or
 - (iii) accept a surrender of all or any part of any underlet premises (where such consent is necessary)
- (e) To enforce against any undertenant the provisions of any underlease and to operate the rent review provisions in any underlease and not to permit any reduction of the rent payable by any undertenant
- (f) Subject to prior written consent of the [Landlord (such consent not to be unreasonably withheld or delayed) and the] ONR submitted by way of an application via the Landlord or (where the Landlord is not the Site Licence Holder in respect of the Demised Premises) the relevant Site Licence Holder the Tenant may (on giving prior written notice to the Landlord containing all

relevant information) share occupation of the whole or part of the Demised Premises with a Group Company of the Tenant on condition that the relationship of landlord and tenant is not created and such occupation ceases immediately if the occupier ceases to be a Group Company of the Tenant

[Commentary: Consent of the ONR is mandatory]

- (g) Not to charge (or agree to charge) the whole or any part of the Demised Premises without the consent of the Landlord (not to be unreasonably withheld) and the consent of the ONR submitted by way of an application via the Landlord or (where the Landlord is not the Site Licence Holder in respect of the Demised Premises) the relevant Site Licence Holder

[Commentary: Consent of the ONR is mandatory]

- (h) To give to the Landlord' solicitors within 14 days written notice of any assignment underletting charge or other devolution of any interest in the Demised Premises together with a certified copy of the relevant documentation and a reasonable registration fee of not less than £50.00 plus VAT
- (i) From time to time on demand to provide the Landlord with such details as the Landlord may reasonably require of all derivative interests in the Demised Premises

3.22 Keyholders

To register with the Landlord the name and home address and home telephone number (and any mobile telephone number) of at least two keyholders of the Demised Premises.

3.23 Security

- (a) To adopt the same security procedures and standards as are adopted from time to time by the Landlord and/or the holder of any Site Licence to comply with any Enactment or Regulatory Requirement and any direction from any Public Authority for the safe-keeping of Nuclear Material (as described in the Nuclear Installations Act 1965) provided that the Landlord or the holder of any Site Licence shall (as appropriate) notify the Tenant of such procedures and standards and of any modifications to them.
- (b) Without prejudice to any other obligations contained in this Lease, to provide particulars of all employees, agents and contractors to the Landlord and the holder of any Site Licence in such format reasonably requested by each of them for security clearance purposes and to ensure that its employees, agents,

contractors and visitors observe any restrictions or regulations relating to access to the Adjoining Property (or any part of it) which may be imposed by the holder of any Site Licence from time to time in the interests of security (which for the avoidance of doubt shall include restrictions on entry by nationals of specified countries) and to ensure that such employees, agents, contractors and visitors carry such security passes or identity documents as the Landlord or the holder of any Site Licence may prescribe and further to comply with stop and search procedures authorised or prescribed by the Landlord or the holder of any Site Licence from time to time in the interest of the security of the Adjoining Property and the Demised Premises whether such procedures are implemented by the Civil Nuclear Constabulary or any other guard force authorised by the Landlord or the holder of any Site Licence.

- (c) To take all practicable steps at all times during the Term to maintain the security of the Demised Premises against entry onto them by unauthorised persons.

3.24 Landlord's costs

- (a) To pay all costs and demands properly incurred by the Landlord:-
 - (i) in relation to, or in reasonable contemplation of the preparation and service of a notice under section 146 of the Law of Property Act 1925 or any proceedings under section 146 or 147 of that Act notwithstanding forfeiture is avoided otherwise than by relief granted by the court and;
 - (ii) in connection with or procuring the remedying of any breach of covenant on the part of the Tenant contained herein.
- (b) To pay all costs and demands reasonably incurred by the Landlord in relation to any application for consent required or made necessary by this Lease (such costs to include reasonable management fees and expenses) whether or not it is granted (except in cases where the Landlord is obliged not to withhold its consent unreasonably and the withholding of its consent is held to be unreasonable), or the application is withdrawn.

3.25 Additional costs

To pay to the Landlord within 5 Working Days of demand the costs properly incurred by the Landlord in connection with compliance with all Enactments and with the Site Licence in relation to the Demised Premises including fees payable to the ONR, the HSE, the EA and any other government ministry or department.

3.26 Nuisance

Not to do anything in or about the Demised Premises and/or use the Demised Premises for any purpose which may be or become a nuisance or which may cause damage to or interfere in any way with the Adjoining Use the Estate the Retained Estate or the Adjoining Property or any plant and equipment on the Adjoining Property or the rights granted to the Landlord or the Superior Landlord herein Provided That the continuing lawful use of the Demised Premises for the Tenant's Use or uses ancillary thereto shall not be or be deemed to be a breach of this clause 3.26 so long as the Tenant carries out such use in a responsible manner having regard to the Adjoining Use the Estate the Retained Estate and the Adjoining Property and the plant and equipment on the Estate the Retained Estate or the Adjoining Property.

3.27 Yielding up

- (a) At the Expiry of the Term quietly to yield up the Demised Premises to the Landlord with vacant possession removing all chattels and belongings and in compliance with all relevant Enactments and requirements of any Public Authority relating thereto and in accordance with the covenants by the Tenant contained in this Lease or in any previous tenancy of the Demised Premises in connection with which the Tenant was permitted to carry out alterations to the Demised Premises subject to a liability to reinstate but did not reinstate the alterations on the determination of that tenancy and to make good (if required by the Landlord) any damage so caused in a proper and workmanlike manner to the Landlord's reasonable satisfaction (having removed the tenant's fixtures and fittings from the inactive areas of the Demised Premises (and in removing such fixtures and fittings the Tenant shall make good any damage thereby caused to the Demised Premises)).

3.28 Defective premises

To give notice forthwith to the Landlord of any defect in the Demised Premises which might give rise to:

- (a) an obligation on the Landlord to do or refrain from doing anything in relation to the Demised Premises; or
- (b) any duty of care or the need to discharge such duty imposed by the Defective Premises Act 1972 or otherwise; or
- (c) a breach of the Site Licence

and at all times to display and maintain all notices which the Landlord may from time to time reasonably require to be displayed at the Demised Premises in relation to their state of repair and condition.

3.29 Insurance and fire fighting precautions and equipment

- (a) Not to do or omit anything by which any insurance policy (particulars of which shall have been provided to the Tenant) relating to the Demised Premises and/or the Adjoining Property or any part of them becomes void or voidable or by which the rate of premium on such policy may be increased.
- (b) To take all practicable and reasonable precautions to guard against the risk of fire to the reasonable satisfaction of the Landlord and (at the Tenant's expense) to conform and comply with any requirements of any competent authority relating to the prevention of fire on or at the Demised Premises.
- (c) To comply with all requirements and reasonable recommendations of the insurers and to provide and maintain unobstructed appropriate operational fire fighting equipment and fire notices on the Demised Premises.
- (d) To notify the Landlord and the Superior Landlord forthwith of:
 - (i) any incidence of any Insured Risk on the Demised Premises and of any other event which ought reasonably to be brought to the attention of insurers;
 - (ii) the insurable value of any fixture installed in the Demised Premises by the Tenant or any person claiming under or through the Tenant.
- (e) That it has prior to the execution of this Lease disclosed to the Landlord and the Superior Landlord in writing any matter known to the Tenant which might affect the decision of any insurance underwriter to underwrite any of the Insured Risks and that it will disclose particulars of any such matter to the Landlord and the Superior Landlord in writing forthwith on becoming aware of it.
- (f) That if at any time the Tenant or any person claiming under or through it shall be entitled to the benefit of any insurance of the Demised Premises to cause all money paid under such insurance to be applied in making good the loss or damage in respect of which it was paid.
- (g) If the whole or any part of the Adjoining Property and/or the Demised Premises is damaged or destroyed by any of the Insured Risks at any time during the Term and the insurance money under any insurance policy effected by the Superior Landlord is rendered wholly or partially irrecoverable because of some

act or default of the Tenant or any person deriving title under or through it or their respective servants agents or invitees forthwith to pay the Superior Landlord the whole or a proper proportion of the amount of the insurance money so irrecoverable.

3.30 Indemnity

To indemnify the Landlord and the Superior Landlord against all expenses proceedings costs claims damages demands and any other liability or consequence arising out or in respect of any breach of any of the Tenant's obligations under this Lease (including all costs reasonably incurred by the Landlord or the Superior Landlord in an attempt to mitigate any such breach) or of any act omission or negligence of the Tenant or any person at the Demised Premises expressly or impliedly with the Tenant's authority.

3.31 Land Registry

If required by the Landlord to the extent the grant (or any transfer) of this Lease and of any right appurtenant to it requires to be completed by registration pursuant to the Land Registration Act 2002 in order to operate at law, to comply with the relevant registration requirements and, as soon as practicable, to provide the Landlord and the Superior Landlord with a copy of an official copy of the relevant register evidencing compliance with them.

3.32 Observe Superior Lease

To observe and perform all the covenants on the part of the tenant contained in the Superior Lease so far as they relate to the Demised Premises and (without prejudice to any Tenant covenants in this Lease) are not expressly assumed by the Landlord in this Lease.

3.33 Indemnity for breach of Superior Lease

To indemnify and keep indemnified the Landlord and the Superior Lease against all damages losses costs expenses actions demands proceedings claims and liabilities made against or suffered or incurred by the Landlord or the Superior Landlord arising directly or indirectly out of any breach by the Tenant of the covenant to observe the Superior Lease set out in clause 3.32

3.34 Permit access to Landlord

To permit the Landlord to enter upon the Demised Premises for any purpose that is in the opinion of the Landlord necessary to enable it to comply with the covenants on the part of the tenant contained in the Headlease or the Superior Lease or to avoid the

forfeiture thereof notwithstanding that the obligation to comply with such covenants may be imposed on the Tenant by this Lease.

3.35 Permit access to Superior Landlord

To permit the Superior Landlord and all persons authorised by it to enter the Demised Premises for the purposes specified and upon the terms contained in the Headlease or the Superior Lease as if the provision in the Headlease and the Superior Lease were incorporated in this Lease.

3.36 Costs

Where the Tenant makes an application to the Landlord under the Lease for consent and the consent of the Superior Landlord is also required under the Superior Lease to pay on an indemnity basis:

- (a) all costs and other expenses properly incurred by the Landlord in relation to that application including seeking the Superior Landlord's consent in accordance with clause 4.8 whether that application is granted refused offered subject to any qualification or withdrawn.
- (b) professional advice obtained by the Landlord in relation to that application.
- (c) the costs and other expenses of the the Superior Landlord in relation to that application.

4 LANDLORD'S COVENANTS

The Landlord **COVENANTS** with the Tenant during the period whilst it is the Landlord and without liability in respect of any subsequent period:-

4.1 Quiet enjoyment

Provided that the Tenant has complied with its covenants and obligations contained in this Lease the Tenant shall and may peaceably and quietly hold and enjoy the Demised Premises during the Term without any disturbance or interruption by the Landlord or any person lawfully claiming through under or in trust for it

4.2 Rights of entry

Not to enter the Demised Premises in exercise of any of the rights hereby reserved except in accordance with the condition that the Landlord causes as little interference as reasonably practicable to the Tenant and as soon as reasonably practicable remedies any damage caused to the Demised Premises or the contents thereof to the reasonable satisfaction of the Tenant and pays to the Tenant an amount equal to the

cost of remedying any such damage to the Demised Premises if the same is not remedied by the Landlord within a reasonable period.

4.3 Services

To comply with its covenants and obligations set out in Part D of the Schedule subject as therein provided.

4.4 Insurance

- (a) To use reasonable endeavours to procure that the Demised Premises are insured against the Insured Risks in a sum which in the Superior Landlord's opinion is their full replacement cost (but not necessarily the facsimile reinstatement cost).
- (b) On request to supply the Tenant (but not more frequently than once in any period of twelve months) with evidence of such insurance.
- (c) If and whenever during the Term the Demised Premises (except as aforesaid) are damaged or destroyed by an Insured Risk and to the extent that payment of the insurance monies is not refused because of any act neglect default or omission of the Tenant or of any person deriving title under or through the Tenant or their respective servants agents and invitees the Landlord will use reasonable endeavours to procure that the Superior Landlord (with all convenient speed) takes the necessary steps to obtain any requisite planning permissions and consents and if they are obtained to lay out the money received from the insurance of the Demised Premises (except sums in respect of public liability and employer's liability and loss of rent) in replacing (but not necessarily in facsimile reinstatement) the damaged or destroyed parts (except as aforesaid) as soon as reasonably practicable **PROVIDED ALWAYS THAT** the Superior Landlord shall not be liable to carry out the replacement if it is unable (having used all reasonable endeavours) to obtain every planning permission and consent necessary to execute the relevant work in which event the Superior Landlord shall be entitled to retain all the insurance money received by it.
- (d) To use reasonable endeavours to procure that the interest of the Tenant is noted on the Superior Landlord's policy and that the insurers provide a waiver of their right of subrogation against the Tenant.

4.5 Landlord's Obligations

To use best endeavours to maintain and comply with any Site Licence insofar as it applies to the Demised Premises the Adjoining Premises and the Estate.

4.6 To pay rent

To pay the rent reserved by the Superior Lease and to comply with the covenants set out in clause 4.4 thereof to the extent they apply to property other than the Demised Premises.

4.7 To enforce covenants

Upon receiving notice from and at the expense of the Tenant to take all reasonable steps to enforce the covenants on the part of the Superior Landlord contained in the Superior Lease.

4.8 Superior Landlord's consent

To take all reasonable steps but at the cost of the Tenant to obtain the consent of the Superior Landlord whenever the Tenant makes an application for any consent required hereunder where the consent of the Landlord and the Superior Landlord is needed by virtue of this Lease or the Superior Lease in those cases where the Landlord is willing to give its consent or where the Landlord's refusal to give such consent is held by the court to be unreasonable.

5 GUARANTOR'S COVENANTS

The Guarantor covenants with the Landlord in the terms set out in Part F

6 PROVISOS

PROVIDED ALWAYS and it is agreed and declared between the Parties:-

6.1 Re-entry

If at any time during the term of this Lease any of the following events shall occur:-

- (a) the whole or part of the rents shall be unpaid for 14 days after becoming payable (whether the rents have been demanded or not); or
- (b) the Tenant is in breach of any of the terms or conditions of this Lease; or
- (c) if the Tenant or any guarantor of the Tenant's obligations (or if more than one person any one of them):
 - (i) being a company is the subject of a petition or issues a notice convening a meeting to consider a resolution for its winding up or enters into liquidation whether voluntarily (except for reconstruction or amalgamation of a solvent company on terms previously agreed by the Landlord) or compulsorily or has a provisional liquidator or a receiver (including an administrative receiver) appointed or a resolution is

passed or any other step is taken by the company or its directors for the appointment of an administrator, or an administrator is appointed, or a petition or application for an administration order is presented in relation to the company or a petition for one or of a voluntary arrangement or a proposal for one under Part I Insolvency Act 1986 or having been registered with unlimited liability it acquires limited liability; or

- (ii) being a company incorporated outside the United Kingdom is the subject of any proceedings or events analogous to those referred to in clause (c)(i) in the country of its incorporation or elsewhere or shall otherwise cease for any other reason to be or to remain liable under this Lease or shall cease for any reason to maintain its corporate existence (other than by merger consolidation or other similar corporate transaction in which the surviving corporation assumes or takes over the liabilities of the Tenant under this Lease);
- (iii) being an individual is the subject of a bankruptcy petition or bankruptcy order or of any application or order or appointment under section 253 or section 273 or section 286 Insolvency Act 1986 or otherwise becomes bankrupt or insolvent or dies; or
- (iv) enters into or makes any proposal to enter into any arrangement or composition for the benefit of his creditors

the Landlord may at any time thereafter re-enter the Demised Premises or any part thereof in the name of the whole and thereupon this demise shall absolutely cease and determine but without prejudice to any rights and remedies of the Landlord in respect of any antecedent breach by the Tenant of any of the covenants contained in this Lease.

6.2 Relocation of Conducting Media

- (a) At any time during the Term the Landlord may by giving reasonable notice in writing addressed to the Tenant notify the Tenant that the Landlord (at its own cost) is to relocate or re-position any or all of the Conducting Media serving the Demised Premises (whether shared or exclusive) and which are situated in on or over or through the Adjoining Property
- (b) where both Parties cease the use of the Shared Media at the same time the cost of removal and making safe in accordance with all relevant Enactments Regulatory Requirements and requirements of all Public Authorities shall be shared according to each Party's respective use of the same;

6.3 [Common Parts

The Common Parts shall at all times be subject to the exclusive control and management of the Landlord who may from time to time (if it shall be necessary or reasonable to do so for the benefit of the Building or otherwise in keeping with the principles of good estate management) alter stop up or divert any of them (leaving available for use by the Tenant reasonable and sufficient means of access to egress from and servicing of the Demised Premises)]

<Relevant where Demised Premises is part of a building only>

6.4 Notices

(a) Unless otherwise stated in this Lease, any notice, request or other communication to be made by one party to the other under or in connection with this Lease shall be in writing and shall be delivered personally or sent by first class post or courier to that other party as follows:

(i) if to the Tenant to:

Address: []

(marked for the attention of []); and

(ii) if to the Landlord to:

Address: []

(marked for the attention of []) with a copy to be addressed to and sent to the Landlord's agent as notified to the Tenant from time to time;

or such other persons and addresses as may from time to time be notified in writing by one party to the other.

(b) Unless otherwise stated in this Lease, a notice, request or other communication under or in connection with this Lease shall be deemed delivered:

(i) if delivered personally, when left at the address referred to in clause 6.4(a) above; and

(ii) if sent by first class mail, two Working Days after the date of posting.

6.5 No implied easements

Neither the granting of this Lease nor anything herein contained shall by implication of law or otherwise operate or be deemed to confer upon the Tenant any easement right or privilege whatsoever over or against the Adjoining Property which would or might

restrict or prejudicially affect the future rebuilding alteration or development of the Adjoining Property save for the rights expressly granted to the Tenant hereunder and the Landlord shall have the right at any time to make such alterations to or pull down and rebuild or redevelop the whole or any part of the Adjoining Property as it may deem fit without obtaining any consent from or making any compensation to the Tenant even if the acts of the Landlord could be construed as a breach of any of the Landlord's covenants or would interfere with the rights granted to the Tenant in Part A of the Schedule.

6.6 Exclusion of statutory compensation

Except where any statute prohibits or modifies the right of the Tenant to compensation being reduced or excluded by agreement, the Tenant shall not be entitled, on quitting the Demised Premises or any part of them, to claim any compensation from the Landlord under the 1954 Act.

6.7 Exclusion of Landlord and Tenant Act 1954

- (a) Further to the Notice and the Declaration and pursuant to section 38A(1) of the 1954 Act the Landlord and the Tenant agree that the provisions of sections 24 to 28 (inclusive) of the 1954 Act are excluded in relation to this Lease
- (b) [Further to the Guarantor's Notice and the Guarantor's Declaration and pursuant to section 38A(1) of the 1954 Act the Landlord and the Guarantor agree that the provisions of sections 24 to 28 (inclusive) of the 1954 Act are excluded in relation to the tenancy to be entered into by the Guarantor pursuant to Part F of the Schedule]
- (c) The provisions of Sections 24 to 28 (inclusive) of the 1954 Act are excluded in relation to the tenancy created by this Lease.

6.8 Tenant's fixtures and fittings

The Tenant's fixtures and fittings (and any plant and equipment replacing the same) is and shall remain the chattels of and the sole and absolute property of the Tenant

6.9 Limitation of liability

- (a) Save as expressly set out in this Lease neither the Landlord nor the Tenant or any of its officers employees agents or contractors shall have any liability whatever to the other Party for any indirect or consequential loss (including loss of profit, loss of production, loss of contract or loss of goodwill and any liability arising out of any liability of the other Party to any other person) whether resulting from negligence, breach of contract or otherwise on the part of the

Landlord or the Tenant (as the case may be) or any of its officers, employees agents or contractors in connection with this Lease.

- (b) Nothing in this Lease shall have the effect of excluding or restricting the liability of either party or of its officers, employees or agents for death or personal injury arising out of such person's negligence.
- (c) Each Party to this Lease agrees that the other Party (in this clause referred to as "relevant party") holds the benefit of clauses 6.9(a) to 6.9(b) above as trustee for itself and for its officers, employees and agents provided that in enforcing those provisions the relevant Party shall be obliged to take any such steps as it may in its absolute discretion think fit.
- (d) The Landlord shall not be liable for (without prejudice to clause 6.2) any stoppage or severance affecting any of the Shared Media due to any cause beyond the control of the Landlord (acting reasonably).

6.10 Rent cesser

If and whenever during the Term:

- (a) the Demised Premises (other than the Tenant's plant and equipment and trade fixtures) or any rights granted to the Tenant by this Lease are damaged or destroyed by any of the Insured Risks so that the Demised Premises are incapable of occupation and use; and
- (b) the insurance of the Demised Premises or the payment of any insurance money has not been vitiated by the act neglect default or omission of the Tenant or of any person deriving title under or through the Tenant or their respective servants agents and invitees

the rents reserved by this Lease or a fair proportion of them according to the nature and extent of the damage sustained shall be suspended and cease to be payable from the date of destruction or damage until whichever is the earlier of the date on which the Demised Premises (other than as aforesaid) are made fit for substantial occupation and use and the date of expiry of a period of three years from the date of damage or destruction.

6.11 Determination

- (a) If the Demised Premises shall be so destroyed or damaged as to be substantially unfit for occupation and use and remain so for a period of at least two years and six months from the date of damage or destruction either the Landlord or the Tenant may by not less than six months notice given to expire

at any time determine this Lease and from the giving of such notice the Landlord's obligations under clause 4.4(c) shall cease to apply and on the expiry of such notice this Lease shall determine without prejudice to any rights or remedies which may then have accrued in respect of any breach of any of the covenants or provisions contained in this Lease and the Superior Landlord shall be entitled to retain the insurance money.

- (b) If the Demised Premises shall be so destroyed or damaged as to be substantially unfit for occupation and use and the Landlord receives notice from the Superior Landlord requiring this Lease to be terminated the Landlord shall serve on the Tenant a notice to terminate this Lease immediately following any request to do so by the Landlord or the Superior Landlord and from the giving of such notice the Landlord's obligations under clause 4.4(c) shall cease to apply and on the expiry of such notice this Lease shall determine without prejudice to any rights or remedies which may then have accrued in respect of any breach of any of the covenants or provisions contained in this Lease and the Superior Landlord shall be entitled to retain the insurance money.

6.12 No planning warranty

Nothing contained in this Lease shall imply or warrant that the Demised Premises may (whether under statute or otherwise) be used for the Tenant's Use.

6.13 Construction

This Lease is governed by and shall be construed in accordance with English law.

6.14 Suspension of occupation and determination of the Term by Landlord

- (a) If at any time during the Term the Superior Landlord the Landlord or the holder of the Site Licence requires possession of the Demised Premises in order to:
- (i) comply with the provisions of any Enactment and/or the Site Licence; or
 - (ii) comply with the proper requirements of any Public Authority and/or any Regulatory Requirement; or
 - (iii) (where the Secretary of State certifies that possession is urgently required) carry out repairs (whether on the Demised Premises or elsewhere) which are needed for the proper operation of the Adjoining Property or for any other proper purpose;

then the Landlord may either:

- (iv) terminate this Lease by giving written notice to the Tenant ("**Termination Notice**") and upon the issue of such notice by the Landlord this Lease shall immediately cease and determine but without prejudice to any rights either Party may have against the other for any antecedent breach; or
 - (v) serve a notice in writing on the Tenant ("**Suspension Notice**") suspending from the date set out in the notice the Tenant's right to occupy and the Landlord's covenant to give quiet enjoyment of the whole or part of the Demised Premises.
- (b) The Landlord shall use all reasonable endeavours to give the Tenant at least 14 days warning that it intends to serve a Termination Notice or a Suspension Notice on the Tenant but the Parties agree that in an emergency neither the Superior Landlord nor Landlord shall not be obliged to give any warning.
- (c) If the Superior Landlord or the Landlord serves a Suspension Notice on the Tenant then:
 - (i) the Tenant's right to occupy and the Landlord's covenant to give quiet enjoyment of the whole or such part of the Demised Premises (as specified by the Landlord) shall be suspended and the rent first reserved by this Lease (or a fair proportion of them as specified by the Landlord) shall be suspended and cease to be payable in both cases from the date specified in the Suspension Notice until the date of the expiry of that notice served by the Superior Landlord or the Landlord pursuant to sub-clause (ii) of this sub-clause (c);
 - (ii) the Superior Landlord or the Landlord (as the case may be) shall give the Tenant not less than 10 Working Days prior written notice that it no longer requires possession of the Demised Premises and on the expiry of such notice the suspension of the Tenant's right to occupy and the Landlord's covenant to give quiet enjoyment of the Demised Premises shall be lifted;
 - (iii) if the Superior Landlord or the Landlord (as the case may be) does not serve a notice pursuant to sub-clause (ii) of this sub-clause (c) within 2 years of the date of the notice served by the Superior Landlord or the Landlord (as the case may be) pursuant to clause 6.14(a)(v) then the Tenant may by not less than 6 months' notice given to expire at any time determine this Lease and on the expiry of such notice this Lease shall determine without prejudice to any rights or remedies which either

Party may have incurred against the other in respect of any breach of any of the covenants or provisions contained in this Lease.

6.15 Construction (Design and Management) Regulations 2007

- (a) In this clause:
 - (i) the expression "**Regulations**" means the Construction (Design and Management) Regulations 2007 and any expressions appearing in this clause which are defined in the Regulations have the same meaning; and
 - (ii) the expression "**relevant work**" means any construction work which is undertaken by the Tenant or by a person claiming under it pursuant to an obligation or a right (whether or not requiring the Landlord's consent) under this lease and for the purposes of the Regulations the Tenant irrevocably acknowledges that it, and not the Landlord, arranges the design, carrying out and construction of relevant work.
- (b) The Tenant irrevocably acknowledges that it will be the only client in respect of any relevant work.
- (c) Before any relevant work is commenced in respect of which the Tenant shall act as agent on behalf of the Landlord the Tenant shall make a written election that it is to be treated as the only client in respect of the relevant work for the purposes of the Regulations and give a copy of the election to the Landlord.
- (d) To the extent that the Landlord may be a client for the purposes of the Regulations in relation to the relevant work the Landlord agrees to the written election by the Tenant.
- (e) The Tenant shall:
 - (i) comply with its obligations as a client for the purposes of the Regulations;
 - (ii) ensure that the CDM co-ordinator and the principal contractor and any other duty holders that it appoints in relation to the relevant work comply with their respective obligations under the Regulations;
 - (iii) liaise with the CDM co-ordinator to enable the CDM co-ordinator to assist the Tenant in performing the Tenant's duties as client under the Regulations;

- (iv) [ensure that all relevant documents relating to the relevant work are placed in the health and safety file for the Demised Premises by the CDM co-ordinator in accordance with the Regulations;]

<Lease of whole of a building>

- (v) [maintain the health and safety file for the Demised Premises in accordance with the Regulations and give the health and safety file to the Landlord at the end of the term of the Lease; and]

<Lease of whole of a building>

- (vi) [allow the Landlord and its surveyors to enter the Demised Premises to inspect the health and safety file and at its own cost promptly supply the Landlord with copies of it or any of the documents in it.]

<Lease of whole of a building>

- (vii) [at completion of the construction phase of the relevant work
 - (A) ensure that the CDM co-ordinator gives the Landlord all documents relating to the relevant work that are required under the Regulations to be kept in the health and safety file for the Demised Premises; and
 - (B) ensure that the CDM co-ordinator checks that the documents are kept in the health and safety file or that the CDM co-ordinator updates the health and safety file for the Demised Premises].

<Lease of part of a building>

- (f) [the Landlord shall co-operate with the CDM co-ordinator to the extent necessary to allow the CDM co-ordinator either to check that the documents relating to the relevant work are kept in the health and safety file for the Demised Premises or to update the health and safety file for the Demised Premises].

<Lease of part of a building>

- (g) The provisions of this clause shall apply notwithstanding that any consent issued by the Landlord in respect of any relevant work does not refer to the said provisions or to the Regulations.

6.16 Consents

In the event of the ONR or the Superior Landlord refusing consent to an application of the Tenant including but not limited to an application to assign underlet charge or otherwise dispose of the Lease or the Demised Premises or any part then the withholding of such consent by the Landlord shall be deemed to be reasonable

6.17 Third Party Determination

- (a) Where this Lease provides for Third Party Determination the matter for determination shall be referred at the Landlord's option either to a single arbitrator acting in accordance with the Arbitration Act 1996 or to an independent expert acting as an expert
- (b) The arbitrator or the expert (as the case may be) shall be agreed between the Landlord and the Tenant or in the absence of agreement nominated on the application of either party by the President
- (c) If the arbitrator or expert (as the case may be) fails to make any determination as to fees they shall be borne equally between the Landlord and the Tenant

7 EARLY TERMINATION

7.1 [Either the Landlord or the Tenant] [The Landlord] [The Tenant] may determine this Lease on [the] [any] Break Date by serving on the [other party][Tenant] [Landlord] written notice prior to [the] [any] [the relevant] Break Notice Date [specifying the proposed Break Date]

7.2 This Lease shall only determine as a result of notice served by the Tenant under clause 7.1 if on the [relevant] Break Date:

- (a) the Tenant gives vacant possession of the Demised Premises to the Landlord;
and
- (b) the Tenant is not in material breach of any of its covenants in this Lease; and
- (c) there are no arrears of Rent

7.3 On Determination the Tenant shall deliver to the Landlord the original of this Lease and any counterpart underleases and all other title documents relating to the Demised Premises

7.4 [If the Landlord serves notice of determination under clause 7.1 then on the Break Date the Tenant shall give vacant possession of the Demised Premises]

- 7.5 The Landlord may in its absolute discretion waive compliance with all or any of the conditions or obligations set out in clauses 7.2 [and] 7.3[and 7.4] but unless otherwise expressly agreed in writing such waiver shall not relieve the Tenant from liability to comply with the relevant condition or obligation
- 7.6 If the provisions of this clause 7 are complied with then on the Break Date this Lease shall determine but without prejudice to the rights of either party in respect of any previous breach by the other
- 7.7 The Landlord may determine this Lease at any time after the date of this Lease on not less than 3 months prior written notice in the event that the Demised Premises are Dedesignated. Upon expiry of such notice upon which the Term shall immediately cease and determine but without prejudice to any rights either party may have against the other for any antecedent breach.

8 CONFIDENTIALITY

8.1 Confidential Information

Subject to clauses 8.2 to 8.8 below, each party shall hold in confidence all documents, materials and other information, whether technical or commercial, supplied by or on behalf of another party (including all documents and information supplied in the course of any dispute resolution procedure to which a dispute is referred in accordance with this Lease) and shall not except with the written agreement of the party that supplied the information publish or otherwise disclose the same otherwise than as expressly provided for in this Lease unless or until the recipient party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of this Lease, whereupon to the extent that it is in the public domain this obligation shall cease.

8.2 Disclosure by the Landlord or the Site Licence Holder

The Landlord and/or the holder of any Site Licence may disclose any and all information acquired by it under or pursuant to this Lease (the "**Information**") to:

- (a) the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, Greater London Landlord or any department, officer, agent, representative, employee, consultant or adviser of any of them;
- (b) the Regulators;

- (c) the extent required by applicable Law or pursuant to an order of any court of competent jurisdiction;
- (d) bidders who have pre-qualified to participate in any relevant forthcoming tender process upon obtaining an undertaking of confidentiality equivalent to that contained in clause 8.1;
- (e) insurers upon obtaining an undertaking of confidentiality equivalent to that contained in clause 8.1;
- (f) consultees under the Energy Act; and/or
- (g) any department, officer, agent, representative, employee, consultant or adviser of any of the entities referred to in clauses 8.2(a) to 8.2(f) above subject, in the case where the entity in question would be required to provide an undertaking of confidentiality equivalent to that contained in clause 8.1, to obtaining such undertaking of confidentiality.

8.3 So far as is practicable, the Landlord and/or the holder of any Site Licence shall give the Tenant reasonable notice of any proposed disclosure pursuant to clause 8.2.

8.4 Notwithstanding the provisions of clause 8.2, the Landlord and/or the holder of any Site Licence may with the consent of the Tenant (not to be unreasonably withheld) further disclose the Information to persons not referred to in clause 8.2 .

8.5 Any determination as to whether it is reasonable for the Tenant to withhold its consent to disclosure under clause 8.2 above shall have regard to:

- (a) compliance with the Landlord's and (where relevant) the holder of any Site Licences statutory functions and duties, including in particular the promotion of effective competition and value for money;
- (b) relevant Government policy;
- (c) the requirement to maintain security;
- (d) the commercial sensitivity of the information
- (e) the public interest; and
- (f) the requirement to maintain openness and transparency.

8.6 Publication

- (a) The Landlord and/or the holder of any Site Licence may publish in such form and at such times as it sees fit such information as the Landlord reasonably requires to publish having regard to the list of considerations set out in

clause 8.5 above, including information it includes in its respective annual report.

- (b) The Landlord and/or the holder of any Site Licence shall give the Tenant reasonable notice of any proposed publication pursuant to clause 8.6(a).

8.7 Disclosure by the Tenant

The Tenant may disclose without the consent of the Landlord any and all information acquired by it under or pursuant to this Lease save for information which is judged by the ONR to be security sensitive (unless the recipient of information pursuant to this clause 8.7 holds all relevant security clearances) to:

- (a) the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, Greater London Landlord or any other local Landlord;
- (b) the Regulators;
- (c) the extent required by applicable Law or pursuant to an order of any court of competent jurisdiction;
- (d) insurers, upon obtaining an undertaking of confidentiality equivalent to that contained in clause 8.1;
- (e) professional advisers, upon obtaining an undertaking of confidentiality equivalent to that contained in clause 8.1; and
- (f) any department, officer, agent, representative, employee, consultant or adviser of any of the entities referred to in sub-clauses (a) to (e) of this clause above subject, in any case where the entity in question would be required to provide an undertaking of confidentiality equivalent to that contained in clause 8.1, to obtaining such an undertaking of confidentiality.

8.8 Freedom of Information Act

This clause 8 is subject to the parties' respective obligations under the Freedom of Information Act 2000, as amended (if any).

9 NEW TENANCY

This Lease constitutes a new tenancy for the purposes of the 1995 Act.

10 EXCLUSION OF THIRD PARTY RIGHTS

Each party confirms that no term of this Lease is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Lease except by the holder of any Site Licence and/or the Superior Landlord.

IN WITNESS whereof this Deed has been executed by the parties and is intended to be and is hereby delivered on the day and year first before written

Schedule 1

Part A

Easements and rights in the nature of easements granted to the Tenant

- 1 The right to the free passage and running of Utilities from time to time benefiting the Demised Premises through the Conducting Media which now or during the Term pass through in or over the Adjoining Property.
- 2 The right on giving not less than 3 Working Days' prior written notice to the Landlord (save in case of emergency) (such notice being given to such person as the Landlord may from time to time direct) and subject to compliance with the Site Licence and such conditions as the Landlord may reasonably impose (which may include conditions as to route to be used and supervision of such entry by the Landlord) to enter on such parts of the Adjoining Property as is necessary in order for the Tenant to comply with its obligations under this Lease and insofar as it is not possible to comply with its obligations under this Lease from within the Demised Premises.
- 3 To the extent that the Landlord has the power to grant such right and subject to the terms of the Site Licence and subject to the terms of any contract in relation to the provision of Utilities the right (in common with the Landlord and all others authorised by the Landlord from time to time) to connect into and to receive Utilities through the Conducting Media of the Landlord now or hereafter at the Demised Premises.
- 4 The right to use (in common with the Landlord and all those authorised by it) such roads accessways and pathways over and upon the Adjoining Property as notified by the Landlord to the Tenant from time to time for the purposes of access to and from the Demised Premises only.
- 5 [The right to use such car parking spaces located on the Adjoining Property as the Landlord shall from time to time direct].
- 6 [The right at all times in connection with the Permitted Use for the Tenant its servants and duly authorised agents invitees and visitors to use the Common Parts over such routes as the Landlord in its absolute discretion shall from time to time designate]

<Relevant where Demised Premises is part of a building only>

Part B

Easements and rights in the nature of easements excepted and reserved to the Landlord

- 1 The right to the free passage and running of Utilities now benefiting the Adjoining Property through the Conducting Media which now or at any time during the Term pass through in or over the Demised Premises.
- 2 The right on giving reasonable prior written notice to the Tenant (save in case of emergency) to enter the Demised Premises in order to inspect test maintain repair operate alter remove replace and renew:-
 - 2.1 the Conducting Media;
 - 2.2 the Adjoining Property and the buildings and structures thereon;
 - 2.3 any Conducting Media laid pursuant to paragraph 3 of Part A of this Schedule
- 3 The right at all times to enter the Demised Premises for any other purpose for which the Tenant covenants in this Lease to permit entry
- 4 The right on giving reasonable prior written notice to the Tenant (save in the case of emergency) to enter the Demised Premises in order to lay new or relocate existing Conducting Media in over or under the Demised Premises
- 5 All rights of light and air support protection shelter and all other easements quasi-easements rights and privileges now belonging to or enjoyed by the Adjoining Property
- 6 Where the Tenant ceases use of the Shared Media within the Demised Premises the Landlord's right under Part A of this Schedule shall continue
- 7 The right to build alter or extend (whether vertically or laterally) any building on any Adjoining Property notwithstanding the access of light and air to the Demised Premises
- 8 All rights of light, air and other easements and rights (but without prejudice to those expressly granted by this Lease) enjoyed by the Demised Premises from or over the [Adjoining Property], all such rights being reserved for the benefit of the [Adjoining Property]
- 9 [Subject to compliance with clause 3.14, the right to pass and repass to and from the Adjoining Property with or without vehicles for all purposes connected with the Landlord's use and enjoyment of the Adjoining Property over and along the roads, footpaths and accessways designated for such use by the Tenant at any time and which are within the Demised Premises]

Party Determination on the application of either party at any time after the Relevant Review Date

- 5 If any Reviewed Rent is not agreed or determined by the Relevant Review Date the Rent shall continue to be payable at the rate applicable immediately before that date (but for any abatement of Rent) and the Tenant shall pay within 5 days of the Reviewed Rent being ascertained the amount of any increase for the period from and including the Relevant Review Date up to the month next following ascertainment
- 6 Whenever any Reviewed Rent is ascertained the Landlord and Tenant shall sign and exchange a memorandum recording it
- 7 If on any Relevant Review Date there are Rent Restrictions in force the Landlord may elect at any time that the day following the date on which the Rent Restrictions are modified or repealed shall be substituted for the Relevant Review Date
- 8 Time is not of the essence in this Part C of the Schedule

Part D

Services and Service Charge

1 PROVISION OF SERVICES

1.1 Subject to payment by the Tenant of the Service Charge at all times during the Term the Landlord shall use reasonable endeavours to carry out provide manage and operate the Services in an efficient manner and in accordance with the principles of good estate management Provided That:

- (a) The Landlord may take out of service for repair replacement modernisation or otherwise for as short a period as is reasonably practicable any plant or installations or any part thereof used in the provision of the Services and shall not be liable to the Tenant or the Tenant's employees or those claiming through or under the Tenant for such taking out of service or for the failure or breakdown of the plant or installations relating to such Services or of the electricity gas or water supply or drainage services unless due to the default or neglect of the Landlord or the Landlord's agent arising out of a failure to act in accordance with the principles of good estate management
- (b) The Landlord shall not incur any liability in respect of any failure in the management or operation of the Services unless due to the default or neglect of the Landlord or the Landlord's agent arising out of a failure to act in accordance with the principles of good estate management
- (c) The Landlord may from time to time discontinue the supply of any Service or reduce the degree to which such Service is provided if in the interests of good estate management of the Estate it considers it appropriate to do so
- (d) The Landlord shall be at liberty at any time during the Term upon giving notice in writing to the Tenant to arrange for any or all of the items comprising the Utilities Services to be adopted by any suitable utility provider and upon such adoption the Landlord shall no longer be obliged to provide such Utilities Services and (without prejudice to any payments due and outstanding at the date of adoption) the Tenant shall not be required to pay the Utilities Services Charge to the Landlord in respect of those Utilities Services so adopted and the Tenant shall thereafter deal directly with such utility service provider
- (e) In each case Services shall not be provided by the Landlord where the Tenant is obliged under this Lease to provide the same

- 1.2 The Landlord shall use reasonable endeavours to ensure that the Service Charge proportion payable by the Tenant under this Lease is a fair and reasonable proportion of the total service charge for the Estate at all times and to use reasonable endeavours to manage the Estate in such a way that the Service Charge payable by the Tenant is as low as reasonably practicable having regard to the obligations on the Landlord to provide services in accordance with the terms of this Lease

2 THE SERVICES

- 2.1 The Estate Services to be included within the Estate Service Charge are as follows:-
- (a) The provision and maintenance (including replanting or planting) of the landscaped areas forming part of the Estate the grounds and any trees and shrubs therein (and vermin control thereon) and any architectural or ornamental features.
 - (b) The repair and maintenance of all roads paths common car parks and lighting upon the Estate.
 - (c) The provision and maintenance of signage of the Estate including road traffic directional signs.
 - (d) The maintenance of all boundaries of the Estate including fences access barriers gates and necessary patrol tracks.
 - (e) The provision of a security service and equipment for the Estate including reception at the main gate and an agreed first response capability.
 - (f) The provision of a first response emergency evaluation team
 - (g) Any other services relating to the Estate or any part of it provided by the Landlord from time to time which shall be reasonably capable of being enjoyed by the occupier of the Demised Premises or reasonably calculated to be for the benefit of the Tenant or other tenants of the Estate or appropriate for the maintenance upkeep or cleanliness of the Estate and in any such case in keeping with the principles of good estate management
- 2.2 [The Building Services to be included within the Building Service Charge are as follows:-
- (a) Inspecting maintaining and repairing amending altering rebuilding and renewing and where appropriate treating washing down painting and decorating all load bearing and other structural parts of the Building and the external fabric and surfaces (except the external surfaces of the doors and door frames referred to in paragraph 5 of the definition of Demised Premises at clause 1.1 and the

whole of the window glazing and frames constructed in the external walls and in the other boundaries of the said premises referred to in paragraph 6 of the definition of Demised Premises at clause 1.1)

- (b) Inspecting servicing maintaining and repairing amending overhauling and replacing all the Landlord's apparatus plant machinery and equipment within the Building
- (c) Maintaining repairing cleansing emptying amending and renewing all Service Media
- (d) Maintaining repairing cleansing renewing the electrical distribution system within the Building (but excluding small power sockets and light fittings)
- (e) Maintaining and renewing any fire alarms and ancillary apparatus and basic fire prevention and fire fighting equipment and apparatus in the Building (excluding specialist plant and systems)
- (f) Providing such heating for the Building and for such hours and times of the year as the Landlord shall in its reasonable discretion determine
- (g) Providing water hygiene testing to the Building
- (h) Supplying whether by purchase or hire and maintaining renewing replacing repairing servicing and keeping in good and serviceable order and condition all Landlord's fixtures and receptacles appliances materials equipment and other things which the Landlord may deem desirable or necessary for the maintenance appearance upkeep or cleanliness of the Building or any part of it
- (i) Cleaning as frequently as the Landlord shall in its reasonable discretion consider adequate the outside of the window glazing
- (j) Cleaning maintaining and repairing the Common Parts including all Service Media forming part of the Common Parts
- (k) Lighting the Common Parts and cleaning maintaining repairing and replacing lighting machinery and equipment on the Common Parts
- (l) Cleaning maintaining repairing and replacing refuse bins on the Common Parts
- (m) Cleaning maintaining repairing and replacing signage for the Common Parts
- (n) Cleaning maintaining repairing and replacing the floor coverings on the internal areas of the Common Parts

- (o) Cleaning maintaining repairing and replacing the furniture and fittings on the Common Parts
- (p) Cleaning maintaining repairing and replacing the furniture fittings and equipment in the lavatories and washrooms on the Common Parts and providing hot and cold water soap paper towels and other supplies for them
- (q) Decorating the internal areas of the Common Parts
- (r) Any other services relating to the Building or any part of it provided by the Landlord from time to time which shall be:
 - (i) reasonably capable of being enjoyed by the occupier of the Demised Premises; or
 - (ii) reasonably calculated to be for the benefit of the Tenant and other tenants of the Building; or
 - (iii) appropriate for the maintenance upkeep or cleanliness of the Building and (in any such case) in keeping with the principles of good estate management]

<Relevant where Demised Premises is part of a building only>

2.3 The Utilities Services which comprise in and are paid for by the Utilities Service Charge are as follows:

- (a) The provision of a gas connection to the Demised Premises for the generation of heating and supply of gas to the Demised Premises
- (b) The provision of water supply connection to the Demised Premises and supply of water to the Demised Premises
- (c) The provision of conventional drainage from the Demised Premises including surface water and foul sewerage.
- (d) The provision of an electricity supply connection to the Demised Premises and the supply of electricity to the Demised Premises
- (e) The provision of a telecommunication connection to the Demised Premises and supply of telecommunication services to the Demised Premises

3 CALCULATION AND PAYMENT OF SERVICE CHARGE

3.1 The Estate Service Charge shall comprise the proportionate part of the Landlord's Costs incurred in connection with the provision of the Estate Services and shall be a fair and reasonable sum as at 1 April in the relevant Landlord's accounting year.

3.2 [The Building Service Charge shall comprise the proportionate part of the Landlord's Costs incurred in connection with the provision of the Building Services and shall be a fair and reasonable as at 1 April in the relevant Landlord's accounting year]

<Relevant where Demised Premises is part of a building only>

3.3 The Utility Service Charge shall comprise the proportionate part of the Landlord's Costs incurred in connection with providing the Utilities Services and relate exclusively to such services and shall be a fair and reasonable sum and also have regard to the quantity of such Services used or consumed by the Tenant Provided That the Landlord and Tenant agree that in so far as such Services are metered or are subsequently metered the Tenant shall pay the actual cost of the item consumed on the Demised Premises as recorded by the meters.

3.4 The amount of the Landlord's Costs shall be ascertained and certified annually in accordance with the provisions of this Lease in a certificate signed by a qualified accountant as soon as reasonably practicable after the end of the Landlord's accounting year ("the Certificate").

3.5 The expression "the Landlord's accounting year" shall mean the period from 1 April of every year to 31 March of the following year or such other annual period as the Landlord may in its discretion from time to time determine as being that in which the accounts of the Landlord relating to the Estate shall be made up.

3.6 A copy of the Certificate for each Landlord's accounting year shall be supplied by the Landlord to the Tenant without charge within three months after the end of the Landlord's accounting year.

3.7 The Certificate shall contain a breakdown of all the items of expenditure set out in Part D of this Schedule and comprised in the Landlord's Costs in respect of the Landlord's accounting year to which it relates.

3.8 On the Quarter Days in every year during the Term the Tenant shall pay to the Landlord such a sum (hereinafter called "the advance payment") in advance and on account of the Service Charge for the Landlord's accounting year then current as the Landlord shall from time to time specify as being in its reasonable opinion a fair and reasonable assessment of one quarter of the likely Service Charge for the Landlord's accounting year then current such amount to be in accordance with the anticipated expenditure set out in the estimate provided to the Tenant at the beginning of each Landlord's accounting year then current ("the relevant year").

(a) If the Landlord reasonably and properly considers that the likely Service Charge for the relevant year will exceed the aggregate of the advance payments for the relevant year the Landlord may reassess the advance payments for the whole

of the relevant year ("the revised advance payments") and the Tenant shall pay to the Landlord the revised advance payments on each of the next following Quarter Day during the remainder of the relevant year and the Tenant shall pay to the Landlord within 21 days of receipt of a written demand the aggregate of the amounts by which the advance payments already made in respect of the relevant year fall short of the sum which would have been payable if the revised advance payments had been assessed before the commencement of the relevant year.

- (b) If the Landlord does not assess the amount of the advance payment payable hereunder in respect of any Landlord's accounting year before the beginning of such year the advance payments shall continue to be payable at the rate specified for the previous year until such time as the Landlord has made such assessment whereupon the Tenant shall pay to the Landlord within 21 days of receipt of a written demand the aggregate of the amount by which the advance payments already made in respect of the relevant year fall short of the sum which would have been payable if the amount of the advance payments for the relevant year had been assessed before the commencement thereof and on each of the Quarter Days during the remainder of the relevant year the Tenant shall pay to the Landlord the advance payments at the new rate.

3.9 As soon as practicable and in any event within three months after the end of each Landlord's accounting year the Landlord shall furnish to the Tenant the Certificate and an account ("the Account") specifying the Service Charge payable by the Tenant for that year due credit being given therein for the advance payments and any revised advance payments made by the Tenant in respect of the said year and upon the furnishing of the Certificate and such account there shall be paid by the Tenant to the Landlord within 21 days the balance (if any) of the Service Charge after deduction of the aggregate of any advance payments and/or revised advance payments made by the Tenant to the Landlord in respect of the said year or there shall be credited by the Landlord to the Tenant any amount which shall have been overpaid by the Tenant by way of advance payments and revised advance payments as the case may require Provided That:

- (a) the provisions of this paragraph shall continue to apply notwithstanding the expiration or sooner determination of the Term but only in respect of the period down to such expiration or sooner determination as aforesaid. The Service Charge for the Landlord's accounting year then current shall be apportioned for the said period on a daily basis and upon the expiry or sooner determination of the Term the Landlord shall repay any overpayment to the Tenant within 3 months of the end of the Landlord's accounting year

- (b) the Services described in Part D of this Schedule may be the subject of a separate invoice but in all other respects shall be treated as part of the Service Charge and all provisions of this Schedule shall apply thereto as appropriate.
- 3.10 Subject as hereinafter provided and subject to the Landlord complying with its obligations under paragraph 3.11 below the Certificate and the Account shall be final and binding upon the parties hereto (save in the case of manifest error) provided always that subject to the Tenant first paying the Service Charge the Tenant shall be entitled by written notice within 3 months of receipt of the Certificate and the Account to challenge the same or anything contained therein on the ground that either of them contains an error or errors and/or that any of the Services or any charge in relation to any of the Services has or have been included therein which should not have been included and/or that the amount charged in relation to any particular Service or Services is unreasonable in all the circumstances. If such a challenge cannot be resolved between the Landlord and the Tenant it shall be referred for Third Party Determination and any sum agreed or determined as aforesaid to have been overpaid by the Tenant shall be repaid by the Landlord to the Tenant within 30 days of it being agreed or determined with interest on the overpaid at the base rate of Barclays Bank Plc for the period from the date of such challenge to it being agreed or determined.
- 3.11 The Landlord shall following a reasonable request by the Tenant make available to the Tenant all invoices and details of expenses incurred in providing the Services at the management office for the **Estate** situated on the Estate.
- 3.12 Where the Landlord carries out major works of redecoration replacement or rebuilding (where necessary by way of repair) the Landlord may elect to defray the expenditure so incurred over such longer period than the Landlord's accounting year or years in which such expenditure is incurred as it shall in its absolute discretion consider appropriate and may include the actual cost of any interest properly incurred on such part of such expenditure not so far charged to tenants by way of Service Charge at the lower of the base rate from time to time of Barclays Bank plc or the rate the Landlord actually pays on any part of such expenditure not yet charged to the tenants and borrowed by the Landlord. Such expenditure shall be calculated on a day-to-day basis either from the date on which the expenditure is incurred down to the end of the Landlord's accounting year (in relation to the Landlord's accounting year in which such expenditure is incurred) or the period of the Landlord's accounting years (in relation to the subsequent Landlord's accounting years over which the expenditure is defrayed) Provided That the Tenant shall not contribute towards expenditure incurred prior to the date hereof or after the expiry or determination of the Term.
- 3.13 The Landlord may if reasonably necessary raise money by way of loan or overdraft paying a reasonable rate of interest thereof for the purposes of defraying expenditure

incurred in providing the Services or any of them and any proper and reasonable interest or other charges (excluding Value Added Tax for which the Landlord is entitled to credit under the Value Added Tax Act 1994) payable by the Landlord in respect thereof shall be included under paragraph 4.1 of this Part D of the Schedule as part of the Landlord's Costs.

4 THE LANDLORD'S COSTS

The Landlord's Costs shall be calculated after the end of each Landlord's accounting year and shall comprise the aggregate for such year of the following:-

- 4.1 The costs expenses outgoings and other expenditure reasonably and properly incurred from time to time by the Landlord in connection with the provision of the Services including without prejudice to the generality of the foregoing any interest and/or any other charges payable by the Landlord in relation to any loan or overdraft raised in accordance with the foregoing or provisions of this Lease.
- 4.2 The Retained Estate Costs
- 4.3 []% of the amount of the Estate Service Charge payable by the Tenant during the relevant Landlord's accounting year.
- 4.4 []% of the amount of the Building Service Charge payable by the Tenant during the relevant Landlord's accounting year.]
- 4.5 []% of the amount of the Utilities Service Charge payable by the Tenant during the relevant Landlord's accounting year (excluding the cost of any fuels water and electricity and fixed charges payable to the relevant supplier of the Utilities which that provides such fuel and water and electricity to the Landlord).
- 4.6 A fair and reasonable sum attributable to any Services provided to any premises on the Estate used or occupied by the Landlord (or others authorised by the Landlord) to the extent that such premises are used for the purposes of managing the Estate and providing the Services.
- 4.7 Value Added Tax (if any) at the applicable rate in respect of the fees and other items of expenditure herein mentioned save to the extent that such Value Added Tax is recoverable by the Landlord in its accounting with HM Revenue and Customs.

Part E

Guarantee

1 GUARANTEE

1.1 The Guarantor covenants with the Landlord (as between the Landlord and the Guarantor as if the Guarantor were principal debtor):

- (a) that until the Tenant is released by law from the Tenant's covenants in the Lease:
 - (i) the Tenant will pay the rents reserved by and perform its covenants and observe the conditions contained in the Lease and
 - (ii) if the Tenant fails to do so the Guarantor will indemnify the Landlord on demand against all losses costs claims expenses liabilities and demands arising from that failure
- (b) that the Tenant will perform its covenants and observe the conditions contained in any authorised guarantee agreement to be entered into in respect of the Lease

2 LIABILITY

2.1 The Guarantor shall not be released from liability by:

- (a) forbearance the granting of time to or any other indulgence allowed by the Landlord to the Tenant
- (b) any refusal by the Landlord to accept rent at a time when it is or might be entitled to re-enter the Demised Premises
- (c) any variation of the Lease or surrender of part of the Demised Premises whether or not made with the Guarantor's consent
- (d) the Landlord transferring its interest in reversion to the Lease
- (e) the insolvency liquidation dissolution winding-up administration receivership or reconstruction of or any change in the name style or constitution of the Landlord Tenant or Guarantor
- (f) any legal limitation relating to or incapacity of the Tenant
- (g) any other act, matter or thing by or as a result of which the Guarantor would have been released

3 WAIVER OF GUARANTOR'S RIGHTS

Until all payments and obligations expressed to be guaranteed by the Guarantor in paragraph 1 ("the guaranteed liabilities") have been paid discharged or satisfied in full the Guarantor will not without the Landlord's prior written consent:

- (a) exercise its rights of subrogation and/or indemnity against the Tenant
- (b) seek to enforce any right against the Tenant in respect of the guaranteed liabilities whether directly or by way of lien set-off or counterclaim
- (c) claim or prove in competition with the Landlord in the liquidation winding-up or bankruptcy of the Tenant or have the benefit of or share in any payment from or composition with the Tenant or the Tenant's creditors or any other arrangement on the Tenant's insolvency
- (d) be entitled to share in any security held by the Landlord or stand in place of the Landlord in respect of any security nor take any security from the Tenant in respect of this Guarantee

Provided that any security taken by the Guarantor and any money received or benefit obtained by the Guarantor in respect of the guaranteed liabilities despite the Guarantor's covenants in this paragraph 3 of Part F of the Schedule shall be held in trust by the Guarantor for the Landlord

4 TERMINATION OF LEASE

4.1 If the Lease is terminated by disclaimer or forfeiture the Guarantor will (if required in writing by the Landlord within six months of the date of termination) either:

- (a) at the cost of the Guarantor enter into a new lease of the Demised Premises with effect from the date of termination for the residue of the term of the Lease and on the same terms as the Lease but so that:
 - (i) any outstanding rent review or other matters shall be completed as between the Landlord and the Guarantor and
 - (ii) the Guarantor shall assume the liability of the Tenant under the Lease as if it had continued; or
- (b) pay to the Landlord within fourteen days of written demand a sum equal to the amounts which would otherwise have been payable under the Lease until the date six months after the date of termination or (if earlier) the date the Demised Premises are fully re-let

Executed as a deed by **MAGNOX LIMITED**)

acting by:)

Director

Director/Secretary

Executed as a deed by **[TENANT]**)

acting by:)

Director

Director/Secretary

Executed as a deed by **[GUARANTOR]**)

acting by:)

Director

Director/Secretary

Scotland Template Lease

**LEASE
of
Land known as []**

NUCLEAR DECOMMISSIONING AUTHORITY (1)

and

MAGNOX LIMITED (2)

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LEASE BETWEEN:

- (1) **NUCLEAR DECOMMISSIONING AUTHORITY** (established under section 1 of the Energy Act 2004) whose principal place of business is at Herdus House, Westlakes Science & Technology Park, Moor Row, Cumbria CA24 3HU (the "**Landlord**"); [and]
- (2) **MAGNOX LIMITED** whose registered office is at [] (Co. Regn. No. 02264251) (the "**Tenant**"); [and]
- [(3) [] (the "**Guarantor**").]

WITNESSES as follows:

1 DEFINITIONS

In this lease the following expressions have the following specified meanings (subject to any particular interpretation required by clause 2):

"Adjoining Property" means any land or buildings neighbouring adjoining or adjacent to the Premises belonging to the Landlord (excluding the Premises);

"Conducting Media" means pipes, drains (including drainage ditches), sewers, mains, ducts, gutters, watercourses, wires, cables (including fibre optic cables) and any other conducting media including any fixings, louvres, cowls and other covers, manholes, junction boxes and other ancillary works and mechanisms existing at the date hereof and hereafter any installed during the Term;

"Constabulary" means the Civil Nuclear Police Authority;

"Contract" means a Site Licence Company Agreement dated [] and made between (1) Nuclear Decommissioning Authority (2) Magnox Limited and (3) Research Sites Restoration Limited relating to the Premises [together with other premises], including any variation or extension thereof;

"Date of Entry" means ●

"Delicensed" means no longer subject to a Nuclear Site Licence in the name of the Tenant;

"Enactment" means every Act of Parliament, the Scottish Parliament and European Union Law directive and regulation and any other law effective in Scotland (in each case existing and future);

"Environment" means any and all living organisms (including, without limitation, man), ecosystems, property and the media of air (including, without limitation, air in buildings)

natural or man-made structures, below or above groundwater (as defined in Section 3(4) of the Water Environment and Water Services (Scotland) Act 2003 and within drains and sewers), buildings and land;

"HSE" means the Health and Safety Executive (being the body corporate established by Section 10 of the Health and Safety at Work etc Act) or any successor statutory or other authority performing or carrying out or having the same regulatory functions under the Nuclear Installations Act 1965 as the Health and Safety Executive has at the date of this lease;

"Keeper" means the Keeper of the Registers of Scotland;

"Licensed Site" means any part of the Premises that is from time to time subject to a Nuclear Site Licence;

"Mast" means a weather monitoring or meteorological survey mast which is in such location from time to time agreed by the Landlord and the Tenant the location of which on the date of this lease is shown [●] on Plan [●];;

"New Area" means an area (or areas) of land which the Landlord (acting reasonably and in consultation with the Tenant) considers that the Tenant should have leased to it in order for the Tenant to be able to properly perform its obligations under the Contract, which for the avoidance of doubt shall include as a minimum such part or parts of the Premises and/or other land as shall be subject from time to time to a Nuclear Site Licence in the name of the Tenant together with such ancillary land as shall be required to enable the Tenant to comply with its obligations in the said Nuclear Site Licence;

"New Lease" means a lease to be granted by the Landlord to the Tenant in respect of the New Area for a term equal to the residue of the Term of this lease at the date of the grant of the New Lease and otherwise on like terms mutatis mutandis to those contained in this lease (including clause 9) and includes any additional rights which the Landlord (acting reasonably and in consultation with the Tenant) considers necessary for the Tenant's use and enjoyment of the New Area for the Permitted Use;

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

"ONR" means the Office for Nuclear Regulation (currently an agency of HSE) or any body having responsibility for nuclear safety in the United Kingdom which substantially replaces it from time to time;

"Party" means the Landlord and/or the Tenant (as appropriate);

"Permitted Part" means any part of the Premises previously approved by the Landlord (such approval not to be unreasonably withheld);

"Permitted Use" means any of:

- (a) the uses of the Premises referred to in a designating direction applicable to the Premises made by the Secretary of State for Trade and Industry and the Scottish Ministers (acting jointly) on [●] as modified at any time or such other designating direction made under the Energy Act 2004 as may apply to the Premises at any time;
- (b) any use of the Premises in accordance with the rights and obligations set out in the Contract; and
- (c) any use of the Premises in accordance with any obligations established by any Regulatory Requirements.

"Planning Law" means every Enactment for the time being in force relating to the use, development and occupation of land and buildings and every planning permission, statutory consent and agreement made under any Enactment;

"Plan 1" [[and]"Plan 2"] [and "Plan 3"] means the plan[s] attached to this lease and so marked;

"Premises" means the premises described in Part A of the Schedule and all additions, alterations and improvements made to them but excludes:

- (a) tenant's fixtures and fittings; and
- (b) any tenant's plant whether within or outside the boundaries of the Premises, not acquired or installed under the Contract [(and/or any prior similar contract)];

"Public Authority" means any of the Scottish Ministers, the Secretary of State for Scotland and any government department public, local, regulatory, fire or any other authority or institution having functions which extend to the Premises or their use and occupation and any court of law and the companies or authorities responsible for the supply of water gas and electricity or any of them and any of their duly authorised officers;

"Regulators" means the HSE, the ONR, the SEPA, [the Financial Services Authority ("FSA") and the Office of Gas and Electricity Markets ("OFGEM")] and others specific to commercial operations or the Tenant's use of the Premises for the Permitted Use and local authorities and the expression "**Regulator**" shall mean each or any one of them;

"Regulatory Requirements" means any legally enforceable requirement of any Regulator;

"SEPA" means the Scottish Environment Protection Agency as defined in Section 20 of the Environment Act 1995 and its statutory successor from time to time performing the same function;

"Schedule" means the schedule consisting of six parts annexed as relative hereto;

"Shared Media" means Conducting Media used in common by the Landlord and the Tenant;

"Stipulated Rate" means a yearly rate three per cent above either the base rate of Lloyds TSB Bank plc or such other bank (being for the time being generally recognised as a clearing bank in the London market) as the Landlord may from time to time nominate or if the base rate cannot be ascertained then such other rate as the Landlord may reasonably specify (and so that wherever there is reference in this lease to the payment of interest at the Stipulated Rate such interest shall be calculated on a daily basis and compounded with quarterly rests on the usual quarter days);

"Subcontract" means any agreement entered into by the Tenant or any Subcontractor of the Tenant in connection with the performance of the Tenant's obligations under the Contract;

"Subcontractor" means any person who has entered into any Subcontract;

"Subleases" means the occupational leases, licences, tenancies and other similar arrangements in respect of any part of the Premises which are subsisting at the Date of Entry and listed in Part D of the Schedule Part II or which may be granted by the Tenant during the Term and the term "Sublease" shall mean any one of them (as appropriate);

"Sublease Rents" means any sums payable to the Tenant by each tenant, licensee or other occupier of the whole or any part of the Premises under any lease, licence, tenancy or other document or arrangement permitting occupation of the whole or any part of the Premises whether subsisting today or granted by the Tenant at any time during the Term;

"Term" means 35¹ years (from and including) the Date of Entry;

"Third Party Rights" means:

¹ 35 Year Term to be assumed unless site specific reason otherwise

- (a) [all rights granted or reserved in favour of [Network Rail Infrastructure Limited (or its predecessors in title)] [pursuant to ● dated ●]²; [and]
- (b) all rights of access from time to time enjoyed by [the SEPA (or its statutory predecessors in title)] in respect of the monitoring station [shown edged ● on Plan [●]] and the Regulators; and
- (c) the Title Matters.

and the expression "**Third Party Right**" shall mean any one of the above rights as the context shall require;

"Title Matters" means any matters which are described in Part D of the Schedule Part I [or which are contained or referred to in any document or registered title listed in Part D of the Schedule Part I];

"Variation Notice" means the option notice to be served by the Landlord on the Tenant pursuant to the terms of clause 9.1 of this lease;

"VAT" means Value Added Tax as referred to in the Value Added Tax Act 1994 (or any tax of a similar nature which may be substituted for or levied in addition to it);

"Working Day" means any day (other than a Saturday or Sunday) on which clearing banks in the United Kingdom are open to the public for the transaction of business.

2 INTERPRETATION

- 2.1 The Schedules shall form part of this lease and all terms defined in the Schedules bear the meanings stated.
- 2.2 Any reference to any law (whether or not specifically named) shall include any modification or re-enactment of it for the time being in force and any order, instrument, plan, regulation, permission or direction made or issued under it or under any law replaced by it or deriving validity from it.
- 2.3 A reference to laws in general is to all local, national and directly applicable supra-national laws in force for the time being taking account of any amendment, extension application or re-enactment and includes any sub-ordinate laws for the time being in force made under them and all orders, notices, codes of practice and guidance made under them.

² This is only applicable where there is a local rail hub which is not part of the Premises

- 2.4 Any obligation on the part of the Landlord or the Tenant not to do any act or thing shall be construed as well as an obligation not to allow any such act or thing to be done.
- 2.5 Any approval of the Landlord or words to similar effect means an approval in writing signed by or on behalf of the Landlord and given before the act requiring approval.
- 2.6 If, in order to comply with any obligation in this lease, the Landlord or the Tenant is under a duty to obtain the consent of a third party such obligation shall be deemed to be subject to the obtaining of such consent which the party in question shall use its reasonable endeavours to obtain except where otherwise specified in this lease.
- 2.7 In the event of any Regulator refusing to consent to an application of the Tenant (where such application is required to be made under this lease or any Regulatory Requirement) then the Landlord shall be deemed to be acting reasonably in also refusing to give its consent.
- 2.8 Any right of entry by one Party on to the Premises or the Adjoining Property shall be taken to be a right for the relevant party and their properly authorised agents and contractors to enter with such materials and equipment as necessary subject to the provisions of this lease.
- 2.9 Any right of (or obligation to permit) the Landlord to enter the Premises shall also be construed (subject always to the provisions of this lease) as entitling the Landlord or any tenant, licensee or occupier of any part of the Adjoining Property to remain on the Premises with or without equipment and permitting such right to be exercised by all persons authorised by any of them;
- 2.10 Any entry on to land subject to any Nuclear Site Licence shall be in compliance with any conditions properly imposed by and under the supervision of the holder of the relevant Nuclear Site Licence.
- 2.11 Where the context so requires words importing the singular include the plural and vice versa.
- 2.12 The titles or headings appearing in this lease are for reference only and do not affect its construction.
- 2.13 Where a Party comprises more than one person, any obligations of that Party take effect as joint and several obligations.
- 2.14 If there is any conflict or inconsistency between this lease and the Contract the provisions of the Contract shall prevail.

- 2.15 If any provision of this lease is or becomes void, illegal or unenforceable that provision shall be severed from the remainder of this lease which shall remain valid and enforceable.
- 2.16 All sums payable pursuant to this lease shall be exclusive of VAT which shall where chargeable be paid in addition.

3 **DEMISE AND RENTS**

The Landlord **LEASES** the Premises to the Tenant for the Term **TOGETHER WITH** ([insofar as the Landlord has title to grant the same³] and **SUBJECT TO** the provisions of clause 4.8) the servitudes and rights specified in Part B of the Schedule (exercisable in common with the Landlord and all others with its authority or otherwise from time to time entitled thereto) **EXCEPT** and **RESERVED** to the Landlord and all other persons authorised by the Landlord from time to time during the Term or otherwise from time to time entitled thereto the servitudes and rights specified in Part C of the Schedule (together with and except and reserved as aforesaid) **SUBJECT** to and with the benefit of the Subleases (so far as the same are still subsisting and capable of taking effect) and **SUBJECT FURTHER** to all rights servitudes obligations stipulations and other matters effecting the Premises (including but not limited to all Third Party Rights so far as they are in existence and capable of taking effect) **YIELDING AND PAYING:**

FIRSTLY yearly and proportionally for any part of a year the rent of £1,000 by one annual payment to be made in advance on 1 April each year (the first such payment or a proportionate part of it to be made on the date of this lease);

SECONDLY as additional rent on demand (in addition and without prejudice to the Landlord's right of re-entry and any other right of the Landlord) interest at the Stipulated Rate on any sum owed by the Tenant to the Landlord whether as rent or otherwise which is not:

- (a) received in cleared funds by the Landlord on the due date (or in the case of money due only on demand within seven days after the date of demand) calculated for the period commencing on the due date for payment and ending on the date the sum (and the interest) is received in cleared funds by the Landlord; or
- (b) demanded (or if tendered is for the time being refused) by the Landlord in circumstances where it is prudent for it not to demand or accept any payment

³ NDA to consider whether to specify in Part B of the Schedule to which specific rights this qualification applies to. To be considered when individual site leases are populated; the intention being only to qualify rights in this way if it is not clear that the NDA has the legal/technical ability to grant them

having regard to any breach of any of the Tenant's obligations under this lease calculated for the period commencing on the date the payment would have been due in the absence of those circumstances (on the assumption in the case of money due only on demand that the Landlord would have made the demand as soon as it was entitled to do so) and ending on the date the sum (and the interest) is subsequently received in cleared funds by the Landlord.

AND THIRDLY as additional rent all VAT for which the Landlord is or may become liable to account to HM Revenue & Customs (or other relevant body to whom account has for the time being to be made) on the supply by the Landlord to the Tenant under or in connection with the provisions of this lease of the interest created by it and of any other supplies whether of goods or services such rent thirdly reserved to be due for payment contemporaneously with the other rents or sums to which it relates.

PROVIDED ALWAYS THAT in the event that any aforementioned rights servitudes obligations and stipulations and other matters affecting the Premises referred to in this clause 3 result in the Tenant incurring additional cost under the Contract or this Lease, any such additional cost shall be an "Allowable Cost" (as that term is defined in the Contract) under the Contract.

4 **TENANT'S OBLIGATIONS**

The Tenant undertakes to the Landlord:

4.1 **Rent**

To pay the rents reserved by clause 3 of this lease on the days and in the manner set out in clause 3 without deduction or set-off.

4.2 **Sublease rents**

To pay the Sublease Rents to the Landlord (by electronic transfer to such bank as the Landlord may from time to time nominate) within 20 Working Days of the Sublease Rents being received in cleared funds by the Tenant.

4.3 **VAT**

Wherever the Tenant is required to pay any amount to the Landlord hereunder by way of reimbursement or indemnity to pay to the Landlord in addition an amount equivalent to any VAT incurred by the Landlord save to the extent that the Landlord obtains credit for such VAT incurred by the Landlord pursuant to sections 24, 25 and 26 of the Value Added Tax Act 1994 or any regulations made thereunder.

4.4 Outgoings

- (a) Save where the Landlord has chosen to pay the same and has informed the Tenant in writing of its intention to do so, to pay all rates, taxes, charges and other outgoings now or at any time during the Term assessed, charged or imposed upon the Premises or upon their owner or occupier (and a reasonable and proper proportion determined by the Landlord attributable to the Premises of any rates, taxes, charges and other outgoings now or at any time during the Term assessed, charged or imposed upon the Premises in common with other premises or upon the owners or occupiers thereof) excluding (without prejudice to the rent thirdly reserved at clause 3) any tax payable by the Landlord as a direct result of any actual or implied dealing with the heritable interest in the Premises or of the Landlord's receipt of income under this lease.
- (b) To the extent that to do so would not be inconsistent with the provisions of the Contract, to take all reasonably practicable steps to mitigate as much as reasonably possible the liability for all taxes, rates and other similar charges assessed, charged or imposed upon the Premises and to assist and co-operate with the Landlord in achieving any mitigation where applicable.
- (c) To pay all charges for water, gas and electricity (including meter rents) consumed at the Premises during the Term other than any consumed and paid directly by any tenant, licensee or occupier of the Premises or any Permitted Part.
- (d) To pay to the Landlord on demand a reasonable proportion (to be determined in the Landlord's discretion, save for manifest error) of any costs of maintenance, repair and/or renewal of any pipe, wire, cable or other conduit or footpath, road or accessway or any other structure or thing which is situated outside the Premises but which serves the Premises in common with any Adjoining Property.

4.5 Compliance with Enactments

To comply with the requirements of all Enactments and/or of every Public Authority and/or Regulator (including the proper execution of any works carried out at the Premises) in respect of the Premises or their use, the occupation or employment of personnel in them and any work being carried out to them.

4.6 Notices

Forthwith to give to the Landlord notice of (and a certified copy of) any notice, permission, direction, requisition, order or proposal made by any Public Authority or Regulator.

4.7 Repair

To keep the Premises in a condition that is consistent with the Tenant's obligations under the Contract.

4.8 To permit entry

To permit the Landlord at all times to enter the Premises:

- (a) for any necessary or reasonable purpose; and/or
- (b) to exercise the rights reserved to the Landlord contained in Part C of the Schedule

PROVIDED ALWAYS THAT the Landlord shall not exercise any such right to enter the Premises in any way which would contravene the terms of any Nuclear Site Licence or prevent the Tenant from complying with the terms of any Nuclear Site Licence and shall comply with any proper regulations notified in writing by the Tenant to the Landlord at any time relating to the Licensed Site (in its capacity as the holder of a Nuclear Site Licence for the Licensed Site) which the Tenant agrees shall not (subject to the above) materially adversely affect the exercise of the Landlord's rights under this lease or otherwise.

4.9 Entry onto Adjoining Property

Where any part of the Adjoining Property is subject to any Nuclear Site Licence or other regulatory instrument or regime that imposes controls on rights of access and security not to exercise any right to enter the Adjoining Property for any purpose described in Part B of the Schedule (without prejudice to any rights of entry for any other purpose) in any way which would contravene the terms of any Nuclear Site Licence or other regulatory instrument or regime and at all times to comply with any proper regulations made by any tenant, licensee or occupier at any time of the relevant part of the Adjoining Property which have been notified to the Tenant or of which the Tenant is otherwise aware (in its capacity as the holder of a Nuclear Site Licence or other regulatory instrument or being subject to such regulatory regime) relating to that part of the Adjoining Property and which have been notified to the Tenant.

4.10 Encroachments

Unless authorised otherwise by the Landlord (the Landlord acting in its absolute discretion) or necessary in order to discharge the Tenant's obligations under the Contract or in order to comply with any Nuclear Site Licence:

- (a) to preserve all rights of light and other servitudes belonging to the Premises and not to give any acknowledgement that they are enjoyed by consent; and
- (b) not to do or omit to do anything which might subject the Premises to the creation of any new servitude and to give notice to the Landlord forthwith on the Tenant becoming aware of any encroachment which might have that effect.

4.11 Alterations

Save to the extent required to facilitate the achievement of the Tenant's obligations under the Contract or in order to comply with any Nuclear Site Licence, not to carry out any works to build or construct any new building or structure on the Premises without the approval of the Landlord (such approval not to be unreasonably withheld or delayed).

4.12 Use

To use the Premises or any fittings fixtures and moveable items in or on them only for the Permitted Use.

4.13 Alienation

- (a) Not to assign, grant securities over, mortgage, charge, hold on trust for another or sublet or in any other manner (subject to clause 4.13(e)) part with possession of the whole or any part of the Premises or agree to do so except that the Tenant may (subject to complying with the terms of any necessary Regulatory Requirements, including obtaining the consent of ONR where required):
 - (i) underlet any Permitted Part if it first complies with the conditions of clause 4.13(b); and/or
 - (ii) assign the whole of the Premises to any person to whom the Tenant's obligations under the Contract have been lawfully assigned, novated or otherwise transferred.
- (b) Not to sublet any Permitted Part (being referred to in this sub-clause as the "premises") except:

- (i) to a person who before the subletting has agreed with the Landlord not to assign the whole of the premises without the Landlord's consent (which shall not be unreasonably withheld or delayed) and shall have given an unqualified obligation with the Landlord not to assign part of the premises nor to mortgage, charge, hold on trust for another, sublet or in any other manner part with possession of the whole or any part of the "premises" or share the occupation of the premises or any part of them;
 - (ii) by reserving as a yearly rent the then open market rack rental value of the premises without payment or receipt of a fine or premium, such rent to be approved by the Landlord (such approval not to be unreasonably withheld or delayed)) PROVIDED THAT the Tenant shall not be required to underlet at the open market rack rental value where the proposed subtenant is a contractor or subcontractor of the Tenant and will be occupying the proposed underlet premises solely to discharge its contractual duties to the Tenant and will not be carrying out any activities to or for the benefit of anyone other than the Tenant (or anyone else lawfully in occupation of the proposed underlet premises during the term of the proposed underlease) and in such circumstances the proposed alternative underlease rent (whether nil or otherwise) shall require the consent or approval of the Landlord (such consent not to be unreasonably withheld);
 - (iii) by an sublease in the form attached at Part E of the Schedule with such amendments as are approved in writing by the Landlord (such approval not to be unreasonably withheld or delayed);
 - (iv) with the Landlord's approval (which is not to be unreasonably withheld or delayed);
- (c) To take all practicable steps to enforce the observance and performance by every subtenant and their respective successors in title with the provisions of any sublease and not to waive any breach of those provisions nor vary the terms of any sublease nor (without the Landlord's approval which shall not be unreasonably withheld or delayed) accept any surrender of any sublease;
- (d) If the premises demised by any sublease are so destroyed or damaged so as to be substantially unfit for occupation and use by the subtenant, the Tenant shall serve on the subtenant a notice to terminate the sublease immediately following any request to do so by the Landlord.

- (e) Not to part with or share the occupation of the Premises or any part of them (otherwise than as permitted by clauses 4.13(a)-(d) above) except the Tenant may (subject to complying with the terms of any necessary Regulatory Requirement including obtaining the consent of the ONR where required) share occupation of the Premises or any part of them without the need for Landlord's consent with authorised Subcontractors (where the Landlord has granted its consent to a Subcontract pursuant to but only to the extent required by the Contract and such sharing of occupation of the Premises is required in order to effect the performance of the Contract in respect of the Premises), the Constabulary or any other guard force agreed by ONR as part of the site security plan for the Premises PROVIDED THAT the Tenant does not grant the person sharing occupation exclusive possession (so that such entity occupies as licensee only without creating any relationship of landlord and tenant but in such sharing an authorised Subcontractor may allow its own sub-contractors to share possession with it subject to the same requirements (mutatis mutandis) as those contained in this clause 4.13(e)) nor otherwise transfer or create a legal interest and the Tenant shall upon request notify the Landlord of the identity of each entity in occupation.

4.14 Registration

Within ten working days after any assignation or devolution of this lease or of any estate or interest in or derived out of it (including any sharing of occupation of it in accordance with clause 4.13(e)) to give notice in duplicate of the relevant transaction to the Landlord for registration with a certified copy of the relevant instrument.

4.15 Payment of cost of notices consents etc

To pay on demand all expenses (including professional and any other fees or costs) incurred by the Landlord in and incidental to:

- (a) any steps taken in contemplation of or in connection with the preparation and service of a schedule of dilapidations during or after the expiration of the Term; and
- (b) every step taken during or 12 months following the expiry of the Term in connection with the enforcement of the Tenant's obligations under this lease;

4.16 Costs for landlord's consent

To pay on demand all reasonable and proper expenses (including professional and any other fees or costs) incurred by the Landlord in and incidental to every application for approval or consent under this lease even if the application is withdrawn or properly

refused, such costs to be regarded by the Landlord as "Allowable Costs" (as that term is defined in the Contract) in respect of applications properly made in accordance with this Lease.

4.17 Defective premises

To give notice forthwith to the Landlord of any defect in the Premises which might give rise to:

- (a) an obligation on the Landlord to do or refrain from doing anything in relation to the Premises; or
- (b) any duty of care or the need to discharge such duty imposed by statute or otherwise;

and to display and maintain all notices which the Landlord or any Regulator may from time to time require to be displayed at the relevant part or parts of the Premises in relation to their state of repair and condition.

4.18 Yield up

- (a) At the expiry or sooner determination of the Term:
 - (i) yield up the Premises in a condition that is consistent with the Tenant's obligations under the Contract;
 - (ii) to make an application to the Keeper for the cancellation of any notice of, or relating to, this lease or any document supplemental or collateral to it and, on request, to supply the Landlord with a copy of the application.
- (b) For the purpose of securing the Tenant's obligation in clause 4.18(a)(ii) the Tenant irrevocably appoints the Landlord and its successors in title severally as attorney of the Tenant and in its name (and with power to appoint the Landlord's solicitors as substitute attorney) to make any application referred to in that clause at the Tenant's cost but only if the Tenant is in breach of the obligation to apply itself.

4.19 Obligations and Third Party Rights

- (a) To comply with all obligations, stipulations and other matters affecting the Premises and not to interfere with any rights, servitudes or other matters affecting the Premises or the Adjoining Property.

- (b) To comply with all obligations on the Landlord relating to Third Party Rights (in so far as they affect the Premises) and not to do anything that may interfere with any Third Party Rights.
- (c) To allow any person authorised by the Third Party Rights to enter the Premises in accordance with the terms of the relevant Third Party Rights.

4.20 **Keeper of the Registers of Scotland**

To the extent that the grant (or any transfer) of this lease and of any right appurtenant to it requires to be completed by registration pursuant to the Registration of Leases (Scotland) Act 1857, the Long Leases (Scotland) Act 1954 or the Land Registration (Scotland) Act 1979, to comply with the relevant registration requirements and, as soon as practicable, to provide the Landlord's solicitors with either (as appropriate) an extract or a copy of an office copy of the relevant register evidencing compliance with them. The Landlord shall, if reasonably requested by the Tenant, use reasonable endeavours to assist the Tenant in responding to any requisitions raised by the Registers of Scotland in connection with such registration (the Landlord bearing its own and the Tenant's reasonable and proper costs in this regard).

5 **LANDLORD'S OBLIGATIONS**

The Landlord undertakes with the Tenant:

5.1 **Warrantice**

to warrant this lease to the Tenant absolutely and grants warrantice;

5.2 **Nuclear Site Licence Compliance**

Not to do or omit to do anything on the Adjoining Property which will cause the Tenant to be in breach of the Nuclear Site Licence for the Licensed Site and to cease (as soon as reasonably practicable following receipt of written notice from the Tenant to do so and specifying the relevant activities giving rise to the same and the nature and extent of the relevant perceived breach) any activities of the Landlord on the Adjoining Property which will or are likely to put the Tenant in breach of the Nuclear Site Licence for the Licensed Site.

5.3 **Conducting Media and Entry to the Premises**

To make good as soon as reasonably practicable (and to the Tenant's reasonable satisfaction) any damage caused by the Landlord to:

- (a) any Conducting Media situated on the Adjoining Property and properly serving the Premises; and/or

- (b) the Premises in exercise of the Landlord's right of entry at clause 4.8 of this lease.

6 PROVISOS

PROVIDED ALWAYS and it is hereby agreed and declared that:

6.1 Servitudes and use

Subject to the provision of clause 5.2, the Landlord may develop or concur with or suffer or permit any development of or the implementation of any use on any Adjoining Property notwithstanding the effect of the development or the use on the Premises and neither the Tenant nor the Premises shall be entitled to any servitude or right other than those servitudes and rights expressly granted by this lease and nothing herein contained or implied shall give the Tenant the benefit of or the right to enforce or to have enforced or to prevent the release or modification of any right, servitude, obligation, condition or stipulation (other than those expressly contained in this lease) or to prevent or restrict the development or use of any Adjoining Property.

6.2 Service of notices

- (a) Unless otherwise stated in this lease any notice, request or other communication to be made by one Party to the other under or in connection with this lease shall be in writing and shall be delivered personally or sent by first class post or courier to that other Party as follows:

- (i) if to the Tenant to:

Address: Berkeley Centre, Berkeley, Gloucestershire, GL13 9PB

(marked for the attention of the General Counsel, Legal Department with a copy to the Estates Department);
and

- (ii) if to the Landlord to:

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

(marked for the attention of the Head of Legal with a copy to the Head of Property Services)

or such other persons and addresses as may at any time be notified in writing by one Party to the other.

- (b) Unless otherwise stated in this lease, a notice, request or other communication under or in connection with this lease shall be deemed delivered:
 - (i) if delivered personally, when left at the address referred to in clause 6.2(a) above; and
 - (ii) if sent by first class mail, two Working Days after the date of posting.

6.3 No warranty as to use

Nothing contained in this lease shall constitute or be deemed to constitute a warranty by the Landlord that the Premises are authorised under Planning Law to be used for the Permitted Use or are otherwise fit for any specific purpose.

6.4 Lease Not to Terminate

Save as otherwise provided, this Lease shall not terminate as a result of damage to or destruction of the Premises or any part thereof.

6.5 Jurisdiction

This lease shall be governed by and construed in accordance with the law of Scotland.

6.6 Dealings with the Landlord's heritable interest

- (a) Subject to clause 6.6(b), the Landlord shall not dispoise, convey, assign, or lease the whole or any part of its heritable interest in the Premises **SAVE THAT** the Landlord may dispoise, convey, assign the whole of its interest in the Premises to an assignee or dispoinee who has either:
 - (i) also taken an assignation, novation or transfer of the Landlord's obligations under the Contract; or
 - (ii) entered into a direct agreement with the Tenant that it will observe and perform the Landlord's obligations under the Contract,insofar as they affect and/or are applicable to the Premises.
- (b) Clause 6.6(a) shall not apply to an assignation, transfer or lease of the whole of the Landlord's heritable interest (whether by virtue of any Enactment or any scheme pursuant to any Enactment or otherwise) to a public body or bodies having the same or substantially the same function as the Landlord as at the date of this Lease, being:
 - (i) a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975; and/or

- (ii) any other public body whose obligations under this Lease are unconditionally guaranteed by the Landlord or a Minister of the Crown.

6.7 Limitation of Landlord's liability

If a person who is the Landlord of this lease transfers or disposes their interest in the Premises either by way of disposition or through the grant of an interposed lease, that person:

- (a) is released from the Landlord's obligations under this lease; and
 - (b) ceases to be entitled to the benefit of the Tenant's obligations under this lease,
- as from the date of entry in terms of the disposition or the interposed lease.

6.8 Relocation of Conducting Media

- (a) Subject to the provisions of clause 5.2, the Landlord may by giving not less than two months' prior notice in writing addressed to the Tenant, notify the Tenant that the Landlord (at its own cost) is to relocate any Conducting Media on, over or passing through the Adjoining Property which serve (whether shared or exclusively) the Premises provided that:
 - (i) the written notice shall give full details of the Conducting Media which the Landlord wishes to be relocated or repositioned and an alternative location or route for the Conducting Media;
 - (ii) prior to such relocation the Landlord has installed, constructed or erected alternative or replacement Conducting Media which serves the Premises;
 - (iii) prior to such relocation the Landlord has engaged with all appropriate Regulators and complied with all Enactments and Regulatory Requirements in respect of such relocation (where necessary);
 - (iv) no interruption (other than temporary) to the free passage and running of services through the Conducting Media shall occur during such operations;
 - (v) no disruption (other than temporary) to the Tenant's use and enjoyment of the Premises for the Permitted Use shall occur during such operations;
 - (vi) the Landlord will procure that so far as practicable any diverted or relocated apparatus is constructed prior to the disconnection of the

Conducting Media in its original or previous position to the intent that any period of disconnection may be kept as short as practicable;

- (vii) the Landlord its agents and contractors shall during the works or diversion at the Tenant's request consult with the Tenant as to the manner and timing of the works of diversion and have reasonable regard to all reasonable recommendations of the Tenant in order to better safeguard and protect the services derived via the Conducting Media and minimise any period of disruption and to accord with the Tenant's reasonable security arrangements;
 - (viii) any damage caused to the Tenant's property the Premises or the Conducting Media shall be forthwith made good by the Landlord to the Tenant's reasonable satisfaction and the Landlord shall pay to the Tenant on demand an amount equal to losses damages claims proceedings and expenses arising directly therefrom and incurred by the Tenant;
 - (ix) such Conducting Media is no less functional and commodious to the Tenant (and the Landlord agrees to use reasonable endeavours to ensure that such Conducting Media is no more expensive to the Tenant) as the Conducting Media which the Landlord is seeking to relocate and has sufficient capacity at the time of the relocation for the Permitted Use being constructed to at least the lower of:
 - (A) equivalent load bearing capacity to those which are being replaced; and/or
 - (B) such load bearing capacity as reasonably required by the Tenant at the time of the relocation;
 - (x) there is no material difference between the Tenant's use of the Conducting Media within the Adjoining Property prior to such relocation and the Tenant's use of such relocated Conducting Media after such relocation; and
 - (xi) prior to such relocation the Landlord has made such connections to the relocated Conducting Media as the Tenant reasonably requires.
- (b) The Tenant may relocate any Conducting Media on, over or passing through the Premises which serve (whether shared or exclusively) the Adjoining Property provided that:

- (i) prior to such relocation the Tenant has installed, constructed or erected alternative or replacement Conducting Media which serve the Adjoining Property;
 - (ii) prior to such relocation the Tenant has engaged with all appropriate Regulators and complied with all Enactments and Regulatory Requirements in respect of such relocation (where necessary);
 - (iii) such Conducting Media are at least as functional and commodious to the Landlord as the Conducting Media which the Tenant is seeking to relocate and have sufficient capacity at the time of the relocation for the Landlord's use or intended use of the Adjoining Property;
 - (iv) no interruption (other than temporary) to the free passage and running of services through the Conducting Media shall occur during such operations
 - (v) there is no material difference between the Landlord's use of the Conducting Media at the Premises prior to such relocation and the Landlord's use of such relocated Conducting Media after such relocation; and
 - (vi) the Tenant has made such connections to the relocated Conducting Media as the Landlord reasonably requires.
- (c) The rights and obligations of the parties in relation to the Conducting Media prior to such relocation shall continue to apply to the Conducting Media as relocated or re-positioned.
 - (d) Where both Parties cease the use of the Shared Media at or about the same time the cost of removal and making safe in accordance with all relevant Enactments, Regulatory Requirements and requirements of all Public Authorities shall be shared according to each Party's respective use of them.

7 **TERMINATION OF THE CONTRACT**

This lease shall determine upon the later of (i) expiry or sooner determination of the Tenant's appointment as the contractor under the Contract and (ii) the date which the whole of the Premises are Delicensed, but such termination shall be without prejudice to the rights of the Landlord and the Tenant with regard to antecedent breaches of the obligations contained in this lease.

8 TERMINATION AFTER DELICENSING

- 8.1 If at any time during the Term any part the Premises shall be Delicensed and no longer reasonably required by the Tenant to perform its obligations under the Contract the Landlord may thereafter serve notice on the Tenant to terminate this lease as to the part of the Premises that has been Delicensed whereupon this lease shall determine as to such part of the Premises but without prejudice to the rights of the Landlord and the Tenant with regard to antecedent breaches of the obligations contained in this lease.
- 8.2 Unless the notice served by the Landlord under clause 8.1 determines this lease in respect of the whole of the Premises it shall include a plan delineating the part of the Premises to which it applies.
- 8.3 On or prior to the termination of this lease in respect of part of the Premises pursuant to clause 8.1 the Landlord and the Tenant shall (each at its own cost and acting reasonably) as soon as reasonably practicable enter into a deed of variation granting to the other such rights over the remainder of the Premises or the part of the Premises in respect of which this lease has been determined (as the case may be) as shall be required for the Tenant's reasonable use and enjoyment of the remaining part of the Premises for the Permitted Use in accordance with the Contract

9 VARIATION OF THE PREMISES

9.1 Landlord's notice to determine

Subject to clause 9.2 and 9.3 the Landlord may at any time serve not less than six months' notice (or such other period of notice as is previously agreed between the parties) on the Tenant to terminate this lease and on the expiry of the notice this lease shall immediately determine but without prejudice to the rights of the Landlord and the Tenant with regard to antecedent breaches of the obligations contained in this lease.

9.2 Lease of New Area

- (a) With the Variation Notice under clause 9.1 the Landlord shall serve notice requiring the Tenant to accept the grant of the New Lease and such notice shall be accompanied by
- (i) a description of the site of the New Area; and
 - (ii) a taxative plan showing the outline of the New Area on an OS plan, which plan shall accord with the registration requirements of the Keeper.

- (b) The Variation Notice shall be sufficiently served if served by the Landlord on the Tenant and posted by recorded delivery to or their last known address in Great Britain or Ireland and shall be deemed to have been served 48 hours after posting if sent by recorded delivery post.
- (c) Upon service of the Variation Notice under clause 9.1, a binding contract shall exist between the Landlord and the Tenant for the variation of the lease to include the New Area on the terms detailed in clause 9.3
- (d) The variation of the lease to include the New Area shall be documented by way of a formal minute of variation of lease making reference to a taxative plan (the terms of which are to be agreed mutually between the parties hereto, both acting reasonably) to be prepared by the Landlord and sent to the Tenant for execution within 14 days of the date of service of the Variation Notice.
- (e) The minute referred to in clause 9.2(d) aforementioned shall be validly executed by the Tenant within 7 days of receipt from the Landlord and shall thereafter be sent to the Landlord, along with details of execution, for execution by the Landlord. The Landlord will validly sign the said minute within 7 days of receipt from the Tenant and thereafter submit to the [Books of Council and Session] [Land Registrar of Scotland] for registration. The Landlord will obtain two extracts (one for each of the Landlord and the Tenant).
- (f) The New Lease shall be completed (and the Tenant shall execute a counterpart of it) simultaneously with the determination of the Term on the expiry of the Variation Notice.

9.3 Title to New Area

- (a) The Landlord will exhibit a valid title to the New Area to the Tenant.
- (b) The Tenant shall raise no objection to or requisition on the Landlord's title to the New Area provided that such title does not include any restrictions which would prevent the Tenant from carrying on the Permitted Use.
- (c) Subject to clause 9.3(b) the New Area shall be let:
 - (i) Together with and including any additional rights which the Landlord (acting reasonably and in consultation with the Tenant) considers necessary for the Tenant's use and enjoyment of the New Area for the Permitted Use; and
 - (ii) subject to and as the case may be with the benefit of the matters contained or referred to in (other than charges to secure the repayment

of money) of the title to the New Area thereto or (if the New Area is unregistered) such matters benefiting and affecting the New Area (other than charges to secure the repayment of money).

- (d) The New Area shall be let subject to:-
- (i) all matters registrable by any competent authority pursuant to statute;
 - (ii) all requirements including (whether or not subject to confirmation) any notice, order or proposal of any competent authority;
 - (iii) all matters disclosed or reasonably to be expected to be disclosed by searches or as the result of enquiries formal or informal and whether made in person by writing or orally by or for the Tenant or which a prudent tenant ought to make;
 - (iv) all notices served by the owner or occupier of any adjoining or neighbouring property;
 - (v) any matters which are overriding interests under the Land Registration (Scotland) Act 1979;
 - (vi) all Third Party Rights subsisting and capable of taking effect immediately prior to the grant of the New Lease;
 - (vii) any unexpired subleases or other occupational leases licences tenancies and other similar arrangements relating to the New Area and which are subsisting immediately prior to the grant of the New Lease
- (e) The Landlord shall not be required to provide the New Area with vacant possession.

9.4 **Costs**

In the event that the grant of the New Lease results in the Tenant incurring additional cost under the Contract or this Lease, the Landlord and the Tenant hereby agree and declare that any such additional cost shall be an "Allowable Cost" (as that term is defined in the Contract) under the Contract.

10 **CONFIDENTIALITY**⁴

10.1 **Confidential Information**

Subject to clauses 10.3 to 10.10 below inclusive, each Party shall hold in confidence all documents, materials and other information, whether technical or commercial, supplied by or on behalf of the other Party (including all documents and information supplied in the course of any dispute resolution procedure to which a dispute is referred in accordance with this lease) and shall not, except with the written agreement of the other Party, publish or otherwise disclose them other than as expressly provided for in this lease unless or until the recipient Party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of this lease, whereupon to the extent that it is in the public domain this obligation shall cease.

10.2 **Tenant right to request confidentiality**

The Tenant may at any time request in writing, stating reasons, that the Landlord keeps particular information confidential and does not disclose it to third parties. The Tenant may further request in writing at any time that, where the Landlord discloses Information (as defined in clause 10.3) under clause 10.3, the Landlord shall make representations to the recipient of that Information as to the desirability of keeping the Information confidential. Any such request by the Tenant shall be accompanied by a document setting out the requested representations. The Landlord shall reasonably consider whether to make such representations.

10.3 **Disclosure by the Landlord**

The Landlord having reasonably considered any request made by the Tenant under clause 10.2 may disclose any and all information acquired by it under this lease save for information which is judged by ONR to be security sensitive (unless the recipient of information pursuant to this clause 10.3 holds all relevant security clearances) (the "**Information**") to:

- (a) the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, Greater London Landlord or any department, officer, agent, representative, employee, consultant or adviser of any of them;
- (b) the Regulators;

⁴ Confidentiality provisions may need to be aligned with the confidentiality provisions in the final form of Contract

- (c) the extent required by applicable Law or pursuant to an order of any court of competent jurisdiction;
- (d) bidders who have pre-qualified to participate in any relevant forthcoming tender process upon obtaining an undertaking of confidentiality equivalent to that contained in clause 10.1;
- (e) insurers upon obtaining an undertaking of confidentiality equivalent to that contained in clause 10.1;
- (f) professional advisers, upon obtaining an undertaking of confidentiality equivalent to that contained in clause 10.1;
- (g) consultees under the Energy Act 2004; and/or
- (h) any department, officer, agent, representative, employee, consultant or adviser of any of the entities referred to in clauses 10.3(a) to 10.3(g) above subject, in any case where the entity in question would be required to provide an undertaking of confidentiality equivalent to that contained in clause 10.1, to obtaining such an undertaking of confidentiality.

10.4 So far as is practicable, the Landlord shall give the Tenant reasonable notice of any proposed disclosure under clause 10.3.

10.5 Notwithstanding the provisions of clause 10.1, the Landlord may with the approval of the Tenant (not to be unreasonably withheld or delayed) further disclose the Information to any person not referred to in clause 10.3.

10.6 Any determination as to whether it is reasonable for the Tenant to withhold its approval to disclosure under clause 10.5 above shall have regard to:

- (a) compliance with the Landlord's statutory functions and duties, including in particular the promotion of effective competition and value for money;
- (b) relevant Government policy;
- (c) the requirement to maintain security;
- (d) the public interest; and
- (e) the requirement to maintain openness and transparency.

10.7 **Publication**

The Landlord having considered any request made by the Tenant under clause 10.2 may publish in such form and at such times as it sees fit such information as the

Landlord reasonably requires to publish having regard to the list of considerations set out in clause 10.6 above, including information it includes in its respective annual report.

10.8 The Landlord shall give the Tenant reasonable notice of any proposed publication under clause 10.7.

10.9 Disclosure by the Tenant

The Tenant may disclose without the approval of the Landlord any and all information acquired by it under or pursuant to this lease save for information which is judged by ONR to be security sensitive (unless the recipient of information under this clause 10.9 holds all relevant security clearances) to:

- (a) the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, Greater London Authority or any other local authority;
- (b) the Regulators;
- (c) the extent required by applicable Law or pursuant to an order of any court of competent jurisdiction;
- (d) insurers, upon obtaining an undertaking of confidentiality equivalent to that contained in clause 10.1;
- (e) professional advisers, upon obtaining an undertaking of confidentiality equivalent to that contained in clause 10.1; and
- (f) any department, officer, agent, representative, employee, consultant or adviser of any of the entities referred to in sub-clauses (a) to (e) above subject, in any case where the entity in question would be required to provide an undertaking of confidentiality equivalent to that contained in clause 10.1, to obtaining such an undertaking of confidentiality.

10.10 Freedom of Information Act

This clause 10 is subject to the parties' respective obligations under the Freedom of Information Act 2000, as amended.

11 DISPUTES

11.1 If there is any dispute between the Landlord and Tenant relating to this lease the parties shall seek to settle the matter in accordance with the dispute management procedure set out in clause [36] (Disputes) of the Contract.

12 REGISTRATION

13 The Landlords and the Tenants consent to registration hereof and of any document pursuant hereto for preservation and execution **IN WITNESS WHEREOF** these presents, the preceding ● pages and the schedule consisting of five parts annexed as relative hereto are subscribed as follows:

They are executed on behalf of the said Magnox Limited

at

on

by

Print Full Name

Director/Secretary/Authorised Signatory*

Print Full Name

Director/Secretary/Authorised Signatory/Witness*

Witness address (if applicable):

They are executed on behalf of the said

at

on

by

Print Full Name

Director/Secretary/Authorised Signatory*

Print Full Name

Director/Secretary/Authorised Signatory/Witness*

Witness address (if applicable):

They are executed on behalf of the said

at

on

by

Print Full Name

Director/Secretary/Authorised
Signatory*

Print Full Name

Director/Secretary/Authorised
Signatory/Witness*

Witness address (if applicable):

This is the Schedule referred to in the foregoing Lease between Nuclear Decommissioning Authority and Magnox Limited

Part A

The Premises

The land and buildings known as [] being the land shown edged [red] on Plan [] (which comprises part of the land in title number [] including the Mast).⁵

..... NDA

..... Magnox

⁵ The demise for each site will follow the most up to date LROP plans, plus any additional land required for access and services as appropriate; Maentwrog and Traws may be demised under one lease – tbc.

Part B

Rights Granted

- 1 [The right to use, maintain, operate and decommission (together with all necessary rights of access to them at reasonable times on giving the Landlord or any tenant, licensee or occupier of any Adjoining Property reasonable prior notice (save in cases of emergency)) the boreholes which the Tenant needs at any time for the proper operation and regulation of the Premises [the location of which on the date of this lease are shown ● on Plan. [●]]⁶
- 2 [The right to use, maintain, operate and decommission (together with all necessary rights of access to them at reasonable times on giving the Landlord or any tenant, licensee or occupier of any Adjoining Property reasonable prior notice (save in cases of emergency)) air monitoring stations which the Tenant needs at any time for the proper operation and regulation of the Premises [the location of which on the date of this lease are shown ● on Plan. [●]].⁷
- 3 The right to enter the Adjoining Property on reasonable prior notice to Landlord or any tenant, licensee or occupier of any relevant part of the Adjoining Property (and where any such part of the Adjoining Property is subject to a Nuclear Site Licence the holder of that licence and all appropriate Regulators) and carry out such works as are necessary to remove any contamination found on the Adjoining Property as a result of the Tenant exercising any of the rights referred to at paragraphs 1 and 2 above and which can be shown to be attributable to or emanating from the Premises subject to the Tenant agreeing with the Landlord (and where such part of the Adjoining Property is subject to a Nuclear Site Licence the holder of that licence and the relevant Regulator(s)) in advance (save where the Tenant is already obliged under the Contract to carry out such works) the scope and programme of such works (such agreement not to be unreasonably withheld) and the Tenant making good any damage so caused to the Adjoining Property to the reasonable satisfaction of the Landlord or any tenant licensee or occupier of any Adjoining Property following removal of such contamination.
- 4 The right to the free and uninterrupted passage and running of [public utilities] [water, sewage, gas and electricity] to and from the Premises in and through the conduits laid at the date of this lease or at any time during the perpetuity period in, over or under the

⁶ These boreholes are not always defined in any specific grant and are commonly on the adjoining land of the NDA. Once the Adjoining Property is subject to a lease to a new operator, these boreholes will need to be dealt with by an express reservation in the lease of the Adjoining Property as well as obligations to preserve those that there are or move them in agreement with Magnox and the NDA. There will therefore likely be plans showing the locations when this lease is granted. Rights needed for regulatory and health physics purposes.

⁷ As above

Adjoining Property as are required by the Tenant for the proper operation of the Premises for the Permitted Use and rights of access at reasonable times on giving the Landlord and any tenant, licensee or occupier of the relevant part of the Adjoining Property reasonable prior notice (save in cases of emergency) to repair, maintain, replace and decommission those conduits.

- 5 To the extent that the Landlord is able to grant them, the rights to use, operate, maintain and decommission the pipelines demised by a lease [dated [] made between (1) [] and (2) []] [*and any other outfall pipeline lease*] and registered in the Division of the General Register of Sasines for the County of ● on the ● (the "**Pipeline Lease[s]**") together with all necessary rights of access to them at reasonable times on giving the Landlord and the landlord of such Pipeline Lease[s] reasonable prior written notice (or such other notice period as is specified for access in the Pipeline Lease[s]) **PROVIDED THAT** the Tenant shall comply with all obligations, conditions, provisos and restrictions on the exercise of such rights in accordance with the Pipeline Lease[s].⁸
- 6 [*Rights of access to the sewerage pumping station*]⁹
- 7 [The right to install, maintain, replace, upgrade and remove any apparatus necessary for the proper operation of the Premises or the Mast together with all necessary rights of access to it at reasonable times on giving the Landlord reasonable prior notice (save in cases of emergency).]
- 8 The right to pass and repass to and from the Premises with or without vehicles for all purposes connected with the proper operation of the Premises for the Permitted Use over and along the roads, footpaths and accessways designated by the Landlord for such use at any time within the Adjoining Property **SUBJECT TO** the Tenant paying a fair proportion of the cost of maintaining such roads, footpaths and accessways.
- 9 [The right to pass and repass [to and from the Premises] on foot only [for all purposes connected with the operation of the Premises] along the footbridge shown edged ● on Plan [●].]

⁸ The NDA commonly has rights regarding outfall pipelines which can be active and non-active. These are commonly over Crown Estate foreshore and if so will commonly have a Regulating Lease of a strip of foreshore between mean high and low water marks, together with a lease of a servitude relating to the pipeline itself. Such rights as the NDA has in respect of these pipelines should benefit the Tenant.

⁹ Wylfa has a publicly maintained sewerage pumping station which is used by the Site and the public generally. Current use and rights to access to maintain or monitor this station need to be incorporated if there are any. Other sites may have similar arrangements. Provisions to be tailored to each Site.

- 10 [The right to use, maintain and operate (together with all necessary rights of access to them at reasonable times on giving the Landlord reasonable prior notice (save in cases of emergency)) the railway sidings shown [] on Plan [] as required by the Tenant for the proper operation of the Premises for the Permitted Use]¹⁰.
- 11 The right to use (together with all necessary rights of access to it at reasonable times and giving the Landlord reasonable prior notice (save in cases of emergency)) the facility known as [] Reservoir as required by the Tenant for the proper operation of the Premises the location of which is shown edged [] on Plan [].
- 12 The right of support and protection for the Premises from the Adjoining Property.

¹⁰ This is unlikely to be required as any rail access should be included within the demise but rail connectivity should be considered for each Site

Part C

Exceptions and reservations

- 1 The right to develop, construct, build, alter or extend (whether vertically or laterally) any building in, on, under or over any Adjoining Property notwithstanding that the access of light or air to the Premises and their lights, windows and openings may be affected **PROVIDED THAT** any such development, construction, building, alteration or extension shall not materially interfere with or disrupt the Tenant's use of the Premises for the Permitted Use;
- 2 The right at all times to enter upon the Premises as often as may be necessary for all the purposes for which the Tenant is obliged in this lease to permit entry **PROVIDED THAT** the Landlord complies with any proper regulations notified in writing by the Tenant to the Landlord at any time relating to the Licensed Site (in its capacity as the holder of a Nuclear Site Licence for the Licensed Site) which the Tenant agrees shall not (subject to the above) materially adversely affect the exercise of the Landlord's rights under this lease or otherwise;
- 3 The right to construct and inspect, maintain, repair and renew and to make connections to and use (which for the avoidance of doubt includes the free passage and running of services and utilities through) pipes, wires, cables and other conduits in, on or under the Premises for the benefit of any Adjoining Property;
- 4 The right of support and protection for the Adjoining Property from the Premises;
- 5 The right to relocate any Conducting Media under clause 6.8 of this lease;
- 6 All rights of light, air and other servitudes and rights (but without prejudice to those expressly granted by this lease) enjoyed by the Premises from or over any Adjoining Property all such rights being reserved for the benefit of the [Adjoining Property]/[the land comprised in title number[s] []]¹¹; and
- 7 Subject to compliance with the requirements of clause 4.8 the right to pass and repass to and from the Adjoining Property with or without vehicles for all purposes connected with the Landlord's use and enjoyment of the Adjoining Property over and along the roads, footpaths and accessways designated for such use by the Tenant at any time and which are within the Premises.

¹¹ Second alternative to be used if there is land locally that should benefit from these reservations that is not registered with the main site title number

PROVIDED THAT the Landlord shall not exercise any of the above rights in such a way which would contravene the terms of any Nuclear Site Licence.

Part D

Title Matters

- 1 Land Certificate [] [(other than any mortgage or financial charge)]

<u>Date</u>	<u>Document</u>	<u>Parties</u>

- 2 Overriding Interests under the Land Registration (Scotland) Act 1979
- 3 All other obligation, servitudes, restrictions or other matters which affect the Premises

Part E

Schedule of Subleases

Date	Parties	Building

Part F

Form of Sublease

Scotland Template Underlease

Sublease
of
[]

MAGNOX LIMITED

and

[]

and

[]

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LEASE BETWEEN:-

- (1) **MAGNOX LIMITED** whose registered office is at [] (Co. Regn. No. 02264251) (the "**Landlord**"); [and]
- (2) [] (the "**Tenant**"); [and]
- [(3) [] (the "**Guarantor**").]

WITNESSETH as follows:-

1 INTERPRETATION

1.1 In this Lease:-

Unless the context otherwise requires or admits the following words or expressions shall have the following meanings:-

<Definitions or parts of definitions set out in the Particulars can be deleted where the Particulars are incorporated>

"**Adjoining Property**" means the land or premises adjoining or neighbouring the Premises;

"**Adjoining Use**" means the [use of the Adjoining Property as [] and all uses ancillary thereto including use of the Adjoining Property during such period required for decommissioning;

"**Base Rate**" means either the base rate of National Westminster Bank plc or such other bank (being for the time being generally recognised as a clearing bank in the London market) as the Landlord may from time to time nominate or if the base rate cannot be ascertained then above such other rate as the Landlord may reasonably specify;

["**Break Date[s]**" means []];

["**Break Notice Date[s]**"] means [] [] months before [the] [each] Break Date];

["**Building**" means the land (of which the Premises and Common Parts form part) known as [] which is shown for the purpose of identification only [shaded red] on [Plan 2] together with all buildings fixtures and structures whatsoever from time to time thereon];

<Relevant where Premises is part of a building only>

["**Building Service Charge**" means a service charge calculated and payable in respect of the Building Services in accordance with Part D of the Schedule];

<Relevant where Premises is part of a building only>

["**Building Services**"] means those of the Services described in paragraph 2.2 of Part D of the Schedule];

<Relevant where Premises is part of a building only>

["**Common Parts**"] means the areas of the Building being [the toilets kitchen and conference room] which are shown edged [in green] on [Plan 1]]];

<Relevant where Premises is part of a building only>

"**Conducting Media**" means pipes drains (including drainage ditches) sewers mains ducts gutters watercourses wires cables (including fibre optic cables) conducting media including any fixings louvres cowls and other covers manholes junctions boxes and other ancillary works and mechanisms existing at the date hereof and installed at any time hereafter during the Term;

"**Date of Entry**" means [];

"**Dedesignated**" means no longer designated under section 1 of the Energy Act 2004;

"**Enactment**" means every Act of Parliament, the Scottish Parliament and European Union Law directive and regulation and any other law effective in Scotland (in each case existing and future) now or hereafter to be enacted or made and all subordinate legislation whatsoever deriving validity therefrom and all common law and guidance notes and codes of practice which are of mandatory effect;

"**Environment**" means any land, including without limitation, surface land and sub-surface strata and made ground, sea bed or river bed under any water as defined below and any natural or man-made structures above or below ground, water, including, without limitation, coastal and inland waters, surface waters and ground waters and water in drains and sewers; and air, including, without limitation, air within buildings and other natural or man-made structures above or below ground;

"**Estate**" means (subject to clause 6.4 of the Head Lease) the land and buildings demised to the Head Landlord's by the Head Lease;

"**Estate Rules and Regulations**" means any regulations published from time to time by the Head Landlord in the interests of good estate management and relating to the Retained Estate;

"**Estate Services**" means those of the Services described in paragraph 2.1 of Part D of the Schedule;

"Estate Service Charge" means a service charge calculated and payable in respect of the Estate Services in accordance with Part D of the Schedule;

"Expiry of the Term" means the expiration or sooner determination of the Term including by way of surrender;

["Fixtures and Fittings Schedule" means the schedule dated [] annexed to this Lease and marked "Fixtures and Fittings Schedule");

<Check if relevant>

["Guarantor" [means the party [of the [fourth] part / named in the Particulars] (if any) and] includes its successors in title and assigns;]

"Group Company" means a company which is a holding company of the Tenant or a subsidiary of the Tenant or of such holding company as the terms "subsidiary" and "holding company" are defined in Section 1159 of the Companies Act 2006;

"Hazardous Materials" means any and all materials or substances of any form, whether natural or artificial, which alone or in combination with any other substance are or may be harmful or prejudicial to the health of any human or other living organism or the Environment, including, without limitation, any noxious, toxic, offensive, hazardous, infectious or radioactive substances, organisms or gases, and any oils, petroleum or petroleum products, electricity or heat;

"Head Lease" means the lease under which the Landlord holds the Premises together with other property dated [] made between the Nuclear Decommissioning Authority ("**the Head Landlord**") (1) and the Landlord (2) for a term of [] years from and including [];

"Health and Safety Executive" or "**HSE**" means the body corporate established by section 10 of the Health and Safety at Work etc. Act 1974 and its statutory successor from time to time performing the same function;

"Insurance Cost" means in respect of each year of the Term the aggregate of the amount which the Head Landlord may expend:

- (a) in effecting and maintaining insurance against the occurrence of the Insured Risks in relation to the Premises in such sum as in the Head Landlord's opinion represents its then full current replacement cost with such allowance as the Head Landlord from time to time considers appropriate in respect of related liabilities and expenses (including without limitation liability to pay any fees or charges on the submission of an application for planning permission and costs which might be incurred in complying with any Enactment in carrying out any

replacement work and sums in respect of architects' engineers' and quantity surveyors' and other professional fees and incidental expenses incurred in relation to any works of debris removal and of replacement and all VAT); and

- (b) in effecting and maintaining any insurance relating to the property owners' liability and the employer's liability of the Landlord in relation to the Premises and anything done therein; and
- (c) in professional fees relating to insurance including fees for insurance valuations carried out at reasonable intervals and all fees and expenses payable to advisers in connection with effecting and maintaining insurance policies and claims;

"Insurance Sum" means in respect of each year of the Term the aggregate of:

- (a) an amount equivalent to the Insurance Cost for the relevant period; and
- (b) the amount which the Head Landlord may expend in effecting and maintaining insurance against three years loss of the rents first and secondly hereinafter reserved with any addition to the amount insured as the Head Landlord may decide in respect of VAT; and
- (c) (without prejudice to all other provisions of this Lease relating to the use of the Premises and the vitiation of any policy of insurance) any amount which the Head Landlord may expend in paying all additional premiums and loadings on any policy or policies of insurance required to be paid as a result of anything done or omitted by the Landlord or the Tenant; and
- (d) an amount equivalent to the total of all excess sums which the insurers are not liable to pay out on any insurance claim in respect of the Premises and which the Head Landlord may have expended in replacing the damaged or destroyed parts of the Premises; and
- (e) any tax charged on any premium for any such insurance;

"Insured Risks" means loss damage or destruction whether total or partial caused by fire lightning explosion riot civil commotion strikes labour and political disturbances and malicious damage aircraft and aerial devices (other than hostile aircraft and devices) and articles accidentally dropped from them storm tempest flood bursting or overflowing of water tanks and pipes impact earthquake and accidental damage to underground water oil and gas pipes or electricity wires and cables subsidence ground slip and heave and such other risks or perils against the occurrence of which the Head Landlord may from time to time in its absolute discretion deem it desirable to insure subject to such exclusions and limitations as are from time to time imposed by the insurers and

subject also to the exclusion of such of the risks specifically hereinbefore mentioned as the Head Landlord may in its discretion decide where insurance cover in respect of the risk in question is not for the time being available in the London insurance market on reasonable terms;

"Landlord" [means the party of the first part and] includes (as the context so admits) the estate owner or owners for the time being of any reversionary interest expectant on the termination of the Term whether mediate or not;

"Landlord's Estate" means the Landlord's establishment in [] being part of the Estate the current extent of which is shown edged [red] on [Plan 2] or such smaller area as may result from a surrender of part of the previous demised by the Head Lease;

"Nuclear Installation" means a nuclear reactor or an installation prescribed under section 1 of the Nuclear Installations Act 1965;

"Nuclear Matter" means nuclear matter as the same is defined in section 26 of the Nuclear Installations Act 1965 which constitutes surface radiological contamination;

"ONR" means the Office for Nuclear Regulation (currently an agency of HSE) or any successor body having responsibility for nuclear safety in the United Kingdom which substantially replaces it from time to time;

"Party" means the Landlord [or] the Tenant [or] [the Guarantor];

["Plan 1" "Plan 2" and "Plan 3" means the plans annexed to this Lease and marked accordingly;]

"Planning Acts" means the Town and Country Planning Act (Scotland) Act 1997 as amended and any legislation of a similar nature;

"Premises" means all that [internal premises being [] / [land including the building(s) and other structures thereon (excluding the airspace above the highest point of any such building or structure and the subsoil below)] and also the Landlord's fixtures [and those items listed on the Fixtures and Fittings Schedule (which shall be deemed to be the property of the Landlord)] thereon known as [] which [premises / land] is shown edged [red] on [Plan 1] excluding any Conducting Media save for any that serve the Premises [which premises shall include:

- (a) the plaster linings and other interior coverings and facing material of the columns within the said premises and of the walls within and bounding them from other parts of the Building;

- (b) the floor screed and other fixed floor coverings and all materials lying between the structural floor slab and the floor surface;
- (c) the ceilings including all materials forming part of them lying below the lower surface of the structural ceiling slab;
- (d) all non-load bearing walls and partitions lying within the said premises;
- (e) the doors and door frames within and on the boundaries of the said premises; and
- (f) the window glazing and window frames lying within the said premises];

"Public Authority" means all or any of the Scottish Ministers, the Secretary of State for Scotland and any government department public local regulatory fire or any other authority or institution (including the ONR, HSE, and SEPA) having functions which extend to the Premises or their use and occupation and any court of law and the companies or authorities responsible for the supply of water gas and electricity or any of them and any of their duly authorised officers;

"Quarter Days" means 1 January 1 April 1 July and 1 October;

["radioactive waste" means radioactive waste as the same is defined by section 2 of the Radioactive Substances Act 1993;]

<Only relevant where the tenant is involved in decommissioning activities on site>

"Regulatory Requirements" means any legally enforceable requirement of any Regulator;

"Regulators" means the HSE, the SEPA, and ONR and **"Regulator"** shall mean each or any one of them;

["Rent" means [the greater of] the yearly rent of [] Pounds and [[] Pence] (£[]) [and the sum calculated in accordance with Part C of the Schedule];]

"Retained Estate" means the part of the Head Landlord's establishment known as [] the current extent of which is shown edged [blue] on [Plan 2] or such smaller area as may result from a sale or sales or other disposal of part or parts thereof from time to time by the Head Landlord together with such additional immediately adjoining land as the Head Landlord may from time to time acquire to form part thereof excluding the Estate;

"Retained Estate Costs" means the costs of maintenance of access and other services over through and along the Retained Estate which charges are payable by the Head Landlord in accordance with clause 3 of the Headlease;

["Review Date[s]" means [] and every [] anniversary of that date];

"RICS Code of Measuring Practice" means the Royal Institution of Chartered Surveyors Code of Measuring Practice 6th Edition (2007);

"Schedule" means the schedule of [] parts annexed and signed as relative hereto;

"Secretary of State " means the Secretary of State for Energy and Climate Change of 3 Whitehall Place, London, SW1A 2AW and his successor in title;

["Schedule of Condition" means the schedule of condition prepared by [] and dated [] a copy of which is annexed to this Lease;]

<Check whether relevant>

"SEPA" means the Scottish Environment Protection Agency as defined in Section 20 of the Environment Act 1995 and its statutory successor from time to time performing the same function;

"Service Charge" means the Estate Service Charge [the Building Service Charge] and the Utilities Service Charge;

"Services" means together the Estate Services [the Building Services] and the Utilities Services;

"Shared Media" means Conducting Media used in common by the Landlord and the Tenant;

"Site Licence" means a licence granted under section 1 of the Nuclear Installations Act 1965 in respect of the Premises and for the whole or part of the Adjoining Property;

"Site Rules and Regulations" means any regulations published from time to time by the Landlord in the interests of good estate management and relating to the Estate;

"Stipulated Rate" means a yearly rate three per cent above the Base Rate (and so that whenever there is reference in this Lease to the payment of interest at the Stipulated Rate such interest shall be calculated on a daily basis and compounded with quarterly rests on the Quarter Days);

"Suspension Notice" means a notice given by the Landlord to the Tenant pursuant to the provisions of clause 6.13;

"**Tenant**" means the party of the second part and includes its successors in title and permitted assignees;

"**Tenant Safety Requirements**" means the safety requirements stipulated by the Landlord and/or the holder of the Site Licence as applying to the Tenant in respect of this Lease pursuant to the arrangements described in the document known as [] (as provided to the Tenant from time to time) or such other safety requirements which may be required in respect of the Premises for the purpose of ensuring compliance with the provisions of the Nuclear Installations Act 1965 and/or the Site Licence;

"**Tenant's Use**" means [];

["**Term**" [means [] years from and including [] to and including [] and] [includes any extension holding over or continuation of the Term whether by common law holding over or otherwise]];

"**Termination Notice**" means a notice given by the Landlord to the Tenant pursuant to the provisions of clause 6.13;

"**Third Party Determination**" means third party determination in accordance with clause 6.15;

["**UKAEA**" means United Kingdom Atomic Energy Authority of Culham Science Centre, Abingdon, Oxfordshire OX14 3DB;]

"**Utilities**" means any water, steam, electricity, gas, sewage, radio, television, telephone, telecommunications, computer and other like utility services and supplies;

"**Utilities Service Charge**" means a service charge calculated and payable in respect of Utilities in accordance with Part D of the Schedule;

"**Utilities Services**" means those of the Services described in paragraph 2.3 of Part D of the Schedule;

"**VAT**" means value added tax as defined in the Value Added Tax Act 1994 and any tax of a similar nature substituted for, or levied in addition to, such value added tax; and

"**Working Day**" means any day, other than a Saturday or Sunday, on which clearing banks in the United Kingdom are open to the public for the transaction of business.

1.2 [The Particulars and all schedules shall form part of this Lease and all terms defined in the Particulars or those schedules bear the meanings stated];

- 1.3 Any reference to a statute (whether specifically named or not) shall include any amendment or re-enactment of it for the time being in force, and all instruments, orders, notices, regulations, directions, bye-laws, permissions and plans for the time being made, issued or given under it, or deriving validity from it.
- 1.4 An undertaking by either party not to do (or omit) any act or thing also operates as a undertaking not to permit or suffer it to be done (or omitted) and to prevent (or as the case may be to require) it being done.

[Commentary: This clause must not be amended as this is an ONR requirement]

- 1.5 If in order to comply with any obligation in this Lease the Landlord or the Tenant is under a duty to obtain the consent of a third party such obligation shall be deemed to be subject to the obtaining of such consent which the party in question shall use its reasonable endeavours to obtain except where otherwise specified in this Lease.
- 1.6 Where the context so requires words importing the singular include the plural and vice versa.
- 1.7 Any right of entry by one party on to the Premises or the Adjoining Property shall be taken to be a right for the relevant party their properly authorised agents and contractors to enter with such materials and equipment as necessary subject to the provisions of this Lease and any entry on to land within the Site Licence shall be in compliance with any reasonable conditions imposed by and under the supervision of the Landlord.
- 1.8 The titles or headings appearing in this Lease are for reference only and shall not affect its construction.
- 1.9 Where a party comprises more than one person obligations of that party take effect as joint and several obligations.
- 1.10 The expression or 'the Head Landlord' shall wherever the context so admits include its successors in title.
- 1.11 Any reference to any right or servitude exercisable by the Landlord including the rights and servitudes specified in Part B of the schedule shall be deemed to include the exercise of such right or servitude by the Head Landlord or any heritable creditor of the Landlord or of the Head Landlord.
- 1.12 In every case where there is an obligation on the part of the Tenant to obtain consent or approval from the Landlord there shall be deemed to be included an obligation to obtain consent and approval from the Head Landlord and from any heritable creditor of the Landlord and of the Head Landlord and the Landlord shall be entitled to withhold the

giving of its consent or approval until the consent or approval of the Head Landlord and any such heritable creditor has first been granted.

- 1.13 In every case where there is provision for repayment to the Landlord by the Tenant of any expenses incurred by the Landlord then in the event of any expenses being incurred by the Head Landlord there shall be deemed to be included a similar obligation by the Tenant to repay any expenses incurred by the Head Landlord.
- 1.14 Any indemnities in favour of the Landlord shall be deemed to incorporate indemnities in favour of the Head Landlord.
- 1.15 All rights of entry exercisable by the Landlord or the Head Landlord or any heritable creditor or persons authorised by the Landlord or the Head Landlord shall extend to and include their respective surveyors servants contractors agents licensees and workpeople with or without plant appliances and materials.

2 DEMISE

In consideration of the Rent hereby reserved and the Tenant's obligations and the conditions hereinafter contained the Landlord **HEREBY LETS** unto the Tenant the Premises **TOGETHER WITH** the rights for the Tenant as set out in Part A of the Schedule in common with all others having the like right insofar as such matters are capable of benefiting the Premises and insofar as the Landlord is able to grant the same **EXCEPTING AND RESERVING** unto the Landlord and to all other persons from time to time entitled thereto the rights set out in Part A of the Schedule **TO HOLD** the same unto the Tenant **FOR** the Term **SUBJECT** to the obligations rights servitudes wayleaves stipulations and other matters as are presently subsisting insofar as such matters affect the Premises **YIELDING AND PAYING** therefore:

- 2.1 **FIRST** yearly (and proportionately for part of a year) the Rent by equal quarterly payments to be made in advance on the Quarter Days in every year the first such payment or proportionate part thereof (being a proportionate part of the Rent from [] to the [] anniversary of that date after deduction of the quarterly instalments of such yearly rent payable on the intervening Quarter Days) to be made on the date hereof.
- 2.2 **SECOND** as additional rent from time to time the Insurance Sum payable in accordance with clause 3.2.
- 2.3 **THIRD** as additional rent from time to time the Estate Service Charge payable in accordance with Part D of the Schedule.
- 2.4 **[FOURTH** as additional rent from time to time the Building Service Charge payable in accordance with Part D of the Schedule].

<Only relevant where Premises is part of a building>

- 2.5 [FOURTH/FIFTH] as additional rent from time to time the Utilities Service Charge payable in accordance with Part D of the Schedule.
- 2.6 [FOURTH/FIFTH/SIXTH] as additional rent on demand interest payable in accordance with clause 3.4.
- 2.7 [[FOURTH/FIFTH/SIXTH/SEVENTH] as additional rent on demand all rates taxes charges and other outgoings payable in accordance with clause 3.6].

3 TENANT'S OBLIGATIONS

The Tenant undertakes to the Landlord and where appropriate to the holder of any Site Licence:

3.1 Rent

To pay the Rent on the days and in the manner set out in clause 2 without deduction or set off and (unless for the time being the Landlord shall have required in writing to the contrary) to pay the Rent (together with any VAT thereon) by banker's standing order to such bank as the Landlord may from time to time nominate or by such other method as the Landlord shall reasonably specify in writing from time to time.

3.2 Insurance Charge

To pay the Insurance Sum on demand.

3.3 Service Charge

To pay the Service Charge on the days and in the manner set out in Part D of the Schedule and to observe and perform the obligations on the part of the tenant set out in Part D of the Schedule.

3.4 Interest

To pay interest at the Stipulated Rate on any sum owed by the Tenant to the Landlord whether as rent or otherwise which is not:

- (a) received in cleared funds by the Landlord on the due date (or in the case of money due only on demand within seven days after the date of demand) calculated for the period commencing on the due date for payment and ending on the date the sum (and the interest) is received in cleared funds by the Landlord; or
- (b) demanded (or if tendered is for the time being refused) by the Landlord in circumstances where it is prudent for it not to demand or accept any payment

having regard to a breach of any of the Tenant's obligations under this Lease calculated for the period commencing on the date the payment would have been due in the absence of those circumstances (on the assumption in the case of money due only on demand that the Landlord would have made the demand as soon as it was entitled to do so) and ending on the date the sum (and the interest) is subsequently received by the Landlord provided that if it transpires that the Tenant is not in breach of its obligations under this Lease then no such interest shall be payable.

3.5 VAT

Wherever the Tenant is required to pay any amount to the Landlord hereunder by way of reimbursement or indemnity to pay to the Landlord in addition an amount equivalent to any VAT incurred by the Landlord save to the extent that the Landlord obtains credit for such VAT pursuant to sections 24 25 and 26 Value Added Tax Act 1994 or any regulations made thereunder.

3.6 Outgoings

To pay all charges for all Utilities and/or consumables (including meter rents) supplied to or used in the Premises during the Term and to pay all rates taxes charges and other outgoings whatsoever now or hereafter assessed charged or imposed upon the Premises or upon that owner or occupier and attributable to the Premises or upon the Premises in common with other premises (or upon the owners or occupiers thereof) excluding any corporation tax capital gains tax income tax or other tax payable by the Landlord as a direct result of any actual or deemed dealing with the reversion of this Lease or of the Landlord's income from it.

3.7 Compliance with Enactments etc.

- (a) To comply with all Regulatory Requirements and the requirements of all Enactments and of every Public Authority (including the due and proper execution of any works) in respect of the Premises their use and occupation the employment of personnel in them and any work being carried out to them (whether the requirements are imposed upon the owner tenant or occupier) and not to do or omit anything by which the Landlord may become liable or by which the Landlord's existing liability may be increased to make any payment or do anything under any Regulatory Requirement Enactment or requirement of a Public Authority or the Site Licence.
- (b) To comply with the terms of any Site Licence (in so far as it relates to the Premises) and to ensure that nothing is done by the Tenant on the Premises or

on the Adjoining Property which may jeopardise compliance with the terms of the Site Licence.

- (c) To comply at all times with the Estate Rules and Regulations and the Site Rules and Regulations.

3.8 Planning

- (a) Save to the extent that the Tenant has to make any such application in order to comply with:
 - (i) the Site Licence in so far as it relates to the Premises;
 - (ii) its obligations in this Lease;
 - (iii) the requirements of ONR and/or the HSE

the Tenant shall not make any application for planning permission or for other consents required under the Planning Acts in respect of the Premises without the prior written consent of the Landlord and (if required by the Site Licence) the ONR.

- (b) At its own expense to obtain and (if appropriate) renew any planning permission and any other consent and serve all necessary notices required for the carrying out by the Tenant of the Tenant's Use.
- (c) To notify the Landlord not less than five (5) Working Days prior to the submission of any application (and to provide any accompanying details) for any planning permission or other consents required under the Planning Acts.

3.9 Safety of buildings and equipment etc.

- (a) To keep the Premises including the buildings and any plant and equipment sited thereon in a safe and secure state and condition in accordance with good practice and working methods from time to time accepted in the nuclear industry.
- (b) Not to do or omit any act or thing whereby support from the Premises (and all buildings and structures on over in or under it) for the Adjoining Property (and all buildings and structures on over in or under it) is or may be withdrawn or diminished.
- (c) Not to permit the unauthorised escape discharge or leaching of any Hazardous Material from the Premises into the Adjoining Property or any other adjoining or neighbouring land or premises.

3.10 Repair

- (a) To keep in good repair and condition the Premises (damage by any of the Insured Risks excepted to the extent that the insurance money shall not have been rendered irrecoverable or insufficient because of some act or default of the Tenant or of any person deriving title under or through it or their respective servants agents or invitees) and to replace the Landlord's fixtures and fittings in the Premises which may have become beyond repair [provided that without prejudice to clause 3.10(a) the Tenant shall not be obliged to keep the parts of the buildings on the Premises that the Tenant is obliged by this clause 3.10 to repair (including any Shared Media) in any better state of repair and condition than is evidenced by the Schedule of Condition].
- (b) To ensure that the Adjoining Property shall not suffer any physical damage arising from any disrepair of the Premises.
- (c) To keep the parts of the Premises that have not been built upon tidy and clear of rubbish.
- (d) To keep the interior of the Premises maintained to a good standard of decorative order and finish [provided that the Tenant shall not be obliged to keep the interior of the Premises in any better state of decorative order and finish than is evidenced by the Schedule of Condition].
- (e) If there is any defect or want of repair in the parts of the Premises that the Tenant is obliged by this clause 3.10 to repair or in any of the Shared Media in the Premises promptly to comply with any notice of such defect or want of repair served by the Landlord on the Tenant and if the Tenant shall fail to comply with such notice within a reasonable period having regard to the nature of the defect to permit the Landlord to enter the Premises to remedy the defect or want of repair and in that event such proper costs of repair shall be borne by the Tenant insofar as they relate to the Premises and reimbursed to the Landlord (as a debt due) within 5 Working Days of demand and if such costs relate to the Shared Media such costs shall be shared between the Landlord and the Tenant in accordance with user of the relevant Shared Media.

3.11 Alterations

- (a) Save as provided in clause 3.11(b) below not to carry out any alterations to the Premises without the prior written consent of the Landlord.
- (b) Not to carry out any internal non-structural alterations without the Landlord's prior written consent which is not to be unreasonably withheld or delayed.

- (c) At the Expiry of the Term to remove such alterations and additions made to the Premises by the Tenant which the Landlord reasonably requires to be removed and in such respect if required to do so by the Landlord to restore and make good the Premises in a proper and workmanlike manner to the condition and design that existed before the alterations or additions were made with all services properly sealed off to the Landlord's satisfaction provided that the Tenant shall not be required to reinstate any alterations and/or additions that it has made to the Premises under any obligation pursuant to any Enactment.

3.12 Rights of entry onto the Adjoining Property

Not to enter onto the Adjoining Property to exercise any of the rights hereby granted except in accordance with the following conditions:-

- (a) to cause as little interference as possible to the Landlord and any other tenants licensees or occupiers of the Adjoining Property and forthwith to remedy any damage caused to the Adjoining Property or the contents thereof to the reasonable satisfaction of the Landlord and to pay the Landlord an amount equal to the cost of remedying any damage caused to the Adjoining Property by reason of such entry which is not remedied by the Tenant; and
- (b) to comply with all regulations regarding entry to the Adjoining Property made by the Landlord and notified to the Tenant from time to time.

3.13 Notices

Forthwith to give to the Landlord notice of (and a certified copy of) any notice permission direction requisition order or a proposal made by any competent authority and without delay to comply in all respects at the Tenant's cost with the provisions thereof.

3.14 Entry by the Landlord and the holder of any Site Licence

- (a) To permit the Landlord and the holder of any Site Licence at reasonable times on reasonable prior written notice (except in an emergency) to enter the Premises in order to:
 - (i) examine their state of repair;
 - (ii) ascertain that the obligations and conditions of this Lease have been observed;
 - (iii) take any measurement or valuation of the Premises;

- (iv) carry out surveys within and around the Premises in connection with any proposed de-licensing of the area of the Estate in which the Premises are situated;
- (v) rebuild renew cleanse alter test maintain repair inspect decommission and make connections to any part of the Premises the Estate or the Retained Estate including the Conducting Media;
- (vi) rebuild renew remove alter decommission or demolish any Adjoining Property where there is no reasonably practicable alternative to carrying out such work other than by gaining access to the Premises;
- (vii) enable the Landlord and the holder of any Site Licence to monitor control and direct the activities of the Tenant to the extent necessary to ensure that the Tenant's activities conform with the conditions of the Site Licence applicable to the Premises or the Landlord's Estate and with the requirements or conditions imposed by any Public Authority and such right shall be exercisable also by inspectors of the ONR, the HSE or the SEPA in the course of their duties (whether or not accompanied by representatives of the Landlord) and the Tenant shall permit any such entry pursuant to this clause 3.14(a)(vii) to take place at any time without notice;
- (viii) give effect to any other necessary or reasonable purpose;
- (ix) exercise the rights described in Part B of the Schedule.

PROVIDED THAT the Landlord and all others authorised to enter the Premises for such purposes shall comply with the requirements of clauses 3.15(b) and 3.15(c).

- (b) Except in respect of access by the ONR, HSE or the SEPA, any person entering the Premises shall cause as little inconvenience as possible to the Tenant and the activities carried out at the Premises and shall cause as little damage as possible to the Premises and the Tenant's fixtures and fittings and shall make good as soon as practicable at its own cost all damage so caused to the reasonable satisfaction of the Tenant and (subject to clause 3.14 of this Lease) the person entering shall keep confidential all information regarding the Tenant's or other occupier's business that is obtained and shall not disclose any such information save to the extent that disclosure may be required under any Enactment and any works that the Landlord is required to carry out to the Premises are done as quickly and efficiently as reasonably practicable.

- (c) Except in respect of access by the ONR, HSE or the SEPA, any such right shall be exercised by the person in all cases first consulting with the security staff of the Tenant and in attendance of the Premises and (save in the case of emergency only) shall be effected at reasonable hours only after giving reasonable notice which shall be at least 48 hours prior written notice to the Tenant and shall at all times comply with the Tenant's Entry Requirements.

3.15 Encroachments, obstruction and overloading

- (a) To preserve all rights of light and other servitudes belonging to the Premises and not to give any acknowledgement that they are enjoyed by consent.
- (b) Not to do or omit anything which might subject the Premises to the creation of any new servitude and to give notice to the Landlord forthwith of any encroachment which might have that effect.
- (c) Not to discharge any Hazardous Materials into any Conducting Media serving the Premises other than in accordance with any consents or licences required for such discharge or the Tenant Safety Requirements or as varied between the Landlord and the Tenant and to keep such Conducting Media clear and functioning properly insofar as they are within the Premises or (if outside the Premises) up to and including the agreed hand-over point.
- (d) Not to obstruct any requisite notice erected on the Premises including any erected by the Landlord in accordance with its powers under this Lease and not to obstruct any premises adjoining the Premises or any means of escape.
- (e) Not to overload or cause undue strain to the services of the Premises beyond the loadings and tolerances existing at the date of this Lease or notified to the Tenant in writing and not to suspend any weight from the ceilings or walls of the Premises which would exceed such loadings and tolerances.
- (f) Not to stop-up or darken the windows and other openings of the Premises.

3.16 User

- (a) Not to use the Premises:
 - (i) Otherwise than for the Tenant's Use;
 - (ii) For a sale by action or for any public meeting or any illegal offensive or immoral trade business or activity or for residential purposes; or
 - (iii) For any works involving the emission of ionising radiation other than naturally occurring radiation or for any purposes involving the bringing

on or keeping of radioactive materials or other Hazardous Substances at the Premises within the scope of any relevant enactments.

- (b) [Not to use the external areas of the Premises for any purposes except ancillary parking and access to buildings on the Premises as appropriate in accordance with the rights granted under this Lease unless otherwise permitted by this Lease]

<Check whether relevant>

3.17 Obligations affecting Landlord's Title to the Premises

To perform and observe all the obligations restrictions provisions and stipulations affecting the Landlord's title to the Premises and not to interfere with any rights servitudes or other matters affecting the Premises.

3.18 Regulations

- (a) To comply with any regulations made or varied from time to time by the Landlord and/or the holder of the Site Licence and notified in writing to the Tenant with regard to the safe and efficient running and management of the Premises and the Adjoining Property including (but without prejudice to the generality of the foregoing) regulations relating to security arrangements at the point(s) of access to the Adjoining Property and traffic control signs parking no waiting areas speed limits and safety arrangements or otherwise.
- (b) To conform (together with its agents, servants and all persons authorised by it) in all respects with the Tenant Safety Requirements.
- (c) To observe any restrictions on freedom of movement and access imposed on the Tenant its agents, employees and visitors upon freedom of movement and access to the Premises required to demonstrate the effectiveness of emergency plans on a licensed nuclear site in accordance with the provisions of the Nuclear Installations Act 1965.
- (d) To take all reasonable steps at all times during the Term to maintain the security of the Premises against entry by unauthorised persons.

3.19 [Decommissioning and radioactive waste management liabilities

- (a) Not to undertake (or omit to undertake) any operation or carry out (or omit to carry out) any act in or on the Premises which may materially increase the eventual decommissioning or radioactive waste management costs in respect of the Premises or any building that forms part of the Premises or to install any new plant or equipment or alter any existing plant or equipment in such a way

as to increase such costs without the prior approval in writing of the Landlord and the holder of any Site Licence (the giving of such approval being in the Landlord and the holder of the Site Licence's absolute discretion) and to comply with the terms of any agreement from time to time in force between the Landlord and the Tenant and any agreement from time to time in force between the holder of any Site Licence and the Tenant governing decommissioning and waste management liabilities]

3.20 Contamination

- (a) To decontaminate remediate or take such action as the Landlord may require to remove Hazardous Materials from the Premises or which may or is migrating leaching or escaping from the Premises.
- (b) Not to allow Hazardous Substances to migrate escape or be discharged from the Premises and in the event that such migration escape or discharge does occur the Tenant shall indemnify the Landlord and the Head Landlord against all costs claims damages expenses and any other liabilities arising out of or in connection with such migration escape or discharge.

3.21 Alienation

- (a) Subject to clause 6.15 and except as expressly permitted by clauses 3.21(f) or by consent given pursuant to clauses 3.21(b) 3.21(c) or 3.21(f) or 3.21(g) not to transfer assign convey sublet licence charge part with or share possession or occupation of the whole or any part of the Premises or hold the Lease as trustee agent or otherwise for the benefit of any third party
- (b) Not to assign (or agree to assign) the whole of the Premises without the consent of the Landlord (not to be unreasonably withheld) and the consent of the ONR provided that (without prejudice to the Landlord's right to withhold consent or to impose other conditions where it is reasonable to do so):
 - (i) the Landlord may withhold consent in the following circumstances:
 - (A) if the prospective assignee is a Group Company of the Tenant
or
 - (B) if in the reasonable opinion of the Landlord the prospective assignee is not of sufficient financial standing to enable it to comply with the Tenant's obligations in this Lease
 - (ii) the Landlord may give its consent subject to all or any of the following conditions:

- (A) the prospective assignee gives obligations to the Landlord to pay the Rent and observe and perform the Tenant's obligations in this Lease during the residue of the Term;
 - (B) if the Landlord reasonably requires such other guarantor or guarantors acceptable to the Landlord guarantee(s) to the Landlord the due performance of the prospective assignee's obligations in such terms as the Landlord may reasonably require; and
 - (C) any sum due from the Tenant to the Landlord under this Lease is paid and any material breach of the Tenant's obligations in this Lease is remedied.
- (c) Not to sublet (or agree to sublet) the whole of the Premises without the consent of the Landlord (not to be unreasonably withheld) and the consent of the ONR and in any event not unless:
- (i) the prospective subtenant has agreed with the Landlord to observe and perform:
 - (A) the tenant's obligations in the sublease, and
 - (B) the Tenant's obligations in this Lease (except for payment of the Rent)

during the term of the sublease
 - (ii) if the Landlord reasonably requires a guarantor or guarantors acceptable to the Landlord has guaranteed the performance by the subtenant of the obligation at 3.21(c)(i) above in such terms as the Landlord may reasonably require;
 - (iii) no premium is given or taken for the grant of the sublease;
 - (iv) any rent free period or other financial inducement given to the prospective subtenant is no greater than is usual at the time in all the circumstances;
 - (v) the rent payable under the sublease is not less than whichever is the greater of the Rent then payable under this Lease and the best rent reasonably obtainable for the sublease without a premium;
 - (vi) the sublease:
 - (A) is consistent with this Lease;

- (B) contains a rent reviewable at the same times and on the same terms as the Rent;
 - (C) contains undertenants obligations with the Landlord (as well as the underlessor) that (save as permitted under subclause (D) below) it will not assign sublet charge or part with or share possession or occupation of the whole or any part of the sublet premises;
 - (D) contains undertenants obligations with the Landlord (as well as the underlessor) not to assign or charge the whole or sublet the whole or part of the sublet premises without the consent of the Landlord (not to be unreasonably withheld) and the consent of the ONR; and
 - (E) has the consent of the Landlord (not to be unreasonably withheld) and the consent of the ONR.
- (d) Not without the consent of the Landlord (not to be unreasonably withheld) and the consent of the ONR to:
- (i) vary the terms of any sublease;
 - (ii) agree any review of the rent under any sublease; or
 - (iii) accept a surrender of all or any part of any sublet premises (where such consent is necessary).
- (e) To enforce against any subtenant the provisions of any sublease and to operate the rent review provisions in any sublease and not to permit any reduction of the rent payable by any subtenant;
- (f) Subject to prior written consent of the [Landlord (such consent not to be unreasonably withheld or delayed) and the] ONR submitted by way of an application via the Landlord or (where the Landlord is not the Site Licence Holder in respect of the Premises) the relevant Site Licence Holder the Tenant may (on giving prior written notice to the Landlord containing all relevant information) share occupation of the whole or part of the Premises with a Group Company of the Tenant on condition that the relationship of landlord and tenant is not created and such occupation ceases immediately if the occupier ceases to be a Group Company of the Tenant;

[Commentary: Consent of the ONR is mandatory]

- (g) Not to charge (or agree to charge) the whole or any part of the Premises without the consent of the Landlord (not to be unreasonably withheld) and the consent of the ONR submitted by way of an application via the Landlord or (where the Landlord is not the Site Licence Holder in respect of the Premises) the relevant Site Licence Holder;

[Commentary: Consent of the ONR is mandatory]

- (h) To give to the Landlord' solicitors within 14 days written notice of any assignment underletting charge or other devolution of any interest in the Premises together with a certified copy of the relevant documentation and a reasonable registration fee of not less than £50.00 plus VAT; and
- (i) From time to time on demand to provide the Landlord with such details as the Landlord may reasonably require of all derivative interests in the Premises.

3.22 Keyholders

To register with the Landlord the name and home address and home telephone number (and any mobile telephone number) of at least two keyholders of the Premises.

3.23 Security

- (a) To adopt the same security procedures and standards as are adopted from time to time by the Landlord and/or the holder of any Site Licence to comply with any Enactment or Regulatory Requirement and any direction from any Public Authority for the safe-keeping of Nuclear Material (as described in the Nuclear Installations Act 1965) provided that the Landlord or the holder of any Site Licence shall (as appropriate) notify the Tenant of such procedures and standards and of any modifications to them.
- (b) Without prejudice to any other obligations contained in this Lease, to provide particulars of all employees, agents and contractors to the Landlord and the holder of any Site Licence in such format reasonably requested by each of them for security clearance purposes and to ensure that its employees, agents, contractors and visitors observe any restrictions or regulations relating to access to the Adjoining Property (or any part of it) which may be imposed by the holder of any Site Licence from time to time in the interests of security (which for the avoidance of doubt shall include restrictions on entry by nationals of specified countries) and to ensure that such employees, agents, contractors and visitors carry such security passes or identity documents as the Landlord or the holder of any Site Licence may prescribe and further to comply with stop and search procedures authorised or prescribed by the Landlord or the holder of any Site Licence from time to time in the interest of the security of the

Adjoining Property and the Premises whether such procedures are implemented by the Civil Nuclear Constabulary or any other guard force authorised by the Landlord or the holder of any Site Licence.

- (c) To take all practicable steps at all times during the Term to maintain the security of the Premises against entry onto them by unauthorised persons.

3.24 Landlord's costs

- (a) To pay all costs and demands properly incurred by the Landlord:-
 - (i) any steps taken in relation to or in reasonable contemplation of or in connection with the preparation and service of a schedule of dilapidations during or after the expiration of the Term; and
 - (ii) in connection with or procuring the remedying of any breach of obligation on the part of the Tenant contained herein.
- (b) To pay all costs and demands reasonably incurred by the Landlord in relation to any application for consent required or made necessary by this Lease (such costs to include reasonable management fees and expenses) whether or not it is granted (except in cases where the Landlord is obliged not to withhold its consent unreasonably and the withholding of its consent is held to be unreasonable), or the application is withdrawn.

3.25 Additional costs

To pay to the Landlord within 5 Working Days of demand the costs properly incurred by the Landlord in connection with compliance with all Enactments and with the Site Licence in relation to the Premises including fees payable to the ONR, the HSE, the SEPA and any other government ministry or department.

3.26 Nuisance

Not to do anything in or about the Premises and/or use the Premises for any purpose which may be or become a nuisance or which may cause damage to or interfere in any way with the Adjoining Use the Estate the Retained Estate or the Adjoining Property or any plant and equipment on the Adjoining Property or the rights granted to the Landlord or the Head Landlord herein Provided That the continuing lawful use of the Premises for the Tenant's Use or uses ancillary thereto shall not be or be deemed to be a breach of this clause 3.26 so long as the Tenant carries out such use in a responsible manner having regard to the Adjoining Use the Estate the Retained Estate and the Adjoining Property and the plant and equipment on the Estate the Retained Estate or the Adjoining Property.

3.27 Yielding up

- (a) At the Expiry of the Term quietly to yield up the Premises to the Landlord with vacant possession removing all goods and belongings and in compliance with all relevant Enactments and requirements of any Public Authority relating thereto and in accordance with the obligations by the Tenant contained in this Lease or in any previous tenancy of the Premises in connection with which the Tenant was permitted to carry out alterations to the Premises subject to a liability to reinstate but did not reinstate the alterations on the determination of that tenancy and to make good (if required by the Landlord) any damage so caused in a proper and workmanlike manner to the Landlord's reasonable satisfaction (having removed the tenant's fixtures and fittings from the inactive areas of the Premises (and in removing such fixtures and fittings the Tenant shall make good any damage thereby caused to the Premises)).

3.28 Defective premises

To give notice forthwith to the Landlord of any defect in the Premises which might give rise to:

- (a) an obligation on the Landlord to do or refrain from doing anything in relation to the Premises; or
- (b) a breach of the Site Licence.

and at all times to display and maintain all notices which the Landlord may from time to time reasonably require to be displayed at the Premises in relation to their state of repair and condition.

3.29 Insurance and fire fighting precautions and equipment

- (a) Not to do or omit anything by which any insurance policy (particulars of which shall have been provided to the Tenant) relating to the Premises and/or the Adjoining Property or any part of them becomes void or voidable or by which the rate of premium on such policy may be increased.
- (b) To take all practicable and reasonable precautions to guard against the risk of fire to the reasonable satisfaction of the Landlord and (at the Tenant's expense) to conform and comply with any requirements of any competent authority relating to the prevention of fire on or at the Premises.
- (c) To comply with all requirements and reasonable recommendations of the insurers and to provide and maintain unobstructed appropriate operational fire fighting equipment and fire notices on the Premises.

- (d) To notify the Landlord and the Head Landlord forthwith of:
 - (i) any incidence of any Insured Risk on the Premises and of any other event which ought reasonably to be brought to the attention of insurers;
 - (ii) the insurable value of any fixture installed in the Premises by the Tenant or any person claiming under or through the Tenant.
- (e) That it has prior to the execution of this Lease disclosed to the Landlord and the Head Landlord in writing any matter known to the Tenant which might affect the decision of any insurance underwriter to underwrite any of the Insured Risks and that it will disclose particulars of any such matter to the Landlord and the Head Landlord in writing forthwith on becoming aware of it.
- (f) That if at any time the Tenant or any person claiming under or through it shall be entitled to the benefit of any insurance of the Premises to cause all money paid under such insurance to be applied in making good the loss or damage in respect of which it was paid.
- (g) If the whole or any part of the Adjoining Property and/or the Premises is damaged or destroyed by any of the Insured Risks at any time during the Term and the insurance money under any insurance policy effected by the Head Landlord is rendered wholly or partially irrecoverable because of some act or default of the Tenant or any person deriving title under or through it or their respective servants agents or invitees forthwith to pay the Head Landlord the whole or a proper proportion of the amount of the insurance money so irrecoverable.

3.30 Indemnity

To indemnify the Landlord and the Head Landlord against all expenses proceedings costs claims damages demands and any other liability or consequence arising out or in respect of any breach of any of the Tenant's obligations under this Lease (including all costs reasonably incurred by the Landlord or the Head Landlord in an attempt to mitigate any such breach) or of any act omission or negligence of the Tenant or any person at the Premises expressly or impliedly with the Tenant's authority.

3.31 Land Registers of Scotland

If required by the Landlord to the extent the grant (or any transfer) of this Lease and of any right appurtenant to it requires to be completed by registration pursuant to the Land Registration (Scotland) Act 1979 in order to operate at law, to comply with the relevant registration requirements and, as soon as practicable, to provide the Landlord and the

Head Landlord with a quick copy of the title sheet from the Land Register of Scotland evidencing compliance with them.

3.32 Observe Head Lease

To observe and perform all the obligations on the part of the tenant contained in the Head Lease so far as they relate to the Premises and (without prejudice to any Tenant obligations in this Lease) are not expressly assumed by the Landlord in this Lease.

3.33 Indemnity for breach of Head Lease

To indemnify and keep indemnified the Landlord and the Head Lease against all damages losses costs expenses actions demands proceedings claims and liabilities made against or suffered or incurred by the Landlord or the Head Landlord arising directly or indirectly out of any breach by the Tenant of the obligation to observe the Head Lease set out in clause 3.32.

3.34 Permit access to Landlord

To permit the Landlord to enter upon the Premises for any purpose that is in the opinion of the Landlord necessary to enable it to comply with the obligations on the part of the tenant contained in the Headlease or the Head Lease or to avoid the forfeiture thereof notwithstanding that the obligation to comply with such obligations may be imposed on the Tenant by this Lease.

3.35 Permit access to Head Landlord

To permit the Head Landlord and all persons authorised by it to enter the Premises for the purposes specified and upon the terms contained in the Headlease or the Head Lease as if the provision in the Headlease and the Head Lease were incorporated in this Lease.

3.36 Costs

Where the Tenant makes an application to the Landlord under the Lease for consent and the consent of the Head Landlord is also required under the Head Lease to pay on an indemnity basis:

- (a) all costs and other expenses properly incurred by the Landlord in relation to that application including seeking the Head Landlord's consent in accordance with clause 4.8 whether that application is granted refused offered subject to any qualification or withdrawn.
- (b) professional advice obtained by the Landlord in relation to that application.

- (c) the costs and other expenses of the Head Landlord in relation to that application.

4 LANDLORD'S OBLIGATIONS

The Landlord undertakes with the Tenant during the period whilst it is the Landlord and without liability in respect of any subsequent period:-

4.1 Quiet enjoyment

Provided that the Tenant has complied with its obligations contained in this Lease the Tenant shall and may peaceably and quietly hold and enjoy the Premises during the Term without any disturbance or interruption by the Landlord or any person lawfully claiming through under or in trust for it and the landlord hereby grants warrandice.

4.2 Rights of entry

Not to enter the Premises in exercise of any of the rights hereby reserved except in accordance with the condition that the Landlord causes as little interference as reasonably practicable to the Tenant and as soon as reasonably practicable remedies any damage caused to the Premises or the contents thereof to the reasonable satisfaction of the Tenant and pays to the Tenant an amount equal to the cost of remedying any such damage to the Premises if the same is not remedied by the Landlord within a reasonable period.

4.3 Services

To comply with its obligations set out in Part D of the Schedule subject as therein provided.

4.4 Insurance

- (a) To use reasonable endeavours to procure that the Premises are insured against the Insured Risks in a sum which in the Head Landlord's opinion is their full replacement cost (but not necessarily the facsimile reinstatement cost).
- (b) On request to supply the Tenant (but not more frequently than once in any period of twelve months) with evidence of such insurance.
- (c) If and whenever during the Term the Premises (except as aforesaid) are damaged or destroyed by an Insured Risk and to the extent that payment of the insurance monies is not refused because of any act neglect default or omission of the Tenant or of any person deriving title under or through the Tenant or their respective servants agents and invitees the Landlord will use reasonable endeavours to procure that the Head Landlord (with all convenient speed) takes

the necessary steps to obtain any requisite planning permissions and consents and if they are obtained to lay out the money received from the insurance of the Premises (except sums in respect of public liability and employer's liability and loss of rent) in replacing (but not necessarily in facsimile reinstatement) the damaged or destroyed parts (except as aforesaid) as soon as reasonably practicable **PROVIDED ALWAYS THAT** the Head Landlord shall not be liable to carry out the replacement if it is unable (having used all reasonable endeavours) to obtain every planning permission and consent necessary to execute the relevant work in which event the Head Landlord shall be entitled to retain all the insurance money received by it.

- (d) To use reasonable endeavours to procure that the interest of the Tenant is noted on the Head Landlord's policy and that the insurers provide a waiver of their right of subrogation against the Tenant.

4.5 Landlord's Obligations

To use best endeavours to maintain and comply with any Site Licence insofar as it applies to the Premises the Adjoining Premises and the Estate.

4.6 To pay rent

To pay the rent reserved by the Head Lease and to comply with the obligations set out in clause 4.4 thereof to the extent they apply to property other than the Premises.

4.7 To enforce obligations

Upon receiving notice from and at the expense of the Tenant to take all reasonable steps to enforce the obligations on the part of the Head Landlord contained in the Head Lease.

4.8 Head Landlord's consent

To take all reasonable steps but at the cost of the Tenant to obtain the consent of the Head Landlord whenever the Tenant makes an application for any consent required hereunder where the consent of the Landlord and the Head Landlord is needed by virtue of this Lease or the Head Lease in those cases where the Landlord is willing to give its consent or where the Landlord's refusal to give such consent is held by the court to be unreasonable.

5 GUARANTOR'S OBLIGATIONS

The Guarantor obligations with the Landlord in the terms set out in Part F.

6 PROVISOS

PROVIDED ALWAYS and it is agreed and declared between the Parties:-

6.1 Re-entry

If at any time during the term of this Lease any of the following events shall occur:-

- (a) the whole or part of the rents shall be unpaid for 14 days after becoming payable (whether the rents have been demanded or not); or
- (b) the Tenant is in breach of any of the terms or conditions of this Lease; or
- (c) if the Tenant or any guarantor of the Tenant's obligations (or if more than one person any one of them):
 - (i) being a company is the subject of a petition or issues a notice convening a meeting to consider a resolution for its winding up or enters into liquidation whether voluntarily (except for reconstruction or amalgamation of a solvent company on terms previously agreed by the Landlord) or compulsorily or has a provisional liquidator or a receiver (including an administrative receiver) appointed or a resolution is passed or any other step is taken by the company or its directors for the appointment of an administrator, or an administrator is appointed, or a petition or application for an administration order is presented in relation to the company or a petition for one or of a voluntary arrangement or a proposal for one under Part I Insolvency Act 1986 or having been registered with unlimited liability it acquires limited liability; or
 - (ii) being a company incorporated outside the United Kingdom is the subject of any proceedings or events analogous to those referred to in clause (c)(i) in the country of its incorporation or elsewhere or shall otherwise cease for any other reason to be or to remain liable under this Lease or shall cease for any reason to maintain its corporate existence (other than by merger consolidation or other similar corporate transaction in which the surviving corporation assumes or takes over the liabilities of the Tenant under this Lease);
 - (iii) being an individual is the subject of a bankruptcy petition or bankruptcy order or of any application or order or appointment under section 253 or section 273 or section 286 Insolvency Act 1986 or the Bankruptcy (Scotland) Act 1985 or otherwise becomes bankrupt or insolvent or dies; or

- (iv) enters into or makes any proposal to enter into any arrangement or composition for the benefit of his creditors.

The Landlord may at any time thereafter re-enter the Premises or any part thereof in the name of the whole and thereupon this demise shall absolutely cease and determine but without prejudice to any rights and remedies of the Landlord in respect of any antecedent breach by the Tenant of any of the obligations contained in this Lease.

6.2 Relocation of Conducting Media

- (a) At any time during the Term the Landlord may by giving reasonable notice in writing addressed to the Tenant notify the Tenant that the Landlord (at its own cost) is to relocate or re-position any or all of the Conducting Media serving the Premises (whether shared or exclusive) and which are situated in on or over or through the Adjoining Property;
- (b) where both Parties cease the use of the Shared Media at the same time the cost of removal and making safe in accordance with all relevant Enactments Regulatory Requirements and requirements of all Public Authorities shall be shared according to each Party's respective use of the same.

6.3 [Common Parts

The Common Parts shall at all times be subject to the exclusive control and management of the Landlord who may from time to time (if it shall be necessary or reasonable to do so for the benefit of the Building or otherwise in keeping with the principles of good estate management) alter stop up or divert any of them (leaving available for use by the Tenant reasonable and sufficient means of access to egress from and servicing of the Premises)]

<Relevant where Premises is part of a building only>

6.4 Notices

- (a) Unless otherwise stated in this Lease, any notice, request or other communication to be made by one party to the other under or in connection with this Lease shall be in writing and shall be delivered personally or sent by first class post or courier to that other party as follows:

- (i) if to the Tenant to:

Address: []

(marked for the attention of []); and

(ii) if to the Landlord to:

Address: []

(marked for the attention of []) with a copy to be addressed to and sent to the Landlord's agent as notified to the Tenant from time to time;

or such other persons and addresses as may from time to time be notified in writing by one party to the other.

(b) Unless otherwise stated in this Lease, a notice, request or other communication under or in connection with this Lease shall be deemed delivered:

(i) if delivered personally, when left at the address referred to in clause 6.4(a) above; and

(ii) if sent by first class mail, two Working Days after the date of posting.

6.5 No implied servitudes

Neither the granting of this Lease nor anything herein contained shall by implication of law or otherwise operate or be deemed to confer upon the Tenant any servitude right or privilege whatsoever over or against the Adjoining Property which would or might restrict or prejudicially affect the future rebuilding alteration or development of the Adjoining Property save for the rights expressly granted to the Tenant hereunder and the Landlord shall have the right at any time to make such alterations to or pull down and rebuild or redevelop the whole or any part of the Adjoining Property as it may deem fit without obtaining any consent from or making any compensation to the Tenant even if the acts of the Landlord could be construed as a breach of any of the Landlord's obligations or would interfere with the rights granted to the Tenant in Part A of the Schedule.

6.6 Exclusion of statutory compensation

Except where any statute prohibits or modifies the right of the Tenant to compensation being reduced or excluded by agreement, the Tenant shall not be entitled, on quitting the Premises or any part of them, to claim any compensation from the Landlord.

6.7 Tenant's fixtures and fittings

The Tenant's fixtures and fittings (and any plant and equipment replacing the same) are and shall remain the sole and absolute property of the Tenant.

6.8 Limitation of liability

- (a) Save as expressly set out in this Lease neither the Landlord nor the Tenant or any of its officers employees agents or contractors shall have any liability whatever to the other Party for any indirect or consequential loss (including loss of profit, loss of production, loss of contract or loss of goodwill and any liability arising out of any liability of the other Party to any other person) whether resulting from negligence, breach of contract or otherwise on the part of the Landlord or the Tenant (as the case may be) or any of its officers, employees agents or contractors in connection with this Lease.
- (b) Nothing in this Lease shall have the effect of excluding or restricting the liability of either party or of its officers, employees or agents for death or personal injury arising out of such person's negligence.
- (c) Each Party to this Lease agrees that the other Party (in this clause referred to as "relevant party") holds the benefit of clauses 6.8(a) to 6.8(b) above as trustee for itself and for its officers, employees and agents provided that in enforcing those provisions the relevant Party shall be obliged to take any such steps as it may in its absolute discretion think fit.
- (d) The Landlord shall not be liable for (without prejudice to clause 6.1(c)(iv)) any stoppage or severance affecting any of the Shared Media due to any cause beyond the control of the Landlord (acting reasonably).

6.9 Rent cesser

If and whenever during the Term:

- (a) the Premises (other than the Tenant's plant and equipment and trade fixtures) or any rights granted to the Tenant by this Lease are damaged or destroyed by any of the Insured Risks so that the Premises are incapable of occupation and use; and
- (b) the insurance of the Premises or the payment of any insurance money has not been vitiated by the act neglect default or omission of the Tenant or of any person deriving title under or through the Tenant or their respective servants agents and invitees

the rents reserved by this Lease or a fair proportion of them according to the nature and extent of the damage sustained shall be suspended and cease to be payable from the date of destruction or damage until whichever is the earlier of the date on which the Premises (other than as aforesaid) are made fit for substantial occupation and use and the date of expiry of a period of three years from the date of damage or destruction.

6.10 Determination

- (a) If the Premises shall be so destroyed or damaged as to be substantially unfit for occupation and use and remain so for a period of at least two years and six months from the date of damage or destruction either the Landlord or the Tenant may by not less than six months' notice given to expire at any time determine this Lease and from the giving of such notice the Landlord's obligations under clause 4.4(c) shall cease to apply and on the expiry of such notice this Lease shall determine without prejudice to any rights or remedies which may then have accrued in respect of any breach of any of the obligations or provisions contained in this Lease and the Head Landlord shall be entitled to retain the insurance money.
- (b) If the Premises shall be so destroyed or damaged as to be substantially unfit for occupation and use and the Landlord receives notice from the Head Landlord requiring this Lease to be terminated the Landlord shall serve on the Tenant a notice to terminate this Lease immediately following any request to do so by the Landlord or the Head Landlord and from the giving of such notice the Landlord's obligations under clause 4.4(c) shall cease to apply and on the expiry of such notice this Lease shall determine without prejudice to any rights or remedies which may then have accrued in respect of any breach of any of the obligations or provisions contained in this Lease and the Head Landlord shall be entitled to retain the insurance money.

6.11 No planning warranty

Nothing contained in this Lease shall imply or warrant that the Premises may (whether under statute or otherwise) be used for the Tenant's Use.

6.12 Construction

This Lease is governed by and shall be construed in accordance with Scottish law.

6.13 Suspension of occupation and determination of the Term by Landlord

- (a) If at any time during the Term the Head Landlord the Landlord or the holder of the Site Licence requires possession of the Premises in order to:
 - (i) comply with the provisions of any Enactment and/or the Site Licence; or
 - (ii) comply with the proper requirements of any Public Authority and/or any Regulatory Requirement; or
 - (iii) (where the Secretary of State certifies that possession is urgently required) carry out repairs (whether on the Premises or elsewhere)

which are needed for the proper operation of the Adjoining Property or for any other proper purpose;

then the Landlord may either:

- (iv) terminate this Lease by giving written notice to the Tenant ("**Termination Notice**") and upon the issue of such notice by the Landlord this Lease shall immediately cease and determine but without prejudice to any rights either Party may have against the other for any antecedent breach; or
 - (v) serve a notice in writing on the Tenant ("**Suspension Notice**") suspending from the date set out in the notice the Tenant's right to occupy and the Landlord's obligation to give quiet enjoyment of the whole or part of the Premises.
- (b) The Landlord shall use all reasonable endeavours to give the Tenant at least 14 days warning that it intends to serve a Termination Notice or a Suspension Notice on the Tenant but the Parties agree that in an emergency neither the Head Landlord nor Landlord shall not be obliged to give any warning.
- (c) If the Head Landlord or the Landlord serves a Suspension Notice on the Tenant then:
- (i) the Tenant's right to occupy and the Landlord's obligation to give quiet enjoyment of the whole or such part of the Premises (as specified by the Landlord) shall be suspended and the rent first reserved by this Lease (or a fair proportion of them as specified by the Landlord) shall be suspended and cease to be payable in both cases from the date specified in the Suspension Notice until the date of the expiry of that notice served by the Head Landlord or the Landlord pursuant to sub-clause (ii) of this sub-clause (c);
 - (ii) the Head Landlord or the Landlord (as the case may be) shall give the Tenant not less than 10 Working Days prior written notice that it no longer requires possession of the Premises and on the expiry of such notice the suspension of the Tenant's right to occupy and the Landlord's obligation to give quiet enjoyment of the Premises shall be lifted;
 - (iii) if the Head Landlord or the Landlord (as the case may be) does not serve a notice pursuant to sub-clause (ii) of this sub-clause (c) within 2 years of the date of the notice served by the Head Landlord or the Landlord (as the case may be) pursuant to clause 6.13(a)(v) then the

Tenant may by not less than 6 months' notice given to expire at any time determine this Lease and on the expiry of such notice this Lease shall determine without prejudice to any rights or remedies which either Party may have incurred against the other in respect of any breach of any of the obligations or provisions contained in this Lease.

6.14 Construction (Design and Management) Regulations 2007

- (a) In this clause:
 - (i) the expression "**Regulations**" means the Construction (Design and Management) Regulations 2007 and any expressions appearing in this clause which are defined in the Regulations have the same meaning; and
 - (ii) the expression "**relevant work**" means any construction work which is undertaken by the Tenant or by a person claiming under it pursuant to an obligation or a right (whether or not requiring the Landlord's consent) under this lease and for the purposes of the Regulations the Tenant irrevocably acknowledges that it, and not the Landlord, arranges the design, carrying out and construction of relevant work.
- (b) The Tenant irrevocably acknowledges that it will be the only client in respect of any relevant work.
- (c) Before any relevant work is commenced in respect of which the Tenant shall act as agent on behalf of the Landlord the Tenant shall make a written election that it is to be treated as the only client in respect of the relevant work for the purposes of the Regulations and give a copy of the election to the Landlord.
- (d) To the extent that the Landlord may be a client for the purposes of the Regulations in relation to the relevant work the Landlord agrees to the written election by the Tenant.
- (e) The Tenant shall:
 - (i) comply with its obligations as a client for the purposes of the Regulations;
 - (ii) ensure that the CDM co-ordinator and the principal contractor and any other duty holders that it appoints in relation to the relevant work comply with their respective obligations under the Regulations;

- (iii) liaise with the CDM co-ordinator to enable the CDM co-ordinator to assist the Tenant in performing the Tenant's duties as client under the Regulations;
- (iv) [ensure that all relevant documents relating to the relevant work are placed in the health and safety file for the Premises by the CDM co-ordinator in accordance with the Regulations;]

<Lease of whole of a building>

- (v) [maintain the health and safety file for the Premises in accordance with the Regulations and give the health and safety file to the Landlord at the end of the term of the Lease; and]

<Lease of whole of a building>

- (vi) [allow the Landlord and its surveyors to enter the Premises to inspect the health and safety file and at its own cost promptly supply the Landlord with copies of it or any of the documents in it.]

<Lease of whole of a building>

- (vii) [at completion of the construction phase of the relevant work
 - (A) ensure that the CDM co-ordinator gives the Landlord all documents relating to the relevant work that are required under the Regulations to be kept in the health and safety file for the Premises; and
 - (B) ensure that the CDM co-ordinator checks that the documents are kept in the health and safety file or that the CDM co-ordinator updates the health and safety file for the Premises].

<Lease of part of a building>

- (f) [the Landlord shall co-operate with the CDM co-ordinator to the extent necessary to allow the CDM co-ordinator either to check that the documents relating to the relevant work are kept in the health and safety file for the Premises or to update the health and safety file for the Premises].

<Lease of part of a building>

- (g) The provisions of this clause shall apply notwithstanding that any consent issued by the Landlord in respect of any relevant work does not refer to the said provisions or to the Regulations.

6.15 Consents

In the event of the ONR or the Head Landlord refusing consent to an application of the Tenant including but not limited to an application to assign sublet charge or otherwise dispose of the Lease or the Premises or any part then the withholding of such consent by the Landlord shall be deemed to be reasonable.

6.16 Third Party Determination

- (a) Where this Lease provides for Third Party Determination the matter for determination shall be referred at the Landlord's option either to a single arbitrator acting in accordance with the Arbitration (Scotland) Act 2010 or to an independent expert acting as an expert;
- (b) The arbitrator or the expert (as the case may be) shall be agreed between the Landlord and the Tenant or in the absence of agreement nominated on the application of either party by the President of the Royal Institute of Chartered Surveyors Scotland;
- (c) If the arbitrator or expert (as the case may be) fails to make any determination as to fees they shall be borne equally between the Landlord and the Tenant.

7 EARLY TERMINATION

7.1 [Either the Landlord or the Tenant] [The Landlord] [The Tenant] may determine this Lease on [the] [any] Break Date by serving on the [other party][Tenant] [Landlord] written notice prior to [the] [any] [the relevant] Break Notice Date [specifying the proposed Break Date]

7.2 This Lease shall only determine as a result of notice served by the Tenant under clause 7.1 if on the [relevant] Break Date:

- (a) the Tenant gives vacant possession of the Premises to the Landlord; and
- (b) the Tenant is not in material breach of any of its obligations in this Lease; and
- (c) there are no arrears of Rent

7.3 On Determination the Tenant shall deliver to the Landlord the original of this Lease and any counterpart underleases and all other title documents relating to the Premises.

7.4 [If the Landlord serves notice of determination under clause 7.1 then on the Break Date the Tenant shall give vacant possession of the Premises].

7.5 The Landlord may in its absolute discretion waive compliance with all or any of the conditions or obligations set out in clauses 7.2 [and] 7.3[and 7.4] but unless otherwise

expressly agreed in writing such waiver shall not relieve the Tenant from liability to comply with the relevant condition or obligation.

7.6 If the provisions of this clause 7 are complied with then on the Break Date this Lease shall determine but without prejudice to the rights of either party in respect of any previous breach by the other.

7.7 The Landlord may determine this Lease at any time after the date of this Lease on not less than 3 months prior written notice in the event that the Premises are Dedesignated. Upon expiry of such notice upon which the Term shall immediately cease and determine but without prejudice to any rights either party may have against the other for any antecedent breach.

8 CONFIDENTIALITY

8.1 Confidential Information

Subject to clauses 8.2 to 8.8 below, each party shall hold in confidence all documents, materials and other information, whether technical or commercial, supplied by or on behalf of another party (including all documents and information supplied in the course of any dispute resolution procedure to which a dispute is referred in accordance with this Lease) and shall not except with the written agreement of the party that supplied the information publish or otherwise disclose the same otherwise than as expressly provided for in this Lease unless or until the recipient party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of this Lease, whereupon to the extent that it is in the public domain this obligation shall cease.

8.2 Disclosure by the Landlord or the Site Licence Holder

The Landlord and/or the holder of any Site Licence may disclose any and all information acquired by it under or pursuant to this Lease (the "**Information**") to:

- (a) the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, Greater London Landlord or any department, officer, agent, representative, employee, consultant or adviser of any of them;
- (b) the Regulators;
- (c) the extent required by applicable Law or pursuant to an order of any court of competent jurisdiction;

- (d) bidders who have pre-qualified to participate in any relevant forthcoming tender process upon obtaining an undertaking of confidentiality equivalent to that contained in clause 8.1;
- (e) insurers upon obtaining an undertaking of confidentiality equivalent to that contained in clause 8.1;
- (f) consultees under the Energy Act; and/or
- (g) any department, officer, agent, representative, employee, consultant or adviser of any of the entities referred to in clause 8.2(a) to 8.2(f) above subject, in the case where the entity in question would be required to provide an undertaking of confidentiality equivalent to that contained in clause 8.1, to obtaining such undertaking of confidentiality.

8.3 So far as is practicable, the Landlord and/or the holder of any Site Licence shall give the Tenant reasonable notice of any proposed disclosure pursuant to clause 8.2.

8.4 Notwithstanding the provisions of clause 8.2, the Landlord and/or the holder of any Site Licence may with the consent of the Tenant (not to be unreasonably withheld) further disclose the Information to persons not referred to in clause 8.2 .

8.5 Any determination as to whether it is reasonable for the Tenant to withhold its consent to disclosure under clause 8.2 above shall have regard to:

- (a) compliance with the Landlord's and (where relevant) the holder of any Site Licences statutory functions and duties, including in particular the promotion of effective competition and value for money;
- (b) relevant Government policy;
- (c) the requirement to maintain security;
- (d) the commercial sensitivity of the information
- (e) the public interest; and
- (f) the requirement to maintain openness and transparency.

8.6 Publication

- (a) The Landlord and/or the holder of any Site Licence may publish in such form and at such times as it sees fit such information as the Landlord reasonably requires to publish having regard to the list of considerations set out in clause 8.5 above, including information it includes in its respective annual report.

- (b) The Landlord and/or the holder of any Site Licence shall give the Tenant reasonable notice of any proposed publication pursuant to clause 8.6(a).

8.7 Disclosure by the Tenant

The Tenant may disclose without the consent of the Landlord any and all information acquired by it under or pursuant to this Lease save for information which is judged by the ONR to be security sensitive (unless the recipient of information pursuant to this clause 8.7 holds all relevant security clearances) to:

- (a) the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, Greater London Landlord or any other local Landlord;
- (b) the Regulators;
- (c) the extent required by applicable Law or pursuant to an order of any court of competent jurisdiction;
- (d) insurers, upon obtaining an undertaking of confidentiality equivalent to that contained in clause 8.1;
- (e) professional advisers, upon obtaining an undertaking of confidentiality equivalent to that contained in clause 8.1; and
- (f) any department, officer, agent, representative, employee, consultant or adviser of any of the entities referred to in sub-clauses (a) to (e) of this clause above subject, in any case where the entity in question would be required to provide an undertaking of confidentiality equivalent to that contained in clause 8.1, to obtaining such an undertaking of confidentiality.

8.8 Freedom of Information Act

This clause 8 is subject to the parties' respective obligations under the Freedom of Information Act 2000, as amended (if any).

9 REGISTRATION

The parties hereto consent to the registration of these presents for preservation and execution **IN WITNESS WHEREOF** these presents, the preceding ● pages and the schedule consisting of five parts annexed as relative hereto are subscribed as follows:

They are executed on behalf of the said Magnox Limited

at

on

by

Print Full Name

Director/Secretary/Authorised Signatory*

Print Full Name

Director/Secretary/Authorised Signatory/Witness*

Witness address (if applicable):

They are executed on behalf of the said ●

at

on

by

Print Full Name

Director/Secretary/Authorised Signatory*

Print Full Name

Director/Secretary/Authorised Signatory/Witness*

Witness address (if applicable):

They are executed on behalf of the said ●

at

on

by

Print Full Name

Director/Secretary/Authorised
Signatory*

Print Full Name

Director/Secretary/Authorised
Signatory/Witness*

Witness address (if applicable):

This is the Schedule referred to in the foregoing Sublease between Magnox Limited and

[]

Part A

Servitudes and rights in the nature of servitudes granted to the Tenant

- 1 The right to the free passage and running of Utilities from time to time benefiting the Premises through the Conducting Media which now or during the Term pass through in or over the Adjoining Property.
- 2 The right on giving not less than 3 Working Days prior written notice to the Landlord (save in case of emergency) (such notice being given to such person as the Landlord may from time to time direct) and subject to compliance with the Site Licence and such conditions as the Landlord may reasonably impose (which may include conditions as to route to be used and supervision of such entry by the Landlord) to enter on such parts of the Adjoining Property as is necessary in order for the Tenant to comply with its obligations under this Lease and insofar as it is not possible to comply with its obligations under this Lease from within the Premises.
- 3 To the extent that the Landlord has the power to grant such right and subject to the terms of the Site Licence and subject to the terms of any contract in relation to the provision of Utilities the right (in common with the Landlord and all others authorised by the Landlord from time to time) to connect into and to receive Utilities through the Conducting Media of the Landlord now or hereafter at the Premises.
- 4 The right to use (in common with the Landlord and all those authorised by it) such roads accessways and pathways over and upon the Adjoining Property as notified by the Landlord to the Tenant from time to time for the purposes of access to and from the Premises only.
- 5 [The right to use such car parking spaces located on the Adjoining Property as the Landlord shall from time to time direct].
- 6 [The right at all times in connection with the Permitted Use for the Tenant its servants and duly authorised agents invitees and visitors to use the Common Parts over such routes as the Landlord in its absolute discretion shall from time to time designate]

<Relevant where Premises is part of a building only>

Part B

Servitudes and rights in the nature of servitudes excepted and reserved to the Landlord

- 1 The right to the free passage and running of Utilities now benefiting the Adjoining Property through the Conducting Media which now or at any time during the Term pass through in or over the Premises.
- 2 The right on giving reasonable prior written notice to the Tenant (save in case of emergency) to enter the Premises in order to inspect test maintain repair operate alter remove replace and renew:-
 - 2.1 the Conducting Media;
 - 2.2 the Adjoining Property and the buildings and structures thereon;
 - 2.3 any Conducting Media laid pursuant to paragraph 4 of Part A of this Schedule.
- 3 The right at all times to enter the Premises for any other purpose for which the Tenant undertakes in this Lease to permit entry.
- 4 The right on giving reasonable prior written notice to the Tenant (save in the case of emergency) to enter the Premises in order to lay new or relocate existing Conducting Media in over or under the Premises.
- 5 All rights of light and air support protection shelter and all other servitudes quasi-servitudes rights and privileges now belonging to or enjoyed by the Adjoining Property.
- 6 Where the Tenant ceases use of the Shared Media within the Premises the Landlord's right under Part A of this Schedule shall continue.
- 7 The right to build alter or extend (whether vertically or laterally) any building on any Adjoining Property notwithstanding the access of light and air to the Premises.
- 8 All rights of light, air and other servitudes and rights (but without prejudice to those expressly granted by this Lease) by the Premises from or other the Adjoining Property all such rights being reserved for the benefit of the Adjoining Property
- 9 [Subject to compliance with clause 3.14, the right to pass and repass to and from the Adjoining Property with or without vehicles for all purposes connected with the Landlord's use and enjoyment of the Adjoining Property over and along the roads, footpaths and accessways designated for such use by the Tenant at any time which are within the Premises.]

Party Determination on the application of either party at any time after the Relevant Review Date

- 5 If any Reviewed Rent is not agreed or determined by the Relevant Review Date the Rent shall continue to be payable at the rate applicable immediately before that date (but for any abatement of Rent) and the Tenant shall pay within 5 days of the Reviewed Rent being ascertained the amount of any increase for the period from and including the Relevant Review Date up to the month next following ascertainment
- 6 Whenever any Reviewed Rent is ascertained the Landlord and Tenant shall sign and exchange a memorandum recording it
- 7 If on any Relevant Review Date there are Rent Restrictions in force the Landlord may elect at any time that the day following the date on which the Rent Restrictions are modified or repealed shall be substituted for the Relevant Review Date
- 8 Time is not of the essence in this Part C of the Schedule

Part D

Services and Service Charge

1 PROVISION OF SERVICES

1.1 Subject to payment by the Tenant of the Service Charge at all times during the Term the Landlord shall use reasonable endeavours to carry out provide manage and operate the Services in an efficient manner and in accordance with the principles of good estate management Provided That:

- (a) The Landlord may take out of service for repair replacement modernisation or otherwise for as short a period as is reasonably practicable any plant or installations or any part thereof used in the provision of the Services and shall not be liable to the Tenant or the Tenant's employees or those claiming through or under the Tenant for such taking out of service or for the failure or breakdown of the plant or installations relating to such Services or of the electricity gas or water supply or drainage services unless due to the default or neglect of the Landlord or the Landlord's agent arising out of a failure to act in accordance with the principles of good estate management
- (b) The Landlord shall not incur any liability in respect of any failure in the management or operation of the Services unless due to the default or neglect of the Landlord or the Landlord's agent arising out of a failure to act in accordance with the principles of good estate management
- (c) The Landlord may from time to time discontinue the supply of any Service or reduce the degree to which such Service is provided if in the interests of good estate management of the Estate it considers it appropriate to do so
- (d) The Landlord shall be at liberty at any time during the Term upon giving notice in writing to the Tenant to arrange for any or all of the items comprising the Utilities Services to be adopted by any suitable utility provider and upon such adoption the Landlord shall no longer be obliged to provide such Utilities Services and (without prejudice to any payments due and outstanding at the date of adoption) the Tenant shall not be required to pay the Utilities Services Charge to the Landlord in respect of those Utilities Services so adopted and the Tenant shall thereafter deal directly with such utility service provider
- (e) In each case Services shall not be provided by the Landlord where the Tenant is obliged under this Lease to provide the same

- 1.2 The Landlord shall use reasonable endeavours to ensure that the Service Charge proportion payable by the Tenant under this Lease is a fair and reasonable proportion of the total service charge for the Estate at all times and to use reasonable endeavours to manage the Estate in such a way that the Service Charge payable by the Tenant is as low as reasonably practicable having regard to the obligations on the Landlord to provide services in accordance with the terms of this Lease

2 THE SERVICES

- 2.1 The Estate Services to be included within the Estate Service Charge are as follows:-

- (a) The provision and maintenance (including replanting or planting) of the landscaped areas forming part of the Estate the grounds and any trees and shrubs therein (and vermin control thereon) and any architectural or ornamental features.
- (b) The repair and maintenance of all roads paths common car parks and lighting upon the Estate.
- (c) The provision and maintenance of signage of the Estate including road traffic directional signs.
- (d) The maintenance of all boundaries of the Estate including fences access barriers gates and necessary patrol tracks.
- (e) The provision of a security service and equipment for the Estate including reception at the main gate and an agreed first response capability.
- (f) The provision of a first response emergency evaluation team.
- (g) Any other services relating to the Estate or any part of it provided by the Landlord from time to time which shall be reasonably capable of being enjoyed by the occupier of the Premises or reasonably calculated to be for the benefit of the Tenant or other tenants of the Estate or appropriate for the maintenance upkeep or cleanliness of the Estate and in any such case in keeping with the principles of good estate management.

- 2.2 [The Building Services to be included within the Building Service Charge are as follows:-

- (a) Inspecting maintaining and repairing amending altering rebuilding and renewing and where appropriate treating washing down painting and decorating all load bearing and other structural parts of the Building and the external fabric and surfaces (except the external surfaces of the doors and door frames referred to in paragraph 5 of the definition of Premises at clause 1.1 and the whole of the

window glazing and frames constructed in the external walls and in the other boundaries of the said premises referred to in paragraph 6 of the definition of Premises at clause 1.1)

- (b) Inspecting servicing maintaining and repairing amending overhauling and replacing all the Landlord's apparatus plant machinery and equipment within the Building
- (c) Maintaining repairing cleansing emptying amending and renewing all Service Media
- (d) Maintaining repairing cleansing renewing the electrical distribution system within the Building (but excluding small power sockets and light fittings)
- (e) Maintaining and renewing any fire alarms and ancillary apparatus and basic fire prevention and fire fighting equipment and apparatus in the Building (excluding specialist plant and systems)
- (f) Providing such heating for the Building and for such hours and times of the year as the Landlord shall in its reasonable discretion determine
- (g) Providing water hygiene testing to the Building
- (h) Supplying whether by purchase or hire and maintaining renewing replacing repairing servicing and keeping in good and serviceable order and condition all Landlord's fixtures and receptacles appliances materials equipment and other things which the Landlord may deem desirable or necessary for the maintenance appearance upkeep or cleanliness of the Building or any part of it
- (i) Cleaning as frequently as the Landlord shall in its reasonable discretion consider adequate the outside of the window glazing
- (j) Cleaning maintaining and repairing the Common Parts including all Service Media forming part of the Common Parts
- (k) Lighting the Common Parts and cleaning maintaining repairing and replacing lighting machinery and equipment on the Common Parts
- (l) Cleaning maintaining repairing and replacing refuse bins on the Common Parts
- (m) Cleaning maintaining repairing and replacing signage for the Common Parts
- (n) Cleaning maintaining repairing and replacing the floor coverings on the internal areas of the Common Parts

- (o) Cleaning maintaining repairing and replacing the furniture and fittings on the Common Parts
- (p) Cleaning maintaining repairing and replacing the furniture fittings and equipment in the lavatories and washrooms on the Common Parts and providing hot and cold water soap paper towels and other supplies for them
- (q) Decorating the internal areas of the Common Parts
- (r) Any other services relating to the Building or any part of it provided by the Landlord from time to time which shall be:
 - (i) reasonably capable of being enjoyed by the occupier of the Premises; or
 - (ii) reasonably calculated to be for the benefit of the Tenant and other tenants of the Building; or
 - (iii) appropriate for the maintenance upkeep or cleanliness of the Building and (in any such case) in keeping with the principles of good estate management]

<Relevant where Premises is part of a building only>

2.3 The Utilities Services which comprise in and are paid for by the Utilities Service Charge are as follows:

- (a) The provision of a gas connection to the Premises for the generation of heating and supply of gas to the Premises
- (b) The provision of water supply connection to the Premises and supply of water to the Premises
- (c) The provision of conventional drainage from the Premises including surface water and foul sewerage.
- (d) The provision of an electricity supply connection to the Premises and the supply of electricity to the Premises
- (e) The provision of a telecommunication connection to the Premises and supply of telecommunication services to the Premises

3 CALCULATION AND PAYMENT OF SERVICE CHARGE

3.1 The Estate Service Charge shall comprise the proportionate part of the Landlord's Costs incurred in connection with the provision of the Estate Services and shall be a fair and reasonable sum as at 1 April in the relevant Landlord's accounting year.

3.2 [The Building Service Charge shall comprise the proportionate part of the Landlord's Costs incurred in connection with the provision of the Building Services and shall be a fair and reasonable as at 1 April in the relevant Landlord's accounting year]

<Relevant where Premises is part of a building only>

3.3 The Utility Service Charge shall comprise the proportionate part of the Landlord's Costs incurred in connection with providing the Utilities Services and relate exclusively to such services and shall be a fair and reasonable sum and also have regard to the quantity of such Services used or consumed by the Tenant Provided That the Landlord and Tenant agree that in so far as such Services are metered or are subsequently metered the Tenant shall pay the actual cost of the item consumed on the Premises as recorded by the meters.

3.4 The amount of the Landlord's Costs shall be ascertained and certified annually in accordance with the provisions of this Lease in a certificate signed by a qualified accountant as soon as reasonably practicable after the end of the Landlord's accounting year ("the Certificate").

3.5 The expression "the Landlord's accounting year" shall mean the period from 1 April of every year to 31 March of the following year or such other annual period as the Landlord may in its discretion from time to time determine as being that in which the accounts of the Landlord relating to the Estate shall be made up.

3.6 A copy of the Certificate for each Landlord's accounting year shall be supplied by the Landlord to the Tenant without charge within three months after the end of the Landlord's accounting year.

3.7 The Certificate shall contain a breakdown of all the items of expenditure set out in Part D of this Schedule and comprised in the Landlord's Costs in respect of the Landlord's accounting year to which it relates.

3.8 On the Quarter Days in every year during the Term the Tenant shall pay to the Landlord such a sum (hereinafter called "the advance payment") in advance and on account of the Service Charge for the Landlord's accounting year then current as the Landlord shall from time to time specify as being in its reasonable opinion a fair and reasonable assessment of one quarter of the likely Service Charge for the Landlord's accounting year then current such amount to be in accordance with the anticipated expenditure set out in the estimate provided to the Tenant at the beginning of each Landlord's accounting year then current ("the relevant year").

(a) If the Landlord reasonably and properly considers that the likely Service Charge for the relevant year will exceed the aggregate of the advance payments for the relevant year the Landlord may reassess the advance payments for the whole

of the relevant year ("the revised advance payments") and the Tenant shall pay to the Landlord the revised advance payments on each of the next following Quarter Day during the remainder of the relevant year and the Tenant shall pay to the Landlord within 21 days of receipt of a written demand the aggregate of the amounts by which the advance payments already made in respect of the relevant year fall short of the sum which would have been payable if the revised advance payments had been assessed before the commencement of the relevant year.

- (b) If the Landlord does not assess the amount of the advance payment payable hereunder in respect of any Landlord's accounting year before the beginning of such year the advance payments shall continue to be payable at the rate specified for the previous year until such time as the Landlord has made such assessment whereupon the Tenant shall pay to the Landlord within 21 days of receipt of a written demand the aggregate of the amount by which the advance payments already made in respect of the relevant year fall short of the sum which would have been payable if the amount of the advance payments for the relevant year had been assessed before the commencement thereof and on each of the Quarter Days during the remainder of the relevant year the Tenant shall pay to the Landlord the advance payments at the new rate.

3.9 As soon as practicable and in any event within three months after the end of each Landlord's accounting year the Landlord shall furnish to the Tenant the Certificate and an account ("the Account") specifying the Service Charge payable by the Tenant for that year due credit being given therein for the advance payments and any revised advance payments made by the Tenant in respect of the said year and upon the furnishing of the Certificate and such account there shall be paid by the Tenant to the Landlord within 21 days the balance (if any) of the Service Charge after deduction of the aggregate of any advance payments and/or revised advance payments made by the Tenant to the Landlord in respect of the said year or there shall be credited by the Landlord to the Tenant any amount which shall have been overpaid by the Tenant by way of advance payments and revised advance payments as the case may require Provided That:

- (a) the provisions of this paragraph shall continue to apply notwithstanding the expiration or sooner determination of the Term but only in respect of the period down to such expiration or sooner determination as aforesaid. The Service Charge for the Landlord's accounting year then current shall be apportioned for the said period on a daily basis and upon the expiry or sooner determination of the Term the Landlord shall repay any overpayment to the Tenant within 3 months of the end of the Landlord's accounting year

- (b) the Services described in Part D of this Schedule may be the subject of a separate invoice but in all other respects shall be treated as part of the Service Charge and all provisions of this Schedule shall apply thereto as appropriate.
- 3.10 Subject as hereinafter provided and subject to the Landlord complying with its obligations under paragraph 3.11 below the Certificate and the Account shall be final and binding upon the parties hereto (save in the case of manifest error) provided always that subject to the Tenant first paying the Service Charge the Tenant shall be entitled by written notice within 3 months of receipt of the Certificate and the Account to challenge the same or anything contained therein on the ground that either of them contains an error or errors and/or that any of the Services or any charge in relation to any of the Services has or have been included therein which should not have been included and/or that the amount charged in relation to any particular Service or Services is unreasonable in all the circumstances. If such a challenge cannot be resolved between the Landlord and the Tenant it shall be referred for Third Party Determination and any sum agreed or determined as aforesaid to have been overpaid by the Tenant shall be repaid by the Landlord to the Tenant within 30 days of it being agreed or determined with interest on the overpaid at the base rate of Barclays Bank Plc for the period from the date of such challenge to it being agreed or determined.
- 3.11 The Landlord shall following a reasonable request by the Tenant make available to the Tenant all invoices and details of expenses incurred in providing the Services at the management office for the **Estate** situated on the Estate.
- 3.12 Where the Landlord carries out major works of redecoration replacement or rebuilding (where necessary by way of repair) the Landlord may elect to defray the expenditure so incurred over such longer period than the Landlord's accounting year or years in which such expenditure is incurred as it shall in its absolute discretion consider appropriate and may include the actual cost of any interest properly incurred on such part of such expenditure not so far charged to tenants by way of Service Charge at the lower of the base rate from time to time of Barclays Bank plc or the rate the Landlord actually pays on any part of such expenditure not yet charged to the tenants and borrowed by the Landlord. Such expenditure shall be calculated on a day-to-day basis either from the date on which the expenditure is incurred down to the end of the Landlord's accounting year (in relation to the Landlord's accounting year in which such expenditure is incurred) or the period of the Landlord's accounting years (in relation to the subsequent Landlord's accounting years over which the expenditure is defrayed) Provided That the Tenant shall not contribute towards expenditure incurred prior to the date hereof or after the expiry or determination of the Term.
- 3.13 The Landlord may if reasonably necessary raise money by way of loan or overdraft paying a reasonable rate of interest thereof for the purposes of defraying expenditure

incurred in providing the Services or any of them and any proper and reasonable interest or other charges (excluding Value Added Tax for which the Landlord is entitled to credit under the Value Added Tax Act 1994) payable by the Landlord in respect thereof shall be included under paragraph 4.1 of this Part D of the Schedule as part of the Landlord's Costs.

4 THE LANDLORD'S COSTS

The Landlord's Costs shall be calculated after the end of each Landlord's accounting year and shall comprise the aggregate for such year of the following:-

- 4.1 The costs expenses outgoings and other expenditure reasonably and properly incurred from time to time by the Landlord in connection with the provision of the Services including without prejudice to the generality of the foregoing any interest and/or any other charges payable by the Landlord in relation to any loan or overdraft raised in accordance with the foregoing or provisions of this Lease.
- 4.2 The Retained Estate Costs
- 4.3 []% of the amount of the Estate Service Charge payable by the Tenant during the relevant Landlord's accounting year.
- 4.4 []% of the amount of the Building Service Charge payable by the Tenant during the relevant Landlord's accounting year.]
- 4.5 []% of the amount of the Utilities Service Charge payable by the Tenant during the relevant Landlord's accounting year (excluding the cost of any fuels water and electricity and fixed charges payable to the relevant supplier of the Utilities which that provides such fuel and water and electricity to the Landlord).
- 4.6 A fair and reasonable sum attributable to any Services provided to any premises on the Estate used or occupied by the Landlord (or others authorised by the Landlord) to the extent that such premises are used for the purposes of managing the Estate and providing the Services.
- 4.7 Value Added Tax (if any) at the applicable rate in respect of the fees and other items of expenditure herein mentioned save to the extent that such Value Added Tax is recoverable by the Landlord in its accounting with HM Revenue and Customs.

Part E

Guarantee

1 GUARANTEE

1.1 The Guarantor undertakes with the Landlord (as between the Landlord and the Guarantor as if the Guarantor were principal debtor):

- (a) that until the Tenant is released by law from the Tenant's obligations in the Lease:
 - (i) the Tenant will pay the rents reserved by and perform its obligations and observe the conditions contained in the Lease; and
 - (ii) if the Tenant fails to do so the Guarantor will indemnify the Landlord on demand against all losses costs claims expenses liabilities and demands arising from that failure.
- (b) that the Tenant will perform its obligations and observe the conditions contained in any authorised guarantee agreement to be entered into in respect of the Lease.

2 LIABILITY

2.1 The Guarantor shall not be released from liability by:

- (a) forbearance the granting of time to or any other indulgence allowed by the Landlord to the Tenant
- (b) any refusal by the Landlord to accept rent at a time when it is or might be entitled to re-enter the Premises
- (c) any variation of the Lease or surrender of part of the Premises whether or not made with the Guarantor's consent
- (d) the Landlord transferring its interest in reversion to the Lease
- (e) the insolvency liquidation dissolution winding-up administration receivership or reconstruction of or any change in the name style or constitution of the Landlord Tenant or Guarantor
- (f) any legal limitation relating to or incapacity of the Tenant
- (g) any other act, matter or thing by or as a result of which the Guarantor would have been released

3 WAIVER OF GUARANTOR'S RIGHTS

Until all payments and obligations expressed to be guaranteed by the Guarantor in paragraph 1 ("the guaranteed liabilities") have been paid discharged or satisfied in full the Guarantor will not without the Landlord's prior written consent:

- (a) exercise its rights of subrogation and/or indemnity against the Tenant
- (b) seek to enforce any right against the Tenant in respect of the guaranteed liabilities whether directly or by way of lien set-off or counterclaim
- (c) claim or prove in competition with the Landlord in the liquidation winding-up or bankruptcy of the Tenant or have the benefit of or share in any payment from or composition with the Tenant or the Tenant's creditors or any other arrangement on the Tenant's insolvency
- (d) be entitled to share in any security held by the Landlord or stand in place of the Landlord in respect of any security nor take any security from the Tenant in respect of this Guarantee

Provided that any security taken by the Guarantor and any money received or benefit obtained by the Guarantor in respect of the guaranteed liabilities despite the Guarantor's obligations in this paragraph 3 of Part F of the Schedule shall be held in trust by the Guarantor for the Landlord.

4 TERMINATION OF LEASE

4.1 If the Lease is terminated by disclaimer or forfeiture the Guarantor will (if required in writing by the Landlord within six months of the date of termination) either:

- (a) at the cost of the Guarantor enter into a new lease of the Premises with effect from the date of termination for the residue of the term of the Lease and on the same terms as the Lease but so that:
 - (i) any outstanding rent review or other matters shall be completed as between the Landlord and the Guarantor and
 - (ii) the Guarantor shall assume the liability of the Tenant under the Lease as if it had continued; or
- (b) pay to the Landlord within fourteen days of written demand a sum equal to the amounts which would otherwise have been payable under the Lease until the date six months after the date of termination or (if earlier) the date the Premises are fully re-let.

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Magnox

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Schedule 17

ELECTRICITY INTERFACE OBLIGATIONS

PART 1	ALLOCATION OF RESPONSIBILITIES UNDER INDUSTRY DOCUMENTS
Attachment 1	Balancing and Settlement Code
Attachment 2	Generation Licence
Attachment 3	Grid Code
Attachment 4	Connection and Use of System Code
Attachment 5	Connection and Use of System Code Bilateral Connection Agreement
Attachment 6	Agreement to Vary the Bilateral Connection Agreement
Attachment 7	Connection and Use of System Code Mandatory Services
Attachment 8	Distribution Code
PART 2	EDF INTERFACES
Part A	General
Part B	Magnox Generation Forecast Related Interfaces
Part C	Magnox Maentwrog Interfaces

Pages 2 through 63 redacted for the following reasons:

s.43(2)

Schedule 18

STATE AID DECISION

COMMISSION DECISION of 4 April 2006
on the State Aid which the United Kingdom is planning to implement for the establishment of the
Nuclear Decommissioning Authority

(notified under document number C(2006) 650)

(Only the English text is authentic)

(Text with EEA relevance)

(2006/643/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provision(s) cited above (*) and having regard to their comments,

Whereas:

PROCEDURE

(1) By letter dated 19 December 2003, registered by the Commission on 22 December 2003, the United Kingdom notified the Commission of the State aid implications of the draft law setting up the Nuclear Decommissioning Authority (NDA), hereinafter 'the Measure'.

(2) By letter D/51248 of 20 February 2004, the Commission asked questions on the Measure. The United Kingdom replied by letter dated 29 March 2004, registered by the Commission on 15 April 2004.

(3) By letter D/54319 of 16 June 2004, the Commission asked further questions on the Measure. The United Kingdom replied by letter dated 14 July 2004, registered by the Commission on 19 July 2004.

(4) The United Kingdom submitted additional information on the Measure by letter dated 10 September 2004, registered by the Commission on 14 September 2004, and by letter dated 14 October 2004, registered by the Commission on 19 October 2004.

(5) By letter dated 1 December 2004, the Commission informed the United Kingdom that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.

(*) OJC 315, 21.12.2004, p. 4.

(6) The Commission decision to initiate the procedure (hereafter 'the Opening of Procedure'¹) was published in the *Official journal of the European Union* (²). The Commission called upon interested parties to submit their comments.

(7) The United Kingdom provided the Commission with its comments on the Opening of Procedure by letter dated 31 January 2005, registered by the Commission on the same day.

(8) The Commission received comments from interested parties. It forwarded them to the United Kingdom, which was given the opportunity to react. The United Kingdom's comments were received by letter dated 4 March 2005, registered by the Commission on 7 March 2005.

(9) Meetings between the United Kingdom authorities and the Commission took place on 20 April, 25 August and 11 October 2005.

(10) The United Kingdom submitted additional information on the Measure by letter dated 23 January 2006, registered by the Commission on the same day. An amendment to this letter was sent by letter of 1 February 2006, registered by the Commission on the same day. Further additional information on the Measure was submitted by the United Kingdom by letter of 7 February 2006, registered by the Commission on the same day. Further additional information was submitted by the United Kingdom by letter of 7 February 2006, registered by the Commission on 10 February 2006. Further additional information was submitted by the United Kingdom by letter dated 29 March 2006, registered by the Commission on 30 March 2006.

DETAILED DESCRIPTION OF THE AID

(11) The United Kingdom was one of the first countries worldwide to engage in nuclear technologies, both for civil and military purposes.

² See footnote 1.

- (12) At the time these technologies were first introduced, the emphasis of the industry was on scientific improvements and on gains in efficiency. The management of nuclear liabilities was generally not taken into consideration, or only in a very limited way.
- (13) The rising awareness of the need to ultimately decommission nuclear sites progressively resulted in funds being set aside for the management of nuclear liabilities. However, these funds were generally insufficient to face liabilities the estimated amount of which was still very uncertain, but growing. Even at the end of the 20th century, the management of nuclear liabilities was still handled independently by each of their owners, and very much on a case by case basis.
- (14) The UK Government considered that this kind of management had reached its limits and that a new and more efficient method should be put in place in order for nuclear liabilities to be more efficiently handled, while preserving the highest level of safety.
- (15) In 2001, the United Kingdom Government decided to start a review of ways in which the management of public sector nuclear liabilities could be concentrated in the hands of a single public body. A White Paper entitled *Managing the Nuclear Legacy — A strategy for action* was published in July 2002. After a consultation process, the ideas of the White Paper were implemented in legislation in the form of the 2004 Energy Act.
- (16) Under the provisions of this legislation, a new non-departmental public body, known as the Nuclear Decommissioning Authority (NDA), was created. The NDA will progressively be made responsible for the management of most public sector nuclear liabilities in the United Kingdom⁽¹⁾. For this purpose, the ownership of nuclear sites and assets will be transferred to the NDA. Along with the ownership of the assets and sites, the NDA will take over the responsibility for the nuclear liabilities linked to them as well as all financial assets that are clearly attached to these sites.
- (17) The management of nuclear liabilities in an efficient and safe way is the NDA's objective. The NDA can continue to operate the physical assets that are transferred to it if the continued operation of these assets covers more than their avoidable costs and therefore contributes to reducing the value of their liabilities. The NDA is a public authority and does not have a commercial objective. It will not invest in any new asset nor enter any new activity.
- (18) The NDA does not itself decommission the sites for which it will have responsibility. It will contract this task out to other entities. The continued operation of nuclear assets may similarly be contracted by the NDA. Entities contracted by the NDA to manage a site are known as Site Licensee Companies (SLCs). Initially, SLCs will be the former owners of the sites. Later on, they will be selected via competitive procedures, with a view to triggering the development of a real nuclear decommissioning and clean-up market.
- (19) In order to fund its activities, the NDA uses the value of the transferred financial assets and the net revenues that the transferred physical assets generate. Since it is very likely that these resources will not be sufficient to pay for the entire costs of management of the nuclear liabilities, the State will finance the shortfall.
- (20) Assets belonging to the United Kingdom Atomic Energy Agency (UKAEA) have been transferred to the NDA. This aspect of the Measure has already been decided upon by the Commission in the decision referred to in recital (5) above. The Commission found that this aspect of the Measure did not include State aid within the meaning of Article 87(1) of the EC Treaty.
- (21) The NDA has also received assets belonging to British Nuclear Fuels Limited (BNFL). This aspect of the Measure is the object of the present decision. It must be noted that transitional arrangements were put in place by the United Kingdom to ensure that, even though BNFL's assets were formally transferred to the NDA, no State aid is granted until the Commission takes a final decision on the case.
- (22) BNT-L is a publicly owned limited company that operates in many fields in the nuclear sector. It is present in nearly all steps of the nuclear fuel cycle: it enriches uranium (through Urenco), supplies nuclear fuel, generates electricity and manages spent nuclear fuel.
- (23) Most but not all of BNFL's nuclear activities and sites have been transferred to the NDA. It has received:
- all Magnox electricity generation sites and the Mawntrog station;
- the Sellafield site, including in particular the Thermal Oxide Reprocessing Plant (THORP) and the Sellafield Mox Plant (SMP). The Sellafield site also includes one of the Magnox plants referred to above (the Calder Hall station) and a small Combined Heat and Power plant (the Fellside plant);
- (1) This does not include British Energy's liabilities, although this company has been classified by the British Office of National Statistics as a public sector company after its restructuring.

the Springfields site, which is dedicated to nuclear fuel manufacturing;

- the Drigg low level waste disposal site;

the Capenhurst site, the decommissioning of which is nearly completed, and which will eventually focus on the storage of uranium materials.

(24) Other BNFL activities, in particular the ones linked to Urenco and Westinghouse, will not be transferred to the NDA. They will be reorganised, resulting in a smaller residual group.

(25) Together with the sites mentioned above, BNFL transfers to the NDA a number of financial assets linked to these sites, which were set up in the past to fund at least in part their decommissioning. These assets are:

- the Nuclear Liabilities Investment Portfolio;
- the Magnox Undertaking;

other, more minor, contributions, including in particular the Springfields gilts, which are funds earmarked to cover decommissioning costs at the Springfields site.

(26) Technically, these assets are not transferred directly to the NDA, but rather consolidated in a Government fund, the Nuclear Decommissioning Funding Account. The Government will in turn fund the NDA by grants.

(27) In their notification, the UK authorities had provided the Commission with an estimate of the nuclear liabilities and assets that would be transferred to the NDA, together with a split of these amounts between the ones that originate from commercial activities and the ones that originate from non-commercial activities.

(28) All liabilities linked to UKAEA sites were viewed as non-commercial in the Opening of Procedure.

(29) In order to estimate the share of the liabilities linked to BNFL sites that originate from non-commercial activities, the

financial liabilities still recognised by either the Ministry of Defence (MOD) or the UKAEA were non-commercial. Liabilities linked to assets with dual (commercial/non-commercial) use which were still not recognised by either the MOD or the UKAEA were attributed to BNFL's commercial activities, since BNFL was the operator and owner of these assets, even if they had been used by the MOD or UKAEA in the past.

(30) The estimated liabilities associated with sites then owned by BNFL, split between commercial and non-commercial activities, was as follows:

Table 1

Nuclear Liabilities to be transferred to the NDA, estimates as of March 2003, 2003 prices, discounted at 5.4% nominal, amounts in billion GBP (').

	Non-commercial	Commercial	Total Liabilities
Magnox stations sites (except Calder Hall/Chapelcross)	0	3,9	3,9
Sellafield site (except Calder Hall station)	3,8	10,1	13,9
Calder Hall/Chapelcross (')	0,2	0,6	0,9
Springfields site	0,1	0,2	0,2
Capenhurst site	0	0,2	0,3
Total	4,1	15,1	19,1

(') Note: in all Tables, totals may not exactly match the sums of items because of rounding. (*) Unlike the other magnox plants, these two power plants feature some non-commercial liabilities since they were originally military power plants.

United Kingdom had taken the approach that only

(31) The following table was also provided by the United Kingdom authorities in their notification. It compared the estimated value of the commercial part of the liabilities linked to sites to be transferred to the NDA by BNFL and the economic value of the assets to be transferred to the NDA along with these sites. For physical assets, the economic value was considered to be equal to the cash flows that their continued operation was expected to generate.

Table 2

Difference between commercial liabilities and assets value as of 31 March 2004, 2004 prices, discounted at 5,4% nominal, amounts in billion GBP (').

Total commercial nuclear liabilities	-14,7
Magnox stations future cash flows	-0,1
Sellafield operations cash flow (THORP & SMP)	2,3
Springfields future cash flows	0,2
Nuclear Liabilities Investment Portfolio	4,3
Magnox Undertaking	7,9
Other customer contributions not included above	0,2
Cash and liquid assets	0,1
Total	0,0

(') Values are discounted at 5,4 % nominal.

3. GROUNDS FOR OPENING THE PROCEDURE

(32) In the Opening of Procedure, the Commission first raised doubts as to which entity would be in receipt of State aid within the meaning of Article 87(1) of the EC Treaty. The Commission took account not only of the situation of the NDA, which might receive direct payments from the State, but also that of BNFL, which could be relieved of charges that it might otherwise have had to bear under the polluter-pays principle.

(33) The Commission then analysed whether such State aid could be found compatible with the EC Treaty. It expressed serious doubts that this aid was compatible under the guidelines on State aid for environmental protection (⁴). It also expressed serious doubts that the aid could be found compatible with the Community guidelines on State aid for rescuing or restructuring firms in difficulty (⁵).

(34) The Commission then assessed whether such State aid could be found compatible in direct application of Article 87(3)(c) of the EC Treaty, and in the light of the objectives of the Euratom Treaty. The Commission took the view that such an approach could indeed be undertaken in principle, but also expressed doubts that the United Kingdom authorities had submitted sufficient proof that

⁽⁴⁾ OJ C 37, 3.2.2001, p. 3.

⁽⁵⁾ In view of the date of notification of the Measure, the applicable guidelines would be the ones that were published in OJ C 288 of 9.10.1999, p. 2.

the positive impact of the aid on fulfilling the objectives of the Euratom Treaty outweighed its negative impact on competition in the internal market.

(35) Finally, the Commission raised doubts about the possible absence of State aid due to the fact that, before actual competitive procedures can take place, BNFL would act as SLC on a temporary basis.

COMMENTS FROM INTERESTED PARTIES

(36) Following the publication of the Opening of Procedure, and within the deadline laid down by that publication, the Commission received comments from three third parties. They are summarised below:

Electricite de France (EDF)

(37) EDF supports the general orientation of the Measure. It considers that it contributes to the achievement of the objectives of the Euratom Treaty. It considers that it is necessary to establish proper conditions for the final disposal of nuclear waste. As regards the financing of the decommissioning of nuclear sites, EDF considers that financial and industrial responsibility must go together and that proper funds must be set aside and secured during operation time. EDF supports the Commission's actions to set up a Community-wide framework for solving such problems, and welcomes the fact that the Commission takes account of the Euratom Treaty in the matter.

British Energy pic (BE)

(38) BE welcomes the establishment of the NDA. It does not see the Measure as likely to have anti-competitive effects in its regard.

(39) BE points out that it is also a customer of BNFL's current fuel supply and waste management activities. After the transfer of these activities to the NDA and the tendering of their operation by the authority, it may well be that one of the selected new operators will be a competitor of BE. BE is concerned by this situation where it could end up being a customer of one of its competitors.

(40) BE also draws the Commission's attention to the fact that the setting up of the NDA and its analysis by the Commission should not endanger its own restructuring plan, as approved by the Commission.

(41) BE goes on to explain that it does not believe that the Measure has any impact on trade as regards the supply of AGR fuel and reprocessing of AGR spent fuel because, even if BNFL's only EU competitor, AREVA, were to settle in the United Kingdom, BE would not be in a position to switch to it because it already has arrangements with BNFL for the lifetime requirements of its AGR stations.

(42) As regards Magnox power plants and the electricity market, BE believes that the Measure, even if it reduces BNFL's power plants' Short Run Marginal Costs (SRMCs), cannot have an effect on the price at which BE can sell its own nuclear and fossil output. Based on its own experience, BE also believes that the Measure will not artificially prolong the lifetime of BNFL's plants, since, still according to BE's estimates, these power plants should reasonably be in a position to cover their SRMCs.

(43) BE gives its view of the interactions between the EC and Euratom Treaties. This aspect of the company's comments, though not easy to interpret, seems to suggest that only measures that are not necessary for or that go beyond what is necessary for achieving the objectives of the Euratom Treaty can be analysed under the EC Treaty.

Greenpeace

(44) Greenpeace considers that the Measure includes State aid within the meaning of Article 87(1) of the EC Treaty. It states that it is fundamental to ensure the safe decommissioning of nuclear sites, and equally fundamental that the polluter-pays principle should apply to the nuclear industry.

(45) Greenpeace considers that the aid should not be found compatible with the common market. It considers that the positive impact on the achievement of the safe and efficient management of nuclear liabilities does not outweigh the impact of the Measure on competition.

(46) Greenpeace's submission is very substantial in size and includes many annexes. An important part of the comments relate to Greenpeace's scepticism about nuclear energy in general and the way it has been handled in Britain in particular. According to Greenpeace, nuclear energy entails very significant risks for the environment. Also, the reprocessing of nuclear waste, as opposed to direct disposal, would be a dangerous and costly option.

(47) According to Greenpeace, BNFL, one of the most important actors of this sector in the United Kingdom and under public ownership, has been managed in a particularly hazardous and opaque way. Its accounts are difficult to analyse. Poor management of cash and risky investments

that have ultimately proved uneconomic have jeopardised the company's ability to fund its nuclear liabilities. Part of the provisions aimed at matching these liabilities are not liquid, or, as in the case of the Magnox Undertaking, are of a virtual nature. Furthermore, BNFL has always underestimated its liabilities and overestimated its future income, which has worsened its position further. Greenpeace submits a report that analyses and criticises BNFL's investment policy and accounts.

(48) As regards the Measure more specifically, Greenpeace contends that it should be looked upon as a way for the United Kingdom Government to restructure an ailing company — BNFL — by ridding it of its worst assets and the potentially unfunded liabilities attached to them, in order to allow it to stay on the market and continue as a successful company.

(49) Greenpeace also questions the nature of the future relationship between BNFL and the NDA. According to Greenpeace, with BNFL becoming an SLC for the NDA, it is difficult to tell which of the two entities is of a commercial nature. If it were the NDA, deriving profit from commercial activities would be contrary to its aim. Furthermore, because of this difficulty in deciding which of the two entities is actually the commercial one, it would be also very difficult to decide who is in receipt of State aid.

(50) Greenpeace adds that the NDA will probably be creating new waste with its operations, and that it is not clear whether it will set aside monies to pay for waste management.

(51) Greenpeace also questions the future of Westinghouse, a company owned by BNFL but not transferred to the NDA. Greenpeace questions the viability of Westinghouse without its parent's support. The Commission understands that Greenpeace suggests that, should Westinghouse continue its operations as a part of the BNFL, the historic as well as future ties between BNFL and the NDA might result in a cross-subsidisation from the NDA to Westinghouse. Greenpeace also fears that such a cross-subsidisation might affect the interests of Westinghouse's competitors in the nuclear reactor design business. These cross-subsidisation concerns would be increased if, as Greenpeace suspects, there are plans to sell parts of BNFL to the private sector.

(52) Greenpeace goes on to consider the specific case of BNFL's reprocessing activities. Greenpeace challenges the United Kingdom authorities' argument that State support to these activities cannot affect trade because nuclear wastes are difficult to transport, and it would therefore be uneconomic for competitors to invest in new reprocessing assets in

Britain. According to Greenpeace, this disregards the fact that nuclear wastes do not necessarily have to be reprocessed, but can also be disposed of via direct storage. New investment in direct storage facilities would be a viable economic alternative to be offered by BNFL's competitors.

(53) Greenpeace also notes that, according to figures available to it, prices offered by BNFL in its fuel reprocessing contracts appear to be too low to cover costs. BNFL, and hence the NDA, would therefore generate even greater losses with these activities, creating the need for operating aid. To support this comment, Greenpeace quotes a figure of GBP 140 000/tonne for fixed payments by BE to BNFL for managing its spent fuel. Greenpeace compares this figure to estimates of between GBP 330 000/tonne and GBP 533 000/tonne for the comprehensive management of such waste according to independent studies from the University of Harvard and NIREX.

(54) Greenpeace questions the forecasts for the operation of the SMP. SMP would be difficult to commission, and MOX fabrication would be a decreasingly attractive option for plutonium management.

(55) Regarding the Magnox plants, Greenpeace considers that their continued operation affects competition in the electricity market, in particular from renewable energies. Greenpeace also submits that Magnox spent fuel should be directly disposed of rather than reprocessed.

COMMENTS FROM THE UNITED KINGDOM ON THE OPENING OF PROCEDURE

(56) The United Kingdom first recalls its commitment to nuclear decommissioning and clean-up. The United Kingdom views the establishment of the NDA as a unique means in Europe attempt to deal with historical nuclear liabilities in a systematic way. The NDA would be expected not only to make decommissioning safer and more efficient but also to pave the way for a real nuclear decommissioning market.

(57) The United Kingdom believes that the Measure does not constitute State aid to BNFL, since BNFL will no longer own any of the assets whose decommissioning costs may be funded in part by the State. The United Kingdom adds that the transition period during which BNFL will be SLC before SLCs can actually be selected by competitive procedures will not lead to any State aid to BNFL either, since all payments to the company in this period will be benchmarked against international comparators.

(58) The United Kingdom contends, however, that, even if the Commission were to consider that the Measure includes State aid to BNFL, this aid should be found compatible with the EC Treaty as supporting several objectives of the Euratom Treaty (promoting R&D, health and safety,

investment, regular and equitable supply, common market and competition benefits in the nuclear sector). Moreover, the Measure would also deliver environmental benefits consistent with the objective of Article 174 of the EC Treaty.

(59) The United Kingdom states that it accepts that the Measure is an aid to the NDA. In this case again, it contends that the aid should be found compatible with the common market, for the same reasons. The United Kingdom provides a list of benefits brought by the Measure in the light of the objectives of the Euratom Treaty. For all of these benefits, a qualitative assessment is given, together with a quantitative estimate of the gains where deemed possible.

(60) The United Kingdom gives a detailed list and assessment of the activities that will remain with BNFL. It also explains how BNFL will be paid for when operating as SLC in the temporary period until SLC can be selected by competitive procedures. BNFL will receive payments for allowable costs only. This will include a duty for NDA to achieve efficiencies of 2 % cost reduction per year. Allowable costs will in principle exclude any return on capital. They will also be capped by the budget of the annual site funding limit as set by the NDA.

(61) Payments may also include so called 'performance based incentives', which will be awarded only if challenging costs-based performance targets are achieved. The value of these incentives is based on careful benchmarking of the average profit margins of international engineering and construction companies.

(62) The United Kingdom then gives its views on the impact of the Measure on competition in each of the markets concerned by the sites that are transferred by BNFL to the NDA.

(63) As regards Magnox power plants, the United Kingdom believes that the Measure will not have any impact on the electricity market. The rank of the magnox plants in the SRMCs order would be always under the marginal plant, even at periods of minimum demand. This would imply that any reduction in SRMCs resulting from the Measure could affect neither the time during which competitors can run their plants nor the price at which they could sell their output.

(64) As regards the THORP plant of the Sellafield site, the United Kingdom explains that it reprocesses AGR and LWR nuclear spent fuel. New entry into AGR spent fuel reprocessing would be economically very unattractive, due in particular to transport costs to and from Britain, which is the only country where such fuel is used. While storage would indeed be a possible alternative to reprocessing of AGR fuel.

the United Kingdom also contends that the tight time and regulatory constraints for the construction of any new AGR storage site even in Britain would make it also economically unattractive for new entrants, in particular in view of the limited size of the AGR spent fuel disposal market. The same types of arguments are also used for the Springfields plant, which produces only AGR and Magnox fuel.

(65) Concerning LWR spent fuel, the United Kingdom argues that most of this type of fuel to be reprocessed by THORP is already in Britain and that the difficulty of shipping it to the continent would limit the economic incentive for competitors.

(66) As regards the SMP plant of the Sellafield site, the United Kingdom argues that it would be detrimental to competition if it were to cease operation. Indeed, it would remove an important actor in a very concentrated market. Furthermore, the closure of SMP would mean that significant amounts of plutonium would have to be transported regularly out of the United Kingdom, which would be very costly to customers and also potentially dangerous.

(67) As regards the Drigg low level waste repository, the United Kingdom argues that, since most countries do not allow the import of foreign radioactive waste for storage or disposal, the only way to offer competition would be to build another site in Britain. This would be an unattractive investment since obtaining all necessary consents would be difficult. It would also result in excess capacity which would make investment even less attractive. Tendering by the NDA of the operation of the Drigg site would be a more efficient way to promote competition on this market.

REPLIES FROM THE UNITED KINGDOM TO COMMENTS FROM INTERESTED PARTIES

EDFs comments

(68) The United Kingdom welcomes the support of EDF for the Measure.

BE's comments

(69) The United Kingdom welcomes BE's supporting comments for the Measure.

(70) The United Kingdom believes that proper legal measures will ensure that no problems will arise from the potential operation of some of the NDA's sites by BE's competitors.

(71) The United Kingdom is confident that the Commission will take the terms of its decision on the restructuring plan of BE ⁽⁶⁾ fully into account when considering the facts of the present case.

Greenpeace's comments

(72) The United Kingdom considers that its comments on the Opening of Procedure already provide significant details on issues addressed by Greenpeace. Its replies to Greenpeace's comments are therefore limited to certain statements of a general nature.

(73) The United Kingdom states that the Measure is in fact wholly consistent with the polluter-pays principle. The BNFL group would contribute to over 88 % of the liabilities through assets transferred to the NDA ⁽⁷⁾. The aid from the United Kingdom Government would be limited to what is required in recognition of the Government's ultimate responsibility for nuclear safety and security in the country. BNFL would not benefit directly from the assets and commercial revenues it will transfer to the NDA. It will only benefit from potential performance-based incentives for the time it operates the sites if it outperforms the objectives fixed by the Government.

(74) The United Kingdom gives a detailed explanation of the new structure of the BNFL group and its relationship with the NDA.

(75) The United Kingdom also states that the principal function of the NDA is site decommissioning. If operating certain assets on a commercial basis allows the NDA to secure this objective in a less costly way while keeping the same high level safety standards it is authorised to do so. The NDA will make such decisions, not BNFL.

(76) The United Kingdom notes that the Commission has already addressed the issue of the price charged by BNFL to BE for the management of its spent fuel in its decision on the British Energy restructuring aid.

(77) Finally, the United Kingdom challenges Greenpeace's view that the operation of the NDA would be opaque and could lead to cross-subsidisation with BNFL. The United Kingdom claims that, on the contrary, the NDA would be a 'champion of public information'. Its statutes would include several transparency mechanisms for its accounts, expenditures and overall programming.

Commission Decision 2005/407/EC of 22 September 2004 on the State aid which the United Kingdom is planning to implement for British Energy pk (OJ L 142, 6.6.2005, p. 26). The United Kingdom later on submitted updated figures demonstrating that, according to the United Kingdom, more than 100 % of the liabilities are covered.

ASSESSMENT

(78) At least part of the Measure concerns issues covered by the Euratom Treaty and therefore has to be assessed accordingly⁽⁸⁾. However, to the extent that it is not necessary for or goes beyond the objectives of the Euratom Treaty or distorts or threatens to distort competition in the internal market, it has to be assessed under the EC Treaty.

7.1. Euratom treaty

(79) The establishment of the NDA and the manner in which it will be funded will, by definition, have an impact on the management and funding of nuclear liabilities, including the decommissioning of many nuclear installations and the treatment of large quantities of radioactive waste. Decommissioning and waste management constitute an important part of the life-cycle of the nuclear industry, giving rise to risks which have to be responsibly addressed, and of the costs covered by the sector. In fact, the need to address the risks linked to the dangers arising from ionising radiation constitutes one of the major priorities of the nuclear sector. The Commission notes that after over 50 years of operation of the nuclear industry in the United Kingdom, the issues of decommissioning and waste management are becoming increasingly important, as more facilities reach the end of their lives and important decisions and efforts are required to ensure the health and safety of workers and of the population.

(80) In this regard, the Euratom Treaty deals with this important health and safety issue and at the same time aims at creating the 'conditions necessary for the development of a powerful nuclear industry which will provide extensive energy sources...'. Article 2(b) of the Euratom Treaty provides that the Community, in order to perform its task, is to establish uniform safety standards to protect the health of workers and of the general public and ensure that they are applied. Article 2(c) of the Euratom Treaty also provides that the Community must facilitate investment where appropriate in the nuclear sector. On this basis, the Euratom Treaty establishes the European Atomic Energy Community, creating the necessary instruments and attributing responsibilities to achieve these objectives. In this regard, and as confirmed by the Court of Justice, nuclear safety is a Community competence which must be linked to the protection against the dangers arising from

(*) Article 305(2) of the EC Treaty lays down that "the provisions of this Treaty shall not derogate from those of the Treaty establishing the European Atomic Energy Community".

ionising radiations laid down in Article 30, Chapter 3 of the Euratom Treaty, relating to Health and Supply. (*) The Commission must ensure that the provisions of this Treaty are applied and can therefore adopt decisions in **the** manner provided for in this Treaty or deliver opinions if it considers it necessary.

(81) The Commission takes note of the elements provided by the United Kingdom authorities that the effects of **the** notified measure will be, inter alia, to ensure the safety of nuclear facilities both active and obsolete, to provide for the correct, timely and safe decommissioning of obsolete nuclear facilities, and to store and provide long-term solutions for spent nuclear fuel and radioactive waste.

(82) When assessing this information, and notably in determining whether the Measure is necessary or falls within the objectives of the Euratom Treaty, the Commission notes that the financial support granted by the Government to the NDA is designed to facilitate the previously mentioned objectives of the Treaty. The United Kingdom authorities have decided to create and fund the NDA to ensure the correct establishment of a process of decommissioning and management of the wastes that would adequately protect the health and safety of the workers and the population. The Commission therefore acknowledges that the United Kingdom authorities have addressed their obligations under the Euratom Treaty to provide for safe and adequately provisioned decommissioning in a correct and responsible manner which is compatible with the objectives of the Euratom Treaty.

(83) The notified measure further reinforces the fulfilment of the Euratom Treaty objectives by ensuring that the public intervention will not be used for other purposes than the decommissioning of obsolete nuclear facilities and the safe management of radioactive waste in the context of the discharge of nuclear liabilities. A system of cap and threshold will ensure that enough funds are available for the fulfilment of these goals, while restricting the intervention to the minimum necessary for their achievement.

(84) The Commission concludes that the measures proposed by the United Kingdom authorities are appropriate to address the combination of objectives pursued and are fully in line with the objectives of the Euratom Treaty.

⁰ Ruling of the Court of Justice of 10 December 2002 in Case C-29/99.

7.2. Aid within the meaning of Article S7(1) of the EC Treaty — Application of the polluter-pays principle.

(85) According to Article 87(1) of the EC Treaty, State aid is defined as aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods and affects trade between Member States.

(86) In order to analyse whether the Measure includes State aid to BNFL and/or to the NDA, the Commission first assessed whether it provided an advantage to these entities.

(87) Providing an advantage has to be understood in this respect as the State paying for costs that should normally have been borne by each of the two companies. It is therefore necessary to first establish a benchmark for normal costs to be borne by a company in order to analyse later whether the State is paying part of these costs.

Under Article 174 of the EC Treaty, the Community policy on the environment shall be based in particular on the principle that the polluter should pay.

(89) Under Article 174 of the EC Treaty, environmental protection requirements must be integrated into the definition and implementation of the Community policies.

(90) In practical terms, it is Commission practice to consider that the implementation in State aid policy of the polluter-pays principle requires that the costs of pollution be internalised by polluters⁽¹⁰⁾. This means that such costs should be considered precisely as costs normally to be borne by the polluter, which, in turn, means that their payment by the State should be considered as an advantage granted by the State.

(91) In the present case, the State will undertake to cover any shortfall in the NDA's ability to cover the costs linked to the nuclear liabilities of the assets that will be transferred to the NDA. Since these liabilities relate to the clean-up of sites contaminated by radioactivity, the Commission considers that they are pollution costs which, as explained above, should normally be borne by the polluters, namely, the operators of the sites. Since the State will pay for part of these costs, these payments should be considered as granting an advantage to the polluters.

(92) In this respect, the Commission disagrees with the United Kingdom's claim that the Measure fulfils the polluter-pays principle because, according to the United Kingdom's

⁽¹⁰⁾ See in particular the Community guidelines on State aid for environmental protection (OJ C 37, 3.2.2001, p. 3) in this respect. This approach has also been upheld by the Court in its judgment of 20 November 2003 in Case C-L26/01.

figures, over 85 % of these costs will be paid for by the operators. The Commission considers that these estimates show that about 12 % of the pollution costs will not be covered by the polluters, which demonstrates that the Measure does not fully implement the polluter-pays principle.

(93) Whilst, as explained above, it is relatively easy to determine in this case that the Measure results globally in polluters being granted an advantage because they do not pay the full costs arising from their pollution, it is more difficult to determine the precise extent to which each of the operators is a polluter, and therefore the precise extent to which each of them is relieved of bearing its pollution costs.

(94) Indeed, the majority of the pollution costs at stake in this case are costs linked to the decommissioning of nuclear power plants that were operated by several operators during their total lifetime. Implementing the polluter-pays principle in this case requires the ability to decide which of the successive operators is responsible for what part of these costs.

(95) Decommissioning costs are generated in one go in the very first moments of the operation of the plants. Later increments in these costs are marginal as compared with those created at the outset.

(96) A completely direct implementation of the internalisation of costs principle, which is the translation of the polluter-pays principle, would therefore require that all the plant's decommissioning costs be factored in the price of the first units of energy sold by the plant.

(97) It is obvious that such an interpretation of the polluter-pays principle would be in complete contradiction with the economics of electricity generation and would be so impracticable that it would not even achieve its own goal. It is therefore generally accepted that, in order to apply the polluter-pays principle to these costs in a way that would be practical, a means should be found of spreading the pollution costs (or, to be more exact, the legal duty to cover them) over at least the expected lifetime of the plant.

(98) The way these pollution costs are spread has a particular relevance for the application of State aid rules where the State intervenes to pay the decommissioning costs of plants that have been owned by several owners. Indeed, in such a case, the spread of the pollution costs between the successive owners also drives the spread of the potential advantage granted by the State to each of them.

(99) There is no harmonised Community-wide system for allocating decommissioning costs to the successive owners of a nuclear plant. Member States have different systems for implementing a legal duty to meet nuclear liabilities, these systems resulting in different possible attributions of costs between successive plant owners (").

(100) Despite the lack of a harmonised system, the Commission considers that it is still possible to identify two broad categories.

(101) The first type of system consists in treating decommissioning liabilities as investment costs. In this case, the liability to cover these costs is created at the time the plant is turned on, and the cost becomes unavoidable from then on. In accounting terms, liabilities are similar to a debt to a hypothetical decommissioning operator. Like all debt, this one may be repaid in instalments, as well as purchased or sold by various parties. But it is in any event completely triggered as from the beginning of operations.

(102) The second type of system consists in treating decommissioning liabilities as operating costs. In such cases, the legal liability to cover these costs is created periodically, normally on a yearly basis, as a counterpart for the operation of the plant. Future instalments therefore remain avoidable. In accounting terms, liabilities are similar to an annual tax paid to a hypothetical decommissioning operator. The legal charge for this equivalent of a tax is not completely triggered as from the beginning of the operations, but on a continuous basis during the operation of the plant.

(103) The two systems above may in practice lead to the same behaviour in many cases, in particular for economically efficient power plants ⁽¹²⁾. In this case, operators covered by the first system would tend to put money aside to meet their originally triggered liability in the same regular way as they would if they had to meet an annual payment.

(104) However, they lead to two very different interpretations in State aid analysis in cases where an economically inefficient power plant is transferred from one owner to another under the promise by the State to pay for a shortfall in decommissioning costs.

(105) Under the first system, liability for funding the whole decommissioning cannot be avoided by the first owner. If he cannot sell a part of this liability under market conditions to the new owner he remains liable for this

(¹²) It must be noted however that, in many Member States with a nuclear industry, the question of successive owners of plants is theoretical since all plants have always been owned by a single operator.

(¹³) In this framework, an economically efficient power plant is deemed to be one that generates enough revenue to cover all its costs, including all decommissioning costs.

part, and the new owner cannot be held liable for it, irrespective of the size of this part as compared to the actual time during which the first owner operated the plant. This can lead to a situation where the first owner has to face a burden which is disproportionately high in relation to the time during which it operated the plant and, conversely, the new owner is faced with a burden which is disproportionately low. The economic situation of the power plant is the factor that determines the spread of liabilities. In the extreme case where the power plant is so inefficient that it covers no more than its operating costs, the first owner would be liable for all decommissioning costs and the new one for none. State intervention would then have to be interpreted as an advantage to the first owner only.

(106) Under the second system, the new operator would in any event have to pay for amounts that would be charged to it under the periodical liability mechanism in the future. These liabilities, on the other hand, are avoidable for the first operator, since the legal duty to pay them is only triggered upon actual operation of the plant. Therefore, the first operator cannot be charged for future liabilities by the new operator under a market transaction unless it receives proper compensation. Under this system, operators therefore always remain liable for their share of the decommissioning costs, whatever the economic situation of the power plant.

(107) The United Kingdom's method for treating nuclear liabilities is neither of the two reference systems to implement the polluter-pays principle described in recitals (101) and (102) above, since, as has already been mentioned, it does not implement fully the polluter-pays principle. It is nevertheless necessary to refer to one proper benchmark in order to assess the Measure, otherwise it would not be possible to assess the extent to which the polluter-pays principle has not been implemented.

(108) At the present stage of its legal analysis, the Commission is not in a position to decide whether Community law allows it to impose one of the two methods above in the context of analysing the implications of the polluter-pays principle under the State aid rules. The Commission finds that, in any event, it is not necessary to decide on this question for the present case, since, as will be demonstrated below, the two methods come to the same conclusion as regards BNFL and the NDA, that is, that the Measure does not include State aid to BNFL and includes a State aid to the NDA that can be found compatible with the common market.

7.3. Aid within the meaning of Article 87(1) of the EC Treaty — Absence of aid to BNFL

(109) The Commission has analysed whether the Measure includes an advantage to BNFL under each of the two reference systems described in recitals (101) and (102) above. As is explained above, both analyses aim at making sure that, consistently with the polluter pays principle, BNFL has covered the part of the nuclear liabilities that is attributable to it by its own means only -and in particular not by State support.

(110) In conducting these two analyses, the Commission took account of the history of the ownership of the assets under consideration, as well as the history of State intervention in their favour, which is summarised below.

(III) The Magnox power plants were originally owned and operated by two publicly owned companies that also owned other, non-Magnox, power plants in the United Kingdom. The British nuclear sector was then restructured in several steps.

(112) In a first step, Magnox plants were separated from non-Magnox plants. The former were grouped together in a single publicly-owned company known as Magnox Electric. A debt corresponding to the book value of the transferred plants was created. This debt was owed to Magnox Electric by the companies now owning only the non-Magnox plants (hereunder referred to as 'the Non-Magnox Operators'). The debt later on was earmarked for covering the Magnox plants' complete nuclear liabilities.

(113) In a second step, the UK Government purchased the debt from Magnox Electric and replaced it with an undertaking to pay for the shortfall of nuclear liabilities, capped with the same value as the debt, and indexed with the same rates. It should be noted that this step did not change Magnox Electric's position as it was entitled to receive this money as a result of the first step. On the other hand, by this step the State alleviated the debt burden to the Non-Magnox Operators.

(114) In a third step, BNFL purchased Magnox Electric from the Government for a symbolic price of one pound. At that time, the Government undertaking mentioned above was replaced by a new one, fixed at the newly estimated negative net book value of the power plants: GBP 3,7 billion. It must be noted that, in contrast to what the Commission believed at the time of the Opening of Procedure, this undertaking bears no relationship with the letter of comfort which was approved by the Commission under State aid Case N 34/90 (").

(") Commission Decision in State aid case N 34/90. Letter SG(90)D/2049.

(115) The Measure represents the fourth and last step of the restructuring. BNFL transfers the power plants to the NDA, together with all financial assets attached to them, including the aforementioned undertaking (hereinafter the Magnox Undertaking).

(116) The Calder Hall and Chapelcross Magnox plants represent an exception to the process described above. They have been the responsibility of BNFL since 1971, when BNFL was set up and these stations were transferred to it. BNFL assumed ownership and responsibility for the Springfields site at the same time.

(117) The other assets concerned by the transfer to the NDA, and in particular THORP and SMP, were owned by BNFL from the beginning of their operations until their transfer to the NDA.

7.3.1. Analysis under the first reference system (decommissioning costs as investment costs).

(118) Under this analysis, as explained in recital (105), if an installation changes ownership the buyer cannot be held responsible for nuclear liabilities in excess of those he would be ready to acquire from the seller. This means that, in this reference system, where an asset has a negative book value that consists in nuclear decommissioning liabilities, the burden stays with the seller, and, should the buyer agree to take responsibility for the liabilities, it is entitled to receive payment for these liabilities as a negative price.

(119) In this reference system, when it acquired the plants from Magnox Electric BNFL was therefore entitled to receive the value of the Magnox Undertaking as a negative price for their negative book value. The Magnox Undertaking cannot therefore be interpreted as an advantage given to BNFL, and could be rightly included in the company's balance sheet as an asset it owned. Thus it can be counted as a contribution by BNFL towards meeting the nuclear liabilities for which it had assumed complete responsibility.

(120) The same reasoning must be used for the transfer of the assets from BNFL to the NDA: since the NDA takes over all liabilities under this reference system, BNFL should at the same time provide the NDA with positive assets of a total value equal to that of the liabilities transferred. If it did not do so, the difference would constitute aid to BNFL.

(121) The following table, which was provided by the United Kingdom, gives an update of the values of the liabilities and assets transferred by BNFL to the NDA as provided before the Opening of Procedure. It is worth underlining that, as was explained above, the full value of the Magnox Undertaking can be considered as a contribution by BNFL since BNFL was entitled to get this value itself as a payment at the time it purchased the plants.

Table 3

2005 estimates of assets and liabilities to be transferred from BNFL to the NDA showing BNFL contribution towards its Nuclear Liabilities. March 2005 prices, discounted at 5,4 % nominal, amounts in GBP billion.

Total Economic Nuclear Liabilities	-15,1
Sellafield operations cash flow (THORP & SMP)	2,6
Springfields future cash flows	0,2
Magnox future cash flows	0,2
Magnox Undertaking	8,3
Nuclear Liabilities Investment Portfolio	4,0
Other customer contributions not included above	0,3
Cash and liquid assets	0,7
Total	1,1

(122) The table above is based on BNFL's accounts. These accounts have been audited. Apart from the increase in value of the Magnox Undertaking due to its indexation, the main change as compared to the figures contained in the Opening of Procedure consists in the fact that BNFL will be transferring more financial assets to the NDA.

(123) The Commission is aware that estimates for future revenue from the Sellafield site can be controversial. Greenpeace attached to its submission a report questioning the pertinence of investment in these assets, and in particular for SMP.

(124) The Commission notes however that THORP's future cash flow is based mostly on contracts which have already been signed and which will be executed in the remaining lifetime of the plant. Estimates of THORP future cash flow are therefore unlikely to be significantly flawed. It may indeed be possible, as Greenpeace argues, that reprocessing will

not be the best environmental solution for nuclear waste final management. However, the Commission considers that the power to make this decision lies solely with the countries concerned and is immaterial to the Community State aid policy.

(125) The situation for SMP is different, since SMP still has to contract most of its operations. The Commission compared the value submitted by the United Kingdom authorities with the one that resulted from the procedure of assessment of BNFL's economic case for the Sellafield MOX plant⁽¹⁴⁾. The Commission found that the figure used by the UK authorities is within the average range of reasonable scenarios resulting from the analysis undertaken by independent consultants for this assessment⁽¹⁵⁾.

(126) The Commission notes Greenpeace's comment that the aforementioned assessment of BNFL's economic case for the Sellafield MOX plant took place after most of the investment costs in SMP had been sunk. This timing meant that investment costs were not taken into account when deciding on the economic rationale for or against operating the plant. The Commission understands that, in this context, the positive result of the assessment could give the wrong impression that investment in SMP was a profitable decision overall, whereas in fact, the result meant only that, since the investment had already been made, it was more logical to operate it in the hope of losing less money overall. However, the Commission notes that this distinction only affects the validity of the choice of the timing of the assessment, not the validity of future cash flow estimates in the assessment.

(127) The estimated future cash flow for Magnox plants takes account of the latest electricity prices in Great Britain. Electricity prices in Britain were particularly high at the end of 2005. It is unclear whether they will stay at that level for a sustained period. However, some of the reasons usually

⁽¹⁴⁾ See <http://www.defra.gov.uk/environment/consult/mox/> reports submitted in this public consultation.

for all

Due to the differences between the discount rates used by consultants and the Commission reference rate, the Commission could only compare reasonable orders of magnitudes and not exact

figures.

put forward for high electricity prices, in particular the increase in gas prices and the effect of emission trading, are likely to remain, and could even grow in the case of the effect of emission trading. Furthermore, the figures used for estimating this cash flow, although they take account of the rising trend, are still very cautious as compared to prices witnessed today (⁽¹⁾). The Commission therefore believes that this estimate is acceptable for the few years during which Magnox plants will continue to operate.

(128) The NDA computes and publishes its own estimates of total nuclear liabilities. These estimates are higher than the ones used in BNFL's accounts. They do not distinguish between economic and non-economic liabilities, since this distinction, which is significant for State aid control, is irrelevant for the NDA's activities. However, according to the United Kingdom, splitting the NDA's latest estimates (⁽¹⁷⁾) for total liabilities into economic and non-economic liabilities in the same proportion as that used for the above computation results in estimated total economic nuclear liabilities reaching GBP 18,2 billion in March 2005 prices (compared to GBP 15,1 billion from BNFL's accounts). The total BNFL contribution resulting from the same computation as in Table 3 above would become negative by GBP 1,9 billion (instead of a positive GBP 1,1 billion (⁽¹⁸⁾)).

(129) The Commission acknowledges that nuclear liabilities are difficult to estimate, since they relate to activities that will take place a long time in the future, and of which we still have little experience. This is particularly true of decommissioning activities that concern very specific sites like the ones transferred to the NDA. In view of these uncertainties, the Commission is of the opinion that a GBP 3,1 billion margin of uncertainty out of a total of about GBP 15 to 18 billion is acceptable.

(130) It is understandable that BNFL's estimate of the liabilities is smaller than the NDA's. Indeed, it is clearly in BNFL's interest to have smaller liabilities in its balance sheet. On the other hand, it is in the NDA's interest to be conservative to get sufficient funding for its activities, especially in a period of budgetary restrictions. The fact that the NDA is under an obligation to achieve a 2 % p.a. gain in efficiencies adds to the incentive to present rather conservative first estimates.

(131) The UK Government indicates that similar but already more advanced experience in the USA shows that decommissioning costs estimates tend to follow a curve whereby, after an initial growth, they eventually decrease as a result of increased experience and technology improvements.

(⁽¹⁾) These estimates of electricity prices are in the range of GBP 28MWh to GBP31MWh). As a reference, April 2006 baseload prices are GBP 54,48 MWh and annual 2007 baseload prices (calculated as the average of summer and winter prices) are GBP 53,75/MWh (Source: United Kingdom authorities quoting Platts European Power Daily, 8 February 2006).

(⁽¹⁷⁾) This estimate is referred to as Ufcycle Baseline 2.

(⁽¹⁸⁾) Sums may not match perfectly because of rounding.

(132) Over the last ten years the United States Government has introduced performance-based contracts for nuclear cleanup. This is the approach to clean-up that the NDA is now committed to implementing. Experience in the US has been that over a period of five years or so it is possible to reverse the tendency for liability estimates to increase and in contrast to reduce liability estimates through accelerating work and cost reductions. For example the US Treasury Financial Report for 2003 notes that the Department of Energy reduced its environmental liability by USD 26,3 billion or 12,5 % in fiscal year 2003; this is the second year in a row that Energy's environmental liability has decreased. The decrease in 2003 was primarily due to restructuring the clean-up programme to focus on its core mission and accelerating clean-up (⁽¹⁹⁾). A more recent report by the United States Government Accountability Office (GAO) reviewed the Department of Energy's cost reduction target for nuclear clean-up. The GAO report identified that as at March 2005 the Department of Energy was on track or ahead of schedule for many of the 16 clean-up activities it measures and behind schedule for three challenging and costly activities. The GAO report stated that the Department of Energy is still expecting significant cost reductions of the initial target of 50 billion USD (⁽²⁰⁾).

(133) In view of the above, the Commission considers that it can reasonably consider that, of the two estimates, BNFL's estimate will probably prove to be closer to reality.

(134) Therefore, the Commission concludes that the Measure does not include any aid to BNFL within this reference system.

7.3.2. Analysis under the second reference system (pollution costs as operating costs).

(135) To calculate BNFL's contribution under this reference system, the first step consists in allocating nuclear liabilities properly to the successive owners of the assets, in a way that is consistent with the fees that a hypothetical decommissioning operator would have charged to each of them. The profile of such a fee would be likely to be tightly linked to the assets' revenues.

(136) For the Magnox plants, the Commission considers that the most appropriate way to do this is to allocate liabilities on a time proportion basis, since the output of these power plants remains very stable over time.

(⁽¹⁹⁾) See 2003 Financial Report of the United States Government, p. 11 <http://fms.treas.gov/fr/03frtsg.html>.

(⁽²⁰⁾) GAO Report to the Chairman and Ranking Minority Member, Subcommittee on Energy and water Development, Committee on Appropriations, House of Representatives Nuclear Waste July 2005.

(137) In the case of Springfields, the allocation distinguished between liabilities linked to the reprocessing of Magnox spent fuel, liabilities linked to the reprocessing of AGR spent fuel and other liabilities. Magnox liabilities are allocated using the same pattern as the one used for Magnox plants above, since nuclear waste generation is directly linked to the plant's electricity output. AGR liabilities are allocated to BNFL in accordance with its arrangement with BE whereby BE retained responsibility for these liabilities until 1995. The same method is used for Magnox-related liabilities of the Sellafield site ⁽²¹⁾.

(138) Other (non-Magnox and non-AGR) liabilities in Springfields are allocated on a time proportion basis. The same time proportion method is used for the Drigg and Capenhurst sites.

(139) The situation is different for the THORP and SMP plants of the Sellafield site. These assets were built by BNFL. THORP was operated first by BNFL, but will continue to be operated by the NDA. SMP will be operated exclusively or almost exclusively by the NDA. Allocating liabilities on a time proportion basis would therefore lead to the attribution of an important share of these liabilities to the NDA.

(140) However, unlike power plants or fuel supply plants, these assets are not meant to have a steady business plan. They are generally commercially managed in such a way as to generate most of their revenue at the very beginning of their operations. The first contracts that are signed in this respect are known as 'Tjascload' contracts. Operators aim at recovering if possible all decommissioning costs from the revenue generated by these contracts. This is typically the case for THORP and SMP. In such cases, the Commission believes that, even in this reference system, it is reasonable to allocate all liabilities to the first owner, because a diligent regulator would be likely to fix contributions to repay the full decommissioning costs in such a way as to charge most if not all of them on baseload contracts signed by this owner.

(141) The Commission notes that comments from Greenpeace point to the fact that it is quite likely that the business prospects for THORP and SMP are not as good as they originally seemed. The Commission however believes that this should not be a reason to deviate in the allocation method, since even if the global activity of the plants is decreased, the overall profile of their revenue generation (that is, with most of the revenues generated in the beginning) should remain the same.

(142) Accordingly, the Commission has allocated all nuclear liabilities of the THORP and SMP plants to BNFL.

(143) The second step in the computation consists in calculating the value of BNFL's contribution to these liabilities.

(144) This contribution must first take account of liabilities that have already been discharged by BNFL. Indeed, a certain

⁽²¹⁾ Except THORP and SMP, which are treated separately.

number of sites, including in particular some Magnox plants, have already ceased operation, and decommissioning has started. BNFL has spent GBP 5,1 billion for meeting these liabilities. While doing so, BNFL did not check whether the liabilities it was discharging were 'attributable' to it under the present reference system. However, the whole of this contribution can be included in the computation since either discharged liabilities were attributable to BNFL and therefore can be directly included in the computation, or they were not attributable to it and in this case BNFL provided contribution for more liabilities than it should have, and would have deserved compensation for it.

(145) Second, the contribution must also take account of the financial assets that BNFL will provide to the NDA. From the value of these assets that will be transferred to the NDA must be subtracted the value that was received by BNFL at the time it purchased the Magnox plants, since only the increase in value of the assets constitutes a contribution from BNFL.

(146) Finally, future cash flow for SMP and THORP, which will be received by the NDA instead of BNFL, should also be counted as BNFL's contribution, in order to be consistent with the aforementioned decision to attribute all the liabilities of these plants to BNFL.

(147) The chart below summarises the results of the computation under this reference system:

Table 4

Estimate of contribution from BNFL to its allocated share of liabilities. 2005 prices, discounted at 5,4 % nominal, amounts in billion GBP.

Non-Thorp and Non-SMP liabilities allocated to BNFL	a		-8,0
Thorp and SMP liabilities allocated to BNFL	b		-1,4
Total Liabilities to be funded by BNFL	c	a+b	-9,4
Funds to be provided to NDA			
Magnox Undertaking	d		8,3
NUP	e		4,0
THORP and SMP Future Cash flows	f		2,6
Other assets	g		0,7
Total value of funds	h	d+e+f+g	15,6
Funds provided to BNFL under Magnox transaction			
Magnox Undertaking	i		-5,3
Other funds	j		-4,0
Subtract total funds provided to BNFL	k		-9,4

Value of net funds	1	h-k	6,2
Liabilities discharged by BNFL	m		5,1
Funds Provided towards liabilities	n	l+m	11,4
Result of BNFL administration	0	n-c	2,0

(148) The table above was submitted by the United Kingdom authorities. It is based on figures from BNI-L's accounts, as in Table 3.

(149) The considerations developed in recitals (128) to (133) apply in this case too.

(150) Therefore, the Commission concludes that the Measure does not include any aid to BNFL within this reference system.

7.4. Aid within the meaning of Article 87 (1) of the EC Treaty — Presence of aid to the NDA

(151) The two computations described above could also be applied to determine whether and to what extent the Measure gives an advantage to the NDA.

(152) However, the Commission considers that, in this case, the computation is not necessary. Indeed, the Measure provides an unlimited guarantee that the State will cover all the NDA's expenses if these expenses cannot be covered by the authority's revenues from commercial activities or by financial assets transferred to it. Nor is this guarantee is neither limited in scope nor in time. It does not exclude costs linked to competitive activities, in particular where these activities may generate added incremental liabilities, and is not limited in amount.

(153) The Commission considers that this unlimited guarantee is in itself an advantage that is granted by the State to the NDA.

(154) Since this guarantee is financed by the resources of the State and is specifically aimed at the NDA, and since the NDA will continue to have some commercial activities in markets where there is trade between Member States, the Commission concludes that the Measure involves State aid to the NDA within the meaning of Article 87(1) of the EC Treaty.

(155) The Commission notes that the United Kingdom did not challenge the fact that the measure constitutes State aid to the NDA.

7.5. Compatibility assessment of the aid to the NDA under the EC Treaty

(156) Article 87(1) of the EC Treaty provides for the general principle of prohibition of State aid within the Community.

(157) Article 87(2) and 87(3) of the EC Treaty provide for exemptions to the general incompatibility set out in Article 87(1).

(158) The exemptions in Article 87(2) of the EC Treaty do not apply in this case because the Measure does not have a social character and is not granted to individual consumers, it does not make good the damage caused by natural disasters or exceptional occurrences and is not granted to the economy of certain areas of the Federal Republic of Germany affected by its division.

(159) Further exemptions are set out in Article 87(3) of the EC Treaty. Exemptions in Articles 87(3)(a), 87(3)(b) and 87(3) (d) do not apply in this case because the aid does not promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, it does not promote the execution of an important project of common European interest or remedy a serious disturbance in the economy of a Member State, and it does not promote culture and heritage conservation.

(160) Only the exemption in Article 87(3)(c) of the EC Treaty may therefore apply. Article 87(3)(c) provides for the authorisation of State aid granted to promote the development of certain economic sectors, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

(161) The Commission practice is to interpret the text of Article 87(3)(c) as meaning that a measure can be found compatible with the Treaty where its positive contribution to the fulfilment of certain Community objectives outweighs its negative impact on competition on the internal market.

(162) Section 7.1 explains in some detail the compatibility of the Measure with the objectives of the Euratom Treaty. The Commission welcomes the establishment of the NDA and views it as an excellent measure for handling in an efficient way the burden of nuclear liabilities arising from the distant past when environment policies had not yet reached present-day standards. The Commission considers that the NDA will contribute in a decisive way to the best possible implementation of the back end of the nuclear cycle. In this way, it will clearly contribute to the fulfilment of the Community's nuclear policy as set out in the Euratom Treaty. The positive contribution of the Measure is therefore very important, and well established in the Commission's view.

(163) Had the NDA been under an obligation to cease as soon as possible the commercial operation of the assets for which it will be responsible, there would probably have been no significant negative impact of the Measure on competition. However, the United Kingdom did not make this choice, and allowed the NDA to continue the commercial operation of assets under certain conditions. The Commission can only note that, by doing so, the United Kingdom has made it possible for the NDA's operations to have an

impact on the internal market. This makes it necessary to analyse the magnitude of this impact in order to assess the Measure.

(164) The Commission considers that the continuation of the commercial operation of the assets by the NDA, with the underlying aid from the State, has a very similar impact on competition to that which would result from the continuation of operations of a company in receipt of restructuring aid. The parallelism with the BE restructuring case (") is striking in this respect. In view of these similarities, the Commission considers that the most appropriate way to assess the impact of the Measure on competition and to establish the limits within which it may be found compatible with the common market consists in using the underlying reasoning of the Community guidelines on State aid for rescuing or restructuring firms in difficulty⁽²³⁾, and in particular the need to find proportionate compensatory measures to mitigate the effects of the aid where necessary.

(165) Before entering into a detailed analysis of the competition situation for each of the assets, the Commission has two general remarks concerning the impact of the Measure on competition.

(166) The first remark is that the statutes of the NDA themselves mitigate the impact of the Measure on competition even for assets that will continue in operation. A company with a commercial goal would be likely to use operating aid to reduce its costs and sell at low price. In contrast, the NDA will operate assets only if the operation can add value for its main duty, the decommissioning of the plants. The NDA will therefore have no incentive to use aid to provide services below the market price, and certainly no interest in using the aid to decrease its costs. Furthermore, whilst the NDA will continue to operate the existing assets, it will not invest in any new ones. It will therefore not be in its interests to have a commercial policy aimed at gaining influence and market share.

(167) The NDA will neither invest in new assets nor engage in new activities. The cash flow it will generate by continuing the operation of certain assets will be used solely for the purpose of providing more funding for the discharge of nuclear liabilities. The operating framework for the NDA strictly ringfences all NDA's revenues, preventing them to be used for other purposes.

(168) All nuclear plants operators should cover in principle their proper share of nuclear liabilities under the polluter pays principle. For this purpose, the UK undertook to require the NDA and Site Licensee Companies for the power plants to undertake to use all reasonable efforts in their prices to recover the share of the liabilities that are attributable to the NDA. In the circumstances where this goal would not be reached, the UK will report to the Commission and inform it on the reasons why it could not be reached.

⁽²²⁾ See footnote 9.

(") See footnote 8.

(169) The second remark is that the competitive system that the United Kingdom will put in place to designate SLCs will in itself have a very beneficial effect on competition in the internal market. It will create the basis for a real market in the operation of some nuclear sites in the United Kingdom and, more importantly, their decommissioning. The Commission considers that the development of this market is an excellent opportunity for the Community economy as a whole. It will allow the spread of know-how to the whole Community industry. The Measure will therefore have significant positive externalities, which will be useful in particular in view of the numerous nuclear assets that will have to be decommissioned in the Union in the coming decades.

(170) The Commission has also analysed the competition situation of each of the types of assets that the NDA will continue to operate commercially.

7.5.1. *Magnox power plants*

(171) The Magnox power plants are operating on the very competitive Great Britain electricity market.

(172) The Commission notes the United Kingdom's microeconomic arguments that the Measure, even if it decreased the plants' SRMCs, would not impact the time during which competitors run their plants and the price at which they sell their electricity.

(173) The Commission has reservations in this respect. Indeed, these arguments may be valid in a single, mostly short term, perfect market, with perfect information, preferably pool based. However, the present electricity market in Great Britain is not such a market. It is mostly based on bilateral contracts, with several futures markets. Furthermore, the market is fundamentally divided between wholesale and direct supply to business, the second segment being apparently more commercially valuable. Without affecting the actual amount of electricity sold by one of the NDA's competitors, the Measure may force it to switch partly to a less attractive part of the market, which would impact its results.

(174) The Commission therefore considers that the Measure distorts or threatens to distort competition on this market which must be mitigated.

(175) The ideal way to mitigate the negative impact of the aid on the market would be to cease the operations of the power plants.

(176) The Commission appreciates however that closing down these power plants immediately might have a negative impact on the efficiency and safety of the decommissioning operations. Indeed, because the Sellafield site would not be in a position to start waste reprocessing for several power

plants at such short notice, temporary storage solutions would have to be provided. This would complicate decommissioning works, adding costs and potentially safety concerns. It might also cause problems for security of electricity supply in the already tense Great Britain market. The Commission considers that requiring the immediate closure of the plants is therefore not a proportionate measure for mitigating competition concerns.

(177) The Commission notes that, whilst the plants will not be closed immediately, the United Kingdom already has a programme to close all of them in the relatively short term, the last station being scheduled to close in 2010. This implies that any impact of the Measure on competitors would decrease and end soon. In particular, the period between the time of this decision and the last closure is of the same order of magnitude as the time necessary for a new entrant on the market to develop a new electricity plant project until commissioning. The NDA also will not start new electricity generation activities nor build any other new asset.

(178) In order to mitigate the impact of the Measure on the market in the meantime, the Commission examined the possibility of requiring measures from the NDA which would be equivalent in effect to the ones it required from BE in the framework of the State aid case for its restructuring ^(2*). There were three such compensatory measures.

(179) The first compensatory measure consisted in requiring the separation of BE's nuclear generation, non-nuclear generation and trading business. In the present case, the NDA does not have any significant non-nuclear generation business. The Commission therefore considers that such a compensatory measure would not be meaningful for the present case.

(180) The second compensatory measure consisted in imposing on BE a six-year ban on increasing capacity. In the present case, in practice, the NDA will not only not increase its electricity generation capacity, but will also gradually phase it out over four years. The effects of this measure are therefore already achieved by the normal functioning of the NDA.

(181) The third compensatory measure consisted in prohibiting BE from selling electricity on the direct sale to business segment below wholesale market prices.

(182) The Commission considers that a similar measure is necessary in the case of the NDA. The United Kingdom has undertaken to implement it.

(183) In practice, the same type of derogations as the ones accepted for BE in cases of exceptional market circumstances will apply. The Commission considers that such

exceptional derogations are necessary in order not to jeopardise the very aim of the Measure. Experience of monitoring the Commission decision in the BE case shows that the derogations did not lead to abuse.

(184) In the present case, as in the case of BE, the existence of exceptional market circumstances will be defined by the use of concrete and operational tests.

(185) The tests will however be slightly less cumbersome than in the case of BE. The Commission considers that this is justified and proportionate because NDA's share of the market is much smaller than BE's and the impact of the Measure on the electricity market is therefore less.

(186) The United Kingdom authorities have offered to implement the measure with the rules defined in recitals (187) to (190).

(187) Under normal market circumstances, where the NDA wishes to enter into new contracts for sales to end-users, the Secretary of State will appoint an independent expert to report on an annual basis that such contracts have been at prices where the energy component has been set at or above the prevailing wholesale market price.

(188) Under exceptional market circumstances, the NDA may sell new contracts where the energy component is set below the prevailing wholesale market price but only after the auditors of the NDA, or of companies operating on its behalf, have reached the opinion that one of the two tests set out below for exceptional market circumstances have been met.

Test A: the NDA, or a company operating on its behalf, offers to sell [...] (*) for a period of [...] a minimum of [...] for a winter season trade and [...] for a summer season trade at the prevailing wholesale market price in the wholesale market and at the end of that period such offers have not been accepted.

Test B: reported trades of season ahead baseload electricity on the United Kingdom wholesale electricity market have totalled less than [...] (gross), averaged over the preceding [...].

(189) If either test is fulfilled, a period of exceptional market circumstances would commence. The NDA would then be able to sell new contracts for up to [...] to end-users for contracts at prices below the prevailing wholesale market price on the assumption that such pricing behaviour is a commercial necessity during such a period of exceptional market circumstances.

(190) A period of exceptional market circumstances may not exceed [...]. In order for a subsequent period of exceptional market circumstances to commence either Test A or Test B must again be satisfied.

^(M) See footnote 9.

^(N) Business secret.

(191) The Commission considers that this mechanism is a suitable way to implement the compensatory measure. It is based on sufficiently transparent and practicable criteria to enable decisions to be made in a sound and efficient way. It will make it possible to mitigate significantly the distortion of competition in the market during the period pending the closure of Magnox plants.

(192) In view of the above, the Commission considers that the distortion of competition resulting from the measure, as mitigated by the fact that the plants will close soon and by the compensatory measure that will be put in place, is outweighed by the positive contribution of the Measure on the achievement of the Euratom Treaty objectives.

7.5.2. THORP

(193) The Commission considers that the impact of the Measure as regards the continuation of THORP activities by the NDA is very limited.

(194) First and foremost, an important part of the reprocessing in THORP is of AGR fuel. In this respect, it does not have any competitors at present. Since BE is now the only source of spent AGR nuclear fuel in Europe, the Commission considers that it is dear no market investor would consider any investment in a new AGR nuclear fuel reprocessing plant.

(195) Greenpeace argues that direct storage might be an alternative to reprocessing AGR fuel and could be a more attractive solution for an investor.

(196) The Commission considers however that, even though investment in direct storage may be less costly, it would still remain a very unattractive option. Indeed, as the United Kingdom rightly remarks, BE, as the only source of spent AGR fuel, already has life-time agreements for the managing of its spent AGR fuel. The Commission points out that, contrary to what Greenpeace seems to claim, BNFL was under no obligation to actually reprocess this waste. It is only under a duty to manage it. According to the information available to the Commission, BNFL did not intend to reprocess it all.

(197) These agreements are the result of a renegotiation of the initial arrangements during the restructuring of the company. Prices are therefore particularly interesting for BF., since, within such a framework, BNFL, like any private investor in a market economy, was ready to offer prices going as low as its marginal costs, surrendering part or all of its fixed costs (it should be noted however that the fixed GBP 140 000/tonne mentioned by Greenpeace and reported in *erita*] (53) is incorrect, since prices in these arrangements depend on electricity prices, as is described in Table 7 of the aforementioned Commission decision on the restructuring of BE).

(198) The Commission considers it impossible that a competitor, which would have to either build a new storage facility with significant fixed costs, or factor in high transport costs for hazardous material, could make any competitive offer to BE in such conditions.

(199) Competition concerns are therefore limited to THORP'S LWR spent fuel reprocessing activities.

(200) For these activities, the Commission considers that direct storage is not a real competitor to reprocessing. Indeed, under the economic conditions prevailing now and for the foreseeable future on the uranium market, reprocessing of waste fuel is a significantly more costly option than direct storage ("). The choice of reprocessing over direct storage is therefore very often a policy choice by Governments of countries where the nuclear plants are operated. Such a policy choice, which is often implemented by" law or regulation, leaves very little if any room for competitive arbitrage by operators between the two options.

(201) For the reprocessing of non-AGR fuel THORP has therefore only one competitor in the Union: the French company Areva.

(202) In this context, the Commission considers that requiring advance closure of THORP to mitigate competition concerns raised by the Measure would potentially create more competition issues than it would solve. Indeed, it would establish Areva as a monopoly that would certainly be of very long duration in view of the technological and financial difficulty of entering this market.

(203) The Commission believes that in view of the above, a better way to mitigate the impact of the Measure on competition is to ensure that, during the NDA operations, government resources will not be used to enable THORP to compete on a biased basis with Areva.

(204) It was demonstrated in section 7.3 that BNFL had put aside enough monies to pay for THORP's fixed decommissioning costs. The Commission therefore considers that, in order to ensure that the NDA will not be in a position to offer anticompetitive pricing, it is sufficient to require that the NDA will, for any new contract for THORP, price in all costs, including all incremental nuclear liabilities.

(205) The United Kingdom has undertaken to implement this complete pricing mechanism. It will apply to all new contracts entered into by the NDA after the date of the present decision. This restriction will not be applied to contracts entered into before the date of the Commission decision or to contracts where formal offers approved by the Nuclear Decommissioning Authority and the United Kingdom's Department for Trade and Industry have been issued to customers and are under negotiation before that date or to contracts entered into after that date pursuant to a Letter of Intent entered into before that date.

(") See OECD/NEA. "The Economics of the Nuclear Cycle. 1994, which is one of the most complete studies on this aspect to that date.

(206) In view of the above, the Commission considers that the distortion of competition resulting from the measure, as mitigated by the compensatory measure that will be put in place, is outweighed by the positive contribution of the Measure to the achievement of the Euratom Treaty objectives.

7.5.3. SMP

(207) SMP's competition situation is also very specific. SMP fabricates MOX fuel. MOX can be used only in a limited number of nuclear power plants that have been designed or adapted for its use. SMP only has two commercial competitors at present: Areva and Belgonucleaire. These two competitors have significant ties. In particular, the Commission understands that, whilst Belgonucleaire has the technological capacity for producing MOX, it is dependent on Areva to assemble a final product for use in nuclear power plants. Moreover, Beignonucleaire sells its products via Commox, a jointly owned subsidiary of Areva (60 %) and Belgonucleaire (40 %).

(208) Should SMP disappear, competition in the market would be restricted, at best to two companies with important common interests, and possibly even to a single company. It is not impossible that Japanese and Russian operators, which today own non-commercial MOX fabrication installations, may begin commercial operation in the next years. However, this is not certain, and the overlap between the operational life of SMP and these possible new non-EU commercial operators may be restricted to a few years.

(209) Within this context, the Commission considers that requiring early closure of SMP to mitigate competition concerns raised by the Measure would potentially create more competition concerns than it would solve.

(210) The Commission believes that in view of the above, a better way to mitigate the impact of the Measure on competition is to ensure that, during the NDA operations, Government resources will not be used to enable SMP to compete on a biased basis with Areva and/or Belgonucleaire.

(211) It was demonstrated in section that BNFL had put aside enough monies to pay for SMFs fixed decommissioning costs. The Commission therefore considers that, in order to ensure that NDA will not be in a position to offer anticompetitive pricing, it is sufficient to require that the NDA will, for any new contract for SMP, price in all costs, including all incremental nuclear liabilities.

(212) The United Kingdom has undertaken to implement this complete pricing mechanism. It will apply to all new contracts entered into by the NDA after the date of the present decision. This restriction will not be applied to contracts entered into before the date of the European Commission's decision or to contracts where formal offers approved by the Nuclear Decommissioning Authority and

the United Kingdom's Department for Trade and Industry have been issued to customers and are under negotiation before that date or to contracts entered into after that date pursuant to a Letter of Intent entered into before that date.

(213) In view of the above, the Commission considers that the distortion of competition resulting from the measure, as mitigated by the compensatory measure that will be put in place, is outweighed by the positive contribution of the Measure to the achievement of the Euratom Treaty objectives.

7.5.4. Springfields

(214) By the end of 2006, Springfields' activities will be limited to the production of Magnox and AGR nuclear fuel.

(215) Such nuclear fuels are used only in the United Kingdom. Magnox fuel is used only in the Magnox plants, the last of which will close by 2010. AGR fuel is used only by BE, which renegotiated its long term agreements with BNFL for AGR fuel delivery within the framework of its restructuring.

(216) The same arguments apply as are developed in recitals (196) to (198). No competitor would find it economically attractive to invest in an asset to compete with Springfields' activity. The Commission therefore considers that the impact of the Measure on competition as regards the Springfields site is negligible, and calls for no compensatory measure.

(217) In view of the above, the Commission considers that the distortion of competition resulting from the measure is outweighed by the positive contribution of the Measure to the achievement of the Euratom Treaty objectives.

7.5.5. Drigg

(218) The Drigg installation is a repository for low level nuclear waste. It is the only one in Britain.

(219) The United Kingdom authorities informed the Commission that this repository would have sufficient capacity to accommodate all such waste produced in the United Kingdom until 2050. The NDA will be the source of about 90 % of this waste.

(220) Long distance transport of nuclear waste is not recommended, and some countries even ban its import.

(221) The Commission considers that, in these conditions, the scope for a new entrant to compete with the Drigg installation is very limited, and would make the construction of a competing low level waste repository unlikely to have any economic value.

(222) The Commission therefore considers that the impact of the Measure on competition as regards the Drigg site is negligible, and calls for no compensatory measures.

(223) In view of the above, the Commission considers that the distortion of competition resulting from the measure is outweighed by the positive contribution of the Measure to the achievement of the Euratom Treaty objectives.

7.6. BNFL as temporary SLC

(224) In the Opening of Procedure, the Commission expressed concern that BNFL might receive aid from the NDA in the time during which it will be the temporary SLC of the NDA's site before a competitive process can be put in place to designate SLCs.

(225) The Commission notes that the United Kingdom has delivered a complete and detailed explanation of the way SLCs -including BNFL- will be remunerated. Only necessary costs will be paid for, with annual caps. Profit will be excluded from normal payment, and may only be received if efficiency objectives set by the Government are met. Even in this case, these profits will be compared to international benchmarks in the sector.

(226) The Commission considers that this process makes it possible to conclude that SLC funding involves no State aid.

(227) In this respect, the Commission also stresses that it can find no *a priori* reason to believe that SLC contracts, even with BNFL, will entail cross subsidy. On the contrary, it believes that the framework put in place offers much better prospects for transparency than the situation where BNFL operated all its activities within a single group.

CONCLUSION 8.

(228) The Commission concludes that the Measure does not include aid within the meaning of Article 87(1) of the EC Treaty to BNFL, and that it does include aid within this meaning to the NDA. Insofar as there is no State aid, this decision is without prejudice to the application of the Euratom Treaty. Insofar as this aid is in line with the objectives of the Euratom Treaty and does not affect competition to an extent which is contrary to the common interest, the Measure in question is compatible with the common market. This decision does not prejudice the Commission's view on potential State aid to other subjects than BNFL and the NDA,

HAS ADOPTED THIS DECISION:

Article 1

1. The establishment of the Nuclear Decommissioning Authority by the United Kingdom, notified to the Commission on 22 December 2003, which consists in the transfer to the Nuclear Decommissioning Authority of British Nuclear Fuels Limited's Magnox nuclear power plants, physical assets of the Capenhurst, Driggs, Sellafield and Springfields sites, financial assets linked to these sites, and responsibility for covering their

nuclear liabilities does not include State aid within the meaning of Article 87(1) of the EC Treaty to British Nuclear Fuels Limited.

2. The establishment of the Nuclear Decommissioning Authority as described in paragraph 1 includes aid within the meaning of Article 87(1) of the EC Treaty to the Nuclear Decommissioning Authority which is compatible with the common market and the objectives of the Euratom Treaty, subject to compliance with the conditions set out in Articles 2 to 9 of this Decision.

Article 2

As soon as expenditure corresponding to the nuclear liabilities referred to in Article 1 exceeds GBP 15 100 000 000 at March 2005 prices, the United Kingdom shall submit enhanced additional reports to the Commission demonstrating that the expenditure is restricted to meeting the liabilities referred to in that Article, and that proper steps have been taken to limit expenditure to the minimum necessary to meet those liabilities. Such reports shall be submitted yearly.

For the purpose of calculating amounts at March 2005 prices the United Kingdom shall use the reference and discount rate published by the Commission for the United Kingdom, updating this rate every five years.

Article 3

1. The United Kingdom shall require the Nuclear Decommissioning Authority and Site Licensee Companies for power plants to undertake not to offer to supply non-domestic end-users who purchase electricity directly from the Nuclear Decommissioning Authority and Site Licensee Companies for power plants on terms where the price of the energy element of the contract with the users is below the prevailing wholesale market price. However, in exceptional market circumstances, where the objective tests set out in Article 4(1) are satisfied, the Nuclear Decommissioning Authority and Site Licensee Companies for power plants may, while such exceptional circumstances continue to prevail, price the energy element of the contract at below the prevailing wholesale market price in good faith where necessary to enable the Nuclear Decommissioning Authority and Site Licensee Companies for power plants to respond to competition, under the conditions set out in Article 4.

2. The United Kingdom shall report to the Commission each year on the compliance of the Nuclear Decommissioning Authority and Site Licensee Companies for power plants with this condition.

Article 4

1. Exceptional market circumstances shall be deemed to exist if:

the Nuclear Decommissioning Authority offers to sell [...] for a period of [...] a minimum of [...] for a winter season trade and [...] for a summer season trade at the prevailing

wholesale market price in the wholesale market and at the end of that period such offers have not been accepted (Test A); or

(b) reported trades of season ahead baseload electricity on the United Kingdom wholesale electricity market have totalled less than [...] (gross), averaged over the preceding [...] weeks (Test B).

2. If either test is fulfilled, the Nuclear Decommissioning Authority and Site Licensee Companies for power plants may sell new contracts for up to [...] to end-users for contracts at prices below the prevailing wholesale market price on the condition that such pricing behaviour is a commercial necessity during such a period of exceptional market circumstances.

3. A period of exceptional market circumstances shall not exceed [...]. In order for a subsequent period of exceptional market circumstances to commence, either Test A or Test B must again be satisfied.

Article 5

1. The United Kingdom shall require the Nuclear Decommissioning Authority to undertake that the Nuclear Decommissioning Authority and Site Licensee Companies for the Thermal Oxide Reprocessing Plant (THORP) and the Sellafield Mox Plant (SMP) will not supply spent fuel reprocessing and storage services or manufacture of MOX fuel supply contracts at prices less than the relevant projected incremental costs of supply. Such incremental costs shall include related incremental operating costs and any related incremental costs of decommissioning and waste management, and shall comprise such costs as projected shortly before the commencement of the contract.

2. Paragraph 1 shall not be applied to contracts entered into before the date of this decision or to contracts where formal

offers approved by the Nuclear Decommissioning Authority and the United Kingdom's Department for Trade and Industry have been issued to customers and are under negotiation before this date, or to contracts entered into after that date pursuant to a Letter of Intent entered into before that date.

Article 6

The United Kingdom shall submit a yearly report on the implementation of Articles 3 to 5. The report shall in particular state whether exceptional market circumstances existed in the year concerned and specify the conditions of the resulting contracts. The report shall also state whether contracts were signed in application of the provisions of Article 5(1) in the year concerned, and indicate the conditions of these contracts. The report shall also comment, where applicable, on the evolution of the estimated future cash flow of the assets that were transferred by British Nuclear Fuels Limited to the Nuclear Decommissioning Authority. It will also comment on whether the Nuclear Decommissioning Authority achieved its goal to recover the share of the nuclear liabilities of the power plants that are attributable to the Nuclear Decommissioning Authority, and the reasons why it could not if it did not.

Article 7

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 4 April 2006.

For the Commission

Neelie KROES *Member of the Commission*

Schedule 19

AUTHORITY POLICIES AND PROCEDURES

CONTENTS

Heading	Page
Part 1 - Engineering Requirements	3
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In accordance with Clause 4.1.9 (*Standard of Performance*) of this Agreement, the Contractor shall comply with the Authority Policies and Procedures listed in this Schedule 19 (*Authority Policies and Procedures*). Subject to Clause 37.10.3 (*Variations*) and Paragraph 6.14(k) (*Authority Acceptance and Implementation of the Proposed Change*) of Schedule 2 (*Change Control Procedure*), where any changes to the Authority Policies and Procedures (including additions, withdrawals or revisions of Authority Policies and Procedures) have been published on the Authority's website (www.nda.gov.uk) or notified to the Contractor this Schedule shall be updated to reflect the current versions of the Authority Policies and Procedures.

Part 1 - Engineering Requirements

Document Number	Policy Title	Revision Number	Revision Date
EGG01	Waste and Nuclear Materials Lifetime Plan Guidance Notes	1	July 2006
EGG01	Summary Requirements	0	August 2007
EGG02	Guidance Note for the Assessment of Asset Care Requirements for Inclusion in Life Time Plans	1	January 2010
EGG06	Requirements for the Inclusion, Presentation and Control of Hazard Baselines with Life Time Plans	3	July 2010
EGG08	NDA Guidance on the Production of Business Cases	8	May 2013
EGG08-F01	Business Case Evaluation Form	3	November 2009
EGG10	Technical Baseline and Underpinning Research and Development Requirements	5	November 2012
EGG10-01	R&D Table Template	5	November 2012
EGP12	NDA Intellectual Property Policy	2	October 2013
EGPR02	NDA Prioritisation – Calculation of Safety and Environmental Detriment Score	6	May 2011
EGPR04-F02	Technology Research/Investment Process	5	August 2013
EGPR04-F04	Contractor Output Review	3	July 2013
EGPR02-WI01	Instruction for the Calculation of Radiological Hazard Potential	3	March 2010
EGPR02-WI02	Instruction for the Calculation of Chemical Hazard Potential	2	March 2010
ENG01	Specification for the Content and Format for a Site Integrated Waste Strategy	3	January 2013
SCG01	Guidance Note for Determining the Security Requirements for Inclusion in Lifetime Plan	1	October 2009

Part 2 - Finance Requirements

Document Number	Policy Title	Revision Number	Revision Date
FNP01	NDA Accounting Policies	5	January 2011
FNP02	NDA Site Licence Company Accounting and Reporting	3	August 2010
FNPR04	NDA Site Licence Company Cash Payment and Cashflow Forecasting Procedure	1	July 2013
FNP09	SLC, Subsidiary and NDA Internal Guidance Note - Losses and Special Payments	2	September 2013
ADP02	Governance and Assurance Policy	3	December 2011

Part 3 – Project Control Requirements

The Contractor is required to comply with PCP-M (Revision 2) comprising the following procedures:

Document Number	Policy Title	Revision Number	Revision Date
PCP-01	Work Breakdown Structure	2	18 April 2013
PCP-01-01	Work Breakdown Structure Dictionary and Guidelines	2	18 April 2013
PCP-02	Electronic Data Submissions	2	18 April 2013
PCP-04	Charging Practice	2	18 April 2013
PCP-05	Change Control	2	18 April 2013
PCP-07	Baseline Management	2	18 April 2013
PCP-09	Cost Estimating	2	18 April 2013
PCP-10	Risk Management	2	18 April 2013
PCP-11	Scheduling	2	18 April 2013
PCP-13	Progress Reporting and Reviews	2	18 April 2013
PCP-17	Sanction	2	18 April 2013
PCP-M / Mx / RSRL SLC Annexe	Magnox and RSRL SLC Annexe	1	Commencement Date

Part 4 – Nuclear Safety Guidance

Document Number	Policy Title	Revision Number	Revision Date
NSG-31	Guidance of the Roles of the SLC and PBO	4	May 2013

All references to Authority Policies and Procedures are to the versions set out above. Any changes to the Authority Policies and Procedures will be dealt with in accordance with the Change Control Procedure.

Schedule 20

CALL-OFF SUPPORT

1 PROVISION OF CALL-OFF SUPPORT

1.1 Pursuant to the Contractor's obligation to cooperate with the Authority and provide such reasonable assistance to the Authority as the Authority requests from time to time in relation to this Agreement and/or the Authority's statutory duties and functions set out in Clause 4.3.1, the Authority may request support from the Contractor (such as the provision of consultancy services, technical expertise, development of reports, or availability of personnel resource) in addition to the Contractor obligations set out in the Client Specification and in this Agreement, in relation to:

1.1.1 Strategy Development Support (other than the items of Strategy Development Support costed within the Phase 1 Target Cost as set out Part 2 – Section 3 (*Strategy Development Support*) of the Client Specification); and

1.1.2 other estate-wide activities, strategies, initiatives or objectives notified by the Authority from time to time,

("Call-Off Support").

1.2 Where, pursuant to Paragraph 1.1 (*Provision of Call-Off Support*), the Authority requests additional support from the Contractor, the Contractor shall provide or procure the provision of suitably qualified and experienced personnel and shall procure that those personnel hold all relevant security clearances.

1.3 The Contractor shall maintain an appropriate capability of resources and personnel (directly or through its supply chain) during the Term such that it is able to provide assistance to the Authority in relation to the activities specified in Paragraph 1.1 (*Provision of Call-Off Support*) above.

2 RELATIONSHIP BETWEEN THE AUTHORITY AND CALL-OFF SUPPORT PERSONNEL

2.1 Nothing in this Agreement is intended or should be deemed to create a worker or employment relationship between the Authority and any member of additional support personnel required pursuant to this Schedule 20 (*Call-Off Support*).

3 PAYMENT FOR CALL-OFF SUPPORT

3.1 The Authority shall notify the Contractor that the Authority requires Call-Off Support. Such notice shall include details of the Call-Off Support required so that the Contractor is able to prepare a proposal.

- 3.2 Within such period as the Parties may agree, acting reasonably, of the date of receipt of the Authority's request received pursuant to Paragraph 3.1 above, the Contractor shall submit in good faith a proposal to the Authority which shall include a reasonable price for the Call-Off Support package of work and a proposed schedule of payments and shall, unless otherwise agreed by the Parties, be in the form of the terms and conditions set out in Appendix 1 (*Call-Off Terms and Conditions*) to this Schedule 20 (*Call-Off Support*).
- 3.3 The Authority shall inform the Contractor whether the Call-Off Support proposal submitted to the Authority pursuant to Paragraph 3.2 above is approved or rejected (giving reasons for any rejection). If the Authority requests, the Contractor shall provide an amended Call-Off Support proposal within twenty (20) Working Days of such request (or such other period as the Parties may agree, acting reasonably), in which case the provisions of this Paragraph 3.3 shall apply.
- 3.4 A Call-Off Support work package shall only come into effect upon the Call-Off Support proposal being signed by both the Authority and the Contractor.
- 3.5 Once the Call-Off Support proposal has been agreed by the Authority:
- 3.5.1 the Contractor shall carry out the Call-Off Support; and
- 3.5.2 the Authority shall make the payments
- in accordance with the proposal agreed in accordance with Paragraph 3.3 above.

4 CALL-OFF SUPPORT RECORDS AND REPORT

- 4.1 The Contractor shall keep a record of all Call-Off Support provided and sums paid by the Authority to the Contractor pursuant to this Schedule 20 (*Call-Off Support*) and shall provide an annual written report to the Authority which contains details of such Call-Off Support provided and sums paid.

Schedule 20

Appendix 1 – Call-Off Terms and Conditions

This Call-Off Support Contract is dated *[INSERT]* and made between:

[MAGNOX LIMITED, whose registered office is at Berkeley Centre, Berkeley, Gloucestershire, GL13 9PB a company incorporated under the laws of England and Wales with registered number 02264251;]

[AND/OR]

[RESEARCH SITES RESTORATION LIMITED, whose registered office is at Building 392.10/Room 1.05, Harwell, Oxford, Didcot, Oxfordshire, OX11 0DF, a company incorporated under the laws of England and Wales with registered number 05915837];[;].]

[the "**Supplier**"]]

[OR]

[(together the "**Supplier**")]

[DELETE AS APPLICABLE]

and

THE NUCLEAR DECOMMISSIONING AUTHORITY, a Non-Departmental Public Body whose head office is at Herdus House, West Lakes Science and Technology Park, Moor Row, Cumbria (the "**Authority**");

Background

- (A) The Authority and the Supplier have entered into a Site Licence Companies Agreement dated *[INSERT]* (the "**SLCA**").
- (B) In connection with Schedule 20 (*Call-Off Support*) to the SLCA, the Authority requests certain services to be provided by the Supplier, and the Supplier agrees to provide such services to the Authority in accordance with this Call-Off Support Contract.

The parties agree that:

1 STRUCTURE

- 1.1 Unless otherwise defined in this Call-Off Support Contract, terms used in this Call-Off Support Contract shall have the meaning given to them in the SLCA unless expressly otherwise defined in this Agreement.

2 TERM

2.1 This Call-Off Support Contract shall commence on the date of its execution by the parties and, unless the SLCA is terminated earlier, shall continue until **[INSERT DATE]**.

2.2 The Authority may, by written notice to the Supplier given not less than 30 days before expiry of the then current term, renew this Call-Off Support Contract.

3 SERVICES

3.1 The Supplier shall provide the following services to the Authority:

(a) **[DESCRIPTION OF SERVICES]**; and

(b) **[DESCRIPTION OF SERVICES]**,

(the "**Services**").

3.2 The Services shall be [completed by **[INSERT DATE]**] **[OR]** [performed in accordance with the following timetable:]

Milestone	Due date
INSERT	INSERT
INSERT	INSERT

4 CHARGES AND PAYMENT

4.1 The charges for the Services shall be set out [in the Supplier's quotation to provide the Services set out] in Schedule 1 (Charges) and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Authority, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

4.2 The Supplier shall invoice the Authority on completion of the Services. Each invoice shall include such supporting information required by the Authority to verify the accuracy of the invoice.

5 INCORPORATION OF SLCA TERMS

5.1 Where any provision of the SLCA confers a right or imposes an obligation on a Party in relation to this Call-Off Support Contract, such provision (and any Schedule to the SLCA that is necessary to give full effect to such provision) shall be deemed to be

incorporated into this Call-Off Support Contract. Such provisions include (but are not limited to):

- (a) Clause 1 (Interpretation);
- (b) Clause 2 (Commencement and Duration);
- (c) Clause 3 (Warranties);
- (d) Clause 4 (Contractor's Obligations);
- (e) Clause 5 (Rights and Obligations of Authority);
- (f) Clause 7 (Security);
- (g) Clause 8 (Integrated Management System);
- (h) Clause 10 (CDM Regulations);
- (i) Clause 11 (Defective Performance and Remediation);
- (j) Clause 13 (Force Majeure);
- (k) Clause 14 (Performance Management, Performance Assurance and Records);
- (l) Clause 15 (Inspection and Audit);
- (m) Clause 17 (Claims Handling);
- (n) Clause 18 (Insurance);
- (o) Clause 19 (Liabilities and Indemnities);
- (p) Clause 21 (Permitted Activities);
- (q) Clause 22 (Subcontracting / Procurement);
- (r) Clause 25 (Confidentiality and Compliance with Legislation);
- (s) Clause 26 (Freedom of Information);
- (t) Clause 27 (Data Protection);
- (u) Clause 28 (Knowledge Management);
- (v) Clause 29 (Intellectual Property);
- (w) Clause 30 (Information Technology);
- (x) Clause 31 (Employees and Nominated Staff);

- (y) Clause 32 (Pensions);
- (z) Clause 36 (Disputes);
- (aa) Clause 37 (Miscellaneous);
- (bb) Schedule 1 (Client Specification);
- (cc) Schedule 2 (Change Control Procedure);
- (dd) Schedule 8 (Intellectual Property);
- (ee) Schedule 9 (Information Technology);
- (ff) Schedule 10 (Insurance);
- (gg) Schedule 12 (Dispute Resolution Procedure);
- (hh) Schedule 13 (Reporting);
- (ii) Schedule 14 (Freedom of Information);
- (jj) Schedule 19 (Authority Policies and Procedures); and
- (kk) Schedule 20 (Call-Off Support).

5.2 In the event of any inconsistency as between the provisions of this Call-Off Support Contract and the provisions of the SLCA, the provisions of this Agreement shall prevail.

Schedule 1 - Charges

[INSERT CHARGES FOR EACH SERVICE / SERVICES OR METHOD OF CALCULATION OF CHARGES OR THE SUPPLIER'S QUOTATION]

[INVOICING ARRANGEMENTS FOR SERVICES]

- 1 *[The Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day, worked between [8.00 am] and [5.00 pm] on a Working Day.]*
- 2 *[The Supplier shall not be entitled to charge on a pro-rata basis for part-days unless it has the Authority's prior written consent to do so.]*
- 3 *[The Supplier shall ensure that its Employees, Subcontractors and agents providing the Services complete time sheets recording time spent on the Services.]*
- 4 *[All amounts payable by the Authority under the Call-Off Support Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Call-Off Support Contract by the Supplier to the Authority, the Authority shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.]*
- 5 *[In consideration of the supply of the Services by the Supplier, the Authority shall pay the invoiced amounts within [NUMBER] days of the date of a correctly rendered invoice [to a bank account nominated in writing by the Supplier].*

Signed by [**NAME**]
for and on behalf of [**NAME OF
SUPPLIER**]

.....
Director

Signed by [**NAME**]
for and on behalf of the Nuclear
Decommissioning Authority

.....
Director