

Deed of Variation

**in relation to the Site Management and Operations Contract in
respect of the Sellafield SLC at Sellafield, Capenhurst and
Windscale**

Dated

18 March 2013

Nuclear Decommissioning Authority (1)

Sellafield Limited (2)

Deed of Variation

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Deed of Variation

Dated 18 March 2013

Between

- (1) **Nuclear Decommissioning Authority** a non departmental public body whose head office is at Herdus House, Westlakes Science and Technology Park, Moor Row, Cumbria, CA24 3HU (the "Authority"); and
- (2) **Sellafield Limited** a company incorporated in England and Wales with registered number 1002607 whose registered office is at Booths Park, Chelford Road, Knutsford, Cheshire WA16 8QZ (the "Contractor"),

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

Whereas

- A On 24 November 2008 the Parties entered into a deed of variation to the Existing Site M&O Contracts.
- B The Parties have agreed the provisions of this Deed so as to vary certain provisions of the Site M&O Contract and to incorporate certain additional provisions into the Site M&O Contract.

It is agreed as follows

1 Definitions and interpretation

- 1.1 This Deed is supplemental to and takes effect as an amendment to the Site M&O Contract. References within the Site M&O Contract to "Contract" shall be interpreted as meaning the Site M&O Contract as amended by this Deed. Matters set out in this Deed are subject to the terms of the Site M&O Contract (as amended by this Deed).
- 1.2 Unless otherwise stated in this Deed:
 - (a) all references within this Deed to Clauses and Schedules are to the clauses and schedules of the Site M&O Contract;
 - (b) definitions and principles of interpretation set out or referred to in the Site M&O Contract apply to this Deed; and
 - (c) references to Annexes are to the Annexes to this Deed, which form part of this Deed.
- 1.3 In this Deed the following expressions have the following meanings:
 - (a) "Effective Date" means the date of this Deed.
 - (b) "Site M&O Contract" means the Site Management and Operations Contract as appended to the Deed of Variation entered into between the Parties dated 24 November 2008 together with the Side Letter between the Parties of the same date.

- 1.4 The terms of this Deed are effective from the Effective Date and have retrospective effect as from the Effective Date.

2 Amendments to Site M&O Contract

- 2.1 This Deed varies the Site M&O Contract in accordance with the Annexes to this Deed.
- 2.2 The Parties acknowledge that this Deed constitutes a variation for the purposes of Clause 1.16 of the Site M&O Contract and takes effect as if the procedures set out in that Clause had been complied with irrespective of whether those procedures have in fact been complied with.
- 2.3 Subject to the variations set out in this Deed the Site M&O Contract continues in full force and effect.

3 Governing Law

- 3.1 This Deed is governed by the laws of England and Wales and the Parties submit to the jurisdiction of the courts of England and Wales. Save in relation to matters of enforcement, such jurisdiction shall be exclusive.
- 3.2 Any dispute or difference arising out of or in connection with this Deed including, but not limited to, any question regarding its existence, interpretation, validity, construction or termination shall be resolved in accordance with Clause 13 of the Site M&O Contract.

Executed as a deed and delivered on the date appearing at the beginning of this deed

**Executed as a deed by the
Nuclear Decommissioning Authority**

**The common seal of the Nuclear Decommissioning Authority
was affixed in the presence of**

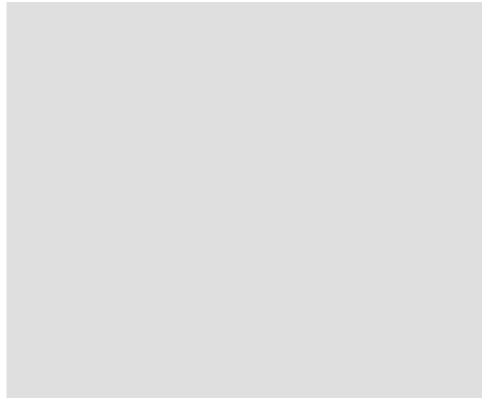
2013-61

Authorised signatory

Name (print)

Authorised signatory

Name (print)



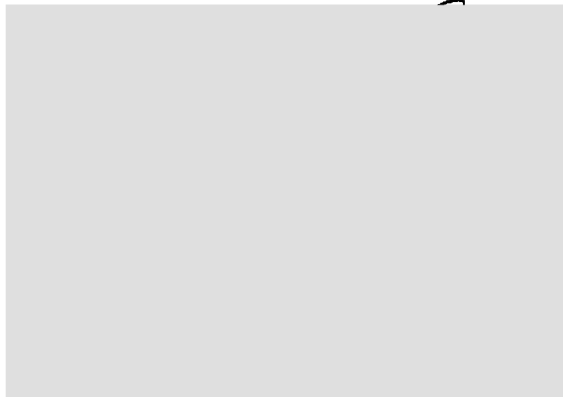
**Executed as a deed by Sellafield Ltd
acting by two directors**

Signature

Name (print)

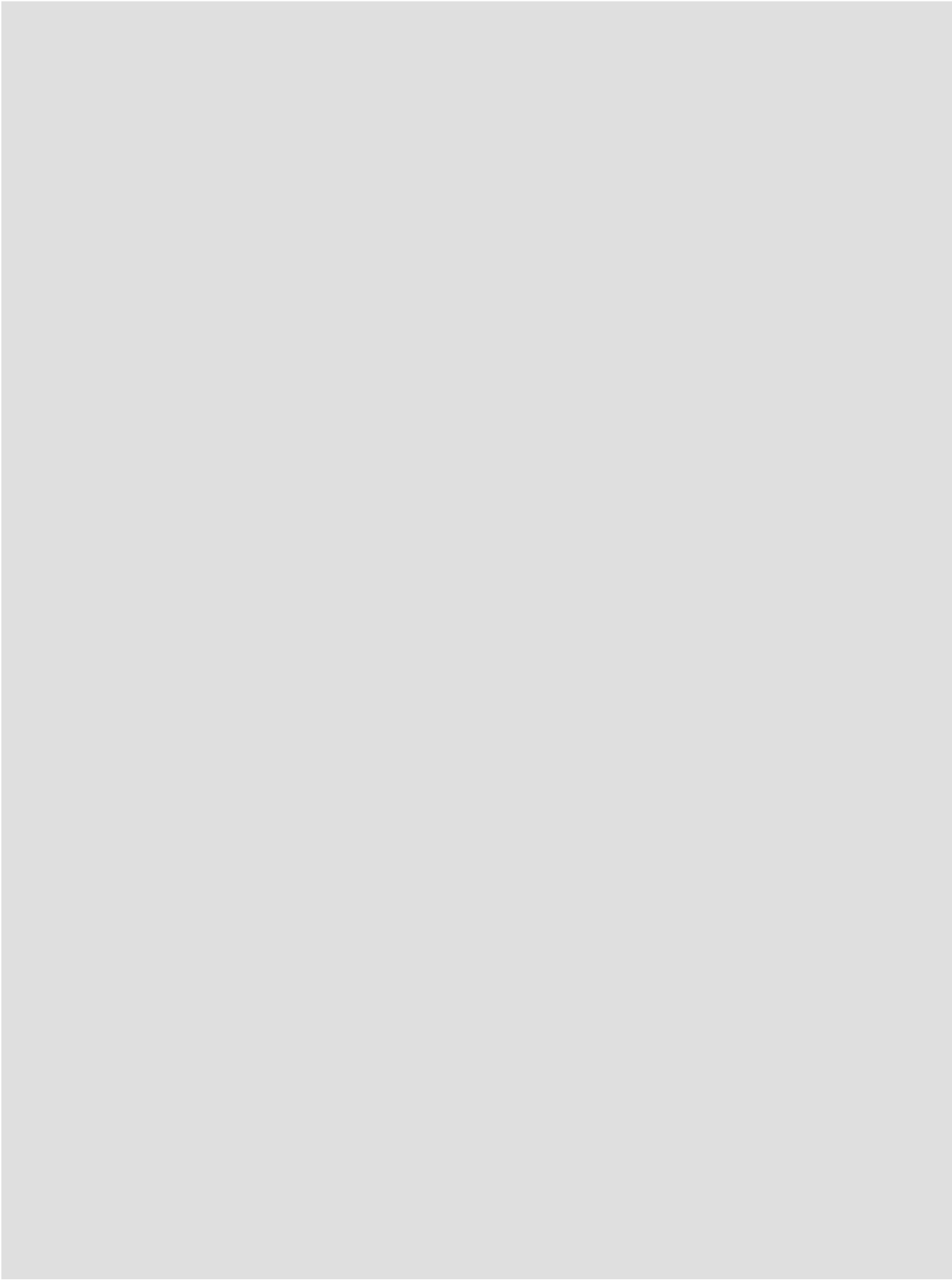
Signature

Name (print)



Annex 1 – Provisions relating to energy supply and Fellside CHP Power Station

1 Definitions



Pages 7 through 14 redacted for the following reasons:

s.43(2) Commercially sensitive

Annex 2 – Amendments to Intellectual Property provisions

This Annex 2 comprises the following Parts.

Part 1 Amendments to Clause 1 (Definitions and Interpretation) of the Site M&O Contract

Part 2 Amendments to Clause 8 (Intellectual Property) of the Site M&O Contract

Part 3 

Part 4 Matters falling within the definition of Strategic Interest

Annex 2 (Amendments to Intellectual Property provisions)

Part 1 - Amendments to Clause 1 (Definitions and Interpretation) of the Site M&O Contract

1 Clause 1 (Definitions and Interpretation) of the Site M&O Contract is amended as follows.

1.1 The following definitions are inserted:

- (a) **“Background IP”** means any IP which a Subcontractor owns or has a licence to use or rightfully possesses independent of its performance of the Subcontract (regardless of whether such independent ownership or rightful possession occurred or licence was granted immediately prior to the commencement of the relevant Subcontract or during the Subcontract term), 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 or exploit the Developed IP.
- (b) **“IP Commercial Guidance”** means the Authority’s document, CMG 02 [Version number and date] attached as Part 3 (IP Commercial Guidance 02-Sellafield Limited) to this Annex 2 (Amendments to Intellectual Property provisions), as may be amended or supplemented from time to time by agreement in writing between the Parties, setting out its requirements in relation to the management and ownership of IP and the processes to be adopted by the Parties that may be proposed by the Authority from time to time and agreed by the Contractor.
- (c) **“ONR (CNS) ”** means the Office for Nuclear Regulation Civil Nuclear Security division (which substantially replaces the Office for Civil Nuclear Security) or any body having responsibility for civil nuclear security in the United Kingdom which substantially replaces the same from time to time.

1.2 The following definitions are amended to read as follows.

- (a) **“Developed IP”** means any IP created by or on behalf of the Contractor and/or by Subcontractors in the course of performance of this Contract.
- (b) **“Strategic Interest”** means technologies, processes and systems which are considered by the Authority to be of strategic interest to the Authority, as set out in Part 4 (Matters falling within the definition of Strategic Interest) of this Annex 2 (Amendments to Intellectual Property provisions).

Annex 2 (Amendments to Intellectual Property provisions)

Part 2 – Amendments to Clause 8 (Intellectual Property) of the Site M&O Contract

Clause 8 of the Site M&O Contract is amended by deletion of that Clause in its entirety and substitution of the following.

8. INTELLECTUAL PROPERTY

8.1 Licence of Authority IP to Contractor

8.1.1 In consideration of a fee of £1,000 (one thousand pounds sterling) per annum (the “Licence Fee”), the Authority hereby grants to the Contractor a non-transferable, non-exclusive, royalty-free licence to use the Authority IP during the term of this Contract for the purpose of fulfilling its obligations under this Contract. The Contractor shall have the right to sub-license the Authority IP to its Subcontractors (including the right to sublicense) to use the Authority IP in the performance of their Subcontracts only (such sublicences to be subject to the same limitations as are set out in Clause 8 of this Contract), but shall have no other rights to sub-license the Authority IP without the prior written approval of the Authority.

8.1.2 The Contractor acknowledges that nothing in this Contract 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.

8.1.3 The Contractor acknowledges that nothing in this Contract shall constitute any representation or warranty by the Authority that the Contractor's exercise of rights granted under this Contract shall not infringe any valid intellectual property rights of Third Parties.

8.2 The Licence Fee

8.2.1 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).

8.3 IP Contributed by Parent Body Organisation

Licence to Authority and Contractor

8.3.1 Save for Excluded Parent IP (as provided in Clause 8.3.4B (Licence to Authority and Contractor)), in respect of IP that is owned by or licensed (with appropriate sub-license rights) to the Parent Body Organisation:

8.3.1.1 any such IP that is made available (whether at the Commencement Date or at any time during the term of this Contract) by the Parent Body Organisation to the Contractor for the purpose of fulfilling its obligations under this Contract or is used by the Contractor for the purposes of fulfilling its obligations in relation to the Site under this Contract, but excluding the Required Parent IP (the “**Delivered Parent IP**”); and

8.3.1.2 any IP which in the Authority's reasonable opinion is directly or indirectly required to enable the Authority or its licensees to use or exploit Developed IP which has been developed from the Delivered Parent IP (the "**Required Parent IP**"),

shall be, and is hereby, in consideration of the Authority's obligations under this Contract, irrevocably licensed to the Authority for the full duration of such rights (in each case for a period which is no greater than the period available to the Parent Body Organisation) as of the Commencement Date where applicable, for utilisation in the Authority Field of Use and, in the case of Required Parent IP, limited to the extent required to enable the Authority or its licensee to use or exploit any Developed IP which has been developed from the Delivered Parent 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**". The Contractor shall implement procedures and systems to record and track Delivered Parent IP and Required Parent IP.

8.3.2 The Authority shall have the right to sub-license the Parent IP to the Contractor for the full duration of such rights (such sub-licence shall be for no greater period and on the same terms as the licence) who in turn shall be entitled to grant sub-licences to its Subcontractors with a right to sub-license to use the Parent IP in the performance of their Subcontracts, 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.

8.3.3 Subject to the Parent Body Organisation's consent (such consent not to be unreasonably withheld or delayed), the Authority shall have the right to sub-license the Delivered Parent IP to other SLCs 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 limited to such purpose) without payment of royalty fees (except as provided in Clause 8.3.4A (Licence to Authority and Contractor)). The Authority's right to use and sub-license the Delivered Parent IP shall remain in force both during the term of this Contract and after this Contract has expired or has been terminated 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.

8.3.4 Except to the extent otherwise agreed in writing between the Authority and the Parent Body Organisation, the Authority shall have the right to sub-license the Required Parent IP to Third Parties including other SLCs for use in relation to their activities falling within the Authority Field of Use where this is necessary to use or exploit Developed IP developed from the Delivered Parent IP (including the right for such SLCs to grant further sub-licences to their subcontractors limited to such purpose) without payment of royalty fees (except as provided in Clause 8.3.4A (Licence to Authority and Contractor)) and who shall themselves be entitled to grant sub-licences to their subcontractors to use the Required Parent IP for use in relation to their activities falling within the Authority Field of Use where necessary to enable the use or exploitation of Developed IP developed from the Delivered Parent IP without payment of royalty fees. The Authority's right to use and sub-license the Required Parent IP shall remain in force both during the term of this Contract and after this Contract has expired or has been terminated until the Authority reasonably determines that the Required Parent IP is no longer needed to enable the use of any Developed IP.

- 8.3.4A Any Parent IP that is of particular value to the Parent Body Organisation is detailed in Schedule 8 (Intellectual Property Schedule) (the “**Reserved Parent IP**”). Any licence granted by the Authority pursuant to Clauses 8.3.3 (Licence to Authority and Contractor) and 8.3.4 (Licence to Authority and Contractor) shall be subject to the payment of such reasonable royalty as the Authority and the Parent Body Organisation shall agree.
- 8.3.4B In addition to the Reserved Parent IP, the Parent Body Organisation and/or its Affiliates also own or have licences to use additional IP, as set out in Part 2 of Schedule 8 (Intellectual Property Schedule), under the heading “Excluded Parent IP” (the “**Excluded Parent IP**”). The Excluded Parent IP is excluded from the terms of this Contract and accordingly (with the exception only of this Clause 8.3.4B (Licence to Authority and Contractor)) the provisions of this Clause 8 (Intellectual Property) shall not apply in relation to Excluded Parent IP. Before the Parent Body Organisation or an Affiliate allows any Excluded Parent IP to be used in connection with this Contract the Authority and the Parent Body Organisation or relevant Affiliate (as the case may be) will negotiate in good faith to agree the terms of a perpetual or time limited royalty-bearing licence allowing the Authority to use (and to sub-license the Contractor to use) such Excluded Parent IP solely in respect of the Site or as may otherwise be agreed. If, after making any Excluded Parent IP available, it becomes directly or indirectly required to enable the Authority or its licensees to use or exploit any Developed IP then notwithstanding Clause 8.3.1.2 (Licence to Authority and Contractor) such Excluded Parent IP shall remain Excluded Parent IP and shall not, for the purposes of this Clause 8.3 (Licence to Authority and Contractor) be treated as Required Parent IP.
- 8.3.4C The Parent Body Organisation and/or an Affiliate 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 Site on terms different to those set out in this Clause 8 (Intellectual Property) “**Future Parent IP**”.

Before the Parent Body Organisation and/or an Affiliate allows any Future Parent IP to be introduced into the Site the Authority and the Parent Body Organisation 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 Future Parent IP solely in respect of the Site, 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 Contract. Such licence may make special provision for ownership and licensing of any Developed IP developed from such Future Parent IP. For the avoidance of doubt, if after making any Future Parent IP available, such Future Parent IP becomes directly or indirectly required to enable the Authority or its licensees to use or exploit any Developed IP then, notwithstanding Clause 8.3.4, such Future Parent IP shall not be treated as Required Parent IP.

With the exception only of this Clause 8.3.4C and Clause 8.3.4D, the provisions of Clause 8 (Intellectual Property) shall not apply in relation to any Future Parent IP.

Neither the Management Plan (as identified in Schedule 8 (Intellectual Property Schedule) Table 2 (Excluded Parent IP) nor compliance with the Contractor's obligations under this Contract is conditional on introduction of any Future Parent IP.

- 8.3.4D Without prejudice to Clause 8.3.1 above, the Contractor shall implement such procedures and systems as are reasonably required and agreed with the Authority, to identify and track any Parent IP that is made available (whether at the Commencement Date or at any time

during the term of this Contract) by the Parent Body Organisation to which there are limitations on the Authority's ability to exploit use or license such IP.

Licensing of Parent IP contained in Developed IP

- 8.3.5 For the avoidance of doubt, Parent IP that is contained in or forms the basis or background of any IP developed by or on behalf of the Contractor (including by Subcontractors) or is otherwise required for the use of such Developed IP, either during the term of this Contract or after this Contract has expired or terminated shall, with respect to such Parent IP, be treated for licensing purposes in the same manner as Required Parent IP.

Infringement of Parent IP by Third Parties

- 8.3.6 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 8.3 (Licence to Authority and Contractor), the Contractor, in consultation with the Authority, shall promptly notify the Parent Body Organisation and shall either at the Authority or Contractor's expense (whichever is the appropriate sub-licensee party) 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.

8.4 Authority's Rights to IP developed by or on behalf of the Contractor and/or Subcontractors

The Contractor shall establish and implement procedures and systems as are reasonably required which shall be audited on reasonable notice by the Authority from time to time for the identification, protection, exploitation, management and ownership of IP in accordance with the terms of this Clause 8.4 (Authority's Rights to IP developed by or on behalf of the Contractor and/or Subcontractors) (whether or not owned by the Authority and regardless of the date of creation including; Developed IP, rights secured to Subcontractor IP and Third Party IP and IP Licensed pursuant to Clause 8.7 whether in the name of the Contractor or the Authority and regardless of the date such rights were secured, including procedures under which the Contractor shall seek approval from the Authority as permitted under Clause 8.4.5 (Authority consent to alternative IP terms in Subcontracts). Developed IP shall be owned in accordance with the following provisions (subject to the terms of any agreement for introduction of Excluded Parent IP or Future Parent IP and any contrary terms agreed by the Authority in respect of any Subcontract):

Ownership by Authority of Developed IP created by the Contractor

- 8.4.1 Without prejudice to Clause 8.4.1A (Ownership by Authority of Developed IP created by the Contractor) the Authority shall own any Developed IP created by the Contractor, subject to any pre-existing rights of Third Parties and of the Parent Body Organisation. 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 hereof.
- 8.4.1.A Developed IP which the Contractor is required to own in accordance with Law shall be owned by the Contractor.

Ownership of Developed IP by the Authority

- 8.4.2 Without prejudice to Clause 8.4.1 (Ownership by Authority of Developed IP created by the Contractor) the Authority shall own any Developed IP which the Authority, having regard to any views of ONR (CNS), reasonably determines: (i) raises or which may raise security issues relating to the use of such Developed IP (including without limitation where the use or disclosure of such Developed IP could compromise the security of any Designated Site, facilities, equipment or materials relating to any Designated Site); and/or (ii) is of Strategic Interest to the Authority .
- 8.4.3 Not used.

Ownership of Developed IP created by or on behalf of Subcontractors

- 8.4.4 Save as may otherwise be agreed by the Authority in accordance with Clause 8.4.5 (Authority consent to alternative IP terms in Subcontracts), Developed IP 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 created by the Subcontractor on or at any time after the date of this Contract.

Authority consent to alternative IP terms in Subcontracts

- 8.4.5 The Authority acknowledges that it may be appropriate, in certain circumstances detailed in the IP Commercial Guidance issued by the Authority, for the Contractor to consider in respect of such Developed IP that falls outside the provisions of Clauses 8.4.2 (Ownership of Developed IP by the Authority) and 8.4.3 (Ownership of Developed IP by the Authority) whether a proposed Subcontract should contain alternative terms with regard to the ownership of and rights to IP. The Contractor may give written notice to the Authority (in a form approved by the Authority) to request the Authority to approve its alternative recommendation for the ownership of and rights to IP in respect of a proposed Subcontract on the basis that it is preferable (from the Contractor's perspective) to adopt an alternative IP solution for the proposed Subcontract to that required by this Clause 8.4 (Authority's Rights to IP developed by or on behalf of the Contractor and/or Subcontractors). Following receipt of such notice, the Authority, in consultation with the Contractor shall at its reasonable discretion approve or reject the Contractor's recommendation, as soon as reasonably practicable. The Authority and the Contractor shall comply with the provisions of the IP Commercial Guidance when implementing the provisions of this Clause 8.4.5 (Authority consent to alternative IP terms in Subcontracts).

Access to and use of information by the Authority

- 8.4.6A Subject always to the provisions of Clause 10 (Confidentiality, Security and Compliance with Law) and without prejudice to the provisions of Clause 4.2 (Records) and Clause 4.5 (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 the Contractor, save to the extent prohibited by applicable law or any obligation of confidence imposed on the Contractor by an agreement entered into by the Contractor in accordance with this Contract. 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;
- 8.4.6A.1 Nominated Staff; or

8.4.6A.2 personnel provided to the Contractor pursuant to Clause 16B (Provision of Support to the SLC) and Schedule 7 (Provision of Support to the SLC) of the Parent Body Agreement,

unless such information is used by the Nominated Staff or such personnel in relation to the Site or this Contract.

8.4.6B Further, notwithstanding ownership of any Developed IP developed by any Subcontractor and without prejudice to the provisions of Clause 4.2 (Records) and Clause 4.5 (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 the Developed IP. 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;

8.4.6B.1 Nominated Staff; or

8.4.6B.2 personnel provided to the Contractor pursuant to Clause 16B (Provision of Support to the SLC) and Schedule 7 (Provision of Support to the SLC) of the Parent Body Agreement,

unless such information is used by the Nominated Staff or such personnel in relation to the Site or this Contract.

Further Assurance

8.4.7 In respect of any Developed IP owned by the Authority pursuant to Clauses 8.4.1 (Ownership by Authority of Developed IP created by the Contractor), 8.4.2 (Ownership of Developed IP by the Authority) and 8.4.4 (Ownership of Developed IP created by or on behalf of Subcontractors) 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 8 (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

8.4.8 Without prejudice to Clause 8.4.5 (Authority consent to alternative IP terms in Subcontracts) the Contractor shall procure that any Subcontractor identifies and declares to the Contractor prior to concluding a Subcontract any Background IP owned by that Subcontractor. In respect of any such Background IP, the Contractor shall procure that the Subcontractor shall grant to the Authority a non-exclusive, perpetual, irrevocable, royalty-free licence to use and exploit such Background IP within the Authority Field of Use together with the right to license such Background IP to any third party including any other SLC without the consent of the Subcontractor, and permitting any SLC itself to sub-license its rights under any such sub-licence to any of its sub-contractors without the consent of the Subcontractor all for the purpose of using, exploiting or licensing Developed IP within the Authority Field of Use. Where such rights cannot be procured, the Contractor shall inform the Authority and the Authority shall determine whether the Subcontract should be entered into and, if so, on what terms.

Licence to the Authority of IP licensed to the Subcontractor

- 8.4.9 Without prejudice to Clause 8.4.5 (Authority consent to alternative IP terms in Subcontracts) the Contractor shall procure that any Subcontractor identifies and declares to the Contractor prior to concluding a Subcontract any Background IP not owned by that Subcontractor which relates to 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 or exploit the Developed IP. In respect of any such Background IP the Contractor shall procure that the Subcontractor shall use all reasonable endeavours to procure a licence for the Authority on reasonable terms which enables the Authority to use and exploit the Developed IP within the Authority Field of Use, together with the right to sublicense that Background IP to any Third Party including any other SLC for the same purpose without the consent of the licensor or Subcontractor, and permitting any SLC itself to sub-license its rights under any such sub-licence to any of its sub-contractors without the consent of the licensor. Where such rights cannot be procured, the Contractor shall inform the Authority and the Authority shall determine whether the Subcontract should be entered into and, if so, on what terms.

Licence of Developed IP from Subcontractor to Authority

- 8.4.10 Without prejudice to Clause 8.4.5 (Authority consent to alternative IP terms in Subcontracts), in the event that any Developed IP is owned by a Subcontractor, the Contractor shall procure that the Subcontractor shall grant to the Authority a non-exclusive, perpetual, irrevocable, royalty-free licence to access, use and disclose such Developed IP together with the right to license such Developed IP to any Third Party, including any other SLC, without the consent of the Subcontractor, and permitting any SLC itself to sub-license its rights under any such sub-licence to any of its sub-contractors without the consent of the Subcontractor.

Licence of Background IP from Subcontractor to Authority

- 8.4.11 [Not Used]

Contractor's Notification of Developed IP

- 8.4.12 Without prejudice to Clause 8.4.5 (Authority consent to alternative IP terms in Subcontracts) the Contractor shall use its reasonable endeavours to procure that any Subcontractor shall promptly notify the Contractor of any Developed IP created by the Subcontractor. The Contractor shall promptly notify the Authority of any such Developed IP and any Developed IP created by the Contractor itself in accordance with the Contractor's IP management policies and procedures.

Use of Developed IP by the Subcontractor

- 8.4.13 Subject to the prior written agreement of the Authority, the Contractor may grant a non-exclusive licence to the Subcontractor enabling the Subcontractor to exploit outside the Authority Field of Use any Developed IP owned by the Authority. The Contractor shall negotiate in good faith with the Subcontractor appropriate payment terms (which may include royalties and/or lump sum payments) to the Authority for the use of such IP.

Licence to Parent Body Organisation

- 8.4.14 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 8.4.1 (Ownership by Authority of Developed IP created by the Contractor), 8.4.2 (Ownership of Developed IP by the Authority) or 8.4.4 (Ownership of Developed IP created by or on behalf of Subcontractors) but not, for the avoidance of doubt, Developed IP which is of Strategic Interest to the Authority provided that where the basis or background of the Developed IP can be demonstrated to be Parent IP such licence to the Parent Body Organisation shall be on an exclusive basis. The Authority shall execute such further documents and do such further acts as the Parent Body Organisation reasonably requires (at the Parent Body Organisation's expense) to give full effect to the terms of this Clause 8.4.14 (Licence to Parent Body Organisation).

Exclusion of Parent IP from Developed IP

- 8.4.15 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 Clause 8.4.1 (Ownership by Authority of Developed IP created by the Contractor), 8.4.2 (Ownership of Developed IP by the Authority) and 8.4.3 (Ownership of Developed IP by the Authority) or 8.4.4 (Ownership of Developed IP created by or on behalf of Subcontractors) above shall exclude any Parent IP under Clause 8.3 (IP Contributed by Parent Body Organisation) or any Third Party IP under Clause 8.7 (Third Party IP) that may form the basis or background of such Developed IP.

Protection of Developed IP

- 8.4.16 Without prejudice to Clause 8.4.5 (Authority consent to alternative IP terms in Subcontracts) where any Developed IP vests in the Authority pursuant to Clauses 8.4.1 (Ownership by Authority of Developed IP created by the Contractor), 8.4.2 (Ownership of Developed IP by the Authority) and 8.4.3 (Ownership of Developed IP by the Authority) or 8.4.4 (Ownership of Developed IP created by or on behalf of Subcontractors), the Contractor shall seek (and shall use its reasonable endeavours to procure that any relevant Subcontractor seeks) 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 cost. The Contractor shall keep the Authority advised as to all developments with respect to any such applications and assign the rights arising therefrom to the Authority.

Warranty

- 8.4.17 The Contractor warrants (and shall use its reasonable endeavours to procure that any Subcontractor warrants) that the use and licensing of any Developed IP for its intended purpose (and in accordance with the terms of any relevant licence granted pursuant to this Contract) shall not infringe the IP rights of any Third Party. The Contractor 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

- 8.4.18 The Contractor shall (and shall use its reasonable endeavours to procure that any Subcontractor shall) maintain an up to date register of the details of all Developed IP 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 any third party.
- 8.4.19 The Contractor must not (unless it has the Authority's express prior written consent) allow IP to be introduced for use at the Site in any manner whatsoever pursuant to this Contract, unless the Contractor owns or has been granted a licence to use and exploit that IP at the Site in accordance with the provisions of this Contract and the IP Commercial Guidance.
- 8.4.20 In the event of any inconsistency between this Clause 8 (Intellectual Property) and the IP Commercial Guidance, this Clause 8 (Intellectual Property) takes priority.

8.5 Infringement of IP owned by the Authority

- 8.5.1 The Contractor shall immediately give notice in writing to the Authority if it becomes aware of any:
- 8.5.1.1 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 8.4 (Authority's Rights to IP developed by or on behalf of the Contractor and/or Subcontractor) above) ("**Authority Owned IP**"); or
 - 8.5.1.2 allegation, complaint, or Legal Proceedings made, raised or threatened by any Third Party that Authority Owned IP or of any Developed IP Licensed to the Authority pursuant to this Agreement infringes the rights of any Third Party.
- 8.5.2 In the case of any actual or threatened infringement or suspected infringement by any Third Party of Authority Owned IP of which the Contractor is aware or ought reasonably to be aware:
- 8.5.2.1 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;
 - 8.5.2.2 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;
 - 8.5.2.3 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;
 - 8.5.2.4 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's 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 8.5.2.2 (Infringement of IP owned by the Authority); and
 - 8.5.2.5 any costs incurred by the Contractor pursuant to this Clause 8.5 (Infringement of IP owned by the Authority) shall be Allowable Costs and any award of costs or

damages or other compensation payment recovered in connection with any of the matters in Clause 8.5 (Infringement of IP owned by the Authority) shall be for the account of the Authority as Category I Revenue.

8.6 Not used.

8.7 Third Party IP

8.7.1 Without prejudice to clause 8.4.11 (Licence of Background IP from Subcontractor to Authority) in the event that the Contractor wishes to obtain a Licence of IP from a Third Party (not being a Subcontractor) for the purpose of fulfilling its obligations in relation to the Site under this Contract ("**Third Party IP**") it shall 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 sub-license to the Contractor the Third Party IP and, if the Authority indicates a further desire, the Contractor shall use all reasonable endeavours also to procure for the Authority the right to sub-license the Third Party IP to other site licensee companies for use in relation to activities falling within the Authority Field of Use on any other Designated Sites. The Contractor also shall use all reasonable endeavours to procure that any licence from the third party to the Authority shall remain in force until the Authority reasonably determines that the Third Party IP is no longer needed in relation to the carrying out of its functions in relation to the Site and, where applicable, any other Designated Site. For the avoidance of doubt any additional costs incurred by the Contractor for this purpose shall be treated as Allowable Costs. For the avoidance of doubt, this Clause 8.7.1 (Third Party IP) shall not apply to IP that is licensed by a Third Party to any Subcontractor to which the provisions of Clause 8.4.10 (Licence of Developed IP from Subcontractor to Authority) apply.

8.7.2 The Contractor shall maintain (and shall procure that any Subcontractor shall agree to maintain) an up to date register of the material details of use of any Third Party IP licensed to the Contractor or the Subcontractor (as the case may be) for the purposes of this Contract or any Subcontract relating thereto including the principal terms in respect thereof.

8.7.3 Without prejudice to Clause 8.7.1 above the Contractor shall be responsible for and shall use reasonable endeavours to ensure that where any Third Party IP is licensed to the Contractor or any Subcontractor the term of such licence are not breached by the Contractor or the Subcontractor as the case may be

8.8 Contractor's obligation to protect IP

The Contractor shall take all such reasonable and necessary steps as the Authority shall from time to time instruct to protect Authority Owned IP and any Developed IP licensed to the Authority. Among other things, the Contractor shall keep the Authority informed of all material matters relevant to the protection of the Authority Owned IP and, if requested by the Authority, (and at the Authority's cost) 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 all assistance as it 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 1st 2005.

8.9 Use and Sharing of Information and Know-How

Subject to Clause 10 (Confidentiality, Security and Compliance with Law), the Contractor shall, save to the extent prohibited by applicable Law or any obligation of confidence imposed on the Contractor by any Subcontract or other agreement entered into by the Contractor in accordance with this Contract, 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.

8.10 Back-up and Storage

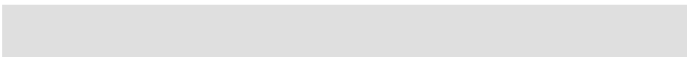
The Contractor shall ensure the back-up of and storage in safe custody of all electronic data, material and documents required to be maintained and retained under this Contract in accordance with its Internal Procedures relating to records and data management.

8.11 Documents and Other Materials

8.11.1 At the Authority's request the Contractor shall provide to the Authority copies of 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 created on or after the Commencement Date subject to any pre-existing rights of third parties and the Parent Body Organisation.

8.11.2 In the event of expiry or termination of this Contract, 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 subject to any pre-existing rights of third parties and the Parent Body Organisation.

Annex 2 (Amendments to Intellectual Property provisions)

Part 3 - 

Pages 29 through 44 redacted for the following reasons:

s.43(2) Commercially sensitive

Annex 3 – Amendments relating to subcontracts and procurement

This Annex 3 comprises the following Parts.

Part 1 Amendments to Clause 1 (Definitions and Interpretation) of the Site M&O Contract

Part 2 Amendments to Schedule 5 (Subcontracting / Procurement Schedule) of the Site M&O Contract

Annex 3 (Amendments relating to subcontracts and procurement)

Part 1 - Amendments to Clause 1 (Definitions and Interpretation) of the Site M&O Contract

- 1 Clause 1(Definitions and Interpretation) of the Site M&O Contract is amended as follows.
 - 1.1 The following definitions are inserted:
 - (a) **“Authority Facing Work”** means employment for Authority purposes as defined in the Energy Act 2004;
 - (b) **“Protected Employees”** means those employees who benefit from pension protection pursuant to the Energy Act 2004;
 - (c) **“Relevant Policies”** means the Ministry of Justice guidance in respect of anti-bribery published in March 2011;
 - (d) **“Relevant Requirements”** all applicable Laws and codes relating to anti-bribery and anti corruption including but not limited to the Bribery Act 2010;
 - 1.2 Delete the following definitions in their entirety:
 - (a) "Annual Procurement Plan"
 - (b) "Subcontracting Instruction Notice"
 - 1.3 The following definition is amended to read as follows:
 - (a) **“Subcontractor Procurement Schedule”** means the subcontract schedule attached as Schedule 5
 - 1.4 All references in the Site M&O Contract to Part 1 (Subcontract/Procurement Requirements - CT-15) of Schedule 5 (Subcontracting / Procurement Schedule) shall be read as references to the Schedule 5 Part 1 (Work Activity Management – Subcontracts and Procurement) as inserted by Part 2 (Amendments to Schedule 5 (Subcontracting / Procurement Schedule) of the Site M&O Contract) of this Annex 3 (Amendments relating to subcontracts and procurement).

Annex 3 (Amendments relating to subcontracts and procurement)

Part 2 - Amendments to Schedule 5 (Subcontracting / Procurement Schedule) of the Site M&O Contract

1. Schedule 5 is deleted in its entirety and replaced with the following:

**Part 1: Work Activity Management –
Subcontracts and Procurement**

1 PURPOSE

- 1.1 This Part 1 (Work Activity Management – Subcontracts and Procurement)] of Schedule 5 (Subcontracting/Procurement Schedule) sets out the Contractor's obligations in relation to the awarding of Subcontracts and other procurement activities as referred to in Clause 2.7 (Subcontracts/Customer Contracts Procurement) of this Contract.
- 1.2 In accordance with Clause 2.8 (Contractor's Internal Procedures) of this Contract, the Contractor shall ensure that it has in place Internal Procedures that comply with the Authority procedure set out in this Part 1 (Work Activity Management – Subcontracts and Procurement) and PCP-17 (Sanction and Validation).

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 (Work Activity Management – Subcontracts and Procurement) or any other provision of or referred to by this Contract would cause a breach of EU Procurement Rules the Contractor shall comply with EU Procurement Rules.

3 APPLICATION

- 3.1 This Part 1 (Work Activity Management – Subcontracts and Procurement) applies in respect of:
- (a) all Subcontracts to be awarded or amended by the Contractor; and
 - (b) the renewal of all Existing Agreements by the Contractor.
- 3.2 This Part 1 (Work Activity Management – Subcontracts and Procurement) 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 paragraph 3.16 of PCP-07.
- 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. Performance metrics specified in PCP-17 shall be monitored and reported by the Contractor to the Authority each period, in accordance with the reporting process specified in PCP-13. 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 (but not exclusively) to examine whether there are grounds for any Fee Determination in accordance with paragraph 5 (Final Determination of Fee) of Part 9 (Payment of Fee) of Schedule 6 (Finance Schedule).

5 SUBCONTRACT AND PROCUREMENT REPORTING

The Contractor shall provide to the Authority a monthly subcontract and procurement report prepared in accordance with PCP-13.

6 PAYMENTS TO SUBCONTRACTORS

The Contractor must meet its obligations to make payments to Subcontractors promptly and in accordance with agreed terms.

7 MAKE OR BUY

The Contractor shall have a process governing its 'make or buy' decision making.

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 4 (Performance Management, Performance Assurance and Records)] of this Contract 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 8 (Intellectual Property) of this Contract and the IP Commercial Guidance 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:

- (a) ensuring the transfer is consistent with the requirements of Clause 5.5 (Maintenance of Skills) of the Contract;

- (b) its retention of intelligent customer capability and control; and
- (c) ensuring compliance with paragraph 11 (Transfer of Employees) below.

10.3 An application by the Contractor for approval under Clause 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 will transfer 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:

- (a) ensure that on or before the date of transfer of employment the Transferee Employer has established or become a participant in 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;
- (b) 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;
- (c) do and shall not omit to do any such other thing 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;
- (d) 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
- (e) 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, and continue to be, met.

12 CONTRACTS WITH AFFILIATES

12.1 The Contractor shall not enter into a Subcontract with an Affiliate unless:

- (a) 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
- (b) 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 accordance with the notification requirements issued by the Authority from time to time) of:

- (a) the inclusion of an Affiliate in any competitive tender; or
- (b) 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 Part 2 of Schedule 2 (Programme Management and Change Procedure) and PCP 17.

13 SOLE SOURCE AWARDS

13.1 Unless the Authority agrees otherwise, the Contractor shall not make an award of any Subcontract where such Subcontract has not been offered for competitive tender unless the Contractor demonstrates 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:

- (a) the award of the Subcontract does not exceed the financial thresholds specified in the EU Procurement Rules for the application of those Rules;
- (b) the Subcontract constitutes a Part B services contract as defined in the Public Contracts Regulations 2006; or
- (c) 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:

- (a) 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 (Work Activity Management – Subcontracts and Procurement) and PCP-17;
- (b) of the definition of any Cost incurred under the Subcontract as either an Allowable Cost or a Disallowable Cost; nor
- (c) 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
- (d) to relieve the Contractor of any of its responsibilities under this Contract.

16 FLOWDOWN OF CONTRACTUAL PROVISIONS

- 16.1 Subject only to paragraph 17 (Exception to Flowdown of Contractual Provisions) below, the Contractor shall ensure that:
- (a) all Subcontracts shall include the contractual provisions set out in Part A of the Appendix to this Part 1 (Work Activity Management – Subcontracts and Procurement); and
 - (b) all Subcontracts and Sub-Subcontracts include the contractual provisions set out in Part B of the Appendix to this Part 1 (Work Activity Management – Subcontracts and Procurement).

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.

17 EXCEPTION TO FLOWDOWN OF CONTRACTUAL PROVISIONS

17.1 Where the Contractor enters into Subcontracts in connection with an Asset Purchase which:

- (a) the Contractor reasonably considers does not contain significant risk in terms of value, duration or nature; or
- (b) 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.

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:

- (a) with reference to the Procurement Plan then current, which Subcontract is the subject of the request;
- (b) 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
- (c) 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:
- (i) 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;
 - (ii) provide its decision in writing within fifteen (15) Working Days; and
 - (iii) 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:
- (a) exercise its rights to terminate (or not terminate) a Subcontract;
 - (b) amend any Inter-SLC Service Contract (in accordance with Clause 2.9 (Inter SLC Service Contracts) of the Contract) or seek to amend any other Subcontract;
 - (c) enter into a new Subcontract in accordance with timescales, with counterparties and on terms specified by the Authority;
 - (d) resist an amendment proposed by a counterparty to any Subcontract;
 - (e) 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.
- 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 Contract (including the application of Part 2 (Allowable and Disallowable Costs) of Schedule 6 (Finance Schedule)) or upon any Customer Contract in accordance with Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure).
- 18.3 Any instructions issued by the Authority pursuant to this paragraph 18 (Authority's Right to Instruct) shall be deemed to be an Authority Change and the Contractor shall prepare and submit to the Authority a Change Proposal in accordance with Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and change procedure) and/or Part 5 (Performance Based Incentive Fee ("PBI Fee") of Schedule 6 (Finance Schedule), as applicable.

- 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

Part A – Provisions to be incorporated into all Subcontracts

Pursuant to paragraph 16.1(a) of [Part 1 (Work Activity Management – Subcontracts and Procurement) 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

The Contractor shall be entitled to assign, novate or transfer its interest in the Subcontract to a party nominated by the Authority:

- 2.1 without the consent of the Subcontractor;
- 2.2 without requiring the consent of any third party; and
- 2.3 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 Clause 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:

- (a) 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.
- (b) The liability in (a) 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.
- (c) The Contractor shall not be liable under (a) unless and to the extent that the Subcontractor has notified the Contractor and the Authority of:
 - (i) 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
 - (ii) where the value of such property has changed by (20%) or more during any one (1) year.
- (d) The liability in (a) shall be limited to the market value of the property notified in writing pursuant to paragraph 5.1(c) above.
- (e) 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(b) of [Part 1 (Work Activity Management – Subcontracts and Procurement) 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:

- (a) reviewing [insert name of relevant subcontractor]'s activities in connection with, and performance in respect of, this [Subcontract];
- (b) 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];
- (c) reviewing all information required to be kept by [insert the name of the relevant subcontractor] pursuant to this [Subcontract];
- (d) verifying the accuracy and completeness of any management information delivered or required by this [Subcontract];
- (e) reviewing the integrity, confidentiality and security of the information required to be kept by the [insert name of relevant subcontractor] pursuant to this [Subcontract];
- (f) 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 Clause 8, compliance with the Bribery Act 2010 in accordance with Clause 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 Clause 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:

- (a) 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];
- (b) interview any employees, secondees or other personnel of the [insert the name of the relevant subcontractor];
- (c) 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];
- (d) 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
- (e) copy and collate any information requested pursuant to this Clause [6].

6.3 For the purposes of:

- (a) carrying out the audit and certification of the Authority's accounts;
- (b) 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 Clause 6.

7 Anti-Bribery and Corruption

7.1 [insert the name of the relevant subcontractor] shall and shall procure that persons associated with it or other persons who are performing services or providing goods in connection with this [Subcontract] shall:

- (a) comply with Relevant Requirements and Relevant Policies;
- (b) 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;
- (c) 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;
- (d) 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 Clause 7, and will enforce them where appropriate;

- (e) 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];
- (f) if requested, other than in relation to a breach of this Clause 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;
- (g) 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 Clause 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 Clause 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 Clause 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 or other persons who are performing services or providing goods in connection with this [Subcontract] (in all cases whether or not acting with the [insert the name of the relevant subcontractor]'s knowledge) breaches Clause 7.1.

7.5 Any dispute relating to the interpretation of this Clause 7, or the materiality of any breach of this Clause 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 Clause 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 Clause 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:
- (a) 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];
 - (b) 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;
 - (c) 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 Clause 8.

9 Insurance

- 9.1 [insert the name of the relevant Contractor] shall notify [insert the name of the relevant subcontractor] of the relevant insurance arrangements put in place by the Authority (the "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:
- (a) not purchase insurance that duplicates the Authority Insurances;
 - (b) consent to being a joint named insured under the Authority Insurances; and
 - (c) 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.