

29 March 2012

Dated _____ **2012**

SITE LICENCE COMPANY AGREEMENT

relating to the restoration of the Dounreay nuclear licensed site by
Dounreay Site Restoration Limited

NUCLEAR DECOMMISSIONING AUTHORITY (1)

and

DOUNREAY SITE RESTORATION LIMITED (2)

Contract Ref: SLCA-10-12

CONTENTS

Clause	Heading	Page
	PART 1: Interpretation.....	2
1	INTERPRETATION	2
	PART 2: Term and Transition.....	70
2	COMMENCEMENT AND DURATION	70
	PART 3: Core Obligations	70
3	WARRANTIES.....	70
4	CONTRACTOR'S OBLIGATIONS	72
5	RIGHTS AND OBLIGATIONS OF AUTHORITY	76
	PART 4: Ancillary Obligations	78
6	ASSET MANAGEMENT	78
7	SECURITY	84
8	INTEGRATED MANAGEMENT SYSTEM	85
9	SOCIO ECONOMIC DEVELOPMENT.....	87
10	CDM REGULATIONS	87
	PART 5: Performance and Monitoring	88
11	DEFECTIVE PERFORMANCE	88
12	DEPENDENCY EVENTS	95
13	FORCE MAJEURE.....	96
14	PERFORMANCE MANAGEMENT, PERFORMANCE ASSURANCE AND RECORDS.....	100
15	INSPECTION AND AUDIT	107
	PART 6: Financial Matters and Liability	113

16	FINANCE	113
17	CLAIMS HANDLING	142
18	INSURANCE	142
19	[NOT USED].....	153
PART 7: Contracting and Inter SLC Activities.....		153
20	AUTHORITY RIGHTS IN RESPECT OF CUSTOMER CONTRACTS	153
21	PERMITTED ACTIVITIES	154
22	SUBCONTRACTING / PROCUREMENT	155
23	INTER SLC SERVICE CONTRACTS	157
24	CROSS SLC INITIATIVES	160
PART 8: Information.....		161
25	CONFIDENTIALITY AND COMPLIANCE WITH LEGISLATION.....	161
25.1	Confidential Information	161
25.2	Contractor Right to Request Confidentiality	161
25.3	Disclosure by the Authority.....	162
25.4	Publication.....	164
25.5	Disclosure by the Contractor	164
25.6	National Audit Office.....	165
25.7	Publicity	165
26	FREEDOM OF INFORMATION	166
27	DATA PROTECTION	168
28	KNOWLEDGE MANAGEMENT	169
PART 9: Intellectual Property and IT.....		169
29	INTELLECTUAL PROPERTY	169
30	INFORMATION TECHNOLOGY	184
PART 10: Personnel Matters.....		187
31	EMPLOYEES	187

32 PENSIONS 196
32.2 Energy Act Requirements 196

PART 11: Termination..... 199

33 TERMINATION..... 199

34 TRANSITION OUT 206

35 TRANSITION ON EXPIRY OR TERMINATION..... 209

36 DISPUTES..... 212

PART 12: Contract Administration and Miscellaneous Provisions..... 212

37 MISCELLANEOUS 212
37.1 Change in Law 212

Schedule 1 – Client Specification.....
Schedule 2 – Change Control Procedure.....
Schedule 3 – Commercial.....
Schedule 4 – Employment and Pensions.....
Schedule 5 – Subcontracting and Procurement.....
Schedule 6 – Finance.....
Schedule 7 – Property.....
Schedule 8 – Intellectual Property.....
Schedule 9 – Information Technology.....
Schedule 10 – Insurance.....
Schedule 11 – Authority Deliverables.....
Schedule 12 – Dispute Resolution Procedure.....
Schedule 13 – Reporting.....
Schedule 14 - European State Aid.....
Schedule 15 – Freedom of Information.....
Schedule 16 – Knowledge Management.....
Schedule 17 – Minimum Performance Standards.....

29 March 2012

THIS AGREEMENT is made on this day of March 2012

BETWEEN:

- (1) **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**"); and
- (2) **DOUNREAY SITE RESTORATION LIMITED**, whose registered office is at Building D2003, Dounreay, Thurso, Caithness KW14 7TZ, a company incorporated under the laws of Scotland with registered number SC307493 (the "**Contractor**"),

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

WHEREAS:

- (A) by an advertisement in the Supplement to the Official Journal of the European Union dated 5 March 2010, the Authority invited expressions of interest from economic operators wishing to be appointed to acquire and hold the share capital of the Contractor and to provide Nominated Staff and other services to the Contractor as the parent body organisation of the Contractor, with a view to promoting and supporting the delivery of improved value for money in the 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 Contractor;
- (C) the Authority, the Contractor and the Parent Body Organisation have entered into the Parent Body Agreement and, as of the Commencement Date, the Parent Body Organisation holds all of the issued share capital in the Contractor;
- (D) the 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 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 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 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;

"Achievement" means completion of the scope of work entailed by a Sub-Milestone or Major Work Package, or the Interim End State, as evidenced in accordance with the relevant Performance Agreement Form in respect of the same, provided that no Achievement of a Major Work Package shall be valid unless and until the Sub-Milestones comprising such Major Work Package are Achieved (and **"Achieved"** shall be construed accordingly);

"Actual Cost of Work Performed" or **"ACWP"** means the aggregate of all Allowable Costs incurred in undertaking activities pursuant to this Agreement;

"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*);

"AEAT" means AEA Technology Plc (Company Number 03095862);

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

"Affiliate"

means:

- (a) the Parent Body Organisation;
- (b) shareholders in the Parent Body Organisation ("**PBO Shareholders**") or in 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**";
- (c) any subsidiary or holding company of a Related Company;
- (d) 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 or in any Related Company;
- (e) wholly owned subsidiaries of the Contractor or Parent Body Organisation;
- (f) 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 issued shares;
- (g) a company with which the Contractor and/or the Parent Body Organisation, either jointly or separately, has a Partnering Arrangement in force;
- (h) 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
- (i) 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 (b), (c), (d) or (e) above;

"Agreed Cash Flow Requirement"

has the meaning given 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*);

"Aggregate Liability Cap"

has the meaning given to it in Clause 18.3.1 (*Liability Cap*);

"AiP"	means Approval in Principle;
"AiP 1"	has the meaning given to it in Paragraph 4.2.4 (<i>Process for Sanction and Validaiton of Work Activities</i>) of Schedule 2 (Part 3) (<i>Change Control Procedure: Work Activity Management - Financial Sanction & Validation</i>);
"AiP 1 Submission"	has the meaning given to it in Paragraph 7.1 (<i>Approval in Principle 1 (AiP 1)</i>) of Schedule 2 (Part 3) (<i>Change Control Procedure: Work Activity Management - Financial Sanction & Validation</i>);
"AiP 2"	has the meaning given to it in Paragraph 4.2.5 (<i>Process for Sanction and Validaiton of Work Activities</i>) of Schedule 2 (Part 3) (<i>Change Control Procedure: Work Activity Management - Financial Sanction & Validation</i>);
"AiP 2 Submission"	has the meaning given to it in Paragraph 8.1 (<i>Approval in Principle 2 (AiP 2)</i>) of Schedule 2 (Part 3) (<i>Change Control Procedure: Work Activity Management - Financial Sanction & Validation</i>);
"Allocated Target Fee"	means the base amount of Target Fee payable in respect of a Sub-Milestone or Major Work Package, or the Interim End State, as set out in the column headed "Allocated Target Fee" of the table at Paragraph 3.1 (<i>Target Fee Payment Milestones</i>) of Part 4b (<i>Target Fee</i>) of Schedule 6 (<i>Finance</i>);
"Allowable Cost"	has the meaning given in Paragraph 2 (<i>Allowable Costs</i>) Part 2a (<i>Allowable and Disallowable Costs</i>) of Schedule 6 (<i>Finance</i>) and " Allowable " and " Allowability " shall be construed accordingly;
"Alternative Strategies"	means the strategies set out in Section 4 of Schedule 1 (<i>Client Specification</i>);
"Amendment"	has the meaning given in Clause 20.1 (<i>Amendments to Customer Contracts and New Customer Contracts</i>);
"Annual Reconciliation Report"	has the meaning given to it in Paragraph 8.1 (<i>Annual Reconciliation of Allowable Costs</i>) of Part 2b (<i>Payment of Allowable Costs</i>) of Schedule 6 (<i>Finance</i>);
"Annual Site Funding Limit" or "ASFL"	means the annual overall funding limit for the management and operation of the Contractor as specified in or determined in respect of each Contract Year in accordance with Part 7 (<i>Financial Limits</i>) of Schedule 6 (<i>Finance</i>) as the same may be adjusted (if at all) pursuant to the Change Control Procedure;
"Applicable"	means the UKAEA Combined Pension Scheme including the Additional Voluntary Contribution Scheme and the Shift Pay Pension Savings Plan, the

Schemes" GPS Pension Scheme, the Magnox Group of the Electricity Supply Pension Scheme, the CNPP and any other pension scheme set up and/or maintained by the Authority pursuant to Section 8 and Schedule 8 of the Energy Act;

"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 7 (*Category 0 Changes*) of the Change Control Procedure of Schedule 2 (Part 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 Procedure; or
- (b) the Authority in all other instances,

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

"Approval in Principle (AIP)" means the process described as such in PCP-17;

"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 the 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 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**”;

"A Share" means the A ordinary share of £1.00 in the capital of the Contractor;

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

"Asset Disposal" means for the purposes of PCP-17, the disposal of an Authority Asset on behalf of the Authority by the Contractor;

"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 Site and Authority Assets*) to record all the Authority Assets on the Site;

"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;

"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" means the Nuclear Decommissioning Authority;

"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 Site which are currently owned by the Authority (whether leased to the Contractor or the Authority 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 Assumptions"	means the list of assumptions set out at Section 5 (<i>Authority Assumptions and Scope Quantification</i>) of Schedule 1 (<i>Client Specification</i>);
"Authority's Assurance Group"	means the group within the Authority's management structure responsible for reviewing the Contractor's arrangements for delivery of IES in line with the requirements set out in this Agreement;
"Authority's Assurance Manager"	means the individual within the Authority's management structure responsible for leading the Authority's Assurance Group;
"Authority Contractors' RIDDOR Scores"	means the mean of the reportable injury frequency rate as determined in accordance with the Reporting of Injuries, Diseases or Dangerous Occurrences Regulations 1995 (or such other legislation in place from time to time) and any related guidance issued by the HSE in relation to each of the nuclear licensed sites managed or operated by or on behalf of the Authority assessed over a rolling period of (12) Months;
"Authority Customer Contracts"	means the contracts between the Authority (including UKAEA NDPB) and Third Parties relating to the provision at the Site of Commercial Operations Tasks to Third Parties including but not limited to the Legacy Fuel Contracts;
"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"	means those items and services set out in Schedule 11 (<i>Authority Deliverables</i>);
"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 Estate"	means sites, property or organisations which are wholly owned by the Authority;
"Authority Field of"	means use in carrying out the Authority's functions, duties and powers as

"Use"	prescribed in the Energy Act from time to time;
"Authority Insurances"	means the insurance policies specified in Schedule 10 (<i>Insurance</i>) and any further insurances that the Contractor is required by Legislation to maintain;
"Authority IP"	means IP owned by or 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 (<i>Authority's Rights to IP developed by or on behalf of the Contractor and/or Subcontractors</i>); (b) Parent IP licensed to the Authority under the provisions of Clause 29.3 (<i>IP contributed by Parent Body Organisation</i>); and (c) Third Party IP licensed to the Authority under the provisions of Clause 29.6 (<i>Third Party IP</i>);
"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 Owned IP"	has the meaning given in Clause 29.5.1.1 (<i>Infringement of IP owned by the Authority</i>);
"Authority Policies and Procedures"	means the policies and procedures identified as such in Schedule 1 (<i>Client Specification</i>);
"Authority Records"	has the meaning given in Clause 14.2.2 (<i>Ownership of Records</i>);
"Authority's Representative"	means the person or persons appointed pursuant to Clause 37.3 (<i>Miscellaneous – Representatives and Delegation of Authority to Act</i>);
"Authority's Socio-Economic Policy"	means the Authority policy 'NDA Socio-Economic Policy, 2008';
"Authority Strategic Authority (SA)"	means those individuals within the Authority responsible for defining the Authority's Strategy;

"Background IP"	has the meaning given to it in Clause 29.4.10 (<i>Licence of Background IP from Subcontractor to Authority</i>);
"Base Shareline"	has the meaning given to it in Paragraph 1.4(b) of Part 4b (<i>Target Fee</i>) of Schedule 6 (<i>Finance</i>);
"Benchmark"	has the meaning given in Clause 16.4 (<i>Benchmarking – Working Capital Facilities</i>);
"Benchmark Assessment"	has the meaning given in Clause 16.4 (<i>Benchmarking – Working Capital Facilities</i>);
"Best Practicable Environmental Option (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 (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;
"B Share"	means the B share of £1.00 in the capital of the Contractor;
"B Share Dividend"	means such dividend or dividends as are paid or payable to the B Shareholder in relation to the B Share from time to time;
"B Shareholder"	means the holder of the B Share for the time being;
"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 pursuant to this Agreement;
"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;

"Caithness and North Sutherland Priority Area Plan"	means the document entitled the "Socio-Economic Caithness and North Sutherland Priority Area Plan" dated June 2009;
"Calendar Day"	means a period of twenty-four (24) hours ending at twelve (12) midnight;
"Capenhurst"	means the Authority owned site at Capenhurst, near Chester;
"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;
"Cardinal Milestone"	means the milestones set out in Section 3.5 (<i>Cardinal Milestones</i>) of Schedule 1 (<i>Client Specification</i>);
"CAT1"	means material defined as such by CWP/G8 classification policy issued by ONR, "Information Concerning the Use, Storage and Transport of Nuclear and Other Radioactive Material";
"CAT2"	means material defined as such by CWP/G8 classification policy issued by ONR, "Information Concerning the Use, Storage and Transport of Nuclear and Other Radioactive Material";
"Category Change"	<p>0 means (without prejudice to the provisions of Paragraph 7.10 (<i>Authority Acceptance and Implementation of the Proposed Change</i>) of the Change Control Procedure, under which the Authority has the discretion to approve or reject certain Proposed Changes, and Paragraph 7.11 (<i>Authority Acceptance and Implementation of the Proposed Change</i>) of the Change Control Procedure, under which the Authority's right to reject certain Proposed Changes is limited) any Proposed Change which, if implemented, would be reasonably likely to:</p> <ul style="list-style-type: none">(a) require any amendment to the SLCA (including any of its schedules, appendices or annexes); and/or(b) 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/entail:

- (i) a change to the Contract Baseline, Client Specification, the agreed date for delivery of a Cardinal Milestone, the Contract Term Long Stop Date;
- (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 Target Cost (provided that the Target Cost shall only be changed in accordance with Paragraph 7.6A (*Evaluation of the Category 0 Change Control Form*) or Paragraph 7.6B (*Evaluation of the Category 0 Change Control Form*));
- (v) any change to the circumstances in which PBI Fee is payable, except to the extent to which such change falls within Paragraph 2.4 (*Establishing PBI Objectives*) of Part 4a (*PBI Fee*) of Schedule 6 (*Finance*) (pursuant to which PBI Payment Milestones are agreed for each Contract Year after the first Contract Year); or
- (vi) any changes above the thresholds set out in the Schedule of Delegated Authority.

Provided that a Change affecting the schedule of activities in the LTP Performance Plan shall not constitute a Category 0 Change on the basis that it results in inconsistency between the schedule in the LTP Performance Plan and any schedule in the Contract Baseline.

"Category 0 Change Control Form" means the form entitled "Change Control Form" attached at Appendix A of Schedule 2 (*Part 2*) (*Change Control Procedure*) completed in respect of Category 0 Changes and in accordance with the provisions of the 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 III Change"

means any Proposed Change which:

- (a) is not a Category 0 Change; and
- (b) either:
 - (i) is reasonably likely to result in 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); or
 - (ii) will otherwise entail a change to the LTP Performance Plan;

"Category I Revenue"

means all monies received and receivable by the Contractor including:

- (a) from the Ministry of Defence;
- (b) from Customers or Third Parties in consideration of the provision by the Contractor of any goods, services, works or products arising from or ancillary to the provision of services in accordance with this Agreement;
- (c) interest (save for interest earned on the Contractor's Fee Account, M&O Contractor's Fee Account or SLCA Contractor's Fee Account) which shall be for the account of the Contractor in accordance with Clause 16.10 (*Operation of Accounts*), dividends from any

subsidiaries of the Contractor and other finance receipts;

- (d) in respect of:
 - (i) recoveries from third parties (other than the Authority) in respect of liabilities of the Contractor which are Allowable; and
 - (ii) insurance proceeds, to the extent that the Authority has previously provided the Contractor with additional ASFL to the value of the insurance proceeds. Where the Authority has not so provided, insurance proceeds shall not constitute Category I Revenue and shall be available to the Contractor as an addition to the ASFL.
- (e) from the sale of Authority Assets save for as provided for in Clause 6.5B (*Disposal of Authority Assets*);
- (f) from UKAEA relating to refunds in respect of early retirement pensions paid to the Employees or Nominated Staff under the terms of the UKAEA Combined Pension Scheme;
- (g) in respect of hedging activities carried out pursuant to the Currency Hedging Strategy; and
- (h) other amounts received or receivable by the Contractor other than in respect of the Contract Price and which do not fall within the limbs (a) to (d) of the definition of Category II Revenue,

excluding any monies received and receivable from the Parent Body Organisation or an Affiliate pursuant to the Parent Body Agreement or that fall within the definition of Category II Revenue;

"Category II Revenue"

means all monies received and receivable by the Contractor:

- (a) from another SLC or UKAEA;
- (b) [Not Used];
- (c) in consideration for minor income generating activities not listed at items (b) to (d) inclusive of the definition of Category I Revenue (including any local authority grants, apprentice training, secondment fees, restaurant receipts, bus receipts and credit interest which accrues on the Contractor's Receipts Account or any Foreign

Exchange Accounts);

excluding in each case any monies that fall within limbs (a) to (h) of the definition of Category I Revenue;

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

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

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

"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 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 the date of 30 August 2011 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; or
- (b) any applicable judgement of a relevant court of law which changes a binding precedent;

"Characterisation Plan"	means the Contractor plan of how it proposes to characterise the Site, prior to and after remediation activities (forming part of the LTP Performance Plan);
"CIL Change"	means any change to this Agreement as a result of a Change in Law pursuant to Clause 37.1 (<i>Change in Law</i>);
"Civil Nuclear Security Supplements"	means supplements to the ONR Security Policy Framework;
"Class A Disallowable Costs"	means all Disallowable Costs which are not Class B Disallowable Costs;
"Class B Disallowable Costs"	has the meaning given to that term in Clause 18.3.5 (<i>Liability Cap</i>);
"Client Specification"	means the Authority's requirements as set out in Schedule 1 (<i>Client Specification</i>);
"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;
"Commencement Date"	means 1 st April 2012;
"Commercial Operations Tasks"	means those Tasks in the LTP Performance Plan which generate Category I Revenue and/or Category II Revenue;
"Comptroller and Auditor General"	means the Comptroller and Auditor General of the UK National Audit Office;
"Conditioning"	means a facility which exists for the purpose of changing the chemical or

"Facility"	physical form of a material to make it suitable for a specific purpose;
"Conditions for Acceptance (CFA)"	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;
"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;
"Consolidation Plan"	means the plan that the Parent Body Organisation submits as part of its Response to Final Tender which describes the consolidation activities that the Contractor plans to undertake during the Consolidation Phase, including development of the LTP Performance Plan in response to the Delivery Plan;
"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;
"Contract Baseline"	means the document bearing that name and set out in Appendix I (<i>Contract Baseline</i>) of Schedule 6 (<i>Finance</i>): <ul style="list-style-type: none">(a) be a high-level plan representing circa fifty (50) to one hundred (100) activities;(b) encompasses a summary of the activities required to take the Site from its current state to full delivery of the Client Specification, to Achievement of the Interim End State;(c) [Not Used];(d) shall, in terms of pre Interim End State activities only, contain no more than those activities which are required to deliver the Client Specification;(e) identify dates for Cardinal Milestones; and

- (f) contains the Contract Baseline BCWS to Interim End State, the total of which shall equal the Target Cost;

"Contract Baseline BCWS" means the Target Cost (as indexed and subject to any Change in accordance with this Agreement) as apportioned between Contract Years in the Contract Baseline;

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

"Contract Month" means the period of one Month starting on the Commencement Date, each successive Month thereafter, and (if shorter) the period between the end of the previous Contract Month and the date of termination of this Agreement in accordance with its terms;

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

"Contract Term Longstop Date" means 31 March 2032;

"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 last 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" means Dounreay Site Restoration Limited (Company Number SC307493);

"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, 11.18 (*Defective Performance*) and 18.3.7 (*Liability Cap*);

- (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) [Not Used];
- (f) a material breach by the Contractor of its supply obligations under the Customer Contracts;
- (g) [Not Used];
- (h) any other events or situations expressly described in this Agreement as a Contractor Default; and
- (i) the Contractor's and the Parent Body Organisation's aggregate liability to the Authority under this Agreement, the Transition Agreement and the Parent Body Agreement exceeds two-thirds of the Aggregate Liability Cap;

"Contractor Exclusions" means those contractor exclusions listed at Section 6 of Schedule 1 (*Client Specification*);

"Contractor Historical Costs" means Costs arising in relation to 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 Knowledge Management Policy" means a policy to be adopted by the Contractor in accordance with EGP11;

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

"Contractor" means the Contractor, each Affiliate, their Subcontractors, their Sub-

"Related Party"	Subcontractors, and the employees and agents of each of these;
"Contractor's Fee Account"	means the bank account nominated as such by the Contractor;
"Contractor's Internal Change 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 3.4 (<i>Contractor Conduct and Contractor Change Control Procedure</i>) of Schedule 2, Part 2 (<i>Change Control Procedure</i>);
"Contractor's Liabilities"	has the meaning given to it in Clause 18.3.4 (<i>Liability Cap</i>);
"Contractor's Payments Account"	means the bank account of the Contractor which the Contractor nominates to the Authority into which drawings made under the Approved Working Capital Facilities are paid and which is separate from the Contractor's Receipts Account;
"Contractor's Receipts Account"	means the bank account of the Contractor which the Contractor nominates as such to the Authority;
"Contractor's Representative"	means the person appointed pursuant to Clause 37.3 (<i>Representatives and Delegation of Authority to Act</i>);
"Contracts Manager"	means the individual appointed by the Authority to be Agreements manager in relation to the Site as notified to the Contractor from time to time;
"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;

- "Controlled Waste"** means any Waste subject to the provisions of the Environmental Protection Act;
- "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;
- "Cost"** means a sum of money which the Contractor is legally obliged to pay other than to the Authority;
- "Costs of Re-competition Cap"** has the meaning given in Clause 33.8 (*Termination for Persistent Breach, Contractor Default, Contractor Insolvency or Commitment of a Prohibited Act*);
- "CNPP"** means the Combined Nuclear Pension Plan set up by the Authority pursuant to Section 8 and Schedule 8 of the Energy Act;
- "CRC Group"** shall have the same meaning as "group" as defined in the CRC Order;
- "CRC Order"** means the CRC Energy Efficiency Scheme Order 2010 (SI 2010/768);
- "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 the Site and effective delivery of the Client Specification;

"Cross SLC 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 by the governance boards (comprising the SLCs) 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;
"DCP"	means the Dounreay Cementation Plant in the Fuel Cycle Area;
"DCP IEF"	means the Dounreay Cementation Plant Import Export Facility in the Fuel Cycle Area;
"DFR"	means the Dounreay fast reactor on the Site;
"DFR Breeder"	means fuel associated with the Dounreay fast reactor breeder blanket;
"DFR Breeder Fuel"	means fuel associated with the Dounreay fast reactor breeder blanket;
"DFR Driver"	means fuel associated with the Dounreay fast reactor core;
"DFR Fuel"	means Nuclear Fuel which was either intended for or irradiated in the Dounreay Fast Reactor and includes DFR Breeder and DFR Driver;

"DFR Sphere"	means the spherical containment building associated with the Dounreay Fast Reactor;
"DGENER"	means the European Commission Directorate-General for Energy;
"DMTR"	means the Dounreay Materials Test Reactor in the Fuel Cycle Area;
"DPA"	means the Data Protection Act 1998;
"DSRL RIDDOR Score"	means the reportable injury frequency rate as determined in accordance with the Reporting of Injuries, Diseases or Dangerous Occurrences Regulations 1995 (or such other legislation in place from time to time) and any related guidance issued by the HSE in relation to the Contractor assessed over a rolling period of twelve (12) Months;
"DSRL Socio-Economic Development Plan"	means the Site Socio-Economic Development Plan as updated on an annual basis;
"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 the Site through to its agreed End State and Decommissioning shall be construed accordingly;
"Decommissioning Principles"	means the document titled "Strategy Management System - Decommissioning and Clean Up Principles Stage 3" (June 2010, Issue 2);
"Deed of Participation"	means the Deed of Participation for the Combined Nuclear Pension Plan entered into between the Authority and the Contractor and dated 23 October 2009;
"Defective Performance"	has the meaning given to it in Clause 11.1 (<i>Defective Performance</i>);
"Defective Performance Notice"	has the meaning given to it in Clause 11.2 (<i>Defective Performance</i>);
"Delegation of"	means the written authorisation issued from time to time by the Authority and

"Authority"	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 37.3 (<i>Miscellaneous – Representatives and Delegation of Authority to Act</i>);
"Deleterious"	means, of a material, that (whether alone or in combination or annexure with other materials) it: (a) poses a threat to health and safety or to the Environment; or (b) poses a threat to the structural stability or performance or the physical integrity of any thing (or any part of a thing) in which it is used or included; or (c) which would or could reduce the normal life expectancy of any thing (or part of a thing) in which it is used or included;
"Delivered Parent IP"	has the meaning given in Clause 29.3.1.1 (<i>IP Contributed by Parent Body Organisation – Licence to Authority and Contractor</i>);
"Delivery Plan"	means the document of that name submitted as part of the Parent Body Organisation's response to the ITSFT describing the Parent Body Organisation's proposed methodology for the Contractor to meet the requirements of the Client Specification;
"Demobilisation"	means the reversal of a Mobilisation;
"Dependency Event"	means a failure by the Authority to provide any service or item dealt with under Schedule 11 (<i>Authority Deliverables</i>) to the applicable standard as set out in that Schedule, or any other event expressly referred to in this Agreement as a Dependency Event;
"Design Life"	means the period time beginning from completion of the building or facility for which the building or facility is intended to be capable of fulfilling the duty for which it was designed;
"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"	has the meaning given to it in Paragraph 6, Part 4b (<i>Target Fee</i>) of Schedule

"Date"	6 (<i>Finance</i>);
"Developed IP"	has the meaning given in Clause 29.4 (<i>Authority's Rights to IP developed by or on behalf of the Contractor and/or Subcontractors</i>);
"Diffusers"	means part of the redundant liquid Waste management system where liquid is discharged to sea;
"Directive Wastes"	is the term used in 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);
"Dirty Dump Tanks"	means the dirty dump tanks containing NaK at DRF;
"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 (<i>Disallowable Costs</i>) Part 2a (<i>Allowable and Disallowable Costs</i>) of Schedule 6 (<i>Finance</i>) 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 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 (£500,000.00);
"Dispute Resolution Procedure"	means the dispute resolution procedure set out in Schedule 12 (<i>Dispute Resolution Procedure</i>);

"Dounreay Heritage Strategy"	means the document entitled, 'Dounreay Heritage Strategy: Delivering a cultural legacy through decommissioning, August 2010, Issue 2;
"Dounreay Land Condition Records"	means the information and records relating to location, quantification, nature extent etc of any contamination on the Site as defined in the SAFEGROUNDS guidance, entitled 'SAFEGROUNDS, good practice guidance for land quality record management for nuclear-licensed and defence sites, 2007';
"Dounreay Stakeholder Group"	means the group of stakeholders established as the formal consultation body relative to the Site under the rules set up for local and national stakeholder groups by the Authority;
"EA"	means the Environment Agency or its successor body from time to time;
"e-Government Metadata Standard (e-GUS)"	means the e-GUS Standard Version 3.0 of 29 April 2004 as updated from time to time;
"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;
"EIR"	means the Environmental Information Regulations 2004 (as amended);
"Electronic Documents Records Management System" or "EDRMS"	means the Authority's management system for storage, identification, management and categorisation of records held by it in the course of its operations;
"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 RADSAFE Emergency Plan;
"Emergency Action"	has the meaning given in the Change Control Procedure;

"Notification"

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

"Emergency Physical Inventory Taking (EPIT)" means the emergency arrangement in place to verify in an emergency situation that all nuclear material inventory is accounted for.

"Employees" means all persons, whether part-time or full-time, employed or engaged by the 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 **"Employee"** shall be construed accordingly;

"EMU" means European Economic and Monetary Union;

"End State" means the physical condition the Site should be returned to as agreed in the Site End State Consultation;

"Energy Act" means the Energy Act 2004;

"Engineering and Technology Information Forum" means the Authority's Cross SLC Initiative in relation to engineering and technical matters;

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

"Environmental Audits" means periodic audits carried out by SEPA;

"Environmental Safety Case" means the Safety Case to be provided by the Contractor in relation to the environmental safety of Disposals of solid radioactive waste which comprises a set of claims concerning the environmental safety of Disposals of solid radioactive waste, substantiated by a structured collection of arguments and evidence supporting such claims. The purpose of the Environmental Safety Case is to demonstrate that the health of members of the public and the integrity of the environment are adequately protected, both when the Waste is Disposed of and in the future;

"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" or "EAC"** means the Contractor's reasonable estimate (prepared on a P50 estimating basis and in accordance with Good Industry Practice, but subject always to the provisions of Paragraph 3 (*EAC Review*) of Part 6 (*Periodic Reviews*) of Schedule 6 (*Finance*)) of the Allowable Costs (including Actual Costs of Work Performed from the Commencement Date to date, accruals, and the Budgeted Cost of Work Scheduled for activities not yet undertaken) to be incurred by it in Achieving the Interim End State (and, for the avoidance of doubt, the EAC 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*));
- "EU Procurement Rules"** means Council Directives 89/665/EEC, 92/13/EEC, 92/50/EEC, 93/37/EEC, 93/36/EEC, 93/38/EEC, 98/4/EC, European Parliament and Council Directives 97/52/EC, 98/4/EC, 2004/17/EC and 2004/18/EC and any other EU measures adopted from time to time in relation to procurement, together with the United Kingdom implementing measures and all applicable Treaty principles;
- "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 4.4 (*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*);
- "Exempt Waste"** means Waste as defined in The Radioactive Substances Act 1993 Amendment (Scotland) Regulations 2011, that, by virtue of its activity concentrations and/or its defined physical and chemical properties is deemed to be outside the scope of, or exempt from the requirements for, either registration or authorisation under Radioactive Substances Regulation (EPR10 in England and Wales, RSA93 in Scotland and Northern Ireland, provided such Waste complies with the prescribed registration or

authorisation conditions) ;

- "Existing Agreements"** means all agreements that are legally binding on the Contractor and were entered into prior to the Commencement Date;
- "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 Contract Term Longstop Date or, if earlier, the date on which the Interim End 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;
- "FCA"** means the Fuel Cycle Area within the inner security fence located within Zones J and I of the map set out in Annex 11 of Schedule 1 (*Client Specification*);
- "FCF"** means the Fuel Characterisation Facility in the Fuel Cycle Area;
- "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;
- "Fall Due"** means become payable in accordance with the legal terms governing the relevant obligation to make payment;
- "Fee"** means the aggregate of the PBI Fee in respect of the relevant Contract Year, 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;
- "Final End State LTP"** means the lifetime plan to be provided by the Contractor in accordance with and more particularly defined in Requirement 72 of Schedule 1 (*Client*

Specification);

"Final Reconciliation" has the meaning given to it in Paragraph 10.1 (*Final Reconciliation of Allowable Costs*) of Part 2b (*Payment of Allowable Costs*) Schedule 1 (*Finance*);

"Final True Cost Variance" means the Target Cost minus the Actual Cost of Work Performed as calculated on Achievement of the Interim End State, as further adjusted pursuant to Paragraph 2 (*True Cost Variance Adjustments*) of Part 4b (*Target Fee*) of Schedule 6 (*Finance*);

"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 in each case after the Commencement Date (in the case of the Contractor, having acted in accordance with Good Industry Practice after 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 as aforesaid) 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 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 the employees or Subcontractors of any Affiliate of that Party;
- (f) Acts of God;
- (g) delay in transport or communications;

- (h) accidental damage to equipment;
- (i) structural shift or subsidence;
- (j) either:
 - (i) any 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 Site; or
 - (ii) upon 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 where the Contractor has no ability to appeal, challenge or discharge any such intention to revoke,

unless in either case such revocation or threatened revocation is: (a) for the sole purpose of issuing to the Contractor a replacement licence, authorisation, permit or consent which does not materially diminish the capacity or capability of the Contractor to operate and manage the Site; (b) is due to any act, omission or failure by the Contractor to act in accordance with Good Industry Practice or otherwise comply with its obligations under this Agreement; or (c) is due to any act, omission or failure by the Authority;
- (k) any release of ionising radiation or contamination by radioactivity from an occurrence involving nuclear matter,

but expressly excluding:

- (i) any unlawful act of a Third Party who has gained entry to the 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;
- (ii) any unauthorised release of ionising radiation from, or contamination by radioactivity from an occurrence involving nuclear matter on the Site or from materials in the course of transportation to or from the 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

(iii) any radioactive, chemical or biological contamination on the Site or emanating from the Site or matter in the course of transportation to or from the 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;

(iv) [Not Used];

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

"Forums" means the Authority's cross-SLC forums including the People Strategy Board, the Shared Services Alliance and the Engineering and Technology Information Forum;

"FSA" means the Financial Services Authority;

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

"GAAP" means Generally Accepted Accounting Practice

"GDF" means the Geological Disposal Facility;

"GIS" means a geographic information system (or geographical information system) which captures, stores, analyzes, manages, and presents data that are linked to location;

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

"Georgian Nuclear Fuel" means Nuclear Fuel originating from Georgia;

"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 Site) ordinarily be expected from a skilled and experienced contractor engaged (in any European Union jurisdiction 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 Payment Obligations"	means the guidance contained in Annex 4.6 of Managing Public Money 2007;
"Guidance for Site Stakeholder Groups"	means the Authority's guidance entitled, 'Authority's Guidance for Site Stakeholder Groups, Ref LAR3.0, 27 March 2009;
"Guidelines on Managing Information"	means the guidelines issued by the Cabinet Office, HMG (or any relevant governmental body) including the HM Treasury Good Practice Guide: the internal audit role in information assurance (January 2010), the HMG Security Policy Framework (December 2008);
"HGCRA"	means the Housing Grants, Construction and Regeneration Act 1996;
"HMRC"	HM Revenue & Customs and any successor to such organisation;
"HR Internal Procedure"	means the Contractor's Internal Procedures referred to in Clause 31.9 (<i>Terms and Conditions of Employment</i>);
"HSE"	means the Health and Safety Executive;
"HSSE Obligations"	means the obligations on the Contractor to manage the Site so as to minimise any material risk to health, safety, security and the environment;
"Harwell/Winfrith Contract"	means the Customer Contract made between DSRL and RSRL dated 1 April 2010, reference D-Sales/10/0004 in relation to payroll services to Harwell/Winfrith;
"Higher Activity Waste"	Means the waste which is defined in current UK categorisations as 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;
"High Level Waste (HLW)"	Means Waste in which the temperature may rise significantly as a result of its radioactivity;

"Home Location"	Means the location at which a member of personnel ordinarily works, determined by reference to their contract of employment where applicable;
"ILW"	Means Intermediate Level Waste, Waste with activity levels above 20GBq/te beta/gamma or 4GBq/te alpha;
"INS"	Means International Nuclear Services Limited, the wholly owned subsidiary of the Authority which acts as a commercial and contract management agency for the Authority;
"IWS"	Means an Integrated Waste Strategy which describes how a site optimises its approach to Waste management in an integrated way, the Waste streams and discharges expected from current and future operations and the actions required to improve the site's approach to Waste management;
"ITSFT"	Means invitation to submit final tender;
"Identified Trend"	Means an identified trend where the Contractor is initiating a trend or a trend is under review by the Contractor for acknowledgement;
"Impartiality Undertaking"	Means an undertaking in the form set out in Part 5 (Pro Forma Impartiality Undertaking) of Schedule 4 (<i>Employment and Pensions</i>);
"Incentive Fee"	has the meaning given to such term in the Management and Operations Contract;
"Incoming Parent"	Means the organisation that successfully bids or is appointed to replace the PBO in relation to the Site, 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 Site;
"Index"	Means the index published monthly by the Office of 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;
"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 1.2.14 (*Interpretation*);

"Indexation Adjustment Date" Means each anniversary of the Commencement Date, but excluding the first such anniversary;

"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 Assurance" has the meaning attributed to it in the Guidelines on Managing Information;

"Information Assurance Maturity Model (IAMM)" Means the HMG information assurance maturity model (version 4, 27 May 2010);

"Information 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" has the meaning attributed to it in the Guidelines on Managing Information;

"Information Security" has the meaning attributed to it in the Guidelines on Managing Information;

"Interim Storage Period" means the period between the date of storage up until Disposal;

"Interim True Cost Variance" means the Target Cost of Work Performed as at the end of the Contract Month in which a Sub-Milestone or Major Work Package was Achieved, minus the Actual Cost of Work Performed as at such time, as further adjusted pursuant to Paragraph 2 (*True Cost Variance Adjustments*) of Part 4b (*Target Fee*) of Schedule 6 (*Finance*);

"Initial Business Case" means the Business Case used to support AiP;

"Insurance Proceeds" amounts received by way of payment of benefits due under a policy of insurance but excluding any amount which is received in respect of the costs of the Authority of pursuing such claim or in respect of any delay in the settlement of such claim;

"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 Paragraphs (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 Deductible" the portion of an insured loss to be borne by the insured before he or she is entitled to recovery from the insurer;

"Insurance Schedule"	means the Insurance Schedule attached as Schedule 10 (<i>Insurance</i>);
"Integrated Management System"	means the management system developed by the Contractor pursuant to Clause 8 (Integrated Management System);
"Inter SLC Service Contracts"	means the Inter SLC services contracts entered into in accordance with Clause 23 (<i>Inter SLC Service Contracts</i>);
"Interim End State"	means the physical state of the Site achieved by delivery of the Client Specification;
"Internal Procedures"	<p>means all internal company documentation of the Contractor (regardless of the manner in which it is held, stored or collated) which:</p> <ul style="list-style-type: none">(a) in the reasonable opinion of the Authority, constitutes a mandatory internal guideline, standard, procedure or policy;(b) in the reasonable opinion of the Authority, relates directly or indirectly to the 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 (<i>Nature of Contractor's Obligations</i>) and/or the manner in which the Contractor chooses to fulfil its Contractual, legal and regulatory obligations therein, <p>and includes HR Internal Procedures and "Internal Procedure" shall be construed accordingly;</p>
"International Relations Topic Strategy Summary"	means the Authority's strategy entitled, 'International Relations Topic Strategy Summary', Feb 2011, V3.0;
"Investment Opportunity"	means a Work Activity not currently identified in the Lifetime Plan which, if pursued, may result in a cost and/or schedule benefit to the Authority;

- "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 Commercial Guidance"** means processes 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*);
- "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 IP Commercial Guidance;
- "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
 - (e) 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;
- "Key Personnel"** means the individuals, whether Nominated Staff or Employees, identified by the Authority and named as key personnel in accordance with Clause 31.2 (*Key Personnel*) and listed in Part 2 (*Key Personnel*) of Schedule 4 (*Employment and Pensions*) as amended from time to time;

"KnK Sodium"	means the sodium which is the subject of a contract between Nuvia and The Authority dated 15 July 1994 for the destruction of sodium originating from the German operated KnK II Reactor;
"Knowledge Management Policy"	means the Authority's knowledge management policy set out in Schedule 16 (Knowledge Management);
"LLW"	see "Low Level Waste";
"LLW Pits"	means the historical Low Level Waste Disposal facility on the Site to be replaced by the LLW Disposal Facility;
"LLW Disposal Facility"	means the new LLW Disposal facility to be built by the contractor to replace the LLW Pits;
"LQM"	means land quality management;
"LQM Plan"	means the Contractor's plan detailing its approach to managing land quality;
"LTP 10"	means the LTP Performance Plan in place immediately prior to the Commencement Date;
"Landfill 42"	means the historical Disposal facility located adjacent to the Site;
"Legacy Fuel Contracts"	means those contracts that were entered into by UKAEA for the processing of Nuclear Fuels through their plants and which could not be completed when the operations of the Site ceased;
"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 or the

Government; and

(c) any judgment of a relevant court of law,

in each case enforceable in the United Kingdom;

"Letters of Compliance (LOC)" means the letters issued by the Disposal Authority that set out the limits and conditions to be met in order to receive authorisation to send Waste to the Disposal facility;

"Liability Cap" has the meaning given in Clause 18.3.1 (*Liability Cap*);

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

"Licence Compliance Audits" means audits carried out by the NII;

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

"Licensed Nuclear Site Area" means the part (or parts) of the Site that is from time to time subject to a Nuclear Site Licence (including all water supplies, pipelines, conduits and drainage systems and other rights and easements appurtenant thereto);

"Lifetime Plan" or "LTP Performance Plan" means the over-arching document which:

- (a) encompasses delivery of and describes the totality of activities planned by the Contractor or instructed by the Authority to take the Site from its current state to full delivery of the Client Specification, to the point of achieving the Interim End State;
- (b) describes the totality of the post-Interim End State activities required to deliver the Final End State (provided that the inclusion of such post-Interim End State activities within the Lifetime Plan shall not require the Contractor to undertake them);
- (c) shall, in terms of pre-Interim End State activities only, contain no more than those activities which are required to deliver the Client Specification or are otherwise required for performance of the Contractor's obligations under this Agreement;
- (d) shall be changed and continuously updated in line with the Change

Control Procedure;

- (e) 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 End State and (separately) the Authority's estimate of its full lifetime liabilities to take the Site from the Interim End State up to the Final End State;
- (f) is a contemporaneous plan which supports and underpins delivery of the Client Specification and achievement of the Interim End State;
- (g) provides the Authority with parts only of the information it needs to comply with its statutory reporting obligations; and
- (h) contains sufficient detail to enable verification of Cost and inform funding requirements,

and for the purposes of this Agreement the terms "Lifetime Plan", "LTP", "LTP Performance Plan" and "Lifetime Plan Performance Baseline" have the same meaning and are interchangeable;

"Locale" means Caithness and North Sutherland;

"Local Stakeholder Partners" means other public agencies that have an interest or remit in local economic development including bodies such are Highland Council, Highlands and Island Enterprise, Caithness and North Sutherland Regeneration Partnership, local business organisations such the Chamber of Commerce and the Dounreay Stakeholder Group;

"Long Term Plan" means the plan to be prepared, maintained and submitted by the Contractor to the Authority in accordance with Requirement 25 that includes an annualised estimate for scope, schedule and cost in compliance with PCPM Contractor Annexe and shows delivery of the Final End State to allow the Authority to maintain the Nuclear Provision and to facilitate strategic decision making;

"Low Level Waste" means radioactive Waste with activity levels below 20GBq/te beta/gamma or 4GBq/te alpha;

- "Low Level Waste Repository" (LLWR)** means the UK LLW Disposal Facility located near Drigg in Cumbria;
- "M68 Deed of Variation"** has the meaning given in the Parent Body Agreement;
- "Magnox Operating Plan"** means the plan for moving Magnox and DFR Fuel to Sellafield and reprocessing at Sellafield through the Magnox Reprocessing Plant;
- "Magnox Reprocessing Plant"** means the plant at Sellafield for the reprocessing of fuel from Magnox reactors;
- "M&O Contractor's Fee Account"** means the bank account nominated as such by the Contractor;
- "Magnox Drying Project Manager"** means the project manager responsible for exploring the opportunity for drying Magnox Fuel at Sellafield;
- "Major Work Package"** means a quantifiable component of the work required to achieve the Interim End State, as set out in the table at Paragraph 3.1 (*Target Fee Payment Milestones*) of Part 4b (*Target Fee*) of Schedule 6 (*Finance*) and more fully described in the relevant PAF;
- "Make-or-Buy Plan"** means the Contractor's plan setting out the extent to which it proposes to subcontract Tasks it currently performs;
- "Management and Operations Contract"** means the site management and operations contract between the Authority and UKAEA dated 1 April 2005 as amended by a deed of amendment dated 1 April 2007 and by the DSRL 2008 Transfer Scheme dated 1 April 2008;
- "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 HSSE 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 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;

"Metallic Nuclear Fuel" means Nuclear Fuel that is fabricated utilising uranic material;

"Minimum Performance Standard" means Minimum Performance Standards as defined in Schedule 17 (*Minimum Performance Standards*);

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

"Monthly Progress Report" means the monthly progress reports to be provided by the Contractor in accordance with 14.1.2 (*Required Reports*);

"Monthly Reconciliation Report" has the meaning set out in Paragraph 7.1 (*Monthly Reporting*) of Part 2b (Payment of Allowable Costs) of Schedule 6 (*Finance*);

"NDA Properties Ltd" means the wholly owned subsidiary of NDA associated with its property and management activities;

"NIA" means the Nuclear Installations Act 1965;

"NII" means the Nuclear Installations Inspectorate forming part of the Health and Safety Executive and responsible for administering the licensing function and

enforcing the Nuclear Installations Act 1965 and the Health and Safety at Work Act 1974 on nuclear sites;

- "NISR"** means the Nuclear Industries Security Regulations;
- "NS Mobilisation"** means the movement of a member of Nominated Staff from their Home Location to the Site, and installation of the necessary support infrastructure (both physical and administrative);
- "NS Support Month"** means a period that is nominally eighty per cent (80%) of a full time equivalent (calculated after subtracting pro rata thirty five (35) Working Days of annual leave plus all public holidays in Scotland) working in support of the activities of the Contractor or otherwise in support of the activities required to deliver the Client Specification, undertaken by a member of Nominated Staff within a Month;
- "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;
- "Nuclear Provision"** means the estimate prepared by the Authority comprising the cost of Decommissioning, clean-up and storage of waste prepared in accordance with HM Treasury Guidelines;
- "National Nuclear Laboratory (NNL)"** means the National Nuclear Laboratory Limited of Sellafield Seascale Cumbria CA20 1PG, a nuclear technology services provider;
- "National Waste Research Forum"** means the SLC led Forum for sharing common research and development needs, risks and opportunities;
- "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;

"New Assets"	means any assets, whether new or second-hand, acquired by the Contractor in accordance with Clause 6.7 (<i>New Assets</i>) on or after the Commencement Date, excluding any Subcontracts and Customer Contracts;
"New Customer Contract"	has the meaning given in 20.1 (<i>Amendments to Customer Contracts and New Customer Contracts</i>);
"NISR"	means the Nuclear Industries Security Regulations 2003 (SI 2003/403), as amended, modified or re-enacted from time to time;
"Nominated Staff"	means the individuals listed in Part 1 (Nominated Staff) of Schedule 4 (<i>Employment and Pensions</i>) as amended from time to time;
"Non Contractor Historical Costs"	means Costs arising in relation to 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;
"Notice"	has the meaning given in Clause 37.7.1 (<i>Notices</i>);
"Novel, Contentious or Repercussive"	means, in respect of any Change, that the Authority, acting reasonably, considers the Change in question to be novel, contentious or repercussive as defined in PCP-17;
"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 the indemnity granted by the Authority in favour of the PBO, the Contractor and the other Indemnified Parties as defined therein dated the date hereof in the form attached at Schedule 8 (<i>Nuclear Indemnity</i>) of the Parent Body Agreement;
"Nuclear National Archive (NNA)"	means the Authority owned national archive facility to be provided by the Authority;
"Nuclear Site Licence"	means a nuclear site licence granted to the Contractor pursuant to Section 1 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 3 (*Commercial*);
- "Occupational Health Services Contract"** means the contract for provision of occupational health services to Third Parties referred to in paragraphs (v) to (viii) of Requirement 21 (*3rd Party Services provided by the SLC*) of Section 3.4 (*Services required through the Contract duration and additional constraints*);
- "Office of Nuclear Regulation" or "ONR"** means the Office for Nuclear Regulation or any body having responsibility for civil nuclear security in the United Kingdom which substantially replaces the same from time to time;
- "ONR Security Policy Framework"** means the ONR security requirements for the protection of Sensitive Nuclear Information and personnel security in the civil nuclear industry Reference TRIM Ref:4.4.2.4890.SB1/6;
- "Operating Plan"** means the Authority's high-level plan set out in Section 3.6 of Schedule 1 (*Client Specification*) for communication of its major deliverables for the Site to the wider stakeholder community;
- "Operating Procedures"** means all documented procedures, processes or prescribed practices in use at the 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;
- "OPG Receipts Account"** means the account which the Authority nominates to the Contractor as such;
- "Outgoing Parent"** means the outgoing Parent Body Organisation;
- "Output"** has the meaning given in Clause 29.4.5 (*Access to and use of information by the Authority*);
- "Outstanding Trend"** means a trend that has not been acted upon and has been temporarily deferred pending resolution;
- "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 Agreed dated 1 April 2008 between the Authority, the Contractor and others;
"Overpayment Notice"	has the meaning given to it in Clause 16.8.3 (<i>Category I and II Revenue</i>);
"Owner Books"	means the books of account prepared and maintained by the SLC contractor for the benefit of the Authority in accordance with its instructions;
"PAF"	has the meaning given to it in Paragraph 1.1 (<i>Performance Agreement Form</i>) Part 5 (<i>Performance Agreement Form</i>) of Schedule 6 (<i>Finance</i>);
"PAT"	means the Project/Programme Assessment Tool;
"PBI Fee"	means an amount of performance-based incentive fee payable in respect of achievement of PBI Payment Milestones, and which is subject to the maximum amounts (to be apportioned across all PBI Payment Milestones for the Contract Year in question) set out in Paragraph 3.4, (<i>Maximum PBI Fee</i>) of Part 4a (<i>PBI Fee</i>) of Schedule 6 (<i>Finance</i>);
"PBI Payment Milestones"	means a payment milestone agreed or determined pursuant to the provisions of Parts 4a (<i>PBI Fee</i>) and 5 (<i>Performance Agreement Form</i>) of Schedule 6 (<i>Finance</i>), achievement of which will (subject to the provisions of Part 4a (<i>PBI Fee</i>) of Schedule 6 (<i>Finance</i>)) result in a payment of PBI Fee;
"PCP-17"	means the Authority's sanction and validation programme controls procedure as listed within the Authority's Policies and Procedures set out at Schedule 1 (<i>Client Specification</i>);
"PCPM Contractor Annexe"	means the Dounreay Annexe to PCP-M as listed within the Authority's Policies and Procedures set out at Schedule 1 (<i>Client Specification</i>) and attached for identification purposes only at Appendix C (<i>PCPM Contractor Annexe</i>) to Schedule 2 (Part 2) (<i>Change Control Procedure</i>);
"PFR"	means the Prototype Fast Reactor located in the Fuel Cycle Area;
"PRAG(D)"	means the independent advisory body set up to provide advice to SEPA and DSRL on the management of the Particles;
"PSWBS"	means in respect of the Site, the Programme Summary Work Breakdown Structure within the relevant Lifetime Plan which is the structure defined and used by the Authority to subdivide the relevant Lifetime Plan to individual

levels where Tasks can be planned, controlled, executed and performance-measured in accordance with the requirements of this Agreement;

- "Package Safety Case"** means the safety case required by the Department for Transport for the transport of packages of radioactive or hazardous materials;
- "Parent Body Agreement"** means the agreement of that name entered into between the Authority, the Contractor and the Parent Body Organisation on the date of this Agreement;
- "Parent Body Organisation" or "PBO"** means Babcock Dounreay Partnership Limited (Co. no. 07868218);
- "Parent IP"** has the meaning given in Clause 29.3.1 (*IP Contributed by Parent Body Organisation – Licence to Authority and Contractor*);
- "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;
- "Particle End State"** means the agreed End State for any environmental contamination resulting from the historic release of particles from the Site;
- "Particles"** means the particles of Nuclear Fuels which have been released from the Site into the environment and which are found periodically on the beaches, seabed and foreshore in the vicinity of the Site;
- "Passive Safety"** means the achievement of a safe state without reliance on intervention from active systems or components;
- "Payment Milestones"** means in those indicators of performance and milestones which are set out in or otherwise determined pursuant to Schedule 6 (*Finance*) and which are to be used as milestones by reference to which PBI Fee or a proportion of the Target Fee (as adjusted by the Shareline) is to be paid;
- "PBO Guarantee"** has the meaning given to such term in the Parent Body Agreement;
- "PCPM"** means the Authority's project control procedures as listed within the Authority's Policies and Procedures set out at Schedule 1 (*Client*

Specification);

- "People Strategy"** means the NDA strategy, 'The NDA People Strategy, 27 Jan 2010, V1.4';
- "People Strategy Board"** means the Authority's cross-SLC initiative forum in relation to its People Strategy;
- "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;
- "Performance Agreement Form"** has the meaning given to it in Paragraph 1.1 (*Performance Agreement Form*) of Part 5 (*Performance Agreement Form*) of Schedule 6 (*Finance*);
- "Performance Trend"** means a trend that, due to favourable or adverse performance, will result in a change to cost of the work performed or the earned value (ACWP, BCWP and/or estimate at completion) but will not result in an overall change to the scope of the work to be undertaken and is not usually regarded as a valid basis for Change Control but will manifest itself as a cost and/or schedule variance;
- "Permitted Activities"** means those activities listed in Part 1 (*Permitted Activities*) of Schedule 3 (*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*);
- "Permitted Activities Request"** means the procedure referred to in Paragraph 2 (*Content of Permitted Activities Request*) of Part 1 (*Permitted Activities*) of Schedule 3 (*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.

"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 (in each case) either a period of four (4) months has passed since the Commencement Date or within such four (4) months period, the Nominated Staff have had a reasonable opportunity to identify, address and avoid such repeated or similar breaches;

"Post Investment Appraisal" or "PIA" has the meaning contained in the Change Control Procedure and PCP-17;

"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;

"Pre-Commencement Relief" any Relief which arises as a consequence of or by reference to any Tax Event occurring, or in respect of a period commencing, before the Commencement Date;

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

"Prohibited Acts" means:

- (i) offering, promising or giving another person any financial or other advantage, whether offered, promised or given directly or indirectly, as an inducement or reward:
 - (a) 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
 - (b) for improperly showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Authority;
- (ii) 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:
- (a) 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
 - (b) for improperly showing or not showing favour or disfavour to any person in relation to this Agreement or any other agreement with the Authority;
- (iii) 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;
- (iv) committing any offence:
- (a) under the Bribery Act 2010;
 - (b) under any applicable Law creating offences in respect of fraudulent acts; or
 - (c) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Authority; or
- (v) 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 Lease" means the leases of part or parts of the Site subject to the terms of this Agreement entered into on the same date as this Agreement and **"Property Lease"** means any of them;

"Proposed Change" means a proposal for any change to any element of the Contract Documents, including to the rights and obligations; dates and any monetary amounts or figures contained therein which may be initiated by either Party in accordance with 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;

"Proximity Principle" means the principle that advocates that Waste should be disposed of (or otherwise managed) close to the point at which it is generated;

"Publicly Available Specification – 55 (PAS 55)" means the specification made publically available by the British Standard Institute in relation to good practices in physical asset management;

"RSA93 Authorisation" means an authorisation given pursuant to the Radioactive Substances Act 1993;

"Radioactive Contamination" means Contamination with radioactive materials;

"Radioactive Waste Management Cases" means documents required by SEPA showing how Waste is managed as part of a Safety Case assessment;

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

"Records" means the records specified in 14.2.2 (Ownership of Records);

"Records Agreement" means the UKAEA Restructuring Records Agreement or any other agreement concerning the compilation, maintenance, indexing and provision of access to such Records in connection with the business of the Contractor from time to time;

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

"Regulator Meetings" means all meetings between the Contractor and any Regulator(s) whether or not other persons are invited to attend;

"Regulators" means the HSE (including NII), the DfT, the EA, the SEPA, the ONR, the Scottish Executive, the FSA, the Pensions Regulator, the Pension Protection Fund, others specific to the Contractor's obligations under this Agreement and 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 Authorisations" means any authorisations required pursuant to the Regulatory Requirements;

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

(i) the Contractor has complied with Good Industry Practice (including full compliance with any applicable Legislative requirements) in seeking such authorisation, consent, response or approval;

(ii) the Contractor has engaged in a timely and appropriate manner with the Regulator (including where required in accordance with

Good Industry Practice the provision to the Regulator of advanced notice of the Contractor's future requirement for such authorisation, consent, response or approval and compliance in a timely manner with any reasonable request or requirement of the Regulator);

(iii) the period from the Contractor's application, notification or other request (as the case may be) to a Regulator for the authorisation, response, consent or approval in question has exceeded any applicable time period set out in the table below or where the Regulatory Process is not identified in the table below any applicable statutory time period and an additional period equivalent to 50% of this specified period has elapsed ;and

(iv) such failure or inability on the part of the Regulator to respond or provide its authorisation, response, consent or approval has not arisen due to any act or omission on the part of the Contractor,

as a direct result of which, the Contractor has incurred additional material Cost, delay or risk in the delivery of a Target Fee Payment Milestone.

Regulator	Regulatory Process	Category	Nominal response time (working days)
NII	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
SEPA [¹]	Radioactive Substances Act	New authorisation	500

¹ The following additional provisions apply to applications relating to SEPA;

- i) Where SEPA, acting reasonably, determines that there is insufficient information provided by the Contractor to determine the authorisation, consent, response or approval, it shall be entitled to request additional information. In such circumstances, the relevant time period set out above shall be suspended until such time as the additional information has been received by SEPA. In the case where additional information is requested by SEPA in connection with an application for a Waste Management Licence or EURATOM (European Atomic Energy Community) Treaty Article 37 application, the time period shall recommence from the point in time such additional information is received by SEPA, as if such application is being made *ab initio*.
- ii) In the case of Pollution prevention and control applications, the "nominal response time" excludes time required by SEPA to;
 - a. receive information required by serving a notice;
 - b. determine if a commercial confidentiality or national security request is valid

	1993	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	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
Department for Transport	Transportation safety case	Approval	90
Highland Council	Planning process	Environmental Impact Assessment scoping	30
		Environmental Impact Assessment	250
	Demolition process		30
	Waste licence		30

iii) For the avoidance of doubt, 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 SEPA to determine the application.

"Regulatory Process"	means a process relating to the subject matter described under the heading "Regulatory Process" in the table set out in the definition of Regulatory Delay;
"Regulatory Requirements"	means any legally enforceable requirement of any Regulator;
"Relevant Variance"	is as defined in Paragraph 1.3(c) (<i>Relevant Variance – Moderation Mechanism</i>) and 1.3A (<i>Relevant Variance – Moderation Mechanism</i>) of Part 4b (<i>Target Fee</i>) of Schedule 6 (<i>Finance</i>);
"Relief"	means: <ul style="list-style-type: none">(a) any relief, loss, allowance, exemption, set-off or credit in respect of Tax;(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 (<i>Performance Management, Performance Assurance and Records</i>);
"Representative"	means either the Authority's Representative or the Contractor's Representative, as the case may be;
"Requirement"	means a particular Authority requirement set out in the Client Specification set out in Schedule 1;
"Required Parent IP"	has the meaning given in Clause 29.3.1.2 (<i>IP Contributed by Parent Body Organisation – Licence to Authority and Contractor</i>);
"Re-Sanction" and	means the obtaining of further Sanction as set out in the Change Control

"Re-Sanction Submission"	Procedure and PCP-17;
"Reserved Parent IP"	has the meaning given in Clause 29.3.5 (<i>IP Contributed by Parent Body Organisation – Licence to Authority and Contractor</i>);
"Response to Final Tender"	means the Contractor's response to the Authority's invitation to submit a final tender dated 30 August 2011;
"Retentions"	has the meaning given to it in Clause 12.3.1.1 (<i>Dependency Events</i>);
"RSS"	means the rolling twelve (12) month Work Activity Schedule referred to at Paragraph 12 of Schedule 2 Part 3 (<i>Work Activity Management – Financial Sanction & Validation</i>);
"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;
"Safety Working Group"	means the Contractor's committee to consider and approve Safety Cases;
"Sanctions" and "Sanction Submission"	means the application by the Contractor to the Authority for sanction and validation as contained in the Change Control Procedure and PCP-17;
"Sanction Plan"	means the " <i>Work Activity Sanction Plan</i> " as referred to and contained in Appendix C of PCP-17;
"SaV"	means Sanction and Validation as referred to in PCP-17;
"SaV Procedure"	means the sanction and validation procedure as set out in PCP-17 (<i>Sanction & Validation</i>);
"SaV Schedules"	means Part 3; <i>Work Activity Management – Financial Sanction & Validation of Schedule 2 (Change Control Procedure)</i> ; and Part 1 (<i>Permitted Activities</i>) of Schedule 3 (<i>Commercial</i>) and Schedule 5 (<i>Subcontracting/Procurement</i>);
"Schedule of Delegated"	means the levels of financial delegated authority against specific work activity thresholds specified at Paragraph 13.2 (<i>Interaction with PCP-17</i>) of Schedule 2 Part 2 (<i>Change Control Procedure</i>) and Paragraph 16 (<i>Subcontract</i>

"Authority"	<i>Strategy</i>) of Schedule 2 Part 3 (<i>Work Activity Management</i>) subject to any Change in accordance with this Agreement;
"Schedule of Designated Areas"	means the schedule contained in Annex 12 (<i>Schedule of Designated Areas</i>) of the Client Specification;
"Scheme Design"	means a design that is more advanced than an outline or concept design, and to include layout drawings, scoping calculations and be sufficient to show how the facility would operate and to allow a cost estimate of the facility to be produced. It should have sufficient detail to allow a future Site operator to place a contract for the detailed design and build of such a facility without further work;
"Scope Trend"	means a trend that results from an anticipated change to the scope of work to be performed, typically as a result of emerging issues, changes in priorities or better understanding of the scope to be performed. If acknowledged, scope trends are incorporated into the baseline through Change Control;
"Scottish Government's Public Consultation on Waste Return"	means the Scottish Government's Public Consultation on proposed Waste Return;
"Scottish Sites"	means the nuclear sites in Scotland;
"Sea Bed Monitoring Contract"	means the contract between the Contractor and Land & Marine Co Ltd for the monitoring and retrieval of Particles on the sea bed resulting from historic Site operations;
"Seconding Employer"	means a company (or other business entity) 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 the Seconding Employer, in the form attached at Part 3 (<i>Pro Forma Secondment Agreement</i>) of Schedule 4 (<i>Employment and Pensions</i>);
"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 the Site in accordance with NISR;

"Security Requirements" means all security requirements relating to the 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;

"Segregated Waste Services" means those services, for the treatment of Waste, offered by the Low Level Waste Repository near Drigg, Cumbria;

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

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

"Senior Information Risk Owner" 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;

"Sensitive Nuclear Information" has the meaning set out in section 9 of the ONR Security Policy Framework;

"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;

"Shaft" means the facility on Site excavated for the purposes of installing the low level liquid waste discharge line and subsequently used for the Disposal of ILW;

"Shared Services Alliance" means the Authority's cross-SLC initiative in relation to estate wide procurement;

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

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

(a) in the context of Interim True Cost Variance, the Target Cost

of Work Performed as at the relevant time; and

(b) in the context of Final True Cost Variance, the Target Cost,

and calculated in each case in accordance with Paragraph 1.4 (*Calculation of Shareline*) of Part 4b (*Target Fee*) of Schedule 6 (*Finance*);

"Shareline Band" means a band as set out in the table at Paragraph 1.4(b) (*Calculation of Shareline*) of Part 4b (*Target Fee*) of Schedule 6 (*Finance*) under the heading "Shareline Band" (the specific choice of which shall be as determined pursuant to Paragraph 1.4(a) (*Calculation of Shareline*) of Part 4b (*Target Fee*) of Schedule 6 (*Finance*));

"Shareline Increment" means, for each Major Work Package, and for the Interim End State, the percentage value set out against it in the column headed "Shareline Increment" of the table at Paragraph 3.1 (*Target Fee Payment Milestones*) of Part 4b (*Target Fee*) of Schedule 6 (*Finance*);

"Shareline Modifier" is 66% (sixty-six per cent.), plus the total of the Shareline Increments attributable to all Major Work Packages that have, as at the date of calculation, been Achieved, plus, following Achievement of the Interim End State, the Shareline Increment attributable to the Interim End State;

"SID Operations" means the operations associated with the Sodium Inventory Destruction plant;

"Silo" means the facility on Site historically used for the storage of wet ILW;

"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;

"Site" means the area coloured green on the plan annexed to the lease between the Authority and the Contractor dated 31 March and 10 and 15 April, all 2008 and registered in the Books of Council and Session on 16 October 2009 and the area edged red on the plan annexed to the draft lease between the Authority and the Contractor relating to the proposed Low Level Waste Facility as at the date of this Agreement;

"Site Drawings" means all engineering drawings of the Site provided and maintained by the Contractor that show the current status of the Site at any given time and particularly indicating the location of structures (including drains and roads) on the Site;

"Site End State Consultation"	means the output of the consultation described in 'Output from Stakeholder Consultation for the Site End State for Dounreay', SMS/TS/A2/1/1/R005, October 2009, Issue 1;
"Site IT Systems"	means IT Systems on the Site or used by or on behalf of the Contractor in respect of the Site;
"Site Manager"	means the person appointed from time to time by the Contractor pursuant to the terms of Clause 6.5.5 (<i>Maintenance of Site and Authority Assets</i>);
"Site Meetings"	means all meetings held or to be held by the Contractor on the 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;
"Site Maintenance Register"	means the Site Maintenance Register to be maintained by the Contractor in accordance with Clause 6.5.2 (<i>Maintenance of Site and Authority Assets</i>);
"SLC"	means a Contractor to whom the HSE has granted a Nuclear Site Licence;
"SLCA Contractor's Fee Account"	means a designated interest bearing account opened and maintained by the Contractor pursuant to Clause 16.10.1A;
"Socio-Economic Development Plan"	means the document to be provided to the Authority by the Contractor pursuant to Clause 9 (<i>Socio-Economic Development</i>);
"Socio-Economic Policy"	means the Authority's Socio-Economic Policy;
"Sodium Disposal Plant"	means the plant at PFR which is used to destroy sodium;
"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 29.3.5A;

"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 the Site and not to similar tasks being carried out at other 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;
- (e) a Change in Law which relates to the holding of shares in SLCs and not other types of company;
- (f) a Change in Law which relates to the nuclear industry and not to other industries; or
- (g) a Change in Law which relates to Security Requirements.

"Springfields" means the Authority owned site near Preston;

"Staffing Profile" means the graph showing the number of people employed, by year and by skill type throughout the period to deliver the IES;

"Stakeholder & Socio-Economic Partnering" means the agreement to be entered into between the Authority, the PBO and the Contractor pursuant to Paragraph (vi) of Requirement 52 (*Socio-*

"Agreement"	<i>Economics</i>) of Schedule 1 (<i>Client Specification</i>);
"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 State Aid decision attached at Schedule 14 (<i>European State Aid</i>);
"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 (<i>Intellectual Property</i>);
"Strategic Option Diagram (SOD)"	means the Authority's method of describing strategic options within the Client Specification;
"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-Milestone"	means a quantifiable component of a Major Work Package, as set out in the table at Paragraph 3.1 (<i>Target Fee Payment Milestones</i>) of Part 4b (<i>Target Fee</i>) of Schedule 6 (<i>Finance</i>) and more fully described in the relevant PAF;
"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;
"Target Cost"	means the Target Cost as defined in Part 3 (<i>Target Cost</i>) Schedule 6 (<i>Finance</i>);

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

"Target Fee" means:

- (a) as at the Commencement Date, the sum of s.43 s.43 or
- (b) following each Indexation Adjustment Date, the aggregate of:
 - (i) all amounts of Allocated Target Fee that pertain to all Sub-Milestones or Major Work Packages, or the Interim End State, to the extent they are scheduled to have been Achieved by such Indexation Adjustment Date (regardless of whether or not they have in fact been Achieved by such date); and
 - (ii) all amounts of Allocated Target Fee that pertain to all Sub-Milestones or Major Work Packages or the Interim End State that are not covered by (i) above, as such amounts are (as at such Indexation Adjustment Date) escalated / de-escalated in accordance with the provisions of Part 8 (Indexation),

as the same may be otherwise varied in accordance with the Change Control Procedure and any other express provisions of this Agreement 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 Shareline;

"Target Fee Payment Milestones" means a payment milestone set out in Part 4b (*Target Fee*) of Schedule 6 (*Finance*), Paragraph 9.3 and more fully described in the relevant PAF, achievement of which will (subject to the provisions of Part 4b (*Target Fee*) of Schedule 6 (*Finance*)) result in a payment 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 (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, 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, PAYE, national insurance and other similar contributions, 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 taxation, 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;

"Tenancy Document" means any lease, licence or other document (other than this Agreement) that subsists from time to time that permits the lawful occupation by any person of the whole or any part of the Licensed Nuclear Site Area;

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

"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*);

"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;

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

"Transfer Scheme" means Costs paid or payable by the Contractor to Third Parties in respect of

Losses"	compensation under Paragraph 11 of Schedule 4 of the Energy Act;
"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 the Contractor or when it is first holding the shares in the Contractor), to: <ul style="list-style-type: none">(a) prepare to manage and hold the shares in the Contractor;(b) enable the 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 (<i>Transition Out</i>) and 35 (<i>Transition on Expiry or Termination</i>);
"Transition Out Plan"	means the plan of the Parent Body Organisation to enable it and the Contractor, (when it is preparing to transfer the shares in the Contractor back to the Authority) to continue to comply with Legislation and Regulatory Requirements and to facilitate the Transition In Plan of the Incoming Parent;
"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;
"UK Inventory"	means the definitive UK Radioactive Waste and Materials Inventory compiled and published jointly by the Authority of the Department for Environment,

Food and Rural Affairs (Defra);

"UK Strategy for the Management of Solid LLW"

means the document entitled "UK Strategy for the Management of Solid Low Level Radioactive Waste from the Nuclear Industry", dated August 2010;

"UK Strategy for Radioactive Discharges"

means the document entitled 'UK Strategy for Radioactive Discharges, July 2009', published by the Department for Energy and Climate Change;

"Ultimate Parents"

means:

- (i) **Babcock International Group PLC**, a public limited company incorporated under the laws of England and Wales (Company Number 2342138) whose registered office is at 33 Wigmore Street, London W1U 1QX;
- (ii) **CH2M HILL Companies, Ltd.**, a company incorporated under the laws of Delaware (federal tax identification 93-0549963) whose registered office is at 9191 South Jamaica Street, Englewood, Colorado 80112, USA; and
- (iii) **URS Corporation**, a company incorporated under the laws of Delaware (federal tax identification number 94-1381538) whose registered office is at 600 Montgomery Street, 26th Floor, San Francisco, California 94111, USA.

"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 Policy and Procedures;
- (b) the Authority's statutory obligations to the extent relevant to the Site; 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;
"VAT Agreement"	means the Agreement dated 1 April 2005 between HM Customs & Excise (now HMRC) and the Authority;
"Vitiating Insurance Liability"	means any Cost or liability of the Contractor which is or ought to be insured under the 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 act or omission of the Contractor or its Subcontractors or Sub-Subcontractors which renders the Authority Insurance void, voidable, unenforceable, suspended or impaired in whole or in part; or (b) required to repay to the insurer under the relevant Authority Insurance as a result of any act or omission of the Contractor or its Subcontractors or Sub-Subcontractors;
"Vulcan Service Agreement"	means the agreement (reference number 8124B) made between the Contractor and Rolls-Royce Power Engineering Limited dated 1 April 2011;
"Vulcan Site"	means the Ministry of Defence leased nuclear site adjacent to Dounreay;
"Waste"	means any substance or object which the holder discards or intends or is required to discard;
"Waste Framework Directive"	means European Parliament and Council Directive 2008/98/EC of 19 November 2008 on waste and repealing certain Directives;
"Waste Management Licence"	has the meaning given to it by The Waste Management Licensing (Scotland) Regulations 2011;
"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;
"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 the Change Control Procedure and PCP-17;

"Work Activity Sanction Plan" means the document which details the sanctioning strategy of a Work Activity including Contractor and Authority approval milestones as referenced and contained in Appendix C of PCP-17;

"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;

"Year End Sum" has the meaning given to such term in the Management and Operations Contract;

"Zero Waste Plan" means the document 'Scotland's Zero Waste Plan', June 2010, which sets the strategic direction for waste policy in Scotland.

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 the Authority's Policies and Procedures;

- 1.2.2A in the event of any conflict, inconsistency or incompatibility between the body of the PCPM and the PCPM Contractor Annexe, the PCPM Contractor Annexe shall take precedence;
- 1.2.3 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;
- 1.2.4 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 parts and paragraphs contained in the Schedules;
- 1.2.5 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;
- 1.2.6 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;
- 1.2.7 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);
- 1.2.8 words importing the singular include the plural and vice versa;
- 1.2.9 words importing a particular gender include all genders;
- 1.2.10 "**person**" includes any individual, partnership, firm, trust, body corporate, government department, corporation sole, governmental body, authority, agency or unincorporated body of persons or association;
- 1.2.11 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;
- 1.2.12 references to "**Party**" and "**Parties**" means a Party or the Parties to this Agreement as applicable;
- 1.2.13 all monetary amounts are expressed in pounds sterling;
- 1.2.14 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.

- 1.2.15 a reference to a balance sheet or profit and loss account includes a reference to any note forming part of or attached to it;
- 1.2.16 references to the word "**includes**" or "**including**" are to be construed without limitation;
- 1.2.17 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;
- 1.2.18 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;
- 1.2.19 a reference to the "**Site**" shall include any part of the Site; and
- 1.2.20 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 clauses of this Agreement which survive such termination pursuant to Clause 37.20 (*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 both Parties warrant and undertake to each other that as at the Commencement Date:

- 3.1.1 they have the requisite power and authority to enter into and exercise their rights and perform their obligations under this Agreement which, when executed, will constitute valid and binding obligations on them in accordance with its terms; and
 - 3.1.2 they have taken all necessary action to authorise the execution and the performance of their obligations under this Agreement.
- 3.2 Each Party 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, Parent Body Agreement, the Ultimate Parents responses to the Dounreay PBO competition pre-qualification questionnaire dated March 2010 and the ITSFT; 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 under or in connection with, or termination of this Agreement, the Transition Agreement or the Parent Body Agreement or the documents referred to in them are those contained or referred to in this Agreement, the Transition Agreement or the Parent Body Agreement or such documents, and for the avoidance of doubt and without limitation, each Party 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,

provided that the foregoing does not apply in relation to any right or remedy the Authority may have in connection with any misrepresentation made by or on behalf of the Parent Body Organisation, PBO Shareholders or the Ultimate Parents' in their responses to the Dounreay PBO competition pre-qualification questionnaire dated March 2010 and ITSFT.
- 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 (subject to Clause 6.4 (*Use of Authority Assets*)) 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 understand the extent and nature of its obligations under this Agreement.
- 3.4 The Contractor shall not in any way 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.
- 3.5 [Not Used].

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 enable the Authority to fulfil 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 in a professional manner, acting with reasonable skill and care, 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); and
- 4.1.9 [Not Used].

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 Interim End 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 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 provisions of this Agreement relating to Intellectual Property and confidentiality), share 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;

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 such parties' 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 the foregoing shall be Costs as defined in this Agreement and treated accordingly;

4.2.2.6 not use the Site for any purpose other than performance of its obligations under this Agreement ("**Non-Specification Activities**") without the prior written consent of the Authority, 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; and

4.2.2.7 comply with the Customer Contracts in accordance with their terms.

4.2.3 During the Consolidation Phase the Contractor will

4.2.3.1 develop and submit Proposed Changes to the LTP Performance Plan in accordance with the programme contained in the Consolidation Plan so as to align the LTP Performance Plan with their proposed delivery methodology and with other aspects of the Delivery Plan as the Contractor considers appropriate;

4.2.3.2 prepare a report demonstrating that the activities in the Consolidation Plan have been completed, such report to be submitted to the Authority at the end of the Consolidation Phase;

4.2.4 For the avoidance of doubt, the Parties intend that, subject to the requirements and restrictions set out in this Agreement, the Contractor is to have control over input methodologies and the scope and schedule of activities to deliver the IES and hence the scope and schedule of activities set out in the LTP Performance Plan.

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 in relation to the Site.

- 4.3.2 The Contractor shall provide all assistance and information reasonably requested by the Authority to enable the Authority to calculate the Incentive Fee and/or Year End Sum in accordance with Clause 6A.12.6 (Final Payment of Fee) of the Management and Operations Contract.

4.4 **Prohibited Acts**

Contractor Warranty and Undertaking

- 4.4.1 The Contractor warrants that:

- (a) in entering into this Agreement it has not committed any Prohibited Act;
- (b) it shall comply with and shall not contravene all Legislation relating to anti-bribery and anti-corruption ("**Relevant Requirements**"), including the Bribery Act 2010;
- (c) 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;
- (d) 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;
- (e) so far as any of the Nominated Staff are aware, no 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 has been 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
- (f) 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.

- 4.4.1A The Contractor shall immediately notify the Authority if, at any time during the term of this Agreement, it becomes aware that it 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:

- (a) 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;
- (b) has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts;
- (c) has committed any offence relating to a Relevant Requirement.

4.4.2 The Contractor shall not, and shall use its reasonable endeavours to procure that any 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 shall not, commit a Prohibited Act.

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 the 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 the 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.

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 thirty (30) Calendar Days, or such other period as the Parties may (acting reasonably) agree, of receipt of such a request.
- 5.3.2 Where the Authority does not respond within the relevant period, and there is an impact on the cost or schedule or delivery of the Client Specification as a result of such Authority delay, this shall constitute a Dependency Event.

PART 4: Ancillary Obligations

6 ASSET MANAGEMENT

6.1 Right to deal with Authority Assets

- 6.1.1 From the Commencement Date until the expiry or earlier termination of this Agreement, the Authority licences the Contractor:

6.1.1.1 to use the Authority Assets

to enable the Contractor to:

- 6.1.2 perform the Tasks; and
- 6.1.3 discharge its obligations pursuant to Nuclear Site Licences and all other relevant Regulatory Requirements

but, save where expressly authorised or contemplated 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.

- 6.1.4 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.
- 6.1.5 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 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 Site, 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 the 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 be the responsibility of the Authority until such time as the Authority Asset is returned to the 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 the Authority procures the removal of such movable asset from the Site.

6.5 **Maintenance of Site and Authority Assets**

6.5.1 Save to the extent that it is the responsibility of a Third Party pursuant to a Tenancy Document, the Contractor shall maintain the Site in accordance with the provisions of the Client Specification and shall maintain, service and repair the Authority Assets in accordance with the Contractor's Internal Procedure.

- 6.5.2 The Contractor shall maintain a current and accurate Site Maintenance Register and supply a copy of that register to the Authority upon request.
- 6.5.3 The Contractor shall create the Asset Register which shall be completed no later than six (6) months after the Commencement Date.
- 6.5.4 The Contractor shall maintain the Asset Register as current and accurate and shall allow the Authority to inspect the Asset Register at any time upon reasonable notice.
- 6.5.5 The Contractor shall appoint and keep appointed a suitability qualified person who shall have been previously approved by the Authority (such approval not to be unreasonably withheld) to manage the Site.
- 6.5.6 The Site Manager shall (inter alia):
 - 6.5.6.1 appoint a suitably experienced person as a deputy and shall forthwith following the deputy's appointment notify the Authority of the identity of such person; and
 - 6.5.6.2 liaise regarding the management of the Site with the person(s) at the Authority notified by the Authority to the Contractor from time to time.

6.5A Efficient Use of Authority Assets

- 6.5A.1 The Contractor shall use its reasonable endeavours to assist the Authority in the efficient use of Authority Assets in the delivery of the Interim End 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 Site rather than procuring New Assets.

6.5B Disposal of Authority Assets

- 6.5B.1 Subject to Clause 6.5B.2 (*Disposal of Authority Assets*) below, where the Contractor no longer requires a particular Authority Asset to deliver the Interim End 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:
 - 6.5B.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);

6.5B.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).

6.5B.2 The provisions of Clause 6.5B.1 above shall not apply to Authority Assets resulting from the demolition of infrastructure on the Site 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 Authority Asset 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, 240V-440V cabling, secondary cabling (e.g. lighting and alarm systems), services pipe work (eg. 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.

6.5B.3 If the Contractor determines in accordance with Clause 6.5B.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.

6.5B.4 Within sixty (60) Working Days of receipt by the Authority of the notification made pursuant to Clause 6.5B.3 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 6.5B.5 (*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 6.5B.6(*Disposal of Authority Assets*) below.

6.5B.5 If the Authority confirms that it requires the Contractor to make an Authority Asset available in accordance with Clause 6.5B.4 (*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. If the Contractor incurs any costs in relation to such shipment or otherwise in connection with the transfer of any Authority Asset, it shall be entitled to an adjustment in accordance with Paragraphs 7.6A (*Evaluating the Category 0 Change Control Form*) and 7.11 (*Authority Acceptance and Implementation of the Proposed Change*) of Schedule 2 (Part 2) (*Change Control Procedure*).

6.5B.6 If the Authority does not respond to a notification made by the Contractor pursuant to Clause 6.5B.3 in accordance with Clause 6.5B.4, 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.

6.5B.7 If the Contractor disposes of or sells an Authority Asset pursuant to Clause 6.5B.2 (*Disposal of Authority Assets*) the Contractor may use the net proceeds of sale or disposal to off set its costs of demolition of the infrastructure from which the Authority Asset was derived.

6.5B.8 If the Contractor disposes of or sells an Authority Asset pursuant to Clause 6.5B.6 (*Disposal of Authority Assets*) the net proceeds of such sale or disposal will be accounted for as Category I Revenue and the Authority shall direct within twenty (20) Working Days of such disposal or sale whether or not such net proceeds will supplement the ASFL for the relevant Contract Year.

6.5B.9 The Contractor shall:

6.5B.9.1 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

- 6.5B.9.2 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.

6.6 **Necessary Consents**

6.6.1 The Contractor shall provide to the Authority's Representative 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. The Contractor shall use all reasonable endeavours to assist the Authority to obtain all Necessary Consents that, as a matter of law, only the Authority is eligible to obtain.

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

- 6.6.2.1 preserve the Necessary Consents; and

- 6.6.2.2 procure that such Necessary Consent is not 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.

6.6.3 The Contractor shall not (and shall use all reasonable endeavours to procure that its Affiliates, employees, agents, Subcontractors and Sub-Subcontractors shall not) without the prior consent of the Authority's Representative (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.

6.6.4 [Not used]

6.7 **New Assets**

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

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

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

6.8 Customer Contracts

6.8.1 Without prejudice to Clause 20.2 (*Obligation to Consult the Authority*) and Clause 6.1.5 (*Right to deal with Authority Assets*), if, at the Commencement Date, 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 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 the applicable Legislation and Regulatory Requirements.

7 SECURITY

7.1 The Contractor shall (and shall procure that Sub-Contractors and Sub-Sub-Contractors 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 Sub-Contractors and/or Sub-Sub-Contractors under this Agreement,) at all times comply with the obligations, restrictions or directions imposed on the Contractor by:

7.1.1 the NISR 2003 (along with its supporting documents the NISR Technical Requirements) and any direction or approval given by the ONR pursuant thereto;

7.1.2 compliance with the ONR Security Policy Framework Issue 2, July 2010 (along with its supporting documents the Civil Nuclear Security Supplements) as amended from time to time;

7.1.3 compliance with ISO 27001;

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 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 reasonably requested in relation to performance by the Contractor of its obligations under this Clause 7.

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,

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 an Integrated Management System in accordance with Good Industry Practice and an appropriate third party certification against an internationally accepted standard.

8.2 The Contractor shall ensure that its Integrated Management System contains 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 so far as is consistent with this Agreement.

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 immediately notify the Authority of any change to an Internal Procedure which materially impacts upon the Authority, including a potential impact to the Cost

of or risks to the delivery of the Client Specification and/or the Interim End State; and

- 8.3.3 provide to the Authority on a monthly basis a log reporting all significant changes to all 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 for the purposes of delivery of the Client Specification.
- 8.6 When responding to any Contractor request for the Authority's approval of changes to the Contractor's Internal Procedures, the Authority 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 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.
- 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 the 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 solely 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 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 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:
- 9.2.1 respond in writing;
 - 9.2.2 provide reasons for any determination that the Contractor's proposed events, activities or functions are unsuitable; and
 - 9.2.3 not wilfully impede the Contractor from being able to comply with any agreed schedule set out in such Socio-Economic Development Plan.
- 9.3 Once approved, the Contractor shall comply with the terms of its Socio-Economic Development Plan as changed (if at all) in accordance with Clause 9.2 (*Socio-Economic Development*) above to the extent of available funding as 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 Contractor hereby elects and the Authority consents to the Contractor being treated as the only client in relation to all projects to be carried out under this Agreement for all the purposes of the CDM Regulations. The 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 for all the purposes of the CDM Regulations.
- 10.3 The Contractor shall observe, perform and discharge and shall procure the observance, performance and discharge of:

- 10.3.1 all the obligations, requirements and duties arising under the CDM Regulations in connection with all projects to be carried out under this Agreement;
 - 10.3.2 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.
- 10.4 The Contractor warrants to the Authority that it is and shall continue to be competent and appropriately resourced to perform the duties imposed on a client by the CDM Regulations.

PART 5: Performance and Monitoring

11 DEFECTIVE PERFORMANCE

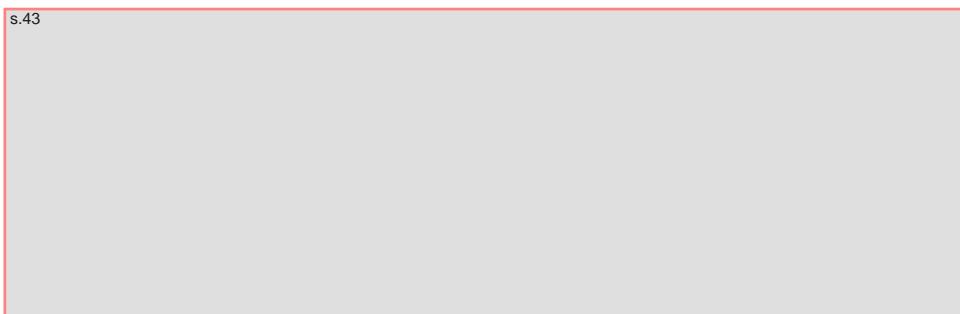
11.1 For the purposes of this Agreement, "**Defective Performance**" means a failure after the Commencement Date to act in accordance with Good Industry Practice which:

- 11.1.1 materially increases the Authority's costs or liabilities; or
- 11.1.2 has a material adverse effect on the delivery of the Contractor's obligations under this Agreement,

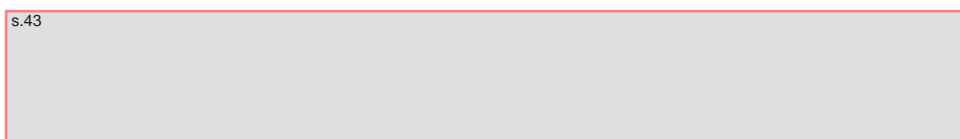
provided always that such Defective Performance shall not entitle the Authority to terminate this Agreement for Contractor Default pursuant to Clause 0 (*Defective Performance*) and neither shall the relevant Costs incurred by the Contractor constitute Disallowable Costs pursuant to Appendix D (*Determining Liability for Disallowable Costs*) of Schedule 6 (*Finance*) or Paragraph 4.1(jj) (*Disallowable Costs*) of Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) unless:

11.1.2A

s.43

A large rectangular area that has been redacted, indicated by a light grey fill and a red border. It contains the text 's.43' in the top left corner.

s.43

A smaller rectangular area that has been redacted, indicated by a light grey fill and a red border. It contains the text 's.43' in the top left corner.

s.43



and

11.1.2B either a period of 12 months has passed since the Commencement Date; or within such 12 months period, the Nominated Staff have had a reasonable opportunity to identify, address and avoid such failure to act in accordance with Good Industry Practice,

and provided further that the following shall not constitute Defective Performance:

11.1.3 any failure by the Contractor to act in accordance with Good Industry Practice as a result of a Force Majeure Event; and

11.1.4 any failure by the Contractor to act in accordance with Good Industry Practice as a result of any Dependency Event.

11.2 Upon becoming aware of any Defective Performance or upon receipt by the Authority of a notification from the Contractor pursuant to Clause 11.7 (*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 a Defective Performance Notice within 5 (five) Working Days.
- 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, unless otherwise agreed, the Contractor shall without undue delay remedy such Defective Performance.
- 11.6 If either:
- 11.6.1 the Contractor fails to achieve any Minimum Performance Standard; or
 - 11.6.2 the Contractor fails to remedy any Defective Performance as required by Clause 11.5 (*Defective Performance*) above,
- 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 the 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.
- 11.9 If the Contractor accepts or it is otherwise determined pursuant to the Dispute Resolution Procedure 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 unless otherwise agreed, where the Contractor fails to submit a Remediation Plan in accordance with this Clause 11.9 or where the Parties do not agree that the subject matter is capable or incapable of remediation, such matter shall be referred to the Dispute Resolution Procedure for determination.

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 [Not Used]

11.12 [Not Used]

11.13 Where Clause 11.10.1 (*Defective Performance*) 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 in accordance with its terms so as to remedy the Defective Performance or breach of a Minimum Performance Standard giving rise to such Remediation Plan this shall constitute a Contractor Default.

11.14 If either:

11.14.1 the Contractor accepts 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 (so far as not incapable of remediation);

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

(i) require the Contractor to submit a new Remediation Plan (in which case the provisions of Clauses 11.9 (Defective Performance) (with the removal of Clause 11.9.2 (Defective Performance) as an option for the Contractor) to 11.13 (Defective Performance) above shall apply), provided that the Authority shall not be entitled to exercise its rights under this Clause 11.14(i) (Defective Performance) more than once where Clause 11.9.2 (Defective Performance) above applies; or

(ii) terminate this Agreement for Contractor Default.

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

11.15.1 resulting in a material adverse impact on compliance with the Client Specification.

11.15.2 [Not Used].

For the avoidance of doubt, a past failure to exercise Good Industry Practice does not in itself constitute a matter incapable of remediation unless it has the result referred to in Clause 11.15.1 above.

11.16 The provisions of Clauses 11.1 (*Defective Performance*) to 11.15 (*Defective Performance*) above shall not apply in respect of any Prohibited Act (to which Clauses 11.18 (*Defective Performance*) to 11.20 (*Defective Performance*) below shall apply instead).

11.17 Obligation to Notify

11.17.1 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*), if at any time:

11.17.1.1 the Contractor believes it will fail to any material extent to deliver the Client Specification; or

11.17.1.2 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.

11.17.2 The Contractor shall introduce and maintain an appropriate system for identifying Defective Performance.

Prohibited Acts

11.18 If the Contractor or any 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 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 was engaged by another suitably 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 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, Parent Body Organisation or any Affiliate acting as a company, this shall constitute a Contractor Default, provided always that in the case of any Prohibited Act committed by the Contractor, such Prohibited Act shall not be capable of constituting Contractor Default unless either such Prohibited Act is committed more than four (4) months after the Commencement Date, or within such four (4) month period, the Nominated Staff have had a reasonable opportunity to identify, address and prevent such Prohibited Act or the continuation thereof.

11.19 Any Notice given under Clause 4.4.1A 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 who 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.

Other Contractor Default and Persistent Breach

11.21 In the event of any Persistent Breach or Contractor Default falling outside the scope of Clauses 11.13.2 (*Defective Performance*) and 11.14 (*Defective Performance*) and not otherwise capable of being the subject of a Remediation Notice in accordance with Clause 11.6 (*Defective Performance*), such Persistent Breach or Contractor Default shall not entitle the Authority to terminate this Agreement for Contractor Default or Persistent Breach pursuant to Clause 33.1.1 (*Termination by the Authority*) unless the Authority has given the Contractor prior written notice of such Persistent Breach or Contractor Default stating that the Authority intends to terminate this Agreement on the grounds of such Persistent Breach or Contractor Default unless the Contractor:

11.21.1 remedies such Contractor Default; or

11.21.2 takes action in accordance with Good Industry Practice to avoid occurrence of the repeated or similar breaches giving rise to such Persistent Breach;

within such reasonable period as is specified in the Authority's notice.

12 DEPENDENCY EVENTS

- 12.1 The Authority shall endeavour to provide the Authority Deliverables to the applicable standard as set out in Schedule 11 (*Authority Deliverables*) (including any standard relating to the timing of such provision), 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 Part 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 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 against any deductions or withholdings of PBI Fee or Target Fee ("**Retentions**") 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*) 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 Authority shall not be entitled to apply Retentions arising as a result of the Dependency Event for the period during which the Dependency Event subsists.
- 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 Part 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 Notwithstanding any other provision of this Agreement, but subject to Clauses 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 any re-mobilisation, except that the Contractor 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 the Contractor's ability so to perform its obligations could have been reasonably avoided or mitigated after the Commencement Date by;
- 13.1.1 the maintenance of business continuity and disaster recovery plans in accordance with Clause 30.4 (*Maintenance and Support and Business Continuity*) and the implementation of such plans;

13.1.2 the exercise of Good Industry Practice (including appropriate procurement, management and supervision of any Subcontractor or Sub-Subcontractor);

13.1.3 enforcement of any right, action or claim that it may have against any Subcontractor or Sub-Subcontractor;

or to the extent that a Force Majeure Event arises due to any fraud or wilful default on the part of any Subcontractor or Sub-Subcontractor, provided that in relation to Clause 13.1.1 to 13.1.3 and in the case of a Force Majeure Event that arises due to any fraud or wilful default on the part of any Subcontractor or Sub-Subcontractor more than four (4) months have elapsed from the Commencement Date, or within such four (4) month period, the Nominated Staff have had a reasonable opportunity to identify and address the cause of such failure to mitigate.

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 estimated period (if any) by which the Interim End State shall be extended.

13.3 Without prejudice to Clause 13.6 (*Mitigation 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's Contracts Manager 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 Contracts Manager'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 (without prejudice 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).
- 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 (without prejudice 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; and

- 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.
- 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.
- 13.9 The implementation of a Proposed Change determined in accordance with Clause 13.6 (*Instigation of a Proposed Change*) above shall not make a Cost an Allowable Cost where it would otherwise be a Disallowable Cost pursuant to Paragraph 4 (*Disallowable Costs*) of Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) provided that this provision will not prevent any Cost being Allowable where, but for the implementation of such a Proposed Change such Cost would have been Dissallowed under Schedule 6 Part 2 Sub paragraph 4.1 (dd) but following implementation such Proposed Change no longer falls within that Sub paragraph.
- 13.10 [Not Used].

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 progress reports in accordance with Schedule 13 (*Reporting*);
 - 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 (*Objection 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 of the following issues or matters of which the Contractor becomes aware or ought reasonably to have become 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 Site 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 Contractor shall comply with the 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

- 14.2.2 Subject to Clause 14.2.3 (*Ownership 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**").
- 14.2.3 Notwithstanding Clause 14.2.2 (*Ownership 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**").
- 14.2.4 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

- 14.2.5 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, provided that this indemnity does not apply in relation to any Authority Record made prior to

the Commencement Date and provided further that this indemnity does not apply in relation to any such Authority Record being completed, kept or maintained fraudulently within a period of four (4) months after the Commencement Date unless:

14.2.5.1 the relevant fraud is on the part of any one or more of the Nominated Staff or other individuals provided by the Parent Body Organisation pursuant to Clause 8 (Provision of Support to the SLC) of the Parent Body Agreement; or

14.2.5.2 within that four (4) month period the Nominated Staff or other individuals provided by the Parent Body Organisation pursuant to Clause 8 (Provision of Support to the SLC) of the Parent Body Agreement have had a reasonable opportunity to identify, address and prevent such fraud.

Use of Authority Records

14.2.6 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

14.2.7 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.

14.2.8 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.

14.2.9 The Contractor shall manage all Authority and Contractor Records in accordance with:

14.2.9.1 the Guidelines on Managing Information;

14.2.9.2 the ONR Security Policy Framework, subject to Clause 7.1.2 (*Security*);

14.2.9.3 guidelines issued by any Regulator;

- 14.2.9.4 the Public Records Act 1958, without prejudice to Clause 4.1.3;
- 14.2.9.5 BS ISO 15489-1:2001 (or its equivalent);
- 14.2.9.6 BS 10008;
- 14.2.9.7 BS 10012; and
- 14.2.9.8 BS 5454.

Unless otherwise agreed by the Authority in writing, all records will be treated as public records for the purposes of the Public Records Act.

Contractor Records

14.2.10 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 reasonably required by the Authority.

14.3 Books of Account and Other Information

Books of Account

14.3.1 The Contractor shall maintain, on a current and accurate basis, books of account relating to its 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 Site 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 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 Site and its 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 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 the Site 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 the 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 the 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 or the Authority Agents' 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). 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 materially prevented from performing its obligations under this Agreement, despite having used reasonable endeavours to so perform, such material prevention shall constitute a Dependency Event, except to the extent that this arises due to Defective Performance.

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 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 (subject to any Change in accordance with the Change Control Procedure) its relevant Costs incurred within any Contract Year in respect of the Site, together with any such Shareline, do not exceed the relevant ASFL, and (where applicable) Current Budget and the Capital Budget. For the avoidance of doubt, 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.

Any such notice 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 the Site, 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;
- 16.3.1.5A 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 or to the extent that such giving of guarantee or indemnity or assumption of liability would represent Good Industry Practice and be Value for Money;
- 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 Contractor's Fee Account, or the Contractor's Payment Account;
- 16.3.1.8 commence any litigation or arbitration other than:
 - 16.3.1.8.1 for the purposes of satisfying Clause 6.6 (*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 essential to the Contractor's ability to

operate the Site 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);

16.3.1.12 notwithstanding the Permitted Activities, enter into any Customer Contract or Subcontract where a material liability or material 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 16.10.5 (*Payments to Parent*) below, make any payments to the Parent Body Organisation or to any of its other 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*);

16.3.1.13.2 have not been agreed to under an Advance Agreement; or

16.3.1.13.3 are not made in accordance with the provisions of Clause 9 (Provision of Support to the SLC) of the Parent Body Agreement and Schedule 7 (Provision of Support to the SLC) of the Parent Body 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 than would have been the case were it not for any direct or indirect benefit or advantage which accrues to any Affiliate, or to any Subcontractor;

16.3.1.16 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

16.3.1.17 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 16.3.1.17 (*Financial Restrictions*) above to the extent the relevant activity is:

16.3.2.1 necessary for (or necessarily ancillary to) the delivery of the Interim End 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 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 Costs Management Agreement. The Contractor shall pay any amounts reclaimed pursuant to this Clause 16.5.3 (*Historical Costs*) to the Authority as Category I Revenue.

16.6 Cashflow

16.6.1 Costs and Capital

Working 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 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 (*Working 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 Contractor's Payments Account. The Contractor shall only pay creditors out of the 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 amend the definition of Category II Revenue so that revenue which would otherwise have fallen into the definition of Category I Revenue falls into the definition of Category II Revenue for all succeeding Contract Years; and/or
 - 16.7.1.2 amend categories of revenue within or delete categories of revenue from the definition of Category I Revenue and/or Category II Revenue for all succeeding Contract Years.

- 16.7.2 If, at any time in a Contract Year, the amount of Category II Revenue received by the Contractor exceeds the amount forecast by the Contractor as receivable for that Contract Year, the Authority shall be entitled at any time thereafter in the current Contract Year, acting reasonably, to treat the excess revenue falling within the definition of Category II Revenue as revenue falling into the definition of Category I Revenue.
- 16.7.3 The Authority shall (acting reasonably and in consultation with the Contractor) be entitled at any time to add new categories of revenue to the definition of Category I Revenue and/or Category II Revenue to the extent that such categories of revenue are not already accounted for as Category I Revenue or Category II Revenue.
- 16.7.4 Monies received or receivable by the Contractor shall predominantly be treated as Category I Revenue. Any dispute as to whether monies received or receivable by the Contractor are to be treated as Category I Revenue or Category II Revenue shall be determined by the Authority acting reasonably.

16.8 **Category I and II Revenue**

- 16.8.1 Unless specifically instructed in writing by the Authority, the Contractor shall pay all Category I Revenue and Category II Revenue into the Contractor's Receipts Accounts on receipt of such revenue and shall transfer the entire balance of the Contractor's Receipts Account on a daily basis to the OPG Receipts Account.
- 16.8.2 The Contractor will hold the entire balance standing to the credit of the Contractor's Receipts Account in trust for the Authority from the moment of receipt of funds into the Contractor's Receipts Account until the day of receipt of the balance by the Authority.
- 16.8.3 If the Contractor becomes aware that an amount so transferred to the OPG Receipts Account was paid into the Contractor's Receipts Account in error and therefore should not have been so transferred, then the 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 Contractor will use all reasonable endeavours to make such claim within 21 Calendar Days following the end of the Accounting Month in which a receipt has been transferred by the Contractor to the OPG Receipts Account under Clause 16.8.1 (*Category I and II Revenue*) above. In the event that, exercising such reasonable endeavours, the Contractor is unable to make such claim as aforesaid, the Contractor shall make such claim as soon as reasonably

practicable after the expiry of 21 Calendar Days following the end of the Accounting Month in which a receipt has been transferred by the Contractor to the OPG Receipts Account under Clause 16.8.1 (*Category I and II Revenue*) above.

16.8.4 The 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 Contractor's Receipts Account was made in error. If the Parties cannot agree whether an amount was paid into the 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 Contractor transferred all or part of the amount referred to in the Overpayment Notice to the 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 Contractor's Receipts Account.

16.9 Invoicing and Payment

16.9.1 The Contractor shall be paid for the provision of the services under this Agreement in accordance with the provisions of Schedule 6 (*Finance*).

16.10 Operation of Accounts

16.10.1 Contractor's Fee Account

16.10.1.1 The Contractor shall maintain the Contractor's Fee Account as a designated account for the receipt of Fee.

16.10.1.2 The Contractor may only draw funds from the Contractor's Fee Account in order and to the extent necessary to:

16.10.1.2.1 pay Costs and discharge any liabilities which are not Allowable Costs;

16.10.1.2.2 reimburse the Payments Account for any Costs previously treated as Allowable Costs and which are subsequently determined to be Disallowable Costs;
or

16.10.1.2.3 make payments to the Parent Body Organisation which are not Allowable Costs and which are permitted by this Agreement and the Parent Body Agreement.

16.10.1.3 Any interest which accrues on the Contractor's Fee Account shall be for the benefit of the Contractor only.

16.10.1A M&O Contractor's Fee Account

16.10.1A.1 As soon as reasonably practicable following the Commencement Date, the Contractor shall open and maintain the M&O Contractor's Fee Account as a designated account with a reputable bank of good standing for the receipt of sums identified by the Authority as comprising the Incentive Fee and/or Year End Sum paid pursuant to the Management and Operations Contract.

16.10.1A.2 The Contractor may only draw funds from the M&O Contractor's Fee Account in order and to the extent necessary to make dividend payments to the B Shareholder in accordance with the instructions of the Authority or to satisfy any increased Tax liability of the Contractor in connection with the receipt of any amounts referred to in 16.10.1A.1 above or otherwise by reason of inclusion of such amounts in the calculation of the Contractor's profits.

16.10.1A.3 Any interest which accrues on the M&O Contractor's Fee Account shall be for the benefit of the B Shareholder.

16.10.1A.4 The M&O Contractor's Fee Account may not be closed without the consent of the Authority.

16.10.1B SLCA Contractor's Fee Account

16.10.1B.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:

- 16.10.1B.1.1 Target Fee paid pursuant to Paragraphs 5 and 8A.5 of Part 4b (*Target Fee*) of Schedule 6 (*Finance*);
- 16.10.1B.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
- 16.10.1B.1.3 other sums (if any) payable to the Contractor under this Agreement in respect of or referable to delivery of the Interim End 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.

- 16.10.1B.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 B Shareholder or to satisfy any increased Tax liability of the Contractor in connection with the receipt of any amounts referred to in 16.10.1B.1 above or otherwise by reason of inclusion of such amounts in the calculation of the Contractor's profits.
- 16.10.1B.3 Any interest which accrues on the SLCA Contractor's Fee Account shall be for the benefit of the B Shareholder.
- 16.10.1B.4 The SLCA Contractor's Fee Account may not be closed without the consent of the Authority.

16.10.2 Contractor's Payments Account

- 16.10.2.1 The Contractor shall maintain the 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.

16.10.2.2 The Contractor shall use any interest which accrues on credit balances in the Contractor's Payments Account as follows:

16.10.2.2.1 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

16.10.2.2.2 if on an annual basis the credit interest exceeds the charges which arise under the Approved Working Capital Facility, then the excess shall be payable by the Contractor to the Authority as Category II Revenue within five (5) Working Days of the relevant annual reconciliation.

16.10.2.3 The Contractor shall have available a daily cashflow analysis of the 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*).

16.10.2.4 The Contractor may only transfer funds from the Contractor's Payments Account to fund foreign currency hedging if:

16.10.2.4.1 such payments are in accordance with the Currency Hedging Strategy; or

16.10.2.4.2 the Authority has given its prior written consent to such payments.

16.10.3 Contractor's Receipts Account

16.10.3.1 The Contractor shall maintain the 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 (*Category I and II Revenue*) above.

16.10.3.2 Any interest which accrues on credit balances in the Contractor's Receipts Account shall be payable by the Contractor to the Authority as Category II Revenue in accordance with Clause 16.8.1 (*Category I and II Revenue*) above.

16.10.3.3 Payments shall only be made from the Contractor's Receipts Account in accordance with Clause 16.8 (*Category I and II Revenue*) above.

16.10.4 Foreign Exchange Accounts

16.10.4.1 The Contractor shall not maintain any Foreign Exchange Accounts without the prior written consent of the Authority.

16.10.4.2 The Contractor may only transfer funds into the Foreign Exchange Accounts to fund any foreign currency hedging activities if:

16.10.4.2.1 such transfer of funds is carried out in accordance with the Currency Hedging Strategy;

16.10.4.2.2 the Authority has given its prior written consent to such transfer of funds; and

16.10.4.2.3 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).

16.10.4.3 The Contractor shall accurately record such transfers of funds into the Foreign Exchange Accounts and associated payments to creditors in its accounting records.

16.10.4.4 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 .

16.10.4.5 Other Accounts

16.10.4.5.1 Save with the approval of the Authority (not to be unreasonably withheld), 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.

16.10.5 Payments to Parent

16.10.5.1 Save as set out in the following provisions of this Clause 16.10.5, the Contractor shall not without the prior written consent of the Authority make any payment to the Parent Body Organisation.

16.10.5.2 Notwithstanding Clause 16.3.1.13 (*Financial Restrictions*) above but subject to the Contractor's obligations under clause 16.10.5.5 (*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.

16.10.5.3 For the purposes of calculating such distributable profits the Contractor will be required to apply the Accounting Policies and Procedures.

16.10.5.4 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.

16.10.5.5 Following the Commencement Date and before the Contractor is able to make any payments to the Parent

Body Organisation under clause 16.10.5.2 (*Payment to Parent*), the Contractor shall prepare and supply to the Authority a written policy paper which shall:

- 16.10.5.5.1 clearly define the process for how profits available for distribution shall be determined;
- 16.10.5.5.2 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 16.10.5.3 (*Payments to Parent*) above; and
- 16.10.5.5.3 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**". The Contractor may make any dividend payment in accordance with the approved Dividend Payment Policy without further reference to the Authority.

- 16.10.5.6 For the purposes of agreeing the financial position of the Contractor on the Commencement Date, the Contractor shall prepare a balance sheet of the Contractor as at the Commencement Date, and a profit and loss account of the Contractor 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:

- 16.10.5.6.1 in accordance with the Accounting Policies And Procedures; and
- 16.10.5.6.2 subject thereto, on the basis that any discretions available to the management of the Contractor in the application of any specific policy or procedure, are

exercised in the same way as in the previous statutory accounts of the Contractor.

16.10.5.7 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 16.10.5.2 (*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).

16.10.5.8 The Contractor shall be entitled to make payment to the Parent Body Organisation in accordance with the Parent Body Agreement for the provision of support in accordance with Clause 9 (*Provision of Support to the SLC*) of the Parent Body Agreement and Schedule 7 (*Provision of Support to the SLC*) of the Parent Body Agreement and in respect of Allowable Costs for the provision of Nominated Staff.

16.10.5.9 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.

16.10.6 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 B Shareholder by way of dividend on the 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.

16.10A Payments to B Shareholder following Commencement Date

16.10A.1 Provided that:

16.10A.1.1 the Contractor has sufficient funds available for distribution;

16.10A.1.2 the Contractor has sufficient funds available in the M&O Contractor's Fee Account to cover such payment in full after deduction of any amounts that the Contractor is or will be permitted to withdraw from the M&O Contractor's Fee Account in respect of Tax in accordance with Clause 16.10.1A.2 above; and

16.10A.1.3 the Contractor is otherwise lawfully able to do so;

the Contractor shall on receipt of the Authority's written instruction declare a dividend to the B Shareholder in the amount instructed by the Authority.

16.11 Transparency and Auditing

16.11.1 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 Payment Milestones and the Contractor's calculations of Fee.

16.11.2 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 16.11 (*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.

16.12 Taxation

16.12.1 Tax - General

16.12.1.1 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.

16.12.1.2 The Contractor shall not act in any way inconsistently with the Tax principles set out in this Agreement.

16.12.2 Corporation Tax

The Contractor:

16.12.2.1 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**");

16.12.2.2 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

16.12.2.3 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.

16.12.3 VAT

16.12.3.1 The Contractor shall charge VAT, issue VAT invoices and comply with VAT compliance obligations on the basis of the VAT Agreement and in particular:

16.12.3.1.1 shall maintain its registration for the purposes of the VATA;

16.12.3.1.2 agrees properly to charge VAT and issue VAT invoices in respect of supplies made to Third Party customers;

16.12.3.1.3 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;

16.12.3.1.4 agrees properly to charge VAT and issue VAT invoices and credit notes as appropriate in respect of the Contract Price;

16.12.3.1.5 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 to the Contractor;

16.12.3.1.6 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;

16.12.3.1.7 agrees not to act inconsistently with the principles set out in this Agreement; and

16.12.3.1.8 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.

16.12.3.2 The Authority shall charge VAT in respect of the payments under the Property Leases and shall properly issue VAT invoices in respect thereof.

16.12.3.3 The Authority warrants that it has elected to waive exemption from VAT in accordance with the provisions of Paragraph 2 of Schedule 10 to VATA in respect of the Sites.

16.12.4 Withholding Taxes

16.12.4.1 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.

16.12.4.2 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.

16.12.4.3 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.

16.12.4.4 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.

16.12.5 Employee Taxes

The Contractor undertakes properly to make 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.

16.12.6 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 financial responsibility.

16.12.7 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.

16.12.8 Tax Credits

16.12.8.1 The Contractor is obliged to take all actions reasonably necessary to obtain and maximise any research and development tax 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:

16.12.8.1.1 where research & development activity is undertaken by the Contractor which qualifies for research and development tax 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;

16.12.8.1.2 in so far as is reasonable in the circumstances, where research & 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 research and development tax reliefs available to the Subcontractor and (where relevant) Sub-Subcontractor;

16.12.8.1.3 the Contractor makes a claim for the 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.

16.12.8.2 The Contractor is obliged to inform the Authority of any benefit anticipated or received as a result of research & development tax reliefs. Further:

16.12.8.2.1 in the case of research & development activity undertaken by the Contractor which qualifies for research & development tax relief, the Contractor shall:

16.12.8.2.1.1 calculate the anticipated benefits when it prepares estimates and revised estimates of corporation 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; and

16.12.8.2.1.2 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;

16.12.8.2.2 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 as a result of research and development tax relief, including a right to a payment of an associated tax credit, anticipated or shown in the Contractor's estimate of its corporation tax liability or within its submitted returns. This reduction shall be effected by the Contractor issuing to the Authority a credit note.

16.12.8.2.3 as and when the Contractor's research and development claim (including any right to a payment of an associated tax credit) is agreed by HMRC, the

amount of the claim or right to payment shall be compared to the amount claimed in the relevant return. If the research and development tax relief (including any right to a payment of an associated tax credit) in the relevant estimate or return differs from that agreed by HMRC, then within 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:

16.12.8.2.3.1 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); or

16.12.8.2.3.2 the sum which will be received from HMRC in respect of a payment of an associated tax credit (or which would have been received on making a claim but for it being used or set-off).

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.

16.12.8.3 For the purposes of this Clause, tax shall not be treated as having been "saved":

16.12.8.3.1 (to the extent that the research and development tax relief is not a right to a payment of a tax credit), until the last date upon which the Contractor or any person to whom the Contractor may surrender tax losses would have been obliged to make an actual payment of Tax (which it would otherwise have had to pay but for this tax 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

16.12.8.3.2 (to the extent that the research and development tax credit is a right to a payment of a tax credit), until the

date on which the Contractor receives or would but for any other event have received cleared funds in respect of such repayment had a claim been made.

16.12.8.4 For the purposes of this Clause 16.12.8 (*Tax Credits*), the Contractor shall be deemed to use any available research and development 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 to any person, the losses surrendered shall be deemed to include any unutilised research and development tax 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 of the tax losses) in order to avoid incurring any fine, penalty or interest in respect of unpaid Tax.

16.12.8.5 Where the Authority receives any credit note under this Clause 16.12.8 (*Tax Credits*), 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 30 Calendar Days of the relevant demand.

16.12.8.6 Where the Contractor issues a debit note under this Clause 16.12 (*Taxation*), the Authority shall:

16.12.8.6.1 if its cash flow position reasonably allows, settle the note within thirty (30) Calendar Days of its receipt by the Authority;

16.12.8.6.2 if its cash flow position does not reasonably allow the Authority to make the payment under Clause 16.12.8.6.1 (*Tax Credits*) above, settle the note as soon as reasonably practicable, and in any event by 15 April in the calendar year following its receipt by the Authority.

16.12.8.7 This Clause 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 research and development tax relief which the Contractor claims or is entitled to claim in respect of expenditure incurred prior to the date of termination of this Agreement.

Pre Commencement Reliefs

16.12.9.1 The Contractor is obliged to inform the Authority of any benefit anticipated or received by the Contractor in respect of:

16.12.8.7.1 any research and development tax credit against corporation tax on profits for any period prior to the Commencement Date under Part 13 of Corporation Tax Act 2009 by way of a payment of cash;

16.12.8.7.2 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 research and development tax relief under Part 13 Corporation Tax Act 2009; and

16.12.8.7.3 any research and development tax relief or credit under Part 13 of Corporation Tax Act 2009 applied to or in respect of corporation tax on profits for any period prior to the Commencement Date but recovered by the Contractor by way of set off against its liability to pay corporation tax 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 B Shareholder or the Contractor and submitted by the Contractor in respect of any period prior to the Commencement Date; and

16.12.8.7.4 any repayment of corporation tax (by way of a payment of cash or set off against the Contractor's liability to pay corporation tax) claimed by or on behalf of the 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 research and development relief under Part 13 Corporation Tax Act 2009); and

- 16.12.8.7.5 any brought forward corporation tax losses (including those arising from or comprising research and development tax reliefs) available under Part 4 Corporation Tax Act 2010 as at the Commencement Date ("**Losses**")

together ("**Pre-Commencement Reliefs**")

- 16.12.9.1A In respect of the amount of any benefit received by the Contractor pursuant to Clause 16.12.8.7.1, 16.12.8.7.2 or 16.12.8.7.3 above, the Contractor shall:

- 16.12.9.1A.1 apply fifty per cent (50%) of such amount to the M&O Contractor's Fee Account; and

- 16.12.9.1A.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%).

- 16.12.9.1B In respect of the amount of any benefit received by the Contractor pursuant to Clause 16.12.8.7.4 above, the Contractor shall add one hundred per cent (100%) of such amount to the M&O Contractor's Fee Account.

- 16.12.9.1C In respect of the amount of any benefit received by the Contractor in relation to any Losses under Clause 16.12.8.7.5 above, the Contractor shall:

- 16.12.9.1C.1 retain the benefit as to fifty per cent (50%) of the amount of tax saved by the Contractor as a result of the use of the Losses; and

- 16.12.9.1C.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 the remaining fifty per cent (50%) of any such amounts.

16.12.9.1D Where the benefit received under the preceding clauses of this clause 16.12.9.1 is in the form of a payment of cash, any amounts of such benefit to be applied to the 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.

16.12.9.1E Where the benefit received under the preceding clauses of this clause 16.12.9.1 is in the form of a set off against the Contractor's liability to pay corporation tax, any amounts of such benefit to be applied to the 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.

16.12.9.1F If the amount of the relevant benefit applied under clauses 16.12.9.1D or 12.12.9.1E differs from that subsequently agreed by HMRC an adjustment will be effected within a thirty (30) Calendar Day period so that the Authority or the B Shareholder has received or will receive the correct amount under clause 16.12.9.1A, 16.12.9.1B or 16.12.9.1C (as appropriate). Such adjustment will be made by an adjustment to the 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 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.

16.12.9.1G For the purposes of this Clause 16.12.9.1 (*Pre-Commencement Reliefs*), the Contractor shall be deemed to use any available Pre Commencement Reliefs in advance of all other tax reliefs available to it. 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.

16.12.9.1H For the avoidance of doubt, the Contractor shall have no obligation to the B Shareholder in respect of entitlement to any benefit or any other consideration (by way of dividend or otherwise) in respect of:

16.12.9.1H.1 the Losses; or

16.12.9.1.H.2 in relation to any claims that relate to actions 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 even where such claims relate to Pre-Commencement Reliefs.

16.12.9.1I 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.

16.12.9.1J For the avoidance of doubt, the Authority makes no representation as to the existence or otherwise of any Losses.

16.12.9.1K For the avoidance of doubt, where any Relief is received by the Contractor in relation to any taxes 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 shall be repaid to the Authority as Category I Revenue.

16.12.9.1L The Contractor shall act diligently and in good faith and shall provide all reasonable assistance as the Authority shall require in making all claims for any research and development tax credit or relief and for any repayment of overpaid corporation tax for the purposes of the preceding Clauses and shall cooperate with the Authority and the B Shareholder in respect thereto.

16.12.8.8 [Not Used]

16.12.8.9 [Not Used]

16.12.8.10 [Not Used]

16.12.8.11 [Not Used]

16.12.8.12 The provisions of Clauses 16.12.8.5, 16.12.8.6 (*Tax Credits*) and 16.12.8.7 (*Tax Credits*) above shall apply mutatis mutandis to this Clause 0 (*Pre Commencement Reliefs*).

Division between Capital Budget and Current Budget

16.13 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 13 (*Claims Handling*) of the Parent Body Agreement shall apply to this Agreement with the wording of that Clause 13 (*Claims Handling*) amended as necessary to make contextual sense and to ensure that the contractual effect of this Clause 17 is the same as the contractual effect of that Clause 13 (*Claims Handling*).

18 INSURANCE AND LIABILITY

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 and Clause 6.6 (*Insurance*) of the Parent Body Agreement, the Authority shall take out and maintain the Authority Insurances (which shall not include directors' and officers' insurance) for the Term and for such further period after the end of the Term in which the Parent Body Organisation has continuing liability under the PBO Guarantee in accordance with Clause 5.1.4 (*Continuing Security*) of the Parent Body Agreement.

18.1.2 The insured parties under the Authority Insurances shall be as follows:

18.1.2.1 covering the Authority, the Contractor, the Parent Body Organisation (in respect of their activities and liabilities

connected with this Agreement and the Parent Body Agreement only):

- 18.1.2.1.1 all risks of physical loss or damage including machinery breakdown;
- 18.1.2.1.2 marine package;
- 18.1.2.1A covering the Contractor but not the Parent Body Organisation nor any Subcontractor:
 - 18.2.1.A.1 nuclear marine transit liability;
- 18.2.1.B covering the Authority, the Contractor, the Parent Body Organisation (in respect of their activities and liabilities connected with this Agreement and the Parent Body Agreement only), all Subcontractors and professional consultants and/or engineers and/or other members of any project team in respect of their on Site activities:
 - 18.2.1B.1 construction all risks;
 - 18.2.1B.2 small works construction;
- 18.1.2.2 covering the Authority, the Contractor, the Parent Body Organisation and PBO Shareholders (in respect of their activities and liabilities connected with this Agreement and the Parent Body Agreement only), but not any Subcontractor:
 - 18.1.2.2.1 liability package;
 - 18.1.2.2.2 excess worldwide general public/products liability;
- 18.1.2.3 subject to Clause 18.1.4 below, covering the Contractor (in respect of its liability under the Nuclear Installations Act 1965 in connection with its activities at or on the Site) but not the Parent Body Organisation or any Subcontractor:
 - 18.1.2.3.1 nuclear site liability;
- 18.1.2.3A covering the Authority, the Contractor, the Parent Body Organisation and PBO Shareholders (in respect of their activities and liabilities connected with this Agreement and the Parent Body Agreement only), but not any Subcontractor:

18.1.2.3.A.1 radiation liability;

18.1.2.4 covering the Authority, the Contractor but not the Parent Body Organisation nor any Subcontractor:

18.1.2.4.1 motor accidental damage fire and theft;

18.1.2.4.2 motor third party liability; and

18.1.2.5 covering the Authority, the Contractor (including for any relevant liability to a member of the Nominated Staff) but not the Parent Body Organisation nor any Subcontractor:

18.1.2.5.1 employers' liability primary;

18.1.2.5.2 excess employers' liability £25 million pounds sterling in excess of £25 million pounds sterling;

18.1.2.5.3 excess employers' liability £40 million pounds sterling in excess of £50 million pounds sterling;

18.1.2.5.4 excess employers' liability £10 million pounds sterling in excess of £90 million pounds sterling;

18.1.2.5.5 radiation worker liability;

18.1.2.5.6 group life;

18.1.2.5.7 personal accident and travel; and

18.1.2.5.8 any further insurances that the Contractor is required by Legislation to maintain.

18.1.2A The Authority will review the sums insured under each of the Authority Insurances on an annual basis to ensure that the level of cover remains appropriate and adequate. As at the Commencement Date, the Authority Insurances shall be those set out at Appendix A of Schedule 10 (*Insurance*).

18.1.3 If:

18.1.3.1 the Authority Insurances become unavailable including where rendered void, voidable, unenforceable, suspended or impaired in whole or in part or protection or cover available to the Contractor or the Parent Body Organisation under the Authority Insurances materially diminishes in

cover, scope or amount (save where such unavailability or diminution in cover is caused by a breach of Clause 18.2.2 (*Acknowledgement by Contractor*) below 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 in the circumstances referred to at Clause 18.1.3.1 (*Authority Insurances*), the first Party to become aware of such circumstances and in the case of Clause 18.1.3.2 (*Authority Insurances*) the Authority, shall notify the other Party and the Authority shall ensure that neither the Contractor nor the Parent Body Organisation has any greater financial exposure due to the unavailability of or diminution of protection in cover, scope or amount under the Authority Insurances than as at the date immediately prior to such unavailability or diminution of protection in cover, scope or amount.

- 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 some other means) for sufficient funds to be available as required by, and that, so far as possible 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 Save as otherwise permitted under Schedule 5 (*Subcontracting and Procurement*), the Contractor shall ensure that provisions having similar effect to the provisions of Paragraph 4.1 (hh) or (ll) (Disallowable Costs) of Part 2a (Allowable and Disallowable Costs) of Schedule 6 (*Finance*) and imposing a liability in respect of Insurance Deductibles in similar proportions are incorporated into each and every Subcontract.

18.3 Liability Cap

18.3.1 Subject to Clause 18.3.6 and Clause 18.5 (*Liability Cap*) below, for each Contract Year the Liability Cap shall be as follows:

18.3.1.1 for Contract Year 1, s.43
s.43

18.3.1.2 for Contract Year 2, s.43
s.43

18.3.1.3 for each Contract Year from Contract Year 3 onwards,
 until
the Expiry Date;

18.3.1.4 for a period of six (6) years after the Expiry Date, in which
the Contractor has continued liability, s.43
s.43 (Indexed) provided that:

18.3.1.4.1 at the end of each twelve (12) month period following
such Expiry Date, such amount shall be reduced by
the aggregate of any sums of the type described in
Clause 18.3.4 (*Liability Cap*) below identified in that
twelve (12) month period, and the remaining amount
shall be Indexed, with the resulting amount replacing
the figure stated above for the purposes of this
Clause 18.3.1.4 (*Liability Cap*);

18.3.1.4.2 shall be inclusive of the Costs of Re-competition Cap; and

18.3.1.4.3 the Contractor's continued liability referred to in Clause 18.3.1.4 shall continue for so long as the Parent Body Organisation's liability in respect of such Contractor liability continues under the Parent Body Agreement,

provided that the Contractor's aggregate liability under this Agreement, the Transition Agreement and the Parent Body Agreement shall be no greater than s.43

s.43 (Indexed) (the "**Aggregate Liability Cap**").

18.3.2 If at any time the aggregate of the Contractor's Liabilities arising in any one Contract Year (or in any single twelve (12) month period following termination or expiry of this Agreement) when taken together with any liability to the Authority arising in the same period pursuant to the Parent Body Agreement or the Transition Agreement and falling within the scope of liabilities which are (under the Parent Body Agreement or the Transition Agreement) expressed to be subject to the Liability Cap reaches the level of the Liability Cap or the Aggregate Liability Cap is exceeded, then:

18.3.2.1 where this Agreement has not expired or been terminated, the Contractor shall not be liable to the Authority for any further Contractor's Liabilities arising in that Contract Year;

18.3.2.2 where this Agreement has expired or been terminated, the Contractor shall not be liable to the Authority for any further Contractor's Liabilities; and

18.3.2.3 the Authority shall (provided that the Contractor shall comply with Clause 36 (*Disputes*) and Clause 17 (*Claims Handling*), and subject to Clauses 18.3.4 and 18.3.5 below), indemnify the Contractor for the Contractor's Liabilities where and to the extent that such Contractor's Liabilities, taken together with any liabilities to the Authority pursuant to the Parent Body Agreement and the Transition Agreement as referred to above, exceed the Liability Cap or Aggregate Liability Cap.

18.3.3 [Not Used]

18.3.4 For the purposes of this Clause 18.3, "**Contractor's Liabilities**" shall mean any and all of:

18.3.4.1 Class A Disallowable Costs which are incurred in the Contract Year in question; and

18.3.4.2 the Contractor's liability to the Authority under or in connection with this Agreement howsoever arising (but excluding any liability of the Contractor arising from fraud),

provided that, for the avoidance of doubt, any negative Shareline pursuant to the provisions of Schedule 6 (*Finance*) shall not constitute a Contractor's Liability for the purposes of this Clause 18.3. For the purposes of this Clause 18.3, Contractor's Liabilities are to be treated as arising in and hence will attrite the Liability Cap (a) for the Contract Year by reference to the date on which such Contractor's Liabilities are due, owing or payable by the Contractor; and (b) following the Expiry Date, by reference to the date on which such Contractor's Liabilities are first notified to or identified by the Contractor.

18.3.4.A.1 The indemnity described in 18.3.2.3 shall exclude any fine imposed on or accepted by the Contractor or its Affiliate as contemplated by Paragraph 4.1(t) (*Disallowable Costs*) of Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) in excess of the Liability Cap.

18.3.5 The following types of Disallowable Costs shall be "**Class B Disallowable Costs**" (and accordingly shall not fall within the Liability Cap, Aggregate Liability Cap or the indemnity in Clause 18.3.2 above):

18.3.5.1 Costs of the type described at Paragraph 4.1(a) (*Disallowable Costs*) of Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*);

18.3.5.2 Costs of the type described at Paragraph 4.1(b) (*Disallowable Costs*) of Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*);

18.3.5.3 Costs of the type described at Paragraph 4.1(c) (*Disallowable Costs*) of Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*);

18.3.5.4 [Not used];

- 18.3.5.5 Costs of the type described at Paragraph 4.1(f) (*Disallowable Costs*) of Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*);
- 18.3.5.6 Costs of the type described at Paragraph 4.1(g) (*Disallowable Costs*) of Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*);
- 18.3.5.7 Costs of the type described at Paragraph 4.1(i) (*Disallowable Costs*) of Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) ;
- 18.3.5.8 Costs of the type described at Paragraph 4.1(j) (*Disallowable Costs*) of Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) ;
- 18.3.5.9 Costs of the type described at Paragraph 4.1(k) (*Disallowable Costs*) of Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*);
- 18.3.5.10 Costs of the type described at Paragraph 4.1(m) (*Disallowable Costs*) of Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) ;
- 18.3.5.11 Costs of the type described at Paragraph 4.1(o) or 4.1(p) (*Disallowable Costs*) of Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), but only to the extent that the VAT or other Tax in question is itself in respect of a Class B Disallowable Cost listed elsewhere in this Clause 18.3.5;
- 18.3.5.12 [Not Used]
- 18.3.5.13 Costs of the type described at Paragraph 4.1(t) (*Disallowable Costs*) of Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*);
- 18.3.5.14 Costs of the type described at Paragraph 4.1(u) (*Disallowable Costs*) of Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) unless:
 - 18.3.5.14.1 the Authority has approved such Costs; or

- 18.3.5.14.2 it has been determined pursuant to the Dispute Resolution Procedure that the engagement in Legal Proceedings giving rise to such Costs would be reasonable;
- 18.3.5.15 Costs of the type described at Paragraph 4.1(w) (*Disallowable Costs*) of Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*);
- 18.3.5.16 Costs of the type described at Paragraph 4.1(x) (*Disallowable Costs*) of Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*);
- 18.3.5.17 [Not used];
- 18.3.5.18 [Not used];
- 18.3.5.19 Costs of the type described at Paragraph 4.1(II) (*Disallowable Costs*) of Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) provided that where such Costs are incurred as a result of the Contractor's wilful default, such Costs shall not be Class B Disallowable Costs unless such wilful default has been committed:
- 18.3.5.19.1 by a member of the Nominated Staff or other persons provided by the Parent Body Organisation pursuant to Clause 8 (*Provision of Support to the SLC*) and Schedule 7 (*Provision of Support to the SLC*) of the Parent Body Agreement;
- 18.3.5.19.2 more than four (4) months after the Commencement Date, or if within such four (4) months period, the Nominated Staff or other persons provided by the Parent Body Organisation pursuant to Clause 8 (*Provision of Support to the SLC*) and Schedule 7 (*Provision of Support to the SLC*) of the Parent Body Agreement have had a reasonable opportunity to identify, address and prevent such wilful default;

provided further that where such wilful default was committed by an individual Employee or an individual employed by a Sub-contractor or a Sub-Subcontractor and such wilful default manifests itself as a

malicious act or omission or an act of vandalism, such Costs shall not be capable of constituting Class B Disallowable Costs other than in circumstances where the Contractor has failed to act in accordance with Good Industry Practice in relation to the recruitment, appointment, training or supervision of such Employee, Sub-Contractor or Sub-Subcontractor.

18.3.5.20 Costs of the type described at Paragraph 4.1(mm) (*Disallowable Costs*) of Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*);

18.3.5.21 Costs of the type described at Paragraph 4.1(oo) (*Disallowable Costs*) of Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) but only to the extent that the payments being met are towards a Class B Disallowable Cost listed elsewhere in this Clause 18.3.5;

18.3.5.22 [Not used]

18.3.5.23 Costs of the type described at Paragraph 4.1(ss) (*Disallowable Costs*) of Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*);

18.3.5.24 Costs of the type described at Paragraph 4.1(tt) (*Disallowable Costs*) of Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*);.

18.3.5.25 Costs of the type described at Paragraph 4.1(ee) (*Disallowable Costs*) of Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*);

18.3.5.26 [Not Used];

18.3.5.27 Costs of the type described at Paragraph 4.1(uu) (*Disallowable Costs*) of Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*); and

18.3.5.28 Costs of the type described at Paragraph 4.1(vv) (*Disallowable Costs*) of Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*). .

18.3.6 The Liability Cap shall only be adjusted during a Contract Year as a consequence of a Change. Any such adjustment shall be by way of agreed

Change in accordance with Clause 18.5 below and the Change Control Procedure.

18.3.7 If either:

18.3.7.1 at any time the aggregate of the Contractor's Liabilities arising in any one Contract Year when taken together with any liability to the Authority arising in the same period pursuant to the Parent Body Agreement and falling within the scope of liabilities which are (under the Parent Body Agreement) expressed to be subject to the Liability Cap, exceeds 75% of the Liability Cap applicable to that Contract Year; or

18.3.7.2 at any time it becomes apparent that there is no reasonable prospect that the Liability Cap will not be breached (thus triggering Clause 18.3.2 (*Liability Cap*) above),

then the Authority shall be entitled to terminate this Agreement for Contractor Default.

18.4 **Disallowable Costs**

Subject to Clause 18.3 (*Liability Cap*) above, the Contractor hereby indemnifies the Authority against all Disallowable Costs paid by the Authority.

18.5 **Review of Limit on General Liability**

Subject to Clause 37.10 (*Variation*), if at any time the Authority or the Contractor considers (acting reasonably) that as a result of the application of the Change Control Procedure the ratio of the Liability Cap to the Fee which the Contractor is capable of earning has changed significantly since the Commencement Date, then it may make a proposal to change the Liability Cap in accordance with the Change Control Procedure provided that any such change shall require agreement of the Parties. The Parties shall act reasonably when considering such proposal to ensure that the said ratio is substantially the same as it was at the Commencement Date.

18.6 **Consequential Loss**

18.6.1 Unless expressly stated otherwise, neither Party shall be liable to the other Party whether arising in contract (including negligence or misrepresentation), strict liability or otherwise howsoever arising for:

18.6.1.1 any indirect, special or consequential loss or damage; or

18.6.1.2 any loss of profits, turnover, business opportunities, damage to goodwill (whether direct or indirect) or anticipated savings.

18.6.2 For the avoidance of doubt this Clause 18.6 shall not operate to prevent either Party from recovering any payments that are lawfully due to that Party from the other Party under this Agreement, in respect of Allowable Costs or Disallowable Costs.

19 [NOT USED]

19.1 [Not used]

19.2 [Not used].

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 Authority has given its prior written consent pursuant to the Change Control Procedure and PCP17.

Obligation to consult the Authority

20.2 Subject to Schedule 3 (*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 3 (*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 3 (*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 20.2 (*Obligation to consult the Authority*) and 21.3 to 21.5 (*Permitted Activities*) (inclusive), 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 3 (*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 3 (*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*);

22.1.3 use reasonable endeavours during the Consolidation Phase to ensure that the requirements to comply with Good Industry Practice and cost transparency are incorporated into any Subcontract or Sub-Subcontract; and

22.1.4 ensure that after the Consolidation Phase 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 its 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 above to the extent that:

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 delivering the Client Specification and/or the Interim End 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 as Schedule 5 (*Subcontracting and Procurement*), 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 Part 2 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(b) (*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 Without prejudice to the Authority's rights under Clauses 23.5 (*Review of the Inter SLC Service Contracts*) and 23.6 (*Review of the Inter SLC Service Contracts*) above to request the review of and to require changes to any Inter SLC Service Contract, 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 or in accordance with Clause 23.6 (*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 SLC INITIATIVES

24.1 The Contractor acknowledges that the Authority is developing a variety of Cross SLC Initiatives. For the purposes of the implementation of the Cross SLC 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 SLC 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 SLC Initiatives;

24.1.3 if the Authority requires the Contractor to implement any Cross SLC Initiative and the Contractor believes that implementation will reduce the cost of delivery of the Interim End State, there will be no adjustment to the 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 SLC Initiatives (other than the implementation of the Cross SLC 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 SLC Initiative (including Collaborative Procurement)

the provisions of Schedule 2 Part 2 Paragraph 7.6 and 7.6A apply.

PART 8: Information

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 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 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 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;

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 this shall not apply in relation to commercially sensitive information relating to the Parent Body Organisation, the PBO Shareholders, Ultimate Parents, Affiliates (other than in their capacity as Subcontractors or Sub-Subcontractors), the Target Cost or Shareline;

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 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.

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.

25.3.4 Any determination as to whether it is reasonable for the Contractor to withhold its consent to disclosure under Clause 25.3.2 (*Confidential Information*) 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;

25.3.4.3 the requirement to maintain security;

25.3.4.4 the public interest; and

25.3.4.5 the requirement to maintain openness and transparency.

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 pursuant to this Clause 25.4.

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 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, PBO Shareholders and the Ultimate Parents, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 25.1 (*Confidential Information*) above.

25.6 National Audit Office

25.6.1 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 shall prohibit any Party from making any announcement or despatching any circular as required by Legislation or the rules of the UK Listing Authority or of the London Stock Exchange or any other regulatory body in which case, to the extent not inconsistent with legal obligations or the rules of the UK Listing Authority or of the London Stock Exchange, the announcement shall only be released or the circular despatched after consultation with the other 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

25.8.1 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).

25.9 Damages Not the Only Remedy

25.9.1 Without prejudice to any other rights or remedies that either Party may have, the Parties acknowledge and agree that damages alone would not be an adequate remedy for any breach by the other Party of this Clause 25 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 by the other Party shall also be appropriate remedies.

26 FREEDOM OF INFORMATION

26.1 Freedom of Information Act

26.1.1 This Clause 26 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 under the FOIA and the EIR. The Contractor shall also comply with the Protocol attached at Schedule 15 (*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 and the Protocol contained in Schedule 15 (*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 Site 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.

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 above is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Clause 27.1 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 above immediately it is aware of such a requirement.

27.1.5 Each Party shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of personal data of which the other Party is data controller and accidental loss or destruction of, or damage to such personal data, in the case of the Contractor, including but not limited to taking reasonable steps to ensure the reliability of Employees and Nominated Staff having access to the personal data and (in the case of each Party) 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 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 51 of Schedule 1 (*Client Specification*).

28.2 [Not used]

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 29.3.5.A), 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 Site 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 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**". The Contractor shall implement procedures and systems to record and track Delivered Parent IP and Required Parent IP.

29.3.2 The Authority shall have the right to sub-license 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 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.

- 29.3.3 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 29.3.5 (*IP Contributed by Parent Body Organisation*) below). 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 (except as provided in Clause 29.3.5 (*IP Contributed by Parent Body Organisation*) below) and who shall themselves be entitled to grant sub-licences to their subcontractors (with a right to sub-license) to use the Required Parent IP where necessary to enable the use or exploitation of Developed IP, without payment of royalty fees. 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 Any Parent IP that is of particular value to the Parent Body Organisation is detailed in Schedule 8 (*Intellectual Property*) (the "**Reserved Parent IP**"). Any licence granted by the Authority pursuant to Clause 29.3.3 and 29.3.4 (*IP Contributed by Parent Body Organisation*) above of Reserved Parent IP shall be subject to the payment of such reasonable royalty as the Authority and the Parent Body Organisation shall agree.

29.3.5A The Parent Body Organisation and/or its 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 Site 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**".

29.3.5A.1 Before the Parent Body Organisation or an Affiliate allows any Special Parent IP to be introduced to the Site the Authority and the Parent Body Organisation or relevant 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 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 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 such Special Parent IP shall not be treated as Required Parent IP.

29.3.5A.2 With the exception only of this Clause 29.3.5A, the provisions of this Clause 29 (*Intellectual Property*) shall not apply in relation to any Special Parent IP.

29.3.5A.3 Neither the Delivery Plan nor compliance with the Contractor's obligations under this Agreement is 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.

29.3.6 Without prejudice to Clause 29.3.1 (*IP Contributed by Parent Body Organisation*) above, the Contractor shall implement such procedures and systems as are required and agreed by the Authority 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 infringes that third party's rights.

29.3.7 [Not Used]

Infringement of Parent IP by Third Parties

29.3.8 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 in accordance with the PBA and 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 29.3.5A, IP created by or on behalf of the Contractor and/or by Subcontractors during the performance of this Agreement ("**Developed IP**") shall be managed in accordance with the IP Schedule and, unless:

- (a) 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
- (b) otherwise agreed in writing by the Authority,

be owned in accordance with the following provisions.

Ownership by Authority of Developed IP created by the Contractor

29.4.1 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:

29.4.1.1 the Authority shall own any and all Developed IP created by the Contractor; and

29.4.1.2 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

29.4.2 Without prejudice to Clause 29.4.1 (*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.

29.4.3 Subject to Clause 29.4.4 (*Ownership of Developed IP created by or on behalf of Subcontractor*), 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 such IP created on or at any time after the date of this Agreement.

Ownership of Developed IP created by or on behalf of Subcontractors

29.4.4 Save as expressly set out in this Clause 29.4.4, 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 created by the Subcontractor on or at any time after the date of this Agreement. However, the Authority acknowledges that it may be appropriate or preferable from the Contractor's perspective, 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 29.4.2 (*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 29.4.9 (*Licence of Developed IP from Subcontractor to Authority*) below.

Access to and use of information by the Authority

29.4.5 Subject to the provisions of Clause 25 (*Confidentiality*), 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. 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:

29.4.5.1 Nominated Staff; or

29.4.5.2 personnel provided to the Contractor pursuant to Clause 9 (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 Agreement.

Further Assurance

29.4.6 In respect of any Developed IP owned by the Authority pursuant to Clauses 29.4.1 (*Ownership by Authority of Developed IP created by the Contractor*),

29.4.2 (*Ownership of Developed IP by the Authority*), 29.4.3 (*Ownership of Developed IP by the Authority*) and/or 29.4.4 (*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 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

29.4.7 The Contractor shall procure that each Subcontractor identifies and declares to the Contractor prior to entering into its Subcontract any IP which the Subcontractor owns immediately prior to the commencement of the Subcontract which 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. This declaration will also serve to ensure that there is no confusion between Developed IP and Background IP, and where this is a potential concern the declaration required should be sufficiently detailed to ensure clarity of rights is maintained. In respect of any such IP, the Contractor shall procure that the Subcontractor shall grant to the Authority a licence in accordance with Clause 29.4.10 (*Licence of Background IP from Subcontractor to Authority*) below.

Licence to the Authority of IP licensed to the Subcontractor

29.4.8 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:

29.4.8.1 identifies and declares to the Contractor prior to entering into its Subcontract any Subcontractor-licensed Background IP that is licensed to that Subcontractor immediately prior to the commencement of the Subcontract. This declaration will also serve to ensure that there is no confusion between Developed IP and Subcontractor-licensed Background IP, and where this is a potential concern the declaration required should be

sufficiently detailed to ensure clarity of rights is maintained;
and

29.4.8.2 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 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)

- as necessary for their use or exploitation of any Output or Developed IP,
- without the consent of the licensor or Subcontractor,
- and permitting any SLC (and its sublicensees) to sub-license its rights under any such sub-license to any of its subcontractors without the consent of the licensor or Subcontractor.

Without prejudice to Clause 29.4.18 (*Register of IP*) below, where such rights cannot be procured the Contractor and the Authority shall determine whether the Subcontract should be entered into and if so its provisions.

Licence of Developed IP from Subcontractor to Authority

29.4.9 Subject to Clause 29.4.10 (*Licence of 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:

29.4.9.1 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-license to any of its subcontractors without the consent of the Subcontractor; and

29.4.9.2 rights for the Authority to:

- 29.4.9.2.1 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 requested by the Authority into the patent application;
- 29.4.9.2.2 extend the territorial coverage of a patent relating to Developed IP, at the Authority's own cost;
- 29.4.9.2.3 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 29.4.18 (*Register 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 29.4.9 without the express prior written consent of the Authority, not to be unreasonably withheld.

Licence of Background IP from Subcontractor to Authority

29.4.10 Without prejudice to Clause 29.4.18 (*Register of IP*) below, the Contractor shall procure that, unless lesser rights have been sought in accordance with the provisions of the IP Schedule, each Subcontractor shall grant to the Authority a non-exclusive, world-wide, perpetual, irrevocable, royalty-free licence to use any IP owned by that Subcontractor that is reasonably needed to use, exploit or license any Output or Developed IP ("**Background IP**") in order to use, exploit and license the relevant Output or Developed IP. This licence shall include the right to sub-license such Background IP to any third party (including any SLC)

- 29.4.10.1 as necessary for their use or exploitation of any Output or Developed IP,
- 29.4.10.2 without the consent of the Subcontractor,
- 29.4.10.3 without payment of royalty fees, and
- 29.4.10.4 permitting any SLC (and its sublicensees) to sub-license its rights under any such sub-licence 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.

Contractor's Notification of Developed IP

29.4.11 The Contractor shall procure that any Subcontractor shall promptly notify the Contractor of any IP which is created and/or developed by the Subcontractor 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

29.4.12 The Contractor may, if permitted by the provisions of the IP Schedule, grant a non-exclusive licence to a Subcontractor enabling the Subcontractor to exploit outside the Authority Field of Use any Developed IP developed by the Subcontractor. Where required by the IP Schedule, the Contractor shall negotiate in good faith with the Subcontractor appropriate payment (which may include royalties and/or lump sum payments) to the Authority for the use of such IP.

Licence to Parent Body Organisation

29.4.13 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 29.4.1 (*Ownership by Authority of Developed IP created by the Contractor*), 29.4.3 (*Ownership of Developed IP by the Authority*) and/or 29.4.4 (*Ownership of Developed IP created by or on*

behalf of Subcontractors) but not, for the avoidance of doubt, Clause 29.4.2 (*Ownership of Developed IP by the Authority*) above.

Exclusion of Parent IP from Developed IP

29.4.14 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 29.4.1 (*Ownership by Authority of Developed IP created by the Contractor*), 29.4.2 (*Ownership of Developed IP by the Authority*), 29.4.3 (*Ownership of Developed IP by the Authority*) and 29.4.4 (*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

29.4.15 Where any Developed IP vests in the Authority pursuant to Clauses 29.4.1 (*Ownership by Authority of Developed IP created by the Contractor*), 29.4.2 (*Ownership of Developed IP by the Authority*), 29.4.3 (*Ownership of Developed IP by the Authority*) and/or 29.4.4 (*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 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 developments with respect to any such applications and assign the rights arising therefrom to the Authority.

Warranty

29.4.16 The Contractor warrants (and shall procure that any Subcontractor warrants) 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

29.4.17 The Contractor shall (and shall procure that any Subcontractor shall) maintain an up to date register of the details of all Developed IP 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.

29.4.18 The Contractor must not (unless it has the Authority's express prior written consent) allow IP to be introduced in relation to the Site unless the Authority owns, or has been granted a licence to use that IP at least in relation to the Site.

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 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 I 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 Site under this Agreement ("**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 to sub-license to the Contractor the Third Party IP. For the avoidance of doubt, this Clause 29.6.1 shall not apply to IP that is licensed by a Third Party to any Subcontractor to which the provisions of Clause 29.4.8 (*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 29.4.18 (*Register 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 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 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 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 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 as are required for the full and efficient performance of its obligations under this Agreement, subject to the requirements of this Clause 30;

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 obligations to deliver 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 in respect of the Critical Site IT Systems consistent with ISO/IEC 17799 and Good Industry Practice.

30.5 Changes to Site IT Systems

30.5.1 Without prejudice 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 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 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 Site and/or the security of a Critical Site IT System.

30.5.2 Without prejudice 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 Contractor's Affiliates or any IT Systems external to the 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 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 the materiality and criticality of the Software concerned and the ease with which the same could be replaced and, without prejudice to the generality of 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 The Contractor shall ensure that any deposit made in accordance with Clause 30.6.1 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.

30.7 **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 at all times 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 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

31.1 Nominated Staff

- 31.1.1 The Contractor shall, in respect of each of the Nominated Staff, enter into and comply with, and shall procure that any Seconding Employer and each person who is a named member of Nominated Staff enters into and complies with, a Secondment Agreement.
- 31.1.2 Save where expressly permitted by the Parent Body Agreement, the Contractor shall procure that none of the Nominated Staff is withdrawn from work at the Site without first obtaining the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed) as to the suitability and adequacy of a replacement who must have a level of skills and experience broadly comparable to that of the Nominated Staff being withdrawn, or if more appropriate depending on the relevant job position, have the necessary skills and experience required for that job position.
- 31.1.3 Where the withdrawal from work of Nominated Staff and/or appointment of a replacement for any Nominated Staff in accordance with this Clause 31.1 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.

- 31.1.4 In the event that individual persons designated Nominated Staff are withdrawn and replaced in accordance with Clauses 31.1.1 (*Nominated Staff*) to 31.1.3 (*Nominated Staff*) above, then the Contractor shall enter, and shall procure that each Seconding Employer and each replacement shall enter into a secondment agreement in terms substantially the same as the Secondment Agreement prior to such replacement commencing work at the Site and such replacement shall be deemed to be a member of the Nominated Staff.
- 31.1.5 Reference to "withdrawal" of Nominated Staff or to any such persons being "withdrawn" in the above provisions and in Clause 31.3.2 (*Organisational Change*) below shall not include withdrawal due to their retirement on their normal retirement age (i.e. on achieving the age at which they would normally be expected to retire from the Parent Body Organisation or Seconding Employer), long-term illness or voluntary resignation from the employment of the Parent Body Organisation or Seconding Employer.

31.2 Key Personnel

- 31.2.1 The Authority shall, provided that it acts reasonably, be entitled to identify and name individuals, whether Employees or Nominated Staff, as Key Personnel from time to time. The individuals so named by the Authority are listed in Part 2 (*Key Personnel*) of Schedule 4 (*Employment and Pensions*). Such list may be amended from time to time by the Authority whether to take account of the replacement of any individual as a member of Key Personnel or to add any person or to remove any person from such list.
- 31.2.2 Subject to Clause 31.3.2 (*Organisational Change*) and Clause 31.3.3 (*Organisational Change*) below, the Contractor shall not, and shall procure that the Parent Body Organisation shall not without prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):
- 31.2.2.1 dismiss (either summarily or on notice) any Key Personnel;
 - 31.2.2.2 suspend for more than five (5) Calendar Days any Key Personnel;
 - 31.2.2.3 change the job description of any Key Personnel;
 - 31.2.2.4 subject to Clause 31.9.4 (*Terms and Conditions of Employment*) below, alter any material term or condition of the contract or terms of employment or engagement of any Key Personnel;

31.2.2.5 redeploy or reallocate to other services, any Key Personnel without the prior written consent of the Authority; and/or

31.2.2.6 do anything (by act or omission) which is, or may be, a breach of the contract or terms of employment or engagement of any Key Personnel.

31.3 **Organisational Change**

31.3.1 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).

31.3.2 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 the Site, it must:

31.3.2.1 obtain the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed) 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

31.3.2.2 where such withdrawal and/or appointment of a replacement member of Nominated Staff or Key Personnel in accordance with this Clause 31.3.2 requires the approval of the Regulators, procure all such approvals as are necessary before making the withdrawal and/or replacement as applicable.

31.3.3 Nothing in Clause 31.1 (*Nominated Staff*) above or Clause 31.2 (*Key Personnel*) 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:

31.3.3.1 necessary to comply with any applicable Legislation or Regulatory Requirements;

31.3.3.2 required to safeguard the health and wellbeing of any employee on the Site;

31.3.3.3 justified on the grounds that any member of the Key Personnel or Nominated Staff has committed an act of gross misconduct; and/or

31.3.3.4 justified on the grounds that any member of the Key Personnel or Nominated Staff has failed a drugs and/or alcohol test;

31.3.4 Where the Contractor and/or the Parent Body Organisation dismisses or suspends any Key Personnel or Nominated Staff pursuant to Clause 31.3.3 (*Organisational Change*) above 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.

31.4 **Non-Contract Activities**

31.4.1 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, save as may otherwise be expressly agreed in writing in advance with the Authority pursuant to Clause 8 (Provision of Support to the SLC) of the Parent Body Agreement 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.

31.4.2 [Not Used]

31.5 **Notice to Authority of Disputes**

31.5.1 The Contractor shall notify the Authority in writing of the existence and details of any grievance or dispute (whether actual, pending or threatened) between:

31.5.1.1 the Contractor (or other relevant employer) and any of the Employees or Nominated Staff; and/or

31.5.1.2 the Contractor and any of the Contractor's Subcontractors engaged in connection with this Agreement and/or their personnel; and/or

31.5.1.3 the Contractor (or other relevant employer) and any trade union or other body representing any such person in Clause 31.5.1.1 (*Notice to Authority of Disputes*) or 31.5.1.2 (*Notice to Authority of Disputes*) above,

where the consequence of such dispute may include:

31.5.1.3.1 liabilities, Costs or potential Costs in excess of one hundred thousand pounds (£100,000);

31.5.1.3.2 material delay to the delivery of the Client Specification; or

31.5.1.3.3 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.

31.5.2 The Contractor shall keep the Authority informed with regard to any dispute notified pursuant to Clause 31.5.1 (*Notice to Authority of Disputes*) above together with any proposed settlements or developments which may affect compliance with the Client Specification or result in increased Cost.

31.6 **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 in relation to delivery of the Client Specification:

31.6.1 without prejudice to Clause 31.7 (*Authority Approval of Redundancy*) below, when considering redundancies or any other programme involving a reduction of Employee or Nominated Staff numbers and/or when making make-or-buy decisions pursuant to its Make-or-Buy 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;

31.6.2 consider and plan future skills requirements and predict possible skills shortages and needs and, in each case, train Employees and Nominated Staff and recruit and train additional employees accordingly; and

31.6.3 ensure that when it replaces any of the Employees pursuant to this Clause 31, the replacement has a level of skills and experience which:

31.6.3.1 is at least broadly comparable to that of the Employee that he or she is replacing; or

31.6.3.2 if more appropriate depending on the relevant job position, matches the necessary skills and experience required for that job position.

31.6.4 not allow secondment or transfer of the Contractor's Employees to the Parent Body Organisation or its Affiliates unless authorised to do so by the Authority.

31.7 **Authority Approval of Redundancy**

31.7.1 Subject to Clauses 31.1 (*Nominated Staff*) and 31.2 (*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:

31.7.1.1 commencing and/or continuing a Redundancy programme or any other programme involving the reduction of Employee numbers such as a voluntary early release 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

31.7.1.2 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.

31.7.2 Nothing in this Clause 31.7 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:

- 31.7.2.1 necessary to comply with any applicable Legislation or Regulatory Requirements;
 - 31.7.2.2 required to safeguard the health and wellbeing of any employee on the Site;
 - 31.7.2.3 justified on the grounds that any Employee has committed an act of gross misconduct; and/or
 - 31.7.2.4 justified on the grounds that any Employee has failed an alcohol and/or drugs test.
- 31.7.3 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 SLC initiatives.

31.8 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 Site or on behalf of the Contractor shall comply with the:

- 31.8.1 Sex Discrimination Act 1975 and Sex Discrimination Act 1986;
- 31.8.2 Race Relations Act 1976;
- 31.8.3 Disability Discrimination Act 1995;
- 31.8.4 Human Rights Act 1998;
- 31.8.5 Equal Pay Act 1970;
- 31.8.6 Employment Rights Act 1996;
- 31.8.7 Employment Equality (Sexual Orientation) Regulations 2003;
- 31.8.8 Employment Equality (Religion or Belief) Regulations 2003;
- 31.8.9 Employment Equality (Age) Regulations 2006;

31.8.10 Equality Act 2006;

31.8.11 Equality Act 2010; and

31.8.12 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 Site operate an appropriate equal opportunities policy.

31.9 **Terms and Conditions of Employment**

31.9.1 The Contractor shall keep and maintain adequate HR Internal Procedures and records to enable it to manage the Employees. 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.

31.9.2 [Not used]

31.9.3 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:

31.9.3.1 increase or reclassify wages, salary, other elements of pay, benefits, allowances or emoluments as pensionable or non-pensionable;

31.9.3.2 increase wages, salary, other elements of pay, benefits, allowances or emoluments; and

31.9.3.3 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 (including without limitation in relation to pensions liabilities) related to the operation of the Site 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.

31.9.4 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.

31.10 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 changes to any such agreement or of any 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.

31.11 Removal of Contractor or Subcontractor Employees from Site

31.11.1 If the Authority reasonably believes that an Employee is guilty of misconduct that the presence on the 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.

31.12 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 is 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 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 Deed of Participation.

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 or fail to take any action which would cause it to cease to participate in any Applicable Scheme without the 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 appoint the Authority as its nominee for the purposes of consultation 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;
- 32.2.5.4 appoint the Authority as its nominee for the purposes of consultation on the member nominated trustee provisions of the Pensions Act 2004;
- 32.2.5.5 [Not used]
- 32.2.5.6 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;
- 32.2.5.7 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;
- 32.2.5.8 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;

- 32.2.5.9 comply with all obligations whenever arising to consult in respect of matters related to pensions and disclose all relevant information in advance of its issuance to the Authority and in connection therewith cooperate and liaise with the Authority as reasonably required by the Authority;
 - 32.2.5.10 not terminate (or allow to terminate) the service of any Employees or Nominated Staff in circumstances where an enhanced benefit would be due under the Applicable Schemes without the consent of the Authority;
 - 32.2.5.11 comply with its obligations as employer arising under the general Legislation relating to pensions; and
 - 32.2.5.12 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 The Authority confirms that, prior to the Commencement Date, they have completed all consultation necessary, including as required under Schedule 8 of the Energy Act, with all Employees relating to any change in their pension arrangements, including the retirement benefit scheme under which they accrue benefit on an ongoing basis, which occurs because of the transfer of the shares in the Contractor.
- 32.2.7 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 32.2.7 shall not affect the Authority's obligations in respect of any consultation required under Schedule 8 of the Energy Act.

PART 11: Termination

33 TERMINATION

Termination by the Authority

33.1 The Authority shall be entitled to terminate this Agreement:

33.1.1 subject to Clause 11 (*Defective Performance*), 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 in the case of:

33.1.2.1 an application to court for the appointment of an administrator;

33.1.2.2 a notice of intention to appoint an administrator;

33.1.2.3 commencement of negotiations as referred to in paragraph (b) of the definition of Insolvency Event;

33.1.2.4 presentation of a petition for a winding up order; or

33.1.2.5 any occurrence or proceeding in any jurisdiction which has equivalent effect to the above matters as identified in this Clause 33.1.2,

the Authority shall be entitled to terminate this Agreement in accordance with this Clause 33.1.2 only where such matter does not arise due to any instruction under or breach of the SLC Agreement by the Authority;

33.1.3 [Not used];

33.1.4 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;

33.1.5 otherwise at its discretion, subject only to providing not less than thirty (30) Working Days' prior written notice to the Contractor; or

33.1.6 on not less than thirty (30) Working Days written notice to the Contractor upon either:

33.1.6.1 any 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 (and in relation to any licence, authorisation, permit or consent this provision shall apply where such licence, authorisation, permit or consent is material to the operation of the Site by the Contractor) or any other Necessary Consent held by the Contractor which, in each case, is material in nature and the possession of which is necessary to enable the Contractor to operate the Site; or

- 33.1.6.2 receipt of notice by the Contractor of the HSE's (or other relevant body's) intention to revoke such licence, authorisation, permit or consent or any part thereof where the Contractor has no ability to appeal, challenge or discharge any such intention to revoke,

where in either case such revocation or threatened revocation is due to any act, omission or failure by the Contractor to act in accordance with Good Industry Practice or otherwise comply with its obligations under this Agreement.

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;

33.2.1A on not less than thirty (30) Working Days' prior written notice to the Authority following an Authority Default under Clause 20.9 of the Parent Body Agreement;

33.2.2 on not less than thirty (30) Calendar 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 Calendar 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 and the Contractor shall continue to be relieved from its obligations as appropriate pursuant to Clause 13 (*Force Majeure*), provided further that the Authority shall have no such right to prevent termination if the Contractor's notice under this Clause 33.2.3 is issued within three (3) months of the Contract Term Longstop Date; or

33.2.4 on not less than thirty (30) Working Days written notice to the Authority upon either:

33.2.4.1 any 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 Site; or

33.2.4.2 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 where the Contractor has no ability to appeal, challenge or discharge any such intention to revoke,

where in either case such revocation or threatened revocation is due to any act, omission or failure by the Authority.

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.

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.

33.4A In the event that this Agreement terminates as set out in Clause 2 (*Commencement and Duration*) on the Contract Term Longstop Date:

33.4A.1 if the agreed date for achievement of the IES (as adjusted in accordance with this Agreement) has not been reached, for the purposes of this Clause 33 (*Termination*) such termination shall be treated in the same manner as termination pursuant to Clause 33.1.5 (*Termination by the Authority*) and Clause 33.6 (*Termination for Convenience by the Authority and Authority Default*) shall apply; and

33.4A.2 if the agreed date for achievement of the IES (as adjusted in accordance with this Agreement) has passed but the Contractor is not in breach of the Minimum Performance Standard set out in Paragraph 2.1(b) of Schedule 17 (*Minimum Performance Standards*) such termination shall be treated in the same manner as termination pursuant to Clause 33.1.4 (*Termination by the Authority*) and Clause 33.7 (*Termination for Force Majeure*) shall apply.

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.

Termination for Convenience by the Authority and Authority Default

33.6 Where this Agreement is terminated pursuant to Clause 33.1.5 (*Termination by the Authority*), 33.2.1, 33.2.1A or 33.2.4 (*Termination by the Contractor*) above, the Contractor shall be entitled to recover from the Authority (as its sole remedy in respect of such termination);

33.6.1 any Allowable Costs outstanding at such time;

33.6.2 its reasonable costs (not including loss of profit or any other indirect or consequential loss) arising directly from such termination;

33.6.3 in respect of PBI Fee:

33.6.3.1 an amount in respect of PAFs that have been achieved but where the relevant PBI Fee remains outstanding, such outstanding amount; and

33.6.3.2 an amount in respect of PAFs that were due to be achieved after the termination date in that Contract Year, such amount to be that which represents the proportion of PBI Fee allocated to PAFs taking place in that Contract Year after the termination date calculated pro rata to the termination date with respect to that Contract Year;

33.6.4 the amount of any outstanding but unpaid Allocated Target Fee that would have become payable on or prior to the termination of this Agreement, in respect of Target Fee Payment Milestones that have been achieved but unpaid as at the date of termination;

33.6.5 the amount of any outstanding but unpaid Shareline applicable as at the date of termination, such amount to be determined for the purposes of this Clause 33.6.5 without application of the Moderator and on the assumption that 100% (one hundred per cent) of the Shareline Increment would have been payable.

Termination for Force Majeure

33.7 Where this Agreement is terminated pursuant to Clause 33.1.4 (*Termination by the Authority*) or 33.2.2 (*Termination by the Contractor*) or 33.2.3 (*Termination by the Contractor*) above, the Contractor shall be entitled to recover from the Authority (as its sole remedy in respect of such termination):

33.7.1 any Allowable Costs outstanding at such time;

33.7.2 its reasonable costs (not including loss of profit or any other indirect or consequential loss) arising directly from such termination;

33.7.3 in respect of PBI Fee:

33.7.3.1 an amount in respect of PAFs that have been achieved but where the relevant PBI Fee remains outstanding, such outstanding amount; and

33.7.3.2 an amount in respect of PAFs that were due to be achieved after the termination date in that Contract Year, such amount to be fifty per cent (50%) of that which represents

the proportion of PBI Fee allocated to PAFs taking place in that Contract Year after the termination date calculated pro rata to the termination date with respect to that Contract Year;

- 33.7.4 the amount of any outstanding but unpaid Allocated Target Fee that would have become payable on or prior to the termination of this Agreement, in respect of Target Fee Payment Milestones that have been achieved but unpaid as at the date of termination;
- 33.7.5 the amount of any outstanding but unpaid Shareline applicable as at the date of termination, such amount to be determined for the purposes of this Clause 33.7.5 after application of the Moderator and on the assumption that 100% (one hundred per cent) of the Shareline Increment would have been payable.

Termination for Persistent Breach, Contractor Default or Insolvency Event

33.8 Where this Agreement is terminated pursuant to Clause 33.1.1 (*Termination by the Authority*), 33.1.2 or 33.1.6 (*Termination by the Authority*) above, the Contractor shall be entitled to recover from the Authority (as its sole remedy in respect of such termination);

- 33.8.1 any Allowable Costs outstanding at such time;
- 33.8.2 its reasonable costs (not including loss of profit or any other indirect or consequential loss) arising directly from such termination;
- 33.8.3 in respect of PBI Fee, an amount in respect of PAFs that have been achieved but where the relevant PBI Fee remains outstanding, such outstanding amount;
- 33.8.4 the amount of any outstanding but unpaid Allocated Target Fee in respect of Target Fee Payment Milestones that have been achieved but are unpaid as at the date of termination;
- 33.8.5 the amount of any outstanding but unpaid Shareline applicable as at the date of termination, such amount to be determined for the purposes of this Clause 33.8.5 after application of the Moderator and on the assumption that any Shareline Increment achieved up to the termination date will be payable,

provided always that the Authority shall be entitled to recover from the Contractor its reasonable and proper costs incurred in carrying out either:

- 33.8.5.1 a process by which the Authority requests tenders from any parties interested in becoming an Incoming Parent,

evaluates the responses from those interested parties and enters into a new contract with an Incoming Parent; or

- 33.8.5.2 any other process the aim of which is procuring a replacement for the existing arrangement embodied by this Agreement and the Parent Body Agreement,

provided that the Authority shall take reasonable steps to mitigate such costs and the Contractor's liability to pay such reasonable and proper costs shall be limited to the sum of five million pounds sterling (£5,000,000) (the "**Costs of Re-competition Cap**").

Termination for Revocation of Licence

- 33.9 In the event of any 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 Site; or 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 which the Authority accepts (acting reasonably) has not occurred through Contractor Default, the Authority shall provide reasonable assistance to the Contractor in its discussions with HSE and/or EA or SEPA as applicable.

Accrued Liabilities

- 33.10 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 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 Site,

(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 Site 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. Notwithstanding any other provision of this Agreement, all Costs incurred in complying with its obligations under this Clause 34.2 are disregarded in the calculation of the Shareline.

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 Site, the Contractor shall demonstrate to the satisfaction of the Authority that:

34.5.1 the Contractor is:

34.5.1.1 remaining impartial;

34.5.1.2 treating all tenderers equally including providing them with equality of information;

34.5.1.3 making the Employees (including the Nominated Staff) equally available to assist and be consulted by tenderers, remaining impartial at all times;

34.5.1.4 using all reasonable endeavours to procure that the tenderers perceive that they are being treated equally; and

34.5.1.5 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 8 (*Employee Schedule*).

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*)) from employment at the Site. 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):

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;
- 34.7.3 [Not Used];
- 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 expressly permitted by the Parent Body Agreement, to 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;
 - 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 Partywithout the Authority's prior written consent (such consent not to be unreasonably withheld).
- 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, 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 Site (as the case may be).
- 35.2 For the purposes of this Clause 35 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 Site 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/or its PBO Shareholders (and for the purpose of this Clause 35.2.3 "commercially sensitive" shall mean information which would, if disclosed to a

competitor of the Contractor and/or the Parent Body Organisation and/or its PBO Shareholders, 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 and/or its PBO Shareholders, but shall not include any information referred to in Clause 31 (*Employees*)).

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 Site;

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 or difference arising out of or in connection with this Agreement, including, but not limited to, any question regarding its existence, interpretation, validity, construction or termination 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 Neither Party shall commence any Legal Proceedings save in accordance with the Dispute Resolution Procedure.

36.1.3 Nothing in this Clause 36.1 shall prevent or restrict the right of either Party to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

36.1.4 [Not used]

36.2 Reasonableness of the Authority

[Not used]

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 Target Costs (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:

37.1.2.1 Specific Change in Law; or

37.1.2.2 Material General Change in Law,

then, without prejudice to the provisions of Part 2a (Allowable and Disallowable Costs) of Schedule 6 (*Finance*), the Target Cost shall be adjusted in accordance with Paragraph 7.6A of Schedule 2 (Part 2) (*Change Control Procedure*) save to the extent such Specific Change in Law or Material General Change in Law was taken into account in a previous Proposed Change.

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 obligation of the Contractor to deliver the

Client Specification and/or the Interim End State and/or achieve the Minimum Performance Standards; and

- 37.1.3.5 any change in Target Cost that is 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 State Aid

The Contractor acknowledges 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 in order for the Authority to fulfil its obligations to the European Commission pursuant to the State Aid Decision.

37.3 **Representatives and Delegation of Authority to Act**

- 37.3.1 Each of the Authority and the Contractor shall appoint the person whose name, address and telephone number is set out in Clause 37.7 (*Notices*) below as their respective Representatives in connection with this Agreement.
- 37.3.2 Each of the Authority's Representative and the Contractor's Representative shall have full authority to act on behalf of the relevant Party for all purposes of this Agreement. Unless notified in writing before any act or instruction is undertaken in respect of this Agreement, each Party shall be entitled to treat such act of the other Party's Representative which is authorised by the Agreement as being expressly authorised by the Contractor or the Authority and the other Party's Representative shall not be required to determine whether authority has in fact been given.
- 37.3.3 Each Party shall procure that its Representative acts in accordance with the relevant Representative's powers and functions in the Agreement.

Change in Representative

- 37.3.4 Each Party may propose a change in the identity of its Representative by giving the other Party written notification of such change and the Representative's details in Clause 37.7 (*Notices*) below shall be updated accordingly.
- 37.3.5 During any period when a Representative is unable through illness, incapacity, holidays or any other reason to carry out or exercise his functions under this Agreement, such Representative may, with the other Party's Representative's approval, delegate his functions to another suitable and appropriate person (the "**Delegated Representative**") by giving the other Party's Representative written notice of the identity of the Delegated Representative and the extent of the Delegated Representative's authority to act under this Agreement.

Notices to Representatives

- 37.3.6 Subject to Clause 37.7 (*Notices*) below, any Notice, information, instructions or public communication given to:
- 37.3.6.1 the Contractor's Representative shall be given in writing and shall be deemed to have been given to the Contractor; and
- 37.3.6.2 Authority's Representative shall be given in writing and shall be deemed to have been given to the Authority.

37.3.7 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 the Authority's Representative or Delegated Representative.

37.4 **Liaison with Regulators**

Communications with Regulators

37.4.1 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 the Site and the Contractor's activities under this Agreement.

Regulator Meetings

37.4.2 The Contractor shall use all reasonable endeavours to give the Authority prompt notice of all Regulator Meetings.

37.4.3 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).

37.4.4 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

37.4.5 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.

37.5 Meetings

Site Meetings

37.5.1 The Authority shall be entitled to attend and participate in Site Meetings.

37.5.2 The Contractor shall:

37.5.2.1 maintain a timetable of all Site Meetings;

37.5.2.2 give the Authority reasonable notice of all proposed Site Meetings in order to enable the Authority to attend; and

37.5.2.3 at the Authority's request, provide the Authority with the minutes of and any action plans and other related documents resulting from any Site Meeting.

Other Meetings

37.5.3 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 arise the Parties shall try 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, electronic mail (in the case of Clause 37.7.5 (*Notices*) below only) or other communication ("**Notice**") in connection with this Agreement and the documents referred to in it must be in written form in the English language and must be delivered by hand, by first class prepaid post (or airmail if posted to or from a place outside the United Kingdom) or by facsimile transmission, marked clearly with the words "Site Licence Company Agreement Communication" to the relevant Party's Representative at the address or facsimile number specified in Clause 37.7.2 (*Notices*) below or, for the purposes of Clause 37.7.5 (*Notices*) below only, by electronic mail to an address for the time being notified for that purpose to the Party giving notice.
- 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: Head of Programme, DSRL

Address: Nuclear Decommissioning Authority

Freswick House, Forss Business & Technology Park,

Thurso, Caithness

KW14 7UZ

Telephone:

Facsimile:

Email:

s.40

Contractor's Representative:

Addressee: Managing Director

Address: Dounreay Site Restoration Limited,

Building s.40, Dounreay

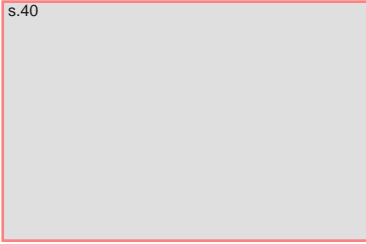
Thurso, Caithness,

KW14 7TZ

Telephone:

Facsimile:

Email:



37.7.4 Any change to the address, telephone number or facsimile number of the Representative must be notified by the relevant Party to the other Party as soon as reasonably practicable by Notice given in accordance with Clause 37.3.4 (*Change in Representative*) above. The Parties' respective Representatives' addresses, telephone numbers and facsimile numbers must be within the United Kingdom.

37.7.5 If an electronic mail address has been provided pursuant to Clause 37.7.1 (*Notices*) above, the following Notices may be sent by electronic mail:

37.7.5.1 electronic transmission of a scanned image of an original executed Notice;

37.7.5.2 day-to-day communication in connection with this Agreement and the documents referred to in it; and

37.7.5.3 any Authority approval/consent, provided that the Authority's Representative has signed the approval/consent and a scanned copy of the signed approval/consent is attached to the electronic mail.

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 37.7.8 (*Notices*), a Notice is deemed to be received:

37.7.7.1 where delivered by hand, upon delivery at the address of the addressee;

37.7.7.2 where delivered by posted letter, on the third Calendar Day after posting or, if posted to or from a place outside the United Kingdom, on the seventh Calendar Day after posting;

37.7.7.3 where sent by facsimile, on production of a transmission report from the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; or

37.7.7.4 where sent by electronic mail (where applicable), on the second 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.

37.8 **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 Records Agreement, the Overarching Cost Management Agreement 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 and without prejudice to the Authority's rights under Clause 37.10.1 (*Variation*) above, 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

Save as expressly provided in this Clause 37.12, no term of this Agreement is enforceable under the Agreements (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.

37.13 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

This Agreement shall be 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.

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 (3) per cent above the base rate of Lloyds TSB Bank plc.

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 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 18.3 (*Liability Cap*);
- 37.20.1.2.7 Clause 18.6 (*Consequential Loss*);
- 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 Clause 34 (*Transition Out*);
- 37.20.1.2.14 Clause 35 (*Transition on Expiry or Termination*);
- 37.20.1.2.15 Clause 36 (*Disputes*) but only insofar as applies to Disputes referred to the Dispute Resolution Procedure prior to termination or the Expiry Date;
- 37.20.1.2.16 Clause 37.3 (*Representation and Delegation of Authority to Act*);
- 37.20.1.2.17 Clause 37.6 (*Severability*);
- 37.20.1.2.18 Clause 37.8 (*Waiver*);
- 37.20.1.2.19 Clause 37.9 (*Entire Agreement*);
- 37.20.1.2.20 Clause 37.12 (*Contract Rights of Third Parties Act 1999*);

- 37.20.1.2.21 Clause 37.13 (*Examination*);
 - 37.20.1.2.22 Clause 37.14 (*Inspections*);
 - 37.20.1.2.23 Clause 37.16 (*Counterparts*);
 - 37.20.1.2.24 Clause 37.17 (*Governing Law*);
 - 37.20.1.2.25 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.

29 March 2012

AGREED by the Parties on the day and year first above written

The **COMMON SEAL** of **THE NUCLEAR**

DECOMMISSIONING AUTHORITY

was affixed in the presence of:

.....

.....

DOUNREAY SITE RESTORATION LIMITED

.....

Authorised Signatory

s.40

For and on behalf of Dounreay Site Restoration Limited

**SCHEDULE 2
CHANGE CONTROL PROCEDURE**

Part 1 : Authority Policies and Procedures

[Not Used]

**SCHEDULE 2
(PART 2)
CHANGE CONTROL PROCEDURE**

1	NOT USED	2
2	SCOPE OF SCHEDULE	2
3	CONDUCT OF THE PARTIES	4
4	NOTIFICATION AND CHARACTERISATION OF CHANGES.....	6
5	CATEGORY I, CATEGORY II AND CATEGORY III CHANGES	8
6	AUTHORITY RIGHT OF VETO.....	10
7	CATEGORY 0 CHANGES.....	13
8	EMERGENCY CHANGES.....	31
9	CHANGE IN LAW	32
10	AUTHORITY RIGHT OF AUDIT	32
11	OBLIGATION TO NOTIFY	32
12	IMPLEMENTATION OF A CHANGE.....	32
13	INTERACTION WITH SAV	33
	Appendix A - Change of Control Form	35
	Appendix B - Consolidation of the Delivery Plan into the LTP Performance Plan	40
	Appendix C - PCPM Contractor Annexe	42

1 DEFINITIONS

[Not Used]

2 BACKGROUND AND SCOPE OF SCHEDULE

2.1 This Schedule 2, Part 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 7.11 (*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.

2.2 This Schedule 2, Part 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, Part 2.

2.3 This Schedule 2, Part 2 is predicated on the following principles in respect of the Contract Baseline and the LTP Performance Plan (provided that, in the event of any conflict or inconsistency between the following principles and any principles set out within the Client Specification, the relevant provisions of the Client Specification shall prevail):

(a) [Not Used];

(b) [Not Used];

(c) the LTP Performance Plan shall be an evolving document over which the Contractor shall (subject to the provisions of this Schedule 2, Part 2 and any other relevant express provision of this Agreement) retain content control, and which shall:

(i) contain a contemporaneous plan which supports and underpins delivery of the Client Specification;

(ii) identify:

(A) the detailed work to be performed (the scope);

(B) when such work is to be performed (the schedule);

(C) how much it is anticipated to cost to achieve the Interim End State (the cost); and

(D) how much it is anticipated to cost to discharge the full lifetime liabilities up to the Final End State,

(provided that all budgeted costs within the LTP Performance Plan for each Contract Year shall be within the Annual Site Funding Limit);

(iii) provide the Authority with the information it reasonably needs to comply with its statutory reporting obligations; and

(iv) contain sufficient detail to enable verification of actual cost and inform funding requirements.

2.4 In processing and implementing (as a Change) any Proposed Change in accordance with this Schedule 2, Part 2, the Parties shall have regard to and shall (subject to Paragraph 2.5 (*Background and Scope of Schedule*) below) comply with the provisions of:

(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*);

(j) PCP-16 (*Opportunity Management*);

(k) PCP-17 (*Sanction and Validation*); and

(l) the PCPM Contractor Annexe;

(m) [Not Used],

in each case to the extent relevant.

- 2.5 In the event of any conflict, inconsistency or incompatibility between:
- (a) the provisions of this Schedule 2, Part 2 or any other provision of this Agreement; and
 - (b) the provisions of any document referred to in Paragraphs 2.4(a) to 2.4(l) (*Background and Scope of Schedule*) (inclusive) above,

the provisions of this Schedule 2, Part 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 2.4(a) to 2.4(l) (*Background and Scope of Schedule*) (inclusive) above.

3 CONDUCT OF THE PARTIES

Reasonableness and Good Faith

- 3.1 In complying with its obligations and exercising its rights under this Schedule 2, Part 2, each Party shall at all times act reasonably and in good faith.

Value for Money Objective

- 3.2 In complying with its obligations under this Schedule 2, Part 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

- 3.3 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, Part 2.

Contractor Conduct and Contractor Change Control Procedure

- 3.4 In complying with its obligations under this Schedule 2, Part 2 the Contractor shall at all times ensure:
- (a) compliance with the Authority's Policies and Procedures (in so far as relevant and consistent with this Agreement); and
 - (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.

- 3.5 The Contractor shall establish and maintain a Contractor's Internal Change Procedure to the reasonable satisfaction of the Authority and in accordance with the provisions of Paragraph 3.4 (*Contractor Conduct and Contractor Change Control Procedure*) above.
- 3.6 The Contractor shall at any time upon the Authority's request promptly provide details of the Contractor's Internal Change Procedure, including evidence of compliance with Paragraph 3.4 (*Contractor Conduct and Contractor Change Control Procedure*) and any other information concerning the Contractor's Internal Change Procedure as reasonably requested by the Authority.

No Misuse of Change Control Procedure

- 3.7 The Contractor shall not use or attempt to use this Schedule 2, Part 2 or any Change or Proposed Change to either:
- (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.
- 3.8 Any Costs incurred by the Contractor due to the Contractor applying or undertaking any processes or activities in breach of:
- (a) Paragraph 3.7 (*No Misuse of Change Control Procedure*) above;
 - (b) [Not Used];
 - (c) [Not Used];
- shall be Disallowable Costs to the extent that:
- (d) such Cost is the cost of operating the procedures set out in this Schedule including costs associated with preparation and proposal of any Proposed Change; or
 - (e) such Cost
 - (i) is the cost of the activities pursuant to a Change as referred to in Paragraph 3.7 (*No Misuse of Change Control Procedure*) above; and

- (ii) exceeds the cost of activities that would otherwise have been carried out pursuant to the LTP Performance Plan but for the Contractor's attempt to distort performance or mask poor performance or non-compliance in contravention of Paragraph 3.7 (*No Misuse of Change Control Procedure*) above,

provided that this shall be without prejudice to those Costs that are identified as Disallowable Costs elsewhere in this Agreement.

4 INITIATION AND CHARACTERISATION OF CHANGES

4.1 Either Party may initiate a Proposed Change in accordance with the provisions set out in this Schedule 2, Part 2.

4.2 If the Contractor wishes to initiate a Proposed Change which, if implemented, would be reasonably likely to:

- (a) increase the likelihood of the Contractor failing to meet the Client Specification;
- (b) [Not Used];
- (c) have a material adverse affect on the Contractor's ability to perform its obligations under this Agreement or the Parent Body Agreement,

it shall provide Notice to the Authority of the same at least fifteen (15) Working Days before Approving such Proposed Change, provided that:

- (i) the provision of such Notice shall not, by itself, render such Proposed Change suitable for Approval; and
- (ii) the Parties acknowledge and agree that any such Proposed Change is only likely to be acceptable to the Authority (having regard to the Authority's role in giving Approval, where relevant, and otherwise having regard to the Authority's right of veto under Paragraph 6 (*Authority Right of Veto*) below) if the relevant detrimental effect of such Proposed Change (as listed in (a) to (c) (*Initiation and Characterisation of Changes*) above and set out in such Notice) is outweighed by some other benefit accruing to the Authority in terms of time, cost, quality or otherwise.

4.3 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 longer or shorter period as the Parties may agree) with such details as the Contractor

may reasonably require in order to comply with its obligations under Paragraph 4.4 (*Proposed Change Specification*) below.

Proposed Change Categorisation

4.4 Without prejudice to its obligations under Paragraph 3.4 (*Contractor Conduct and Contractor Change Control Procedure*) above, 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 Procedure, and shall ensure that such categorisation (together with a supporting rationale for such categorisation) is recorded as appropriate in the Trend Log and the Change Control Log which the Contractor is, pursuant to PCP-05 (Change Control) and Paragraph 12 (*Implementation of a Change*) below, obliged to maintain. Where the Contractor considers that any such Proposed Change:

- (c) is a Category 0 Change; and
- (d) falls within the scope of or is required in consequence of any of the events listed at Paragraph 7.11 (*Authority Acceptance and Implementation of the Proposed Change*);

the Contractor will include reference to the relevant event listed at Paragraph 7.11 (*Authority Acceptance and Implementation of the Proposed Change*), in such record.

4.5 For the avoidance of doubt, a Proposed Change which is necessary to comply with a Change in Law shall also be categorised as a Category 0 Change, a Category I Change, a Category II Change or a Category III Change as appropriate.

Proposed Change Categorisation – Disagreement

4.6 Where the Authority disagrees with the Contractor's categorisation of any Proposed Change, and/or the relevance to an event listed at Paragraph 7.11 (*Authority Acceptance and Implementation of the Proposed Change*) to a Category O Change, it shall give reasons for such disagreement and indicate the categorisation (and/or the relevant event listed at Paragraph 7.11 (*Authority Acceptance and Implementation of the Proposed Change*)) (if any) which it believes should apply. The provisions of this Paragraph 4.6 shall be without prejudice to the Authority's rights under Paragraph 6 (*Authority Right of Veto*) below.

- 4.7 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 event listed at Paragraph 7.11 (*Authority Acceptance and Implementation of the Proposed Change*) pursuant to Paragraph 4.6 (*Proposed Change Categorisation - Disagreement*) above, the provisions of Paragraph 4.8 (*Proposed Change Categorisation - Disagreement*) below shall apply and such disagreement shall be treated as a Dispute under the Dispute Resolution Procedure.
- 4.8 Neither Party shall be entitled to take any steps to implement a specific Proposed Change whilst any disagreement as to its categorisation remains unresolved or pending a resolution of such Dispute in accordance with the Dispute Resolution Procedure.
- 4.9 The provisions of Appendix B set out the principles that shall govern the execution of the Consolidation Plan by the Contractor with regard to the changes that the Contractor makes to the LTP Performance Plan (which is in existence immediately prior to the Commencement Date) to incorporate the activities that are set out in its Delivery Plan during the Consolidation Phase.

5 CATEGORY I, CATEGORY II AND CATEGORY III CHANGES

Contractor Change Control Procedure

- 5.1 Subject to:
- (a) an appropriate Contractor's Internal Change Procedure being established and followed by the Contractor to the reasonable satisfaction of the Authority in accordance with Paragraphs 3.5 (*Contractor Conduct and Contractor Change Control Procedure*) and 3.6 (*Contractor Conduct and Contractor Change Control Procedure*); and
 - (b) any suspension of the Contractor's rights under this Paragraph 5.1 pursuant to Paragraph 5.4 (*Suspension of the Contractor's Right to Approve*) below,
- the Contractor is not required to seek the Approval of the Authority in respect of any Proposed Change that is correctly categorised as a Category I Change, Category II Change or Category III Change but shall be subject to the process set out for the Approval of such Proposed Changes in the Contractor's Internal Change Procedure.
- 5.2 For the avoidance of doubt, Paragraph 5.1 (*Contractor Change Control Procedure*) above shall not apply to any Category 0 Changes.
- 5.3 Notwithstanding Paragraph 5.1 (*Contractor Change Control Procedure*) above, the provisions of Paragraph 12 (*Implementation of a Change*) below shall continue to

apply to any Change implemented in accordance with the Contractor's Internal Change Procedure.

Suspension of the Contractor's Right to Approve

5.4 Approval by the Contractor of Category I Changes, Category II Changes and / or Category III Changes in accordance with the Contractor's Internal Change Procedure shall (at the Authority's sole discretion) be suspended (with the effect that Paragraph 5.1 (*Contractor Change Control Procedure*) above is disapplied in respect of Category I Changes, Category II Changes and / or Category III Changes (as the case may be) and the Authority's Approval of such Proposed Changes will be required as relevant) where the Authority, acting reasonably, determines that:

- (a) the Contractor has failed to adhere to the policies and procedures set out in the relevant Authority's Policies and Procedures;
- (b) the Contractor's Internal Change Procedure does not or has ceased to comply with the relevant Authority's Policies and Procedures;
- (c) the Contractor has failed to comply either in whole or in part with the Contractor's Internal Change Procedure;
- (d) the Contractor has failed to adhere to Good Industry Practice; and/or
- (e) the Contractor has breached its obligations under Paragraph 3.7 (*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.

5.5 Where the Authority, acting reasonably, determines that any of the failures as set out in Paragraph 5.4 (*Suspension of the Contractor's Right to Approve*) above have occurred, it shall inform the Contractor of the same in writing, setting out details of the alleged failure and stating that the Contractor's right to Approve Category I Changes, Category II Changes and / or Category III Changes in accordance with the Contractor's Internal Change Procedure is suspended until further written notice removing the suspension is received from the Authority.

5.6 Where such suspension of the Contractor's right to Approve has occurred pursuant to Paragraph 5.5 (*Suspension of the Contractor's Right to Approve*) above, all Proposed Changes falling within any category that is the subject of such 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.

- 5.7 If the Authority Approves any Proposed Change pursuant to Paragraph 5.6 (*Suspension of the Contractor's Right to Approve*) above, the steps required to implement the relevant Change shall be completed by the Contractor within thirty (30) Working Days (or such other longer or shorter period as the Parties may agree) of the Authority's Approval. The provisions of Paragraph 12 (*Implementation of a Change*) shall also apply in respect of such Change.

6 AUTHORITY RIGHT OF VETO

Authority Right to Veto Proposed Changes

- 6.1 Subject to the provisions of Clause 13.7 (*Instigation of a Proposed Change*) of this Agreement and Paragraph 7.11 (*Authority Acceptance and Implementation of the Proposed Change*) and any express provision of this Agreement requiring the Authority to act reasonably when contemplating Approval of any Proposed Change, and without prejudice to the Authority's exercise of its discretion when deciding whether or not to Approve Proposed Changes for which the Authority is from time to time the Party from whom such Approval is required (in accordance with this Schedule 2, Part 2) in order for a Change to be implemented, the Authority shall, subject to the provisions of Paragraph 6.3 (*Authority Right to Veto Proposed Changes*) below, have the right to veto any Proposed Change on any one or more of the grounds set out in Paragraph 6.3 sub-paragraphs (a) to (g) inclusive in respect of which the Contractor is the Party from whom Approval is required (in accordance with this Schedule 2, Part 2) in order for a Change to be implemented, and 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).
- 6.2 Any exercise of the Authority's veto under Paragraph 6.1 (*Authority Right to Veto Proposed Changes*) above shall be by Notice served on the Contractor, and shall specify the grounds (as listed in Paragraph 6.3 (*Authority Right to Veto Proposed Changes*) below) on which such exercise is based.
- 6.3 Subject to the provisions of Clause 13.7 (*Instigation of a Proposed Change*) of this Agreement and Paragraph 7.11 (*Authority Acceptance and Implementation of the Proposed Change*), the Authority may veto a Proposed Change or a Change pursuant to Paragraph 6.1 (*Authority Right to Veto Proposed Changes*) above if it considers, acting reasonably, that:
- (a) the Contractor has breached Paragraph 3.4 (*Contractor Conduct and Contractor Change Control Procedure*) above in relation to the Proposed Change or Change in question;

- (b) the Contractor has breached Paragraph 3.7 (*No Misuse of Change Control Procedure*) above in relation to the Proposed Change or Change in question;
 - (c) the Contractor has breached the Contractor's Internal Change Procedure in relation to the Proposed Change or Change in question;
 - (d) the Proposed Change or Change will have or has had a detrimental effect on the delivery of the Client Specification and/or the Interim End State;
 - (e) [Not Used]
 - (f) the Proposed Change or Change will not or does not provide Value For Money; and / or
 - (g) where a Notice has been (or should have been) served by the Contractor pursuant to Paragraph 4.2 (*Initiation and Characterisation of Changes*) above in respect of the Proposed Change or Change, the relevant detrimental effect of such Proposed Change (as listed in that Paragraph set out in such Notice) is not outweighed by some other benefit accruing to the Authority in terms of time, cost, quality or otherwise.
- 6.4 Where the Authority exercises its right to veto a Proposed Change or Change in accordance with Paragraphs 6.1 (*Authority Right to Veto Proposed Changes*) to 6.3 (*Authority Right to Veto Proposed Changes*) above, the Contractor shall (subject to Paragraph 6.9 (*Authority Right to Veto Proposed Changes*) below):
- (a) take no further action in respect of such Proposed Change or Change (except to the extent required to comply with Paragraph 6.9 (*Authority Right to Veto Proposed Changes*) below); and
 - (b) (unless otherwise directed by the Authority in its sole discretion) 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.
- 6.5 Subject to Paragraph 7.6A (*Evaluation of the Category 0 Change Control Form*) below, where the Authority exercises its right to veto a Proposed Change or Change in accordance with Paragraphs 6.1 (*Authority Right to Veto Proposed Changes*) to 6.3 (*Authority Right to Veto Proposed Changes*) above and the grounds for such exercise are any of the grounds listed at Paragraphs 6.3(d) to 6.3(g) (*Authority Right to Veto Proposed Changes*) (inclusive) above (and do not include any of the grounds listed at Paragraphs 6.3(a) to 6.3(c) (*Authority Right to Veto Proposed Changes*))

(inclusive) above), the Contractor shall (together with and subject to the Contractor's compliance with Paragraph 6.4 (*Authority Right to Veto Proposed Changes*) above) be entitled to such relief from its obligations (including, where relevant, to an extension of time or a rescheduling of activities), as it can demonstrate to the Authority's reasonable satisfaction is required to place the Contractor in no better and no worse a position than would have been the case had the Authority not so exercised its right to veto such Proposed Change or Change, provided that:

- (a) this shall not in any event relieve the Contractor from its obligation to comply with Paragraph 6.4 (*Authority Right to Veto Proposed Changes*) above;
- (b) the Contractor's right to such relief shall be subject to the Contractor having at all times used (and at all times continuing to use) reasonable endeavours to mitigate the need for such relief; and
- (c) the Contractor shall have no right to such relief to the extent that the need for such relief (or for the Proposed Change or Change in respect of which the Authority has exercised its right of veto) arises as a result of Defective Performance.

6.6 If, despite the provisions of Paragraph 6.5 (*Authority Right to Veto Proposed Changes*) above and Paragraph 7.6A (*Evaluation of the Category 0 Change Control Form*) below, the Contractor will suffer financial loss as a result of any exercise by the Authority of its veto pursuant to Paragraphs 6.1 (*Authority Right to Veto Proposed Changes*) to 6.3 (*Authority Right to Veto Proposed Changes*) above, it shall promptly (and in any event within five (5) Working Days, unless the Parties otherwise agree) respond to the Authority's Notice issued pursuant to Paragraph 6.2 (*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 6.9 (*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.

6.7 The Authority shall, as soon as reasonably practicable (and in any case (unless the Parties otherwise agree) within five (5) Working Days of receipt of any counter-Notice served under Paragraph 6.6 (*Authority Right to Veto Proposed Changes*) above) either:

- (a) withdraw the exercise of its veto, in which case the provisions of Paragraph 6.4 (*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 6.4 (*Authority Right to Veto Proposed Changes*), 6.5 (*Authority Right to Veto Proposed Changes*), 6.8, (*Authority Right to Veto Proposed Changes*), 6.9 (*Authority Right to Veto Proposed Changes*) and 7.6A (*Evaluation of the Category 0 Change Control Form*) shall continue to apply in respect of the Proposed Change or Change in question.
- 6.8 The Authority shall, subject to the Contractor's compliance with Paragraphs 6.6 (*Authority Right to Veto Proposed Changes*) above and 6.9 (*Authority Right to Veto Proposed Changes*) below, reimburse the Contractor's reasonable financial losses (including those arising directly from compliance with Paragraph 6.9 (*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 6.1 (*Authority Right to Veto Proposed Changes*) to 6.3 (*Authority Right to Veto Proposed Changes*) above (whether or not such veto is subsequently withdrawn pursuant to Paragraph 6.7 (*Authority Right to Veto Proposed Changes*) above).
- 6.9 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 6.1 (*Authority Right to Veto Proposed Changes*) to 6.3 (*Authority Right to Veto Proposed Changes*) above, and, where the Contractor has served a counter-Notice under Paragraph 6.6 (*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 6.9 (*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 6.7 (*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.

7 CATEGORY 0 CHANGES

Contractor Proposed Changes

7.1 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 4.3 (*Initiation and Characterisation of Changes*) 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 pertaining to the Site and Paragraph 7.3 (*Category 0 Change Control Form*) below.

"No Better and No Worse" Requirement

7.2 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 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; and
- (b) subject to (i), (ii), (iii), (iv), (c) and (d) (*"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 other Changes to which this sub-paragraph (i) applies, would result in an aggregate increase or decrease of the Target Cost of more than ten per cent (10%) of the Target Cost as at the Commencement Date (escalated in accordance with Paragraph 5 (*Special Indexation – Application*) of Part 8 (*Indexation*) of Schedule 6 (*Finance*)), 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 Target Fee and any relevant amounts of Allocated Target Fee, together with appropriate changes to any agreed date for achievement of a Cardinal Milestone (including the re-apportionment of Fee and/or the creation of additional Sub-Milestones and / or Major Work Packages 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 Target Cost;

- (ii) to the extent that the Proposed Change together with other Changes to which this sub-paragraph (ii) applies, would result in an aggregate increase or decrease of the Target Cost as at the Commencement Date (escalated in accordance with Paragraph 5 (*Special Indexation – Application*) of Part 8 (*Indexation*) of Schedule 6 (*Finance*)), by ten per cent (10%) or less, no adjustment shall be made to any amounts of Allocated Target Fee or the Target Fee (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 Sub-Milestone or Major Work Package, or to the Interim End State (and the Authority shall act reasonably when considering such proposal);
 - (iii) regardless of there being any increase or decrease to the Target Cost as a result of a Proposed Change, there shall be no adjustment made under either Paragraph 7.2(b)(i) (*"No Better and No Worse" Requirement*) or Paragraph 7.2(b)(ii) (*"No Better and No Worse" Requirement*) above to the Shareline Bands or Shareline Formulae as used in the table at Paragraph 1.4 (*Calculation of Shareline*) Part 4b (*Target Fee*), of Schedule 6 (*Finance*); and
 - (iv) in determining the aggregate increase or decrease of the Target Cost for the purposes of Paragraph 7.2(b)(i) and (ii) (*"No Better and No Worse" Requirement*) above the provision of Paragraph 7.6B (*Evaluation of the Category 0 Change Control Form*) below shall apply in relation to any innovative Proposed Change as defined in Paragraph 7.6B below;
- (c) subject to Paragraph 7.6B (*Evaluation of the Category 0 Change Control Form*) (where applicable) where the Proposed Change has been initiated in

order to address the consequences of the occurrence of an event listed at Paragraph 7.11 (*Authority Acceptance and Implementation of the Proposed Change*), the Contractor will demonstrate fulfilment of the objective that the consequence of such event listed at Paragraph 7.11 (*Authority Acceptance and Implementation of the Proposed Change*), are neutralised in accordance with the principles set out in Paragraph 7.6A (*Evaluation of the Category 0 Change Control Form*) below such that the Contractor is in no better and no worse position than that in which it would have been if such event listed at Paragraph 7.11 (*Authority Acceptance and Implementation of the Proposed Change*) had not occurred

- (d) for the purposes of Paragraph 7.2(b) above:
 - (i) in assessing the aggregate increase or decrease of the Target Cost, the amount of the increase or decrease resulting from each of the Changes referred to in Paragraphs 7.2(b) (i) and (ii) shall be adjusted by an amount equivalent to the factor resulting from application of Special Indexation on each Indexation Adjustment Date since that amount of that increase or decrease was agreed or determined; and
 - (ii) reference to escalation of the Target Cost as at the Commencement Date in accordance with Paragraph 5 (Special Indexation – Application) of Part 8 (Indexation) of Schedule 6 (Finance) is to escalation of the entirety of the Target Cost as at the Commencement Date without deduction of the Contract Baseline BCWS for the period up to each relevant Indexation Adjustment Date.

Category 0 Change Control Form

7.3 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, together with such information as is required to be included pursuant to the PCP-M Contractor Annexe pertaining to the Site.

Evaluation of the Category 0 Change Control Form

7.4 Within twenty (20) 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.

- 7.5 The Contractor shall provide the information requested by the Authority pursuant to Paragraph 7.4 (*Evaluation of Category 0 Change*) or provide reasons as to why such information is not available either in whole or in part within twenty (20) Working Days of receipt of such request for information.
- 7.6 Subject to Paragraphs 7.6A (*Evaluation of the Category 0 Change Control Form*) and 7.6B (*Evaluation of the Category 0 Change Control Form*) below, the Authority shall evaluate the Category 0 Change Control Form, taking into account all relevant issues, including 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 achievement of the Client Specification or the likelihood of successful delivery of the services to be provided pursuant to this Agreement and in support of achievement of 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 achievement of the Client Specification (including the timely achievement of any PBI Payment Milestone, Sub-Milestone or Major Work Package, or the Interim End State);
 - (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;
 - (h) Not Used; and/or
 - (i) the Proposed Change is reasonably justifiable, by reference to the information to be provided pursuant to Paragraph 7.3 (*Category 0 Change Control Form*) above.
- 7.6A Subject to Paragraph 7.6B (*Evaluation of the Category 0 Change Control Form*) below, where a Proposed Change is initiated in order to address the consequence of an event listed at Paragraph 7.11 (*Authority Acceptance and Implementation of the Proposed Change*), the Authority will (acting reasonably) evaluate the Category 0

Change Control Form and Approve the Proposed Change in accordance with the following so as to meet the objective set out in Paragraph 7.2(c) (*"No Better and No Worse" Requirement*) above.

- (a) The impact of an event listed at Paragraph 7.11 (*Authority Acceptance and Implementation of the Proposed Change*), on the Contractor's entitlement to Target Fee (as adjusted by Shareline) and PBI Fee will be neutralised by:
- (i) addition to or deduction from the Target Cost of an amount equal to 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 7.11 (*Authority Acceptance and Implementation of the Proposed Change*), or, in the case of the matters referred to in Paragraphs 7.11(j) and (cc) (*Authority Acceptance and Implementation of the Proposed Change*), would not have been so incurred or saved if:
 - (A) the position identified in the list of Authority Assumptions or Contractor Exclusions (as the case may be) referred to in that Paragraph 7.11(j) had been unchanged and accurate,
 - (B) [Not Used]; and
 - (C) the amount of Allowable Cost saved or incurred or the length of any delay had not been materially inconsistent with any assumption agreed between the Parties pursuant to Paragraph 7.6A (d) (*Evaluation of the Category 0 Change Control Form*);
 - (ii) an adjustment of the Target Fee pro rata to the addition to or deduction from the Target Cost and a pro rata adjustment of any relevant amounts of Allocated Target Fee subject to and in accordance with Paragraph 7.2(b) (*"No Better and No Worse" Requirement*) above; and
 - (iii) an adjustment to PBI Fee pro rata to any adjustment to the agreed date for achievement of the Interim End State, consistent with the level of PBI Fee applicable to each Contract Year from the fourth (4) Contract Year following the Commencement Date,

provided that there shall be no adjustment to either Target Fee or PBI Fee (or, for the avoidance of doubt, compensation in relation to any lost opportunity to earn Shareline) where the relevant event is a Regulatory Delay (as set out in Paragraph 7.11(dd) (*Authority Acceptance and*

Implementation of the Proposed Change), or a Force Majeure Event (as set out in Paragraph 7.11(ff) (*Authority Acceptance and Implementation of the Proposed Change*)). For the avoidance of doubt and to the extent applicable, the provisions set out in the text preceding the table contained in Section 6 (*Contractor Exclusions*) of the Client Specification shall apply in relation to Contractor Exclusions referred to in Paragraph 7.11(j) (*Authority Acceptance and Implementation of the Proposed Change*).

- (j) The impact of the event listed at Paragraph 7.11 (*Authority Acceptance and Implementation of the Proposed Change*), on the agreed dates contained in the Contract Baseline for achievement of the Interim End State, any agreed date for achievement of a Cardinal Milestone, any other time related obligation placed on the Contractor and any date on which any Target Fee Payment Milestone or PBI Payment Milestone will cease to operate will be neutralised by addition of the length of time that, due to occurrence of the relevant event listed at Paragraph 7.11 (*Authority Acceptance and Implementation of the Proposed Change*), Achievement of the Interim End State, Major Work Package, Sub-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 Payment Milestone Achievement of which has been so delayed or prevented shall be reallocated to existing or new PBI Payment Milestones. 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.
- (k) The amount of Allowable Cost saved or incurred as referred to in subparagraph (a) above and the extent of any delay as referred to in subparagraph (j) above will be assessed on the assumption that the Contractor responds to the event listed at Paragraph 7.11 (*Authority Acceptance and Implementation of the Proposed Change*), in accordance with Good Industry Practice and such that Value For Money is achieved and maintained for the Authority.
- (l) Where:
 - a. any amount of Allowable Cost that will be saved or incurred as referred to in Paragraph 7.6A(a)(i) (*Evaluation of the Category 0 Change Control Form*) above; or
 - b. any length of time by which Achievement of the Interim End State or any Major Work Package, Sub-Milestone or other relevant obligation

will be delayed as referred to in Paragraph 7.6A(b) (*Evaluation of the Category 0 Change Control Form*) above;

cannot reasonably be determined at the time of evaluation of the Category 0 Change Control Form, the Parties will (each acting reasonably) agree assumptions on which such determination is to be based.

7.6B 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 Target Cost or otherwise reducing hazards or Authority liabilities in connection with the Site.

(a) For the purposes of this Schedule 2 Part 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 Target Cost or otherwise reduce hazards and/or potential liabilities in connection with the 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 7.6B(c) (*Evaluation of the Category 0 Change Control Form*), where either 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:

A. the amount of any deduction from the Target Cost that would, but for this provision, be made pursuant to Paragraph 7.6A(a)(i) (*Evaluation of the Category 0 Change Control Form*) 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;

B. the amount of any deduction from the Target Cost pursuant to Paragraph 7.6A(a)(i) (*Evaluation of the Category 0 Change Control Form*) in connection with Approval of such Proposed Change shall be disregarded for the purposes of Paragraphs 7.2(b)(i) (*Evaluation of the Category 0 Change Control Form*) and 7.2(b)(ii) (*Evaluation of the Category 0 Change Control Form*) above; and

- C. 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 Sub-Milestone or Major Work Package, or to the Interim End State. 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.
 - (m) The provisions set out at Paragraph 7.6B(b) (*Evaluation of the Category 0 Change Control Form*) shall not apply to any Change resulting from the implementation of any of the Alternative Strategies identified as items A to E (inclusive) in the table appearing in Paragraph 2.1 (*Alternative Strategies*) 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 2.1 (*Alternative Strategies*) of Part 3 (*Target Cost*) of Schedule 6 (*Finance*) must be exercised, the provisions set out at Paragraph 7.6B(b) shall continue not to apply to any Change resulting from the implementation of any of those Alternative Strategies referred to at Section 4 of Schedule 1 (*Client Specification*).
 - (n) For the avoidance of doubt, the provisions set out at Paragraph 7.6B(b) (*Evaluation of the Category 0 Change Control Form*) do apply to any other Alternative Strategies.
- 7.7 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.
- 7.8 As soon as practicable after receiving the Category 0 Change Control Form, the Parties shall meet and discuss the matters referred to in it. During their discussions the Authority may propose modifications to the Proposed Change, and, where it does so, the Contractor shall, as soon as practicable, and in any event not more than twenty (20) Working Days (or such other period as the Parties may agree) after receipt of such modification, notify the Authority of any consequential changes to the Category 0 Change Control Form.
- 7.9 Where Approval or Authority rejection is not provided within the time period set out in Paragraph 7.10 (*Authority Acceptance and Implementation of the Proposed Change*) below (as the same may be varied by agreement), the Proposed Change that is the subject of the relevant Category 0 Change Control Form shall (without prejudice to the provisions of Paragraph 7.11 (*Authority Acceptance and Implementation of the*

Proposed Change) below) not be implemented by either Party unless and until such Approval is ultimately provided.

Authority Acceptance and Implementation of the Proposed Change

7.10 Subject to Paragraph 7.11 (*Authority Acceptance and Implementation of the Proposed Change*) below, the Authority shall in its sole discretion (subject to any express provision elsewhere in this Agreement which has the effect of modifying such discretion) Approve or reject the Proposed Change as detailed in the Category 0 Change Control Form within thirty (30) Working Days (or such other longer or shorter period as the Parties may agree, 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;
- (b) receipt by the Authority of the additional information or clarification requested by the Authority in accordance with Paragraph 7.4 (*Evaluation of the Category 0 Change Control Form*) above; or
- (c) receipt by the Authority of details of any changes to the Category 0 Change Control Form notified by the Contractor pursuant to Paragraph 7.8 (*Evaluation of the Category 0 Change Control Form*) above,

as the case may be, in accordance with Paragraph 7.6 (*Evaluation of the Category 0 Change Control Form*) above.

7.11 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 Target Cost, Target Fee, PBI Fee or any time related obligation placed on the Contractor shall be subject to the provisions of Paragraph 7.6A (*Evaluation of the Category 0 Change Control Form*) and Paragraph 7.6B (*Evaluation of the Category 0 Change Control Form*):

- (a) Emergency Action (save that there shall be no adjustment to the 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 the Site or delivery of the Interim End State);
- (b) a Change necessary due to the adoption, promulgation, modification or revocation of any Legislation, or the coming into effect of any applicable judgement of a relevant court of law which changes a binding precedent

(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 Legislation or the coming into effect of any applicable judgement of a relevant court of law which changes a binding precedent, entitlement to adjustment to Target Fee, PBI Fee, the Target Cost and/or any time related obligations in accordance with Paragraph 7.6A (*Evaluation of the Category 0 Change Control Form*) is subject to Clause 37.1 (*Change in Law*) of this Agreement and arises only where such change in Legislation or the coming into effect of any applicable judgement of a relevant court of law which changes a binding precedent 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 Target Cost or any time-related obligations in accordance with Paragraph 7.6A unless such Regulatory Requirement falls within one of the other events listed in this Paragraph 7.11 ;
- (d) a Customer changing its requirements inside the scope of its rights under any Customer Contract ;
- (e) the Authority issuing an instruction under:
 - (i) 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;
 - (ii) 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*);
 - (iii) 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;
- (f) the Contractor having followed an Authority instruction in respect of the exercise of a discretion pursuant to Part 1 (*Permitted Activities*) of Schedule 3 (*Commercial*);
- (g) the Authority having issued an Authority Direction;

- (h) a Change arising as a result of a change made by the Authority as referred to in Clause 37.10.3 (*Variation*) to Authority Policies and Procedures;
- (i) any reduction to the Annual Site Funding Limit referred to at Paragraph 1.2 (*Dounreay Site Restoration*) of Part 7 (*Financial Limits*) of Schedule 6 (*Finance*) for any Contract Year;
- (j) a material adverse effect resulting directly from any change to or inaccuracy in the position identified in the list of Authority Assumptions set out at Section 5 of Schedule 1 (*Client Specification*) or Contractor Exclusions as set out in Section 6 of Schedule 1 (*Client Specification*);
- (k) any difference between the Cost incurred, or in the case of Customer Contracts, actual revenue (sales) generated, and the amount the Authority has directed should be included in the Target Cost in respect of any of the matters set out at Appendix A (*Special Items List*) of Schedule 6 (*Finance*);
- (l) [Not Used];
- (m) a material adverse effect on the Contractor's ability to deliver the Client Specification or perform any of its other obligations under this Agreement resulting directly from a failure by the Authority to comply with its obligations under Clause 5.3.2 (*Authority Responses*) of this Agreement;
- (n) the Contractor is materially prevented from performing its obligations under this Agreement as a result of an Authority or National Audit Office inspection or audit pursuant to Clause 15.22 (*Contractor's Obligations Persist*) of this Agreement;
- (o) any Change to the Contract Baseline or Client Specification;
- (p) any material adverse consequences to the Contractor resulting directly from the exercise of the Authority's rights under Clause 6.4.2.1 (*Use of Authority Assets*) of this Agreement;
- (q) the exercise by the Authority of its rights under Clause 6.4.2.2 (*Use of Authority Assets*) of this Agreement, where the exercise of such rights has a direct material adverse consequence for the Contractor or would otherwise result in a Category 0 Change;
- (r) the Contractor is required by the Authority to implement any Collaborative Procurement which increases the Cost of delivering or delays delivery of all or any part of the Client Specification;

- (s) any Costs incurred by the Contractor in relation to the shipment or otherwise in connection with the transfer of any Authority Asset pursuant to Clause 6.5B.5 (*Disposal of Authority Assets*);
- (t) any Change resulting from a Proposed Change by the Authority to the LTP Performance Plan;
- (u) the improper exercise by the Authority of its right of veto of a Proposed Change or Change in accordance with Paragraphs 6.1 to 6.3 (*Authority Right to Veto a Proposed Change*) (inclusive). Any such exercise by the Authority of its right of veto of a Proposed Change or Change is improper unless in accordance with Paragraph 6.3 and on any one or more of the grounds set out in sub-paragraphs (a) to (g) inclusive of that Paragraph;
- (v) the Authority directs the Contractor to seek and/or procure that any relevant Subcontractor seek, reasonable and necessary protection in respect of Developed IP vesting in the Authority in accordance with Clause 29.4.15 (*Protection of Developed IP*) of this Agreement;
- (w) the Contractor takes action in response to any actual or threatened infringement or suspected infringement by any Third Party of Authority Owned IP or any Developed IP licensed to the Authority in accordance with Clause 29.7 (*Contractor's obligation to protect IP*) of this Agreement;
- (x) the Contractor takes steps to protect Authority Owned IP or any Developed IP licensed to the Authority in accordance with Clause 29.7 (*Contractor's obligation to protect IP*) of this Agreement;
- (y) any failure by the Authority to provide any Authority Deliverables;
- (z) any other Dependency Event to the extent that it is not referred to in this Paragraph 7.11 (*Authority Acceptance and Implementation of Proposed Change*);.
- (aa) any material adverse consequences to the Contractor (including the Cost impact of programmatic consequences and reduction in funding available for other Costs within applicable Funding Limits) arising from the impact of any Contractor Historical Cost or Non Contractor Historical Cost;
- (bb) the Contractor takes action in response to any actual or threatened infringement or suspected infringement by any Third Party of Authority Owned IP or any Developed IP licensed to the Authority pursuant to Clause 29.5.2 (*Infringement of IP owned by the Authority*);

- (cc) any assumption agreed between the Parties pursuant to Paragraph 7.6A (d) (*Evaluation of the Category 0 Change Control Form*) proves to be materially inconsistent with the amount of Allowable Cost saved or incurred or the length of any delay as referred to in such Paragraph;
- (dd) Regulatory Delay (save that there shall be no adjustment to the Target Fee or PBI Fee or compensation in relation to opportunity to earn Shareline);
- (ee) an Enforcement Notice issued in connection with any other matter listed in this Paragraph 7.11 (*Authority Acceptance and Implementation of the Proposed Change*) save to the extent that such Enforcement Notice was issued due to a failure of the Contractor to respond to such matter in accordance with Good Industry Practice after the Commencement Date and provided that this shall be without prejudice to Paragraph 4.2 (t) (*Disallowable Costs*) of Schedule 6 (*Finance*);
- (ff) occurrence of a Force Majeure Event, including (without limitation) any alternative arrangements for resuming performance as referred to in Clause 13.3.6 (*Notification and Mitigation*) of this Agreement (save that there shall be no adjustment to the Target Fee or PBI Fee or compensation in relation to opportunity to earn Shareline);
- (gg) 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 3 (*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;
- (hh) 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*);
- (ii) 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 31.9.4 (*Terms and Conditions of Employment*) of this Agreement;
- (jj) any instruction of the Authority pursuant to Clause 34.10 (*Establishment of New SLC*) or requirement pursuant to Clause 34.11 (*Establishment of New SLC*);
- (kk) the Authority does not provide an AiP or Sanction (whether for programme or project) required in order for the Contractor to perform the activities set out in

the LTP Performance Plan in circumstances where the Contractor has complied with:

- (i) the Authority Policies and Procedures in seeking such AiP or Sanction;
 - (ii) relevant Internal Procedures; and
 - (iii) (to the extent relevant) the principles set out at Appendix B (*Consolidation of the Delivery Plan into the LTP Performance Plan*);
- (ll) the Contractor's legal costs of defending a claim or any allegation thereof brought by a Third Party or the Authority in respect of any Nuclear Liabilities (as defined in the Nuclear Indemnity) under the Nuclear Indemnity;
- (mm) a change to the sanction spending and commitment of resources levels set out at Paragraph 13.2 (*Interaction with PCP-17*);
- (nn) the Authority changes the division of funding between Capital Budget and Current Budget, such division being initially one hundred per cent (100%) Capital Budget and zero per cent (0%) Current Budget;
- (oo) non Approval (whether by exercise of the Authority's Veto under Paragraph 6 (*Authority Right of Veto*) of this Schedule 2 (Part 2) or otherwise) of any Proposed Change to the LTP Performance Plan proposed by the Contractor in accordance with this Agreement during the Consolidation Phase to align the LTP Performance Plan with any part of the Delivery Plan;
- (pp) liability to any third party which is an Allowable Cost, to the extent that the Contractor could not have avoided or mitigated such liability by exercising Good Industry Practice in compliance with its obligations under this Agreement following the Commencement Date, excluding:
- (i) any liability to HMRC or any other statutory body being a liability imposed on the Contractor pursuant to such body's statutory function;
 - (ii) any liability to the Parent Body Organisation, Affiliates or Ultimate Parents;
 - (iii) any liability that the Contractor should have reasonably anticipated would have been incurred in conducting its ordinary course of business and in delivering the Client Specification including liability under any contract of employment or secondment agreement

Subcontract, Sub-Subcontract or Customer Contract, entered into by the Contractor;

- (iv) levies or subscriptions;
- (v) payments made in accordance with the Socio-Economic Development Plan;
- (vi) any fine or penalty imposed by any tribunal of competent jurisdiction or Regulator;
- (vii) any liability resulting from a successful challenge under the EU Procurement Rules unless solely arising due to compliance by the Contractor with any instruction or direction of the Authority; and
- (viii) any liability of the Contractor to make payment under a contract for supply of utilities;
- (qq) any defect in the Authority's title to the Site or the existence of any third party interests in the Site, in each case unless specified in the Client Specification;
- (rr) the Contractor incurs Costs associated with compliance with Clause 35 (*Transition on Expiry or Termination*);
- (ss) any withdrawal suspension or Change to the Contractor's right to Approve Category I Changes and/or Category II Changes and/or Category III Changes (as the case may be) other than due to a failure of the Contractor to comply with its obligations under this Agreement;
- (tt) the Cost of achieving the Interim End State is increased by reason of the Contractor being required to secure rights and licenses for the Authority relating to ownership and/or use of any IP rights beyond those rights and licenses required for delivery of the Interim End State or otherwise complying with the Contractor's obligations under this Agreement (such increased Costs being established by comparison with the Costs that would have been incurred in securing relevant rights and licenses to the extent required for delivery of the Interim End State and compliance with such obligations only), including increased Costs associated with:
 - (i) procurement of licenses for the Authority in relation to Subcontractor licensed Background IP and/or Background IP owned by a Subcontractor for use other than in relation to delivery of the Client Specification;

- (ii) securing an alternative Subcontractor following any determination by the Authority under Clause 29.4.8 that a Subcontract should not be entered into;
- (iii) taking ownership of Developed IP and/or licensing of Subcontractor owned Developed IP under Clause 29.4.9; and
- (iv) procuring a licence for the Authority to use and sub-license any Third Party IP;
- (uu) any of the Authority Insurances are rendered void, voidable, unenforceable, suspended or impaired in whole or in part or any sum paid out under any of the Authority Insurances is repayable in whole or in part;
- (vv) any 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 Site where such revocation is due to any act, omission or failure by the Authority;
- (ww) the Authority does not have sufficient rights or title to grant licences of Authority IP to the Contractor as identified in the Client Specification;
- (xx) any material adverse consequences to the Contractor (including the Cost of programmatic consequences) due to a reduction in funding available for other Costs within applicable Funding Limits due to an increase in Cost of any Special Item;
- (yy) a material increase in the magnitude of, or material change in the nature of asbestos across the Site, in the circumstances described at Appendix A (*Special Items*) of Schedule 6 (*Finance*) relating to asbestos removal;
- (zz) the Contractor is able to demonstrate to the reasonable satisfaction of the Authority that any waste volume or mass shown in the table referred to in paragraph 3.1F (*Target Cost Adjustment*) of Part 3 (*Target Cost*) of Schedule 6 (*Finance*) either has varied or will vary in delivery of the IES, and that such variation is by more than plus five per cent (5%) or minus ten (10%);

provided that (save in relation to Paragraph 7.11(II)) no adjustment to the 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 twelve (12) months has passed since the Commencement Date or within such twelve (12) month period, the Nominated Staff have had a reasonable opportunity to identify,

address and avoid the failure to act in accordance with Good Industry Practice giving rise to such Defective Performance.

Restrictions on Authority Proposed Change

7.12 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 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 achievement of the Client Specification, in a way that is not addressed by the application of the provisions of this Schedule 2, Part 2;
- (f) would adversely affect the health and safety of any person;
- (g) would be unlawful or *ultra vires* for the Authority to implement (or require to be implemented); and/or
- (h) would result, either by itself, or when taken together with any other Proposed Change, in an extension to the Contract Term Long Stop Date,

and any Proposed Change that contravenes this Paragraph 7.12 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

7.13 Where the Authority initiates a Proposed Change pursuant to Paragraph 4.1 (*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.

7.14 Subject to Paragraph 7.13 (*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.

7.15 [Not Used]

8 EMERGENCY CHANGES

8.1 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, Part 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 to Paragraph 8.2 (*Emergency Changes*); and
- (ii) as soon as is practicable (and in any event within three (3) 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.

8.2 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.

9 CHANGE IN LAW

9.1 The procedure and cost of introducing a Change resulting from a Change in Law shall be dealt with in accordance with Paragraph 7.6A (*Evaluation of the Category 0 Change Control Form*) above and other relevant provisions of this Schedule 2, Part 2, and Clause 37.1 (*Change in Law*) of this Agreement.

10 AUTHORITY RIGHT OF AUDIT

10.1 The Contractor acknowledges the Authority's right to audit the Contractor's Internal Change Procedure and the implementation of any Change which has been undertaken by the Contractor at any time and to the extent deemed necessary to the Authority.

10.2 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*)).

11 OBLIGATION TO NOTIFY

11.1 Without prejudice to the provision of Clause 4 (*Contractor's Obligations*), which shall continue to apply following any notification under this Paragraph 11 (*Obligation to Notify*), if at any time the Contractor becomes aware of any contravention of this Schedule 2, Part 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.

12 IMPLEMENTATION OF A CHANGE

12.1 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).

Change Control Log

12.2 Within five (5) Working Days of a Change arising in accordance with this Schedule 2, Part 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*).

12.3 The Contractor shall otherwise maintain and update the "Change Control Log" in accordance with PCP-05 (*Change Control*) and shall make such "Change Control Log" available to the Authority as requested.

- 12.4 Such "Change Control Log" shall be included in the SLC Monthly Performance Reports (as defined in PCP-13 (*Progress Reporting and Reviews*)) in accordance with PCP-13 (*Progress Reporting and Reviews*).
- 12.5 The Parties shall ensure that any formal amendment required to the Agreement or any other Contract Document as a result of any Change that is Approved in accordance with this Schedule 2, Part 2 shall be effected within two (2) Months of approval of such Change.

Trend Log

- 12.6 The Contractor shall identify and categorise all trends in accordance with PCP-05 (*Change Control*).
- 12.7 The Contractor shall record and monitor the status of 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 the provisions of PCP-05 (*Change Control*).

13 INTERACTION WITH PCP-17

- 13.1 [Not Used].
- 13.2 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 or 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
- (a) the Contractor's Internal Procedures for AiP/sanctioning do not or have ceased to comply with the relevant Authority's Policies and Procedures;
 - (b) the Contractor has failed to comply either in whole or in part with the Contractor's Internal Procedures for AiP/sanctioning; or
 - (c) the Contractor has failed to adhere to Good Industry Practice.
- 13.2A For the purposes of Paragraph 13.2 above, in relation to AiP/sanction spending and commitment of resources within the Schedule of Delegated Authority of up to or equal to five million pounds sterling (£5,000,000), any reference to compliance of Internal Procedures with relevant Authority Policies and Procedures shall be deemed to require that those Internal Procedures are consistent with Good Industry Practice only, such that any provisions of Authority Policies and Procedures imposing greater or further requirements in relation to those Internal Procedures do not apply. In relation to AiP/sanction spending and commitment above five million pounds sterling

(£5,000,000), but within the Schedule of Delegated Authority, reference to compliance of Internal Procedures with relevant Authority Policies and Procedures requires that the Internal Procedures are equivalent to those procedures that would have been adopted had Authority approval been required.

13.2B Where Authority Approval is required in relation to Paragraph 13.2 above, the following shall apply:

- (a) where anticipated Costs are 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
- (d) where anticipated Costs are greater than fifty million pounds sterling (£50,000,000) (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
- (e) where anticipated Costs are 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
- (f) where any such project or capital commitment is Novel, Contentious or Repercussive, the Authority shall use its reasonable endeavours to respond to any request for Approval within sixty (60) Working Days.

13.3 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 13.2 (*Interaction with PCP-17*) above.

13.4 [Not Used]

13.5 [Not Used]

Appendix A

Change Control Form

**NDA/DOUNREAY SITE RESTORATION LIMITED
CATEGORY 0 CHANGE CONTROL REQUEST**

1. Summary of Change

Change no. Version Date change raised Trend no. Date trend raised

Title	
--------------	--

Contract Baseline Change <input type="checkbox"/>	LTP Performance Plan Change <input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>

Required approval date?	<input type="text" value="DD/MM/YYYY"/>
-------------------------	---

Implications if the change is not approved by this date?
 DSRL 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. Justification for Change

Client Specification Change <input type="checkbox"/>	Target Fee Milestone Change <input type="checkbox"/>	Funding Change <input type="checkbox"/>
PBI Fee Payment Change <input type="checkbox"/>	Novel/Contentious/Repercussive <input type="checkbox"/>	Target Cost Change <input type="checkbox"/>
Change in NDA Documents <input type="checkbox"/>	Change in Terms and Conditions <input type="checkbox"/>	Change in Law <input type="checkbox"/>
Scope Acceleration <input type="checkbox"/>	Scope Deferral <input type="checkbox"/>	Change to Nominated Staff <input type="checkbox"/>

3. Description of Change

"What" – clearly identifying what the change is.
 Any impact to the interim end state; interim end date; client specification; cardinal milestones dates; and target fee milestone dates must be clearly articulated

4. Justification of Change

"Why" - the event that has triggered the change, describing why it is a valid reason for change.

--

5. Impact of Change

Is this change independent of other changes?	Yes			No
--	-----	--	--	----

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 on what basis the assessment was made, and any assumptions to that basis.

Alternatives Considered

This section must identify what alternatives 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 <input type="checkbox"/>
Fee Implications/Benefits Realisations (DSRL or National) <input type="checkbox"/>	Impact to ADFL/EAC affordability <input type="checkbox"/>	Impact to NDA DSO 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 part 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"/>

6. Supporting Information (to be attached)

Detailed Volume Basis of estimate Cost Summary Schedule Risk Register

Contingency Calculations Other List Other Documents:

NB. Documents should be red-lined to demonstrate changes

7. Approval

DSRL APPROVAL

Position	Print Name	Signature	Date
Project Manager			
Programme Manager			
Managing Director			

FOR NDA USE ONLY:

Comments:

If the change is being returned unapproved, give reasons why e.g. further information required, incomplete submission, etc.

Conditions attached to approval:

Approved? Yes No

Position	Print Name	Signature	Date
Head of Programme – DSRL			

NDA Core Function Approval (Category 0 Changes Only)

COMMERCIAL FUNCTION		
NAME	SIGNATURE	DATE
Comments:		

COMMUNICATIONS FUNCTION –stakeholder & socio economic		
NAME	SIGNATURE	DATE
Comments:		

DELIVERY FUNCTION		
NAME	SIGNATURE	DATE
Comments:		

NAME	SIGNATURE	DATE
Comments:		

FINANCE FUNCTION		
NAME	SIGNATURE	DATE
Comments:		

STRATEGY FUNCTION		
NAME	SIGNATURE	DATE
Comments:		

Appendix B

Consolidation of the Delivery Plan into the LTP Performance Plan

- 1 This Appendix B sets out the principles that shall govern the execution of the Consolidation Plan by the Contractor with regard to replacement of LTP10 with the version of the LTP Performance Plan developed by the Parent Body Organisation and agreed with the Authority during the Transition Phase, the objective of the Parties being the alignment of the LTP Performance Plan with the Delivery Plan ("the Commencement Date LTP Performance Plan") and the changes that the Contractor makes to that version of the LTP Performance Plan to incorporate the activities that are set out in its Delivery Plan (to the extent not already incorporated) and to achieve compliance with all applicable Authority Policies and Procedures.
- 1A With effect from the Commencement Date, the Parties agree that LTP10 is replaced with the Commencement Date LTP Performance Plan, which is then the LTP Performance Plan. The Parties acknowledge that as at the Commencement Date the Commencement Date LTP Performance Plan may not:
- (i) be fully compliant with all applicable Authority Policies and Procedures; and
 - (ii) identify all activities of the Contractor that are on-going as at the Commencement Date or scheduled by the Contractor to commence following the Commencement Date.
- 1B For the purposes of Part 2a (Allowable And Disallowable Costs) of Schedule 6 (*Finance*), the Commencement Date LTP Performance Plan is deemed to include
- (i) all activities of the Contractor that are on-going as at the Commencement Date, and
 - (ii) all scheduled activities of the Contractor the cancellation of which following the Commencement Date would not achieve Value for Money.
- 1C Without prejudice to the Contractor's obligation to comply with Paragraph 2 below, during the Consolidation Phase any non-compliance of the LTP Performance Plan with applicable Authority Policies and Procedures does not constitute a breach of the Contractor's obligations under this Agreement to comply with Authority Policies and Procedures.

Process during Consolidation

- 2 In consolidation of the Delivery Plan into the LTP Performance Plan and otherwise developing the LTP Performance Plan so that by the end of the Consolidation Phase the LTP Performance Plan is compliant with the applicable Authority Policies and Procedures and expressly includes all activities of the Contractor that will continue beyond the end of the Consolidation Phase, the Contractor shall:
 - (i) apply the Contractor's Internal Procedures which shall be compliant with relevant Authority's Policies and Procedures; and
 - (ii) adhere to Good Industry Practice.

Change Control

- 3.1 Changes to the LTP Performance Plan that are required in order to incorporate the activities set out in the Delivery Plan shall not require Approval by the Authority provided that such Changes are consistent with and reflect the activities set out in the Delivery Plan.
- 3.2 Subject to and without prejudice to Paragraph 3.1 above, Changes to the LTP Performance Plan that are required in order to achieve compliance with applicable Authority Policies and Procedures within the scope of the Schedule of Delegated Authority or to expressly include any activities of the Contractor that, in accordance with the above provisions of this Appendix B, are deemed to be included in the Commencement Date LTP Performance Plan shall not require Approval by the Authority.

AiP/Sanction

- 4 The Contractor may assume that any AiP/Sanction that is in existence as at the Commencement Date shall remain valid.
- 5 The Authority's requirement under PCP 17 that work activities should be consolidated into the LTP Performance Plan prior to seeking the Authority's AiP shall be waived during the Consolidation Phase where such work activities are: (i) set out in the Delivery Plan; and (ii) scheduled to commence during the Consolidation Phase or within forty (40) Working Days thereafter.
- 6 Notwithstanding that a project or programme is identified in the Delivery Plan or such project or programme has been incorporated into the LTP Performance Plan during the Consolidation Phase, the Contractor shall require Approval in accordance with paragraph 13.2 above.

29 March 2012

Appendix C
PCPM Contractor Annexe

For the avoidance of doubt, the attached PCPM Contractor Annexe shall form part of the Authority Policies and Procedures and does not form part of this Agreement.

**Baseline Management System
Programme Controls Procedures**

Doc No DSRL SLC ANNEXE

**DSRL SLC Annexe (referred to in the SLCA as the PCPM
Contractor Annexe)**

Baseline Management System Programme Controls Procedures

Doc No DSRL SLC ANNEXE

This annexe to the PCP-M Rev 2 June 11 (PCP-M) sets out to identify certain material features of the PCP-M which are amended or augmented by the requirements of the Site License Company Agreement (SLCA) including its attendant Schedules and referenced Authority Policies and Procedures. It is not intended that this annexe identifies every instance where PCP-M does not align with the SLCA.

The requirements of PCP-M should be adopted by the SLC unless

- a) otherwise stated within this annexe or
- b) where such requirements are in conflict with the SLCA

If any provision of this document or PCP-M is inconsistent with a provision of the SLCA, then the requirements of the SLCA shall take precedence.

PCP-M General

Throughout the PCP-M and this annexe where reference is made to;

“M&O Contract” this should be read as “Site License Company Agreement (SLCA)”.

“LTP Performance Baseline” this should be read as “LTP Performance Plan”

“NDA” this shall mean the Authority

“SLC” this shall mean the Contractor.

PCP05 Change Control

The Dounreay SLC will operate Baseline Management arrangements in line with the PCP-M, this will entail maintaining both a LTP Performance Plan and Contract Baseline, both of which will be subject to Change Control. It is to be recognised that, in the context of the Contract Baseline, the Baseline Management referred to in PCP 05 is in relation to programme controls activities and the configuration of the Contract Baseline for reporting purposes.

Change requirements for both the LTP Performance Plan and the Contract Baseline are defined in Schedule 2 Part 2 to the SLCA (Change Control Procedure).

Categories of Change

In line with Schedule 2, Part 2 of the SLCA the Change Categories stated in PCP-M as Category I, II and III will be subject to SLC approval and do not require approval of the NDA, unless delegated authority has been suspended as a result of Contractor failure/breach of conditions described in Schedule 2, Part 2 of the SLCA and/or where NDA exercises its right to veto the Contractor’s Change Proposal or Change.

NDA will require visibility of Change Control and Trend Logs for Category 0, I, II and III changes in order that it may understand the nature of changes being administered by the

Baseline Management System Programme Controls Procedures

Doc No DSRL SLC ANNEXE

SLC. At the end of each month the SLC shall provide the NDA with an electronic copy of all (Category 0, I, II and III) Change Controls including all underpinning data. By exception, during the course of any month NDA may also request copies in advance of the monthly submission of the details of specific Change Controls and where requested the SLC shall provide such copies in a timely manner.

Additionally, the NDA may choose to carry out assurance activities to ensure that Changes are being carried out in a manner that is consistent with both the Authority's Policies and Procedures and the SLC's Internal Procedures.

Category 0 Change is a specific category described within the SLCA (Schedule 2 Part 2) which includes with any proposed change to the Contract Baseline. Category 0 Changes are subject to NDA approval.

In addition to PCP-M Section 5.2.3.2 Format of Baseline Change Proposals, the Change Proposal will also include a fully completed Change Control Form, the subject form is attached as Appendix A to this annexe, which shall be the same as the form set out in SLCA Schedule 2 Part 2 Appendix A.

Baseline Management System Programme Controls Procedures

Doc No DSRL SLC ANNEXE



Nuclear
Decommissioning
Authority

Rev 1
1st April 2012

Approval and thresholds associated with Categories of Change Control

Type of Change Proposal	Description	Value	Category I SLC	Category II SLC	Category III SLC	Category 0 NDA Head of Programme	Comments/Notes
"Baseline" - in accordance with PC05 (this will include changes to the LTP Performance Plan and Contract Baseline, noting that any such changes must be in accordance with Schedule 2 Part 2 Change Control Procedure)	Scope Change (e.g alteration, acceleration, new and deletion)*	Up to £2M			√		Review and approval will be managed as part of SLC change control process. NDA will conduct regular review of application and compliance.
	Scope Change (e.g alteration, acceleration, new and deletion)*	£2M - £5M		√			
	Scope Change (e.g alteration, acceleration, new and deletion)*	> £5M - £50M	√				
	Scope Change (e.g alteration, acceleration, new and deletion)*	> £50M				√	
	Novel, Contentious, Repercussive					√	
	Scope Deferrals*	Up to £2M			√		
	Scope Deferrals*	£2M - £5M			√		
							Caused by required scope increase and/or unavailable funding

Baseline Management System Programme Controls Procedures

Doc No DSRL SLC ANNEXE



Nuclear
Decommissioning
Authority

Rev 1
1st April 2012

Scope Deferrals*	> £5M	√				
Scope Deferrals*	> £50M					√
Scope Deferrals*	Impacts IES date and/or cardinal milestone dates					√
						Any value of impact requires NDA approval.

*If alters annual funding limit and/or split of resource (current)/capital funding, funding change proposal to be raised and approved by NDA, noting that under the SLCA all spending is assumed to be capital spending unless and until NDA instructs otherwise.

Funding (ASFL)	Any type of Change	Any value				√

Contract Baseline Change	Any type of Change	Any value				√

Baseline Management System Programme Controls Procedures

Doc No DSRL SLC ANNEXE

PCP07 Baseline Management

Contract Baseline and Lifetime Plan Performance Plan

The SLC will maintain both baselines as described in PCP-M and Schedule 2 Part 2 to the SLCA (Change Control Procedure). The Contract Baseline will hold very specific activities, milestones and a cost profile, these will comprise:

- Target Cost Budget Cost of Work Scheduled (BCWS)
- Interim End State Date
- Cardinal Milestones
- Target Fee Milestones
- Circa 50-100 activities, with an individual summary activity bar in relation to each project.

Amongst other things the Contract Baseline will be used as a tool to maintain visibility of performance in support of the fee payment milestones found in Schedule 6 of the SLCA.

There will not be a process of resetting the Contract Baseline over subsequent contractual cycles . Subject to Category 0 Change the Contract Baseline will be set, in accordance with the SLCA, until the point of achieving the Interim End State.

As the LTP Performance Plan evolves the Cardinal Milestones along with the date for each fee payment Sub Milestone, Major Work Package Milestone and IES will also evolve and therefore there will be emerging differences to the corresponding dates in the Contract Baseline. These differences shall not in themselves be a trigger for a Category 0 Change.

Milestone dates in the Contract Baseline cannot be changed without an approved Category 0 Change. The corresponding milestone dates in the LTP Performance Plan can change via SLC approved Change Control. The SLC is required to report the variance between the approved Contract Baseline milestone dates and the LTP Performance Plan milestone dates to the NDA, together with a brief explanation for the variance.

PCP07, PCP09, PCP10, PCP16 References to Assumptions, Exclusions, Risks, Constraints and Opportunities

The PCP-M refers to assumptions, exclusions, risks, constraints and opportunities for the purposes of planning a Lifetime Plan, for example key assumptions and risks would be made to predict the outcome and bound the scope of work for scheduling and costing purposes. Where a change to these assumptions and risks may result in a Change to the LTP Performance Plan this would not automatically give rise to a Change to the Contract Baseline.

Baseline Management System Programme Controls Procedures

Doc No DSRL SLC ANNEXE

PCP07 and PCP09 Price Indexation / Inflation

Specific requirements for indexation and inflation of the Contract Baseline can be found in Schedule 6 of the SLCA.

Baseline Management System Programme Controls Procedures

Doc No DSRL SLC ANNEXE

PCP11 Appendix A1

In accordance with the Sanction and Validation (SAV) process, projects will continue to be coded with relevant SAV/Trigger project code, however the Sanction Value has been increased in line with the SLCA and therefore in addition to PCP11 coding the below coding should also be applied:

Code Type	Project Code
Char. Length	20
Code Name	NDA-SAV-Project type Trigger
Code value	Code Value Description
SAVPRJ	SAV Projects
SAVPRJ.GT50MSANREQ	Greater than £50 million (>£50m), Sanction Required
SAVPRJ.GT50MFULSAN	Greater than £50 million (>£50m), Full Sanction
SAVPRJ.GT50MADDSAN	Received Greater than £50 million (>£50m), Additional
NPRJR	Non Project Recurring
NPRJR.GT50M	Greater than £50 million (>£50m)
NPRJNR	Non Project Non-Recurring
NPRJNR.GT50M	Greater than £50 million (>£50m)

New Activity Codes

In addition to the change in SAV/Trigger coding, additional coding will be required to reflect the Cardinal Milestones along with fee payment Sub Milestones, Major Work Package Milestones and IES. Please see below new PCP11 Appendix A3:

Appendix A3

Activity Codes Definition

Code Type	Global Activity Code Applied to Milestones
Char. Length	20
Code Name	NDA-CBL-MILESTONES
Code value	Code Value Description
CBL.CM	Cardinal Milestone
CBL.TFSM	Target Fee - Sub Milestone

Baseline Management System Programme Controls Procedures

Doc No DSRL SLC ANNEXE

CBL.TFMWP
Milestone
CBL.CTM

Target Fee - Major Work Package
Cardinal & Target Fee Milestone

PCP13 and PCP02 – Progress Reporting & Reviews and Electronic Data Submission (EDS)

Performance reporting of the LTP Performance Plan will be as per PCP-M however performance reporting of the Contract Baseline will require a different set of reporting requirements. The full use of Earned Value (EV) reporting will not be required against the Contract Baseline, progress will be captured at Site and project level using the performance from the LTP Performance Plan at a rolled up level of the Work Breakdown Structure (WBS) to monitor progress against the Contract Baseline. Similarly the EDS requirements described in PCP-02 Sections 2.2.1 to 2.2.5 shall be adapted to suit the level of reporting required against the Contract Baseline.

The LTP Performance Plan is a continuous baseline and is not reset on the award of a new contract. The start date for the LTP Performance Plan is 1 April 2009 (Period 1). The Contract Baseline runs from the Commencement date and will expire when the IES is achieved. The start date for the Contract Baseline is 1 April 2012 (Period 1). Systems are to be maintained to allow cumulative reporting and EDS submissions from the start date of both baselines.

Although the LTP Performance Plan starts from 1 April 2009 reporting relating to performance of the SLC from the start of the SLCA will be a subset of the overall LTP Performance Plan with an earliest start date of 1 April 2012.

For clarification, for the Contract Baseline the purpose of the above is purely to monitor progress against the Contract Baseline. Specific requirements regarding the calculation used for Shareline can be found in Schedule 6 Part 4b of the SLCA.

PCP17 Sanction

The threshold for the SLC to self approve AiP / Sanction is spending and commitment of resources of up to fifty million pounds sterling (£50,000,000) other than for IT and telecoms projects where the threshold shall be one million pounds sterling (£1,000,000) and in each case not Novel, Contentious or Repercussive.. Within the overall AiP / sanction model Sub contracts / procurement shall require NDA approval where the overall value of the sub contract is reasonably expected to be greater than twenty five million pound sterling (£25,000,000). The Schedule of Delegated Authority for the SLC is defined in the SLCA by reference to Schedule 2 Part 2 Paragraph 13.2 and Schedule 2 Part 3 Paragraph 16.

Baseline Management System Programme Controls Procedures

Doc No DSRL SLC ANNEXE

For the avoidance of doubt the requirements of Schedule 3 Commercial Schedule (Customer Contracts) and Schedule 5 Schedule 5 (Subcontracting and Procurement) shall continue to apply.

The timescales related to NDA AiP/sanction approvals stated in PCP 17 shall be replaced with those stated in Schedule 2 Part 2 (Change Control Procedure) Paragraph 13.2

The Authority and the Contractor, both acting reasonably, shall work together with the aim of optimising review timescales. In this regard the Authority will share with the Contractor its schedule for its internal sanction and board meetings.

Where PCP 17 refers to an “NDA approved plan” or “approved plan” this should be read as meaning the LTP Performance Plan.

17.1 Introduction and Purpose

The definition of Work Activity shall be that included in the SLCA Part 1 Interpretation 1.1 Definitions rather than that described in PCPM/PCP 17 Introduction and Purpose.

17.5.2.1 Project Approval in Principal (AiP)

In the event that the NDA wishes to “remove the Project from the approved plan” this shall be achieved by the NDA raising a Category 0 Change.

Paragraph 4 shall be amended to read;

“For complex, high risk and/or high value projects the NDA retains the right to impose multiple stage gating and/or contract approvals. Where such high risk and/or high value projects are within the SLC’s limit of delegation the SLC shall ensure that an appropriate multiple stage gating and/or contract approvals process is employed. AiP may therefore require further staged sanction or approvals. The project Sanction Plan must be endorsed as part of Approval in Principle or any subsequent AiP or Sanction submissions, endorsement will be either by NDA or the SLC consistent with the level of the SLC’s delegated authority”

The reference to Alternative Remuneration Tasks shall be disregarded.

17.5.2.3 Project (staged) sanction

Paragraph 2, first sentence shall be replaced with;

“AiP or (staged) sanction permits an SLC or non-SLC organisation to execute scope in the LTP Performance Plan within cost and schedule tolerances.”

Paragraph 3 first sentence shall be revised to read;

Sanction/approval may be confirmed in writing from the NDA; if sanction is not granted the SLC will be instructed to suspend or terminate the Work Activity.

Baseline Management System Programme Controls Procedures

Doc No DSRL SLC ANNEXE

The timescales shown in the bullet points are to be replaced with the timescales provided in Schedule 2 Part 2 Paragraph 13.2.

17.5.4 Customer Contracts

Paragraph 1 second sentence shall be replaced by:

“The approach to Customer Contracts shall apply equally to Inter SLC Service Contracts.”

17.5.5 Asset Disposals

Paragraph 2 the first sentence shall be deleted and replaced with:

“Asset disposal shall be carried out in accordance with SLCA Part 6 Asset Management.”

17.5.7 Investment Opportunities

This section of PCP 17 shall not apply.

General

The requirements of Schedule 3 (Commercial) and Schedule 5 (Subcontracting and Procurement) of the SLCA shall be read in conjunction with PCP 17 Sanction and this DSRL SLC Annexe, where any conflict exists the requirements of Schedules 3 and 5 shall take precedence.

Baseline Management System Programme Controls Procedures

Doc No DSRL SLC ANNEXE



Nuclear
Decommissioning
Authority

Rev 1

1st April 2012

Appendix A Change Control Form

TO BE INCLUDED

SCHEDULE 3

COMMERCIAL

PART 1 – PERMITTED ACTIVITIES

1. PERMITTED ACTIVITIES

Notwithstanding the Schedule of Delegated Authority, Permitted Activities are any activities in relation to Customer Contracts provided that any such activities:

are not Novel, Contentious or Repercussive;

do not involve the provision of any indemnity;

do not involve a waiver of debt;

do not involve a Customer-funded project;

do not include a payment or credit note in settlement of liabilities of the Contractor under any other contract;

do not generate a value of sales or costs over two hundred and fifty thousand pounds sterling (£250,000);

does not involve a potential cash deferment to later years;

does 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);

are not and are not expected to be loss-making; and

are not contrary to any relevant provision contained in PCP-17.

In the event of any uncertainty as to whether any of the conditions at Paragraph 0 (*Permitted Activities*) to 0 (*Permitted Activities*) apply or where the Contractor wishes to enter into a Customer Contract to which Paragraphs 0 (*Permitted Activities*) to 0 (*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

The Contractor shall ensure that each Permitted Activities Request shall contain the following:

the date of the Permitted Activities Request;

the reasons for requesting the proposed new, amended or updated Permitted Activity; and

the terms of the proposed amendment to the Permitted Activity.

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 0 (*Content of Permitted Activities Request*) above).

If, as a result of the discussions undertaken pursuant to Paragraph 0 (*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.

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.

If the Authority consents to the Permitted Activities Request (as modified (if relevant) pursuant to Paragraph 0 (*Content of Permitted Activities Request*)), it shall notify the Contractor in writing.

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

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 Part 3 (*Work Activity Management – Financial Sanction & Validation*) of Schedule 2 (*Change Control Procedure*) and relevant provisions of PCP-17.

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 Part 3 (*Work Activity Management – Financial Sanction & Validation*) of Schedule 2 (*Change Control Procedure*) 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.

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.

Unless the Authority agrees otherwise, any AiP/sanction by the Authority to an AiP 1 Submission, AiP 2 Submission or Sanction Submission shall be conditional upon the Contractor confirming in writing to the Authority that:

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 Paragraphs 1.4.2 below;

subject to Paragraph 1.4.3, any New Customer Contract shall contain:

- (D) 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;
- (E) 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;
- (F) 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*);
- (G) [Not Used];
- (H) [Not Used];
- (I) 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);
- (J) 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),

where an existing Customer Contract contains any of the terms in Paragraphs 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.

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:

shall be without prejudice to any of the Authority's rights under this Agreement;

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 Part 3 (*Work Activity Management – Financial Sanction & Validation*) of Schedule 2 (*Change Control Procedure*) and relevant provisions of PCP-17);

shall not, unless expressly agreed in writing between the Parties, relieve or excuse the Contractor from any liability or obligation under this Agreement; and

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.

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).

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

Any Authority instruction pursuant to Clause 20.3 (*Authority's right to instruct*) shall set out:

the date of the instruction;

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 0 (*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;

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;

the date by which the Authority wishes its instructions to have been implemented (subject to agreement by the counterparty or the proposed counterparty); and

any other information that the Authority reasonably considers would assist the Contractor in carrying out its instructions.

3. AUTHORITY'S INSTRUCTIONS

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:

if the instructions may have any impact on any Subcontract or Series of Subcontracts; and
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.

Subject to Paragraph 0 (*Authority's Instructions*), the Contractor shall be entitled at any time before the Authority confirms its instruction pursuant to Paragraph 0 (*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:

be inconsistent with the Contractor's obligations under Clause 4.1 (*Standard of Performance*);

be inconsistent with the Contractor's obligations under Clause 4 (*Contractor's Obligations*);

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 0 (*Authority's Instructions*));

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 0 (*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.

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.

As a result of the discussions undertaken pursuant to Paragraph 0 (*Authority's Instructions*), the Authority may confirm, modify or withdraw its instruction.

Without prejudice to Paragraph 0 (*Authority's Instructions*), upon receipt of any confirmation pursuant to Paragraph 0 (*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.

Upon receipt of any modification pursuant to Paragraph 0 (*Authority's Instructions*) or 0 (*Authority's Instructions*), the provisions of Paragraphs 0 (*Authority's Instructions*) to 0 (*Authority's Instructions*) shall apply with the necessary changes according to the circumstances.

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.

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 0 (*Authority's Instructions*) as soon as reasonably practicable after receiving such request and in any event by such deadline as the Authority reasonably requests.

If, as a result of any discussions pursuant to Paragraph 0 (*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.

Upon receipt of any modification pursuant to Paragraph 0 (*Authority's Instructions*), the provisions of Paragraphs 0 (*Authority's Instructions*) to 0 (*Authority's Instructions*) shall apply with the necessary changes according to the circumstances.

SCHEDULE 4

EMPLOYMENT AND PENSIONS

Part 1 – Nominated Staff

The appointment durations of the following table provide the minimum time from the Commencement Date that each of the Nominated Staff are proposed to be in post. The Contractor shall be required to comply with the provisions of Paragraph 2.1(i) (*Employees*) of Schedule 17 (*Minimum Performance Standards*) in relation to the requirement to maintain the 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
Managing Director Deputy Managing Director Finance Director Change Director Commercial Director Technical Director Project Director Waste Project Director Reactors Project Director Fuels Shaft & Silo Project Director	s.40		

Part 2 – Key Personnel

The listing of Key Personnel is to be populated within forty (40) Working Days of the Commencement Date. In nominating the list of Key Personnel the Authority will act in accordance with Clause 31.2.1 (*Key Personnel*) of this Agreement, taking into consideration the requirement to maintain the Contractor as an enduring entity, the Contractor's succession plan for the Key Personnel and other matters as the Authority reasonably considers relevant.

List of Key Personnel

Position	Name

29 March 2012

Part 3 – Pro Forma Secondment Agreement

Date:

BABCOCK DOUNREAY PARTNERSHIP LIMITED

The Parent Body Organisation

[Insert name of organisation which employs Secondee]

The Seconding Employer

DOUNREAY SITE RESTORATION LIMITED

The SLC

THE NUCLEAR DECOMMISSIONING AUTHORITY

The Authority

[Insert name of individual]

The Secondee

Secondment Agreement

THIS AGREEMENT is made this day of

BETWEEN:

- (1) **BABCOCK DOUNREAY PARTNERSHIP LIMITED** a company incorporated in England and Wales with registered number 07868218 whose registered office is at 33 Wigmore Street, London, W1U 1QX (the "**Parent Body Organisation**");
- (2) [*Insert name of organisation which employs/engages Secondee*] a company [*insert incorporation and address details of organisation*] (the "**Seconding Employer**");

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

- (3) **DOUNREAY SITE RESTORATION LIMITED** a company incorporated under the laws of Scotland with registered number SC307493 whose registered office is at Building D2003, Dounreay, Thurso, Caithness KW14 7TZ (the "**SLC**");
- (4) **THE NUCLEAR DECOMMISSIONING AUTHORITY** a non departmental public body whose head office is at Herdus House, Westlakes Science and Technology Park, Moor Row, Cumbria CA24 3HU (the "**Authority**"); and
- (5) [*Insert individual Secondee's name*] of [*insert address*] (the "**Secondee**");

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

WHEREAS:

- A. The Parent Body Organisation, the SLC and the Authority have entered into the Parent Body Agreement, and the Authority and the SLC have entered into the SLC Agreement.
- B. The Secondee is employed by the Seconding Employer and has experience relevant to the SLC's requirements.
- C. Pursuant to the terms of the Parent Body Agreement and the SLC Agreement the Parent Body Organisation has agreed to provide assistance to the SLC [*by seconding*] or [*by procuring the secondment from the Seconding Employer of*] the Secondee to the SLC from the Secondment Start Date for the duration of the Term.
- D. The Parties agree that while the Secondee shall comply with the terms of this Secondment Agreement in providing services and assistance to the SLC, the Secondee shall at all times remain employed by the Seconding Employer.

IT IS AGREED as follows:

1 Definitions

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

Board means the board of directors of the SLC;

Impartiality Undertaking &

Confidentiality Agreement means the letter and agreement in the form set out in Schedule 2;

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

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

Law means any Act of Parliament or subordinate legislation with the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, any enforceable community right with the meaning of section 2 of the European Communities Act 1972, any other applicable law, common law proclamation, bye-law, directive, decision, regulation, rule, notice or court ruling binding on the Parties directly or

through precedent, international convention or Treaty ratified by the United Kingdom, all applicable laws, regulations, directives, orders, decisions or other rules having the force of law in the jurisdiction (including in relation to international waters) where the SLC's obligations under the SLC Agreement are carried out and any United Kingdom government policy binding on the Parties either expressly or as part of a class;

Parent Body Agreement	means the agreement of that name entered into between the Authority, the SLC and the Parent Body Organisation on 1 April 2012;
Regulators	means the Health and Safety Executive (including Nuclear Installations Inspectorate), the Department for Transport, the Environment Agency, Scottish Environment Protection Agency, the Office of Nuclear Regulation, the Scottish Executive, the Financial Services Authority, the Pensions Regulator, the Pension Protection Fund, others specific to the SLC's obligations under the SLC Agreement and as applicable in the relevant jurisdiction (including in relation to international waters) where the SLC's obligations under the SLC Agreement are carried out and "Regulator" shall mean each or any one of them;
Regulatory Requirement	means any legally enforceable requirement of any Regulator;
Secondment Agreement	means this agreement and the attached schedules;
Secondment Start Date	has the meaning set out in Schedule 1;
SLC Agreement	means the agreement of that name governing the management and operation of the Site (as such term is defined in the SLC Agreement);
Term	has the meaning set out in Schedule 1.

2 **Commencement**

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

3 **Duties of the Secondee**

3.1 During the Term the Secondee will be available for a period that is nominally 80% of a full time equivalent subject to the other provisions of this Secondment Agreement and to any short-term leave (such as sick leave, compassionate leave, or study leave) taken in accordance with the Contract of Employment or other applicable policies of the Seconding Employer and unless agreed otherwise by the SLC, to provide services to the SLC in accordance with the Job Title and Job Description set out in Schedule 1.

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

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

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

3.3.2 to take holiday;

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

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

3.5 In the event of any conflict between the duties that the Secondee may owe to the SLC and any duty that the Secondee may owe to the Seconding Employer, the Secondee's duties to the SLC shall prevail and the Secondee shall promptly notify the SLC of any such potential conflict.

3.6 The Secondee may act as a director of the SLC. If the Secondee does so, the Secondee shall owe a fiduciary duty to the SLC (which for the avoidance of doubt shall prevail over any duty owed to the Seconding Employer or the Parent Body Organisation).

3.7 During the Term, the Secondee shall not, except in the course of providing services to the SLC in accordance with the terms of this Secondment Agreement:

3.7.1 incur any expenditure in the name of or on behalf of the SLC;

3.7.2 hold out as having any authority to do or say anything in the name of or on behalf of the SLC;

3.7.3 commit the SLC to any contracts or other arrangements involving the SLC in financial or other commitments or incur any liability in the name of or on behalf of the SLC or in any way pledge its credit or hold out as being authorised to do so; or

3.7.4 make any press, radio or television statement or submit for publication or publish any letter, article or statement relating directly or indirectly to the business or affairs of the SLC or the Authority without first obtaining the consent in writing of the SLC and the Authority.

3.8 The Secondee may:

3.8.1 serve on the board of the Parent Body Organisation provided that such service does not materially detract from the Secondee's ability to perform services for the SLC pursuant to this Secondment Agreement; and

3.8.2 assist the Parent Body Organisation or the Seconding Employer in tendering or competing for contracts with the Authority (other than those connected with the Parent Body Agreement or the SLC Agreement) provided that such assistance does not conflict with or materially detract from the Secondee's ability to perform services for the SLC pursuant to this Secondment Agreement.

3.9 The Authority may by notice in writing require that the Secondee execute an Impartiality Undertaking & Confidentiality Agreement, and the Secondee shall if so required immediately take all necessary steps to comply with this requirement.

4 Relationship of parties

4.1 For the avoidance of doubt, the Secondee will continue to be employed by the Seconding Employer throughout the Term, and the Contract of Employment will remain in full force and effect, save as modified pursuant to this Secondment Agreement.

4.2 Nothing in this Secondment Agreement shall or is intended to create a relationship of employment between the Secondee and the SLC or the Authority, or between the Secondee and the Parent Body Organisation.

4.3 The Seconding Employer will retain responsibility for carrying out any appraisals of the Secondee's work during the Term. The SLC will provide such information regarding the

Secondee's performance as may be reasonably requested by the Seconding Employer in order to assist it in carrying out any appraisal.

5 Payment of salary and provision of benefits

5.1 The Seconding Employer shall remain responsible during the Term for:

5.1.1 paying the Secondee the salary and providing the Secondee with the contractual benefits provided for within the Contract of Employment (as amended from time to time) and for all other employment costs arising in respect of the Secondee's employment; and

5.1.2 any statutory obligation to pay (or deduct) tax or national insurance contributions in respect of the Secondee.

6 Terms of Secondee's engagement

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

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

7 Secondee's expenses

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

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

8 Termination

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

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

- 8.1.2 the expiry or termination of the Parent Body Agreement (subject to the provisions of Clause 8.5 (*Termination*)); or
 - 8.1.3 the expiry of the Term.
- 8.2 For the avoidance of doubt, the termination of this Secondment Agreement shall not operate so as to terminate the employment of the Secondee with the Seconding Employer.
- 8.3 Notwithstanding any other provision in this Secondment Agreement, the Parent Body Organisation and the Authority may agree in writing to terminate this Secondment Agreement on a specified termination date and this Secondment Agreement will then terminate on that date, subject to the Parent Body Organisation procuring a replacement Secondee approved in writing by both the Authority and the SLC who is available to commence providing services as a Secondee immediately after the termination of this Secondment Agreement.
- 8.4 Any one of the Parent Body Organisation, the SLC or the Authority may terminate this Secondment Agreement with immediate effect if in their reasonable opinion such termination is required:
- 8.4.1 in order to comply with Law or any Regulatory Requirement;
 - 8.4.2 in order to safeguard any person's health and safety;
 - 8.4.3 as a result of the Secondee's gross misconduct;
 - 8.4.4 as a result of the Secondee's persistent misconduct;
 - 8.4.5 because of the Secondee's breach of the Impartiality Undertaking & Confidentiality Agreement;
 - 8.4.6 because the Secondee has failed a drug or alcohol test; or
 - 8.4.7 because of the Secondee's failure to ensure, insofar as this is within the Secondee's control in the course of providing services to the SLC in accordance with the terms of this Secondment Agreement, that the SLC does not contravene the terms of the site licence conditions;
- and in the event of termination in such circumstances the Parent Body Organisation shall procure a replacement Secondee approved in writing by both the Authority and the SLC as soon as reasonably practicable.
- 8.5 In the event of expiry or termination of the Parent Body Agreement and/or the SLC Agreement for whatsoever reason:

- 8.5.1 Subject to Clause 8.5.3 (*Termination*) below, the Authority may specify in writing to the Parent Body Organisation that the Seconded remain seconded to the SLC;
 - 8.5.2 where the Authority has specified that the Seconded shall remain seconded to the SLC, the Parent Body Organisation and the Seconding Employer shall procure that the Seconded remains seconded to the SLC in accordance with the terms of this Secondment Agreement until such time as the Authority notifies the Parent Body Organisation that the Seconded is no longer required, at which point this Secondment Agreement shall terminate with immediate effect;
 - 8.5.3 the Authority will not be entitled to require the Seconded to remain seconded to the SLC any longer than six (6) months from the date of termination of the Parent Body Agreement; and
 - 8.5.4 in the event that the Seconded remains seconded to the SLC in compliance with the terms of this Secondment Agreement for the duration of any period during which the Seconded is required to provide services to the SLC subsequent to the termination of the Parent Body Agreement in accordance with the above, the Seconded will be entitled to a bonus to be paid by the SLC to be determined in accordance with the provisions of the Parent Body Agreement, provided that if the reason that the Authority no longer requires the Seconded is the Seconded's misconduct, poor performance or incapacity, the Seconded will not be so entitled.
- 8.6 Upon the termination of this Secondment Agreement howsoever arising the Seconded shall and the Seconding Employer shall procure that the Seconded shall:
- 8.6.1 deliver up to the SLC any documents or property of any nature whether tangible or intangible which belong to the SLC or the Authority or otherwise relates to the business or affairs of the SLC or the Authority and which is in the Seconded's possession, custody, care or control;
 - 8.6.2 irretrievably delete any information relating to the business or the affairs of the SLC or the Authority stored in any medium or media which is within the Seconded's possession, custody, care or control having first ensured that the SLC or the Authority (as the case may be) has retained a copy of that information; and
 - 8.6.3 confirm in writing and produce such evidence as is reasonably required by the SLC and the Authority to prove compliance with the obligations contained in this clause.

9 **Confidentiality**

- 9.1.1 Save and so far as such information is already in the public domain the Seconded agrees to keep confidential and not at any time (whether during or after the Term)

use for the Seconded's own or another's advantage, or reveal to any person, firm, company or organisation any information which the Seconded knows or reasonably ought to have known to be confidential, concerning the business or affairs of the SLC or the Authority. These restrictions will not apply to any disclosure authorised by the Board or required by Law, or to prevent the Seconded making a protected disclosure within the meaning of section 43A of the Employment Rights Act 1996.

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

9.1.2.1 obtained or developed by the Seconded prior to his/her appointment under this Secondment Agreement; or

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

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

10 Intellectual Property Rights

10.1 Subject to the terms of the Parent Body Agreement (including without limitation Clause 17 (*Intellectual Property*) of the Parent Body Agreement and any terms governing the ownership and licensing of IP agreed pursuant to the Parent Body Agreement) the Authority shall be the legal and beneficial owner of all IP created by the Seconded in the course of the Seconded providing services to the SLC under this Secondment Agreement.

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

10.3 The Seconded hereby irrevocably and unconditionally waives all moral rights under the Copyright, Designs and Patents Act 1988 and any analogous or similar rights in any other

jurisdiction which the Secondee has or will have in any existing or future works prepared in connection with providing services to the SLC under this Secondment Agreement.

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

11 **Non-Solicitation**

- 11.1 The Parent Body Organisation shall procure that and the Seconding Employer and the Secondee agree that neither the Seconding Employer nor the Secondee shall:

11.1.1 (in the case of the Seconding Employer) for the period of two (2) years; and

11.1.2 (in the case of the Secondee) for the period of one (1) year;

from the date of termination of this Secondment Agreement, unless they have obtained the prior written consent of the Authority, directly or indirectly solicit or entice away or endeavour to solicit or entice away or cause to be solicited or enticed away from the SLC any person who is employed or directly or indirectly engaged by the SLC in an executive, sales, marketing, research or technical capacity or whose departure from the SLC would have a material adverse effect on the SLC's performance of its operations, with a view to inducing that person to leave such employment or engagement (whether or not such person would commit a breach of his contract of employment or engagement by reason of leaving).

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

12 **Liabilities**

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

- 12.2 Subject to the provisions of Clause 12.1 (*Liabilities*), the SLC shall indemnify the Parent Body Organisation and the Seconding Employer and keep them indemnified against any

claim for loss, injury or damage made by the Secondee arising out of:

- 12.2.1 any unlawful act or omission of the SLC, or any of its officers, employees or agents in circumstances where it is vicariously liable, where the loss injury or damage was sustained by the Secondee in the course of providing services under this Secondment Agreement; or
 - 12.2.2 any claim by the Secondee that the termination of this Secondment Agreement by the SLC or otherwise that the actions of the SLC amounts to a repudiatory breach of the Contract of Employment.
- 12.3 **[Use only if Secondee is a member of the Nominated Staff]** The Parent Body Organisation and the Seconding Employer will take all reasonable steps to provide the Secondee with access to the Compensation Scheme for Radiation Linked Diseases.]

13 **Assignment**

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

14 **Waiver**

- 14.1 No failure or delay on the part of either party to exercise any right or remedy under this Secondment Agreement shall be construed or operate as a waiver of that right or remedy nor shall any single or partial exercise of any right or remedy.
- 14.2 The rights and remedies provided in this Secondment Agreement are cumulative save where expressed otherwise in this Secondment Agreement and are not exclusive of any rights or remedies provided by law save where expressed otherwise.

15 **Variation**

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

16 **Law and Jurisdiction**

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

Signed for and on behalf of the Parent Body Organisation

Signed Date

Signed for and on behalf of the Seconding Employer

Signed Date

Signed for and on behalf of the SLC

Signed Date

Signed for and on behalf of the Authority

Signed Date

Signed for and on behalf of the Secondee

Signed Date

Schedule 1

Secondment Start Date: **[Insert start date]**

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

Job Title **[Insert details]**

Job description: **[Insert details]**

Schedule 2

[Letter to be prepared on NDA headed notepaper]

Company Secretary

Dounreay Site Restoration Limited

Reference:[]

Dear Sir

Contract Reference:[]

Dounreay Site Restoration SLCA and Dounreay Site Restoration Competition – SLC impartiality undertaking and form of agreement for SLC Secondees providing assistance to NDA’s competition process

The Nuclear Decommissioning Authority (the “NDA”) intends to commence a competition process to select a new Parent Body Organisation for Dounreay Site Restoration Limited (the “SLC”). In order to facilitate this process and in accordance with Clause [34] of the SLC Agreement, the NDA requests assistance from the SLC with regard to the conduct of the competition.

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

- (a) act impartially as regards the treatment of bidders in relation to the Dounreay Site Restoration competition, and
- (b) to secure SLC staff members’ signatures to undertakings in the form of the exhibit annexed, before such member of staff provides assistance to the NDA in support of such competition.

29 March 2012

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

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

Yours etc

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

process, including not disclosing confidential information without the written authorisation of the NDA;

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

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

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

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

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

Signed for and on behalf of the Secondee

Signed Date

29 March 2012

Signed for and on behalf of Dounreay Site Restoration Ltd

Signed Date

Part 4 – Deed of Participation

Schedule 5

Subcontracting and Procurement

1 PURPOSE

- 1.1 This Schedule sets out the Contractor's obligations in relation to the awarding of Subcontracts and other procurement activities as referred to in Clause 22 (*Subcontracting/Procurement*) of this Agreement.
- 1.2 The Contractor's obligations in relation to Internal Procedures are set out at Clause 8 (*Integrated Management System*) of this Agreement.

2 EU PROCUREMENT RULES

- 2.1 The Contractor shall comply with the EU Procurement Rules as they apply to a contracting authority or a utility.
- 2.2 If compliance with any provision of this Schedule 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 Schedule 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 Schedule does not apply in respect of Secondment Agreements.

4 PROCUREMENT PLANNING

- 4.1 Notwithstanding the Schedule of Delegated of Authority, the Contractor shall prepare and submit to the Authority a procurement plan in accordance with the relevant provisions of PCP-7.
- 4.2 The Contractor shall ensure that the effectiveness of its procurement planning processes, and any Authority approval submissions required under the SaV procedure are compliant with the relevant provisions of PCP-7. Performance metrics specified in PCP-7 shall be monitored and reported by the Contractor to the Authority each period as part of the reporting process specified in PCP-13.

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

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

7 MAKE OR BUY

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

8 REQUIREMENT TO MAINTAIN A SKILLED WORKFORCE

8.1 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 Contractor's employees or of any Third Party's employees transfers to or from a Third Party (whether under the terms of such contract or by operation of law).

8.2 In making an application to the Authority for its approval pursuant to Paragraph 8.1 (*Requirement to Maintain a Skilled Workforce*) above, the Contractor shall set out in a level of detail reasonably satisfactory to the Authority demonstrating 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 31.6 (*Maintenance of Skills*) of this Agreement;
- (b) its retention of intelligent customer capability and control;
- (c) ensuring that the Subcontractor complies with anything which the Authority determines is necessary to enable the Authority to satisfy itself that its duties and obligations under Part 3 and Part 4 of Schedule 8 of the Energy Act 2004 will be complied with and that the Authority's requirements for the provision of pensions within the nuclear industry are satisfied; and
- (d) ensuring that the business case relating to a contract or other arrangement as a consequence of which the employment of any of the Contractor's employees or of any Third Party's employees transfers to or from a Third Party (whether under the terms of such contract or by operation of law) takes due cognisance

of any liabilities, including longer term liabilities, which may accrue from such arrangements.

9 CONTRACTS WITH AFFILIATES

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

- (a) the Subcontract has been offered for competitive tender and:
 - (i) the Contractor has procured that there is open and equitable competition with no unfair advantage of any nature accruing to the relevant Affiliate(s); and
 - (ii) the Authority was notified of the inclusion of the Affiliate in any competitive tender,

or

- (b) the Contractor has awarded the Subcontract in accordance with paragraph 10 (*Sole Source Awards*) below and accordingly can provide adequate substantiating documentation and rationale for not competing the Subcontract.

9.2 Should the Contractor wish to effect any subsequent changes to a Subcontract awarded to an Affiliate, it must consider the terms of the Authority's approval to its Subcontract Strategy (where applicable) and identify whether any such change is required to be Re-Sanctioned in accordance with paragraph 10 of Part 3 (*Work Activity Management – Financial Sanction and Validation*) of Schedule 2 (*Change Control Procedure*) and relevant provisions of PCP-17.

10 SOLE SOURCE AWARDS

10.1 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.

10.2 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.

10.3 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.

11 [Not used]

12 TERMS OF AUTHORITY APPROVAL

12.1 Unless any written Authority approval specifically provides otherwise in relation to a particular Subcontract, any 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 Schedule 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 Agreement.

13 [Not used]

14 CDM REGULATIONS

Where the CDM Regulations are applicable to the subject matter of a Subcontract or Sub-subcontracts, in accordance with Clause 10 (*CDM Regulations*) of this Agreement, the Contractor has elected to be treated, for the purposes of the CDM Regulations 2007 (pursuant to CDM Regulations 2007, Regulation 8), as the only client in respect of the Subcontract and the Authority has consented to this election.

15 [Not Used]

16 [Not used]

17 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 fifty thousand pounds sterling (£50,000);

it shall not be required to include the contractual provisions set out in Appendix 1 to this Schedule, but shall be required to use its professional judgement as to which of those provisions should be incorporated into the Subcontract.

17.2 Subject to Paragraph 17.1 (*Flowdown of Contractual Provisions*) 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 set out in Appendix 1 of this Schedule.

17.3 When seeking the Authority's approval in accordance with Paragraph 17.2 (*Flowdown of Contractual Provisions*), the Contractor must specify:

- (a) with reference to the Contractor's procurement plan then current, which Subcontract is the subject of the request;
- (b) which contractual provision(s) specified in Appendix 1 to this Schedule 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 (*Flowdown of Contractual Provisions*), the Authority shall:

- (a) not unreasonably withhold consent to the exclusion of the relevant contractual provision (or part thereof if applicable) identified by the Contractor in its request;
- (b) provide its decision in writing within fifteen (15) working days; and
- (c) provide reasons for any refusal of consent to the Contractor's request.

17.5 The Contractor shall produce and maintain (on a six (6) monthly basis) a report in the form of a simple matrix identifying all subcontracts awarded which contain exceptions to the flowdowns set out in Appendix 1 of this Schedule. The Contractor and Authority will jointly review the report with a view to optimising the approach to flowdowns on a progressive basis recognising the supply chain's response in agreeing contract terms and attendant risk to the Contractor and Authority.

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 23 (*Inter SLC Service Contracts*) of this Agreement) 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 [Not Used].

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 proposed Change and the Contractor shall prepare and submit to the Authority a Proposed Change in accordance with Schedule 2, Part 2 (*Change Control Procedure*).

18.4 [Not Used].

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 17 of Schedule 5 (Subcontracting and 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 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 17 of Schedule 5 (Subcontracting and 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 [Costs] and any costs of suppliers (including subcontractors) of the [Works][Services] which shall include the verification of any supporting documentation in respect of the [Costs];
- (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 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]*, and annually thereafter, 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.

Schedule 6
Finance

CONTENTS

Clause	Heading	Page
Part 1: General		5
1	Total Remuneration	5
2	Payment Mechanics	5
3	Currency of Contract	5
4	Exclusive of VAT	5
Part 2: Costs		6
1	Costs	6
Part 2a: Allowable And Disallowable Costs		7
1	Purpose	7
2	Allowable Costs	7
3	Advance Agreements	8
4	Disallowable Costs	9
5	Accounting Basis	19
Part 2b: Payment of Allowable Costs		20
1	Purpose	20
2	Invoicing and Payment Process	20
3	Submission of Invoices	23
4	Exceptional Items	24
5	VAT	26
6	Payments Account	26
7	Monthly Reporting	26

8	Annual Reconciliation of Allowable Costs	28
9	Ongoing Adjustments	29
10	Final Reconciliation of Allowable Costs	30
11	Interest.....	31
	Part 3: Target Cost	32
1	Introduction.....	32
2	Alternative Strategies	32
3	Target Cost Adjustments.....	35
	Part 4: PBI and Target Fee	49
1	PBI and Target Fee	49
	Part 4a: PBI Fee	50
1	Purpose	50
2	Establishing PBI Objectives	50
3	Maximum PBI Fee.....	51
4	Changes to Apportionment of PBI Fee	54
5	PBI Fee Calculation.....	54
6	PBI Payment Milestones — Delay Events	54
7	PBI Fee Records Management.....	54
8	Reclaiming PBI Fee.....	54
9	Account to which PBI Fee Paid.....	55
	Part 4b: Target Fee	56
1	Calculation of Target Fee and Shareline.....	56
2	True Cost Variance Adjustments.....	59
3	Target Fee Payment Milestones	61

4	Arrangements for the Payment of Target Fee.....	78
5	Target Fee — Invoicing Procedures.....	78
6	Late Achievement of the Interim End State.....	79
7	[Not Used].....	80
8	Failure to Achieve Milestones to which Target Fee is Attached	80
9	Reclaiming Target Fee	85
10	Account to Which Fee Paid	85
	Part 4c: Payment of Fee.....	86
1	Purpose	86
2	Payments of PBI Fee and Target Fee.....	86
3	VAT.....	86
4	Early Completion of Sub-Milestone or Major Work Package and Fee Reconciliation ...	87
5	Project Funding and PBI Reconciliation on Termination.....	88
6	Retention of Fee Pending Transition Out.....	88
	Part 5: Performance Agreement Form	90
1	Performance Agreement Form.....	90
2	PAF Milestone	91
3	Additional Payment Milestones and Changes to Payment Milestones	91
4	Performance Monitoring, Validation and Reporting	91
5	Milestone Records Management.....	91
6	Change Control	92
	Part 6: Periodic Reviews	93
2	Funding Profile	93
3	EAC Review	93

4	[Not Used].....	93
5	Working Capital Review	93
6	[Not Used].....	94
7	Timing of Reviews	94
Part 7: Financial Limits		95
1	Dounreay Site Restoration	95
Part 8: Indexation		99
1	Indexation Mechanism	99
2	CPI Indexation	99
3	Special Indexation — Establishing the Indices Basket	99
4	Special Indexation — Reviewing the Indices Basket	99
5	Special Indexation - Application	102
6	Non-Indexation Items	104
Appendix A - List of Potential Indices for Special Indexation		105
Appendix B - Performance Agreement Form		114
Appendix C - Milestone Validation Form		116
Appendix D - Determining Liability for Disallowable Costs		117
Appendix E - Potential PBI Fee Subject Matters.....		118
Appendix F - PAFs as at Commencement Date		119
Appendix G - First Contract Year Financials		120
Appendix H - Nominated Staff Recoverable Costs		122
Appendix I – Contract Baseline		125

Part 1: General

1 Total Remuneration

1.1 In respect of this 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; 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 For the avoidance of doubt, the Shareline, and hence the Target Fee following adjustment via the Shareline can be in the range of a positive to a nil sum.

1.3 Nothing in this Schedule 6 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

2.1 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 Fee*) of this Schedule 6.

3 Currency of Contract

3.1 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

4.1 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 or Disallowable (Part 2a);
and
- (b) the arrangement for payment of Allowable Costs (Part 2b).

Part 2a: Allowable And Disallowable Costs

1 Purpose

- 1.1 This Part 2a (*Allowable and Disallowable Costs*) sets out the basis on which Costs are treated as Allowable or Disallowable.

2 Allowable Costs

- 2.1 All Costs (including the Contractor's legal costs of defending a claim or any allegation thereof brought by a Third Party or the Authority in respect of any Nuclear Liabilities (as defined in the Nuclear Indemnity) under the Nuclear Indemnity) incurred by the Contractor are "Allowable Costs" except to the extent that such Costs are Disallowable Costs, provided that Costs in respect of which the Contractor is indemnified by the Authority under the Nuclear Indemnity shall not be included in Allowable Costs for the purposes of this Agreement. In addition, the Licence Fee as referred to in Clause 29.1.1 (*Licence of Authority IP to Contractor*) is an Allowable Cost.

- 2.2 Subject always to Paragraphs 4.1(y) (*Disallowable Costs*) and 4.2 (*Disallowable Costs*) below, Costs which are incurred by the Contractor otherwise than in the performance of this Agreement shall nonetheless be Allowable Costs if and to the extent that they are Costs payable 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*) or any Costs of any Legal Proceedings in relation to such disclosure or publication, subject always:

- (a) to the Contractor having made all reasonable endeavours to mitigate the amount of such Costs;
- (b) in the case of an Existing Agreement, to the Contractor having made reasonable efforts to obtain the agreement of the counterparty to such Existing Agreement to allow the disclosure of Information and publication contemplated by Clause 25 (*Confidentiality and Compliance with Legislation*);
- (c) in the case of an agreement entered into on or after the Commencement Date, to the Contractor having obtained the Authority's prior written consent to enter into that agreement on the basis that it does not allow the disclosure of Information and publication by the Authority contemplated by Clause 25 (*Confidentiality and Compliance with Legislation*); and
- (d) (where relevant) to the Contractor having been authorised by the Authority to handle the defence of such matters and having adhered to the Authority's instructions given pursuant to Clause 17 (*Claims Handling*) of this Agreement

and/or Clause 13.6 (*Parent Body Organisation Handling*) of the Parent Body Agreement.

- 2.3 Subject always to Paragraphs 4.1(ii) (*Disallowable Costs*), 4.1(kk) (*Disallowable Costs*) and 4.2 (*Disallowable Costs*) below, Contractor Historical Costs, Pension Costs, Non Contractor Historical Costs and Transfer Scheme Losses (together with any Costs reasonably incurred in mitigating the Contractor's liability in respect of such Costs) are Allowable Costs (provided always that any Cost which is a penalty imposed by a Regulator or a criminal sanction shall always be a Disallowable Cost), notwithstanding that they might otherwise fall within the other provisions of Paragraph 4.1 (*Disallowable Costs*).
- 2.4 Subject always to Paragraph 4.2 (*Disallowable Costs*) below, Costs reasonably and properly incurred by the Contractor in satisfying a Subcontract or a Sub-Subcontract entered into prior to the Commencement Date will be Allowable Costs, notwithstanding that they might otherwise fall within the other provisions of Paragraph 4.1 (*Disallowable Costs*).
- 2.4A Subject always to Paragraphs 4.1(t) (*Disallowable Costs*) and 4.2 (*Disallowable Costs*) below, Costs reasonably and properly incurred by the Contractor in satisfying its obligation to pay rent and other charges under the leases and sub-leases listed in Schedule 7 (*Property*), will be Allowable Costs.
- 2.5 The amount of the Allowable Costs shall be liable to reduction in accordance with the provisions of Clause 16.12.8 (*Tax Credits*), Clause 16.12.9 (*Pre Commencement Reliefs*) of this Agreement and Paragraph 9.4 (*Ongoing Adjustments*) of Part 2b (*Payment of Allowable Costs*) of this Schedule.

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*) below. No sign-off 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:
 - (i) Costs under this Agreement;

- (ii) 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*) 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 An Advance Agreement should also be considered by the Contractor when it will incur Costs that are exceptional or abnormal in size 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*) 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 Lifetime Plan (LTP) 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 4.2 (*Disallowable Costs*), 4.3 (*Disallowable Costs*) and 4.5 (*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 Paragraph 3.1 of Appendix H of this Schedule 6);
- (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 16.10 (*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) [Not Used];
- (f) subscriptions and donations of a political nature (other than as may be provided for in an agreed Socio-Economic Development Plan);
- (g) donations, including cash, property and services, regardless of recipient (other than as may be provided for in an agreed Socio-Economic Development Plan);
- (h) 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 achievement of the Interim End State;
- (i) marketing, advertising and selling expenses other than as may be provided for in an agreed Socio-Economic Development Plan and excluding in each case any such expenses associated with Customer Contracts and Collaborative Procurement activities that are subject to an Advance Agreement;
- (j) Costs paid or payable to or for the benefit of the Parent Body Organisation or any other Affiliates, other than those permitted by Clause 16.3.1.13 (*Financial Restrictions*) and Clause 16.10.5 (*Payments to Parent*) of this Agreement;
- (k) 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;
- (l) 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 H (*Nominated Staff Recoverable Costs*) to this Schedule 6 (*Finance*);

- (m) 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;
- (n) 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;
- (o) 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;
- (p) 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;
- (q) 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;
- (r) Costs for registration, maintenance or licensing of intellectual property not owned by, or licensed to the Contractor by, the Authority, including costs of Patent IP licensed to the Contractor and/or Authority which is not Reserved Patent IP but excluding any reasonable commercial licence fee payable to a Subcontractor in accordance with a Subcontract entered into in accordance with this Agreement;
- (s) 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 save where, in the case of any intellectual property that has been found to be invalid or unenforceable, or the intellectual property has expired, the Contractor could not reasonably have known that no such royalties or costs were payable and cannot reasonably recover any such overpayment or unnecessary payment of such royalties or costs;

- (t) fines and financial penalties (including any interest payable on such fines and financial penalties) imposed on or accepted by the Contractor or its Affiliates 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 the matters giving rise to the relevant fines or financial penalties occurred wholly prior to the Commencement Date or where due to: (i) any failure of the Authority to comply with its obligations or breach of warranty by the Authority under this Agreement); or (ii) any defect in the Authority's title to the Site or the existence of any third party interests in the Site, 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 agreements specified in the Client Specification or in Schedule 7 (*Property*) in circumstances where such non-compliance could reasonably have been avoided by the Contractor acting in accordance with Good Industry Practice;

- (u) 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 6.6 (*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;

 - (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.
- (v) Costs incurred in the defence of any Third Party Claim and which the Contractor would not have incurred if it had complied with the Authority's instructions under Clause 13.4 (*SLC'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;
- (w) Costs incurred in connection with any civil Legal Proceedings brought by the Authority for violation of, or failure to comply with, Legislation that arises due to Defective Performance 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 of defence to the extent relating to Legal Proceedings in respect of an event which occurred prior to the Commencement Date shall not be Disallowable;
- (x) Costs of preparing and submitting a bid or proposal and participation in any Authority procurement, except where the Contractor (acting otherwise than as a bidder or participant) incurs Costs as a result of preparing information on behalf of the Authority or acts in response to an Authority direction. This Paragraph 4.1(x) shall not apply in relation to Costs incurred by the Contractor in supporting Cross SLC Initiatives;
- (y) 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 13.6 (*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);
- (z) 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;
- (aa) Costs attributable to the Nominated Staff (except as provided at Paragraph 3.1 of Appendix H, Schedule 6 (*Finance*)) 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;
- (bb) Costs of pursuing or defending a claim to which Clause 13.6 (*Parent Body Organisation Handling*) of the Parent Body Agreement applies;
- (cc) [Not Used];
- (dd) 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 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 in accordance with the requirements of the Client Specification;
- (ee) 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;

- (ff) [Not Used];
- (gg) [Not Used];
- (hh) where there has been Defective Performance, those Costs (to the extent that the Authority does not receive insurance proceeds in respect of the Costs in question) which are Disallowable in connection with such Defective Performance in accordance with Appendix D (*Determining Liability for Disallowable Costs*) to this Schedule 6;
- (ii) 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;
- (jj) Costs incurred by the Contractor that fall within any Vitiating Insurance Liability where such Vitiating Insurance Liability arises due to Defective Performance;
- (kk) any Contractor Historical Costs or Non Contractor Historical Costs 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;
- (ll) save to the extent that any such Costs are Allowable in accordance with Appendix D (*Determining Liability for Disallowable Costs*) to this Schedule 6, Costs incurred as a result of one or more of:
 - (i) the Contractor's fraud or wilful default;
 - (ii) [Not Used];
 - (iii) [Not Used];

provided that for the avoidance of doubt costs incurred as a result of the Contractor's fraud or wilful default which are (without prejudice to Paragraph (jj) above) covered by insurance are Allowable Costs but any such Costs which fall within the deductible or excess under the relevant insurance are Disallowable Costs;

- (mm) Costs incurred by the Contractor in relation to any insurance premium, save for
 - (i) any premium incurred by the Contractor or the Parent Body Organisation in taking out any insurance that the Contractor is required to maintain in circumstances where the Authority has failed to maintain such insurance in accordance with Clause 18.1 (*Authority Insurances*), and
 - (ii) death in service and medical expenses to be purchased by the Contractor which are associated with the Defined Contribution Pension Scheme;
- (nn) 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);
- (oo) interest on working capital drawn down from the Approved Working Capital Facility to meet any payments other than Allowable Costs;
- (pp) 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 to mitigate its Costs in respect of the relevant Sub Contract or Sub-Subcontract to the extent such failure occurs post Commencement Date;
- (qq) following the breach of any Minimum Performance Standards (to the extent that such breach is capable of remediation and without prejudice to the provisions relating to Defective Performance and Appendix D (*Determining Liability for Disallowable Costs*), any Cost incurred in (i) 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 (ii) below) the forgoing does not include any Costs incurred in implementing any such revised Internal Procedures: and (ii) carrying out any supplementary training required specifically to avoid repetition of such breach;
- (rr) [Not Used]
- (ss) any Cost arising from the provision of support pursuant to Clause 8 (*Provision of Support to the SLC*) of the Parent Body Agreement which is in excess of the amount for provision of such additional support calculated using the relevant agreed rates set out in Schedule 7 (*Provision of Support to the SLC*) of the Parent Body Agreement;

- (tt) any Cost arising from the provision of the Nominated Staff which is in excess of the amount for provision of such support calculated using the relevant agreed rates set out in Appendix H (*Nominated Staff Recoverable Costs*) to this Schedule 6;
 - (uu) any Cost of a type which is described by Paragraph 3.8(a) of Schedule 2 (Part 2) (*Change Control Procedure*) as a Disallowable Cost; and
 - (vv) any Costs arising directly or indirectly in relation to the CRC Order which are not Disaggregated CRC Costs.
- 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 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 and the associated work which is therefore undertaken by the Contractor in the implementation of the LTP, 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, the fact that such steps or changes may result in the achievement of any 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 To the extent that the aggregate value of all Disallowable Costs (but excluding for these purposes all Class B Disallowable Costs) together with any Contractor's Liabilities (as defined in Clause 18.3 (*Liability Cap*)) in any Contract Year exceeds the Liability Cap for that Contract Year, such excess shall be deemed to be Allowable Costs.

- 4.6 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.

5 Accounting Basis

- 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 the Contractor;
- (b) a reconciliation process to ensure that the correct amount is paid to the 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*) and any other procedures, 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 the likely timetable for incurring such Allowable Costs, in such forthcoming Contract Year;
- (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 the 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 Profile 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; and
- (d) the Approved Working Capital Allowance and the Authority Entitled Interest is minimised.

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 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 the Authority shall pay the Contactor 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 To the extent that Allowable Costs comprise salary costs relating to staff engaged by the Contractor, 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 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.
- 2.9 If the Contractor fails to submit an invoice for a particular Accounting Month within 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 (although the Authority shall use reasonable endeavours to pay such instalments sooner).
- 2.10 If during any Contract Year there is any change to:
 - (a) the ASFL;
 - (b) the rates of interest applicable to the 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 2.10 (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.

2.11 The Agreed Cash Flow Requirement, the Agreed Payment Profile and the Approved Working Capital Allowance for the first Contract Year, shall be as specified in Appendix G (*First Contract Year Financials*) of this Schedule 6 and updated on an annual basis for each Contract Year thereafter.

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;
- (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.

3.1A The under noted items are not considered as Costs and therefore the Contractor shall not include within its invoice for:

- (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.
 - 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;
 - (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(o) (*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. Subject to Paragraph 3.6 (*Submission of Invoices*) below, in such circumstances the due date for payment of such Allowable Cost shall be whichever is the later of:
 - (a) the date five 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.
 - 3.6 If the Parties are in dispute as to whether or not a Cost has been properly claimed as an Allowable Cost by the Contractor, then such dispute shall be determined in accordance with the Dispute Resolution Procedure.
- 4 Exceptional Items**
- 4.1 When, in accordance with Paragraph 2 (*Funding Profile*) of Part 6 (*Periodic Reviews*) and any other procedures, 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 can not 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*).

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 Allowable Costs which are not an Exceptional Item are to be invoiced and paid under the normal invoicing and payment regime referred to in the preceding Paragraphs of this Part 2a (*Payment of Allowable Costs*).

4.4 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**").

4.5 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 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 4.5(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.

4.6 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 4.5(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 the Approved Working Capital Facility) to settle the relevant Exceptional Item,

then the Authority shall not be entitled to invoke the provisions of Paragraph 4.5(b) of Part 2b (*Payment of Allowable Costs*) above.

5 VAT

- 5.1 VAT included in any Category I Revenue or any Category II Revenue which is paid over to the Authority in accordance with Clause 16.8 (*Category I and II Revenue*) of this Agreement shall be repaid to the Payments Account of the Contractor 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 I or 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

- 6.1 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 Contractor's Fee Account, the Foreign Exchange Accounts and any other accounts held by the Contractor;
- (b) the amounts received by the Contractor as Category I Revenue, 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 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 Item 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 the 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 sub-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 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 14 Calendar Days after it first becomes apparent that the Disallowable Costs have been invoiced incorrectly.

9.2 Subject to Clause 37.9 (*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 years from the end of the Contract Year in which the Costs were incurred or six years where the reason for the Costs becoming Disallowable is Defective Performance, 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 invoice payment 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 or six (6) years where the reason for the incorrect classification of the Costs was a breach of this Agreement by the Authority.

- 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 neither constitute Category I Revenue nor 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 (the "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. If the Parties cannot agree the Final Reconciliation 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 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 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 being agreed or determined in accordance with Paragraph 10.1 (*Final Reconciliation of Allowable Costs*) above.
- 10.4 If the Final Reconciliation 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 being agreed or determined in accordance with Paragraph 10.1 (*Final Reconciliation of Allowable Costs*) above.
- 10.5 Notwithstanding the Final Reconciliation, 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.

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 Lloyds TSB base rate from time to time:
- (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 Lloyds TSB base 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.

Part 3: Target Cost

1 Introduction

1.1 The Target Cost for delivery of the Client Specification is

s.43

This sum shall be subject to escalation / de-escalation in accordance with Part 8 (*Indexation*) of this Schedule 6 and subject to adjustment for Category 0 Change.

2 Alternative Strategies

2.1 The Authority may (subject to doing so before the date set out against such option in the final column of the table below) exercise the option to implement the following Alternative Strategies, the detailed scope of which is defined in the Client Specification:

Number	Alternative Strategy Description / Contractor Proposal Reference	Client Specification Reference	Target Cost Adjustment (£)	Impact to Milestones / Interim End State Date	Date by which option must be exercised
A	Interim End State where the LLW Pits are not retrieved	Item 2 Section 4 <i>(Alternative Strategies)</i> and Requirement 27(vi)	s.43	There is no impact to the IES date. Cardinal/target fee milestone M60 (LLW Pit Retrieval Complete) would be deleted and an alternative target fee milestone substituted.	s.43
B	Passivation of Sellafield owned mixed Carbide Fuel	Item 6 Section 4 <i>(Alternative Strategies)</i> and Requirement 34e		There is no impact to any of the cardinal milestone, payment milestone or IES dates.	
C	Consolidation at Sellafield and direct disposal of Irradiated Carbide Fuel	Item 7 Section 4 <i>(Alternative Strategies)</i> and Requirement 34g		There is no impact to any of the cardinal milestone, payment milestone or IES dates.	

Number	Alternative Strategy Description / Contractor Proposal Reference	Client Specification Reference	Target Cost Adjustment (£)	Impact to Milestones / Interim End State Date	Date by which option must be exercised
D	Addition of overseas owned Fuels to UK title for Contract B of the Legacy Fuels Contracts	Item 16 Section 4 (<i>Alternative Strategies</i>) and Requirement 34h	<div style="border: 1px solid red; background-color: #cccccc; width: 100%; height: 15px; margin-bottom: 5px;">S.4</div> <div style="border: 1px solid red; background-color: #cccccc; width: 100%; height: 350px;">S.4.3</div>	There is no impact to any of the cardinal milestone, payment milestone or IES dates.	<div style="border: 1px solid red; background-color: #cccccc; width: 100%; height: 25px;">S.4.3</div>
E	Substitution of Vitrified Waste from Sellafield for ILW at Dounreay	Item 17 Section 4 (<i>Alternative Strategies</i>) and Requirement 35b	<div style="border: 1px solid red; background-color: #cccccc; width: 100%; height: 15px; margin-bottom: 5px;">S.4</div> <div style="border: 1px solid red; background-color: #cccccc; width: 100%; height: 150px;">S.4.3</div>	There is no impact to any of the cardinal milestone, payment milestone or IES dates.	<div style="border: 1px solid red; background-color: #cccccc; width: 100%; height: 25px;">S.4</div>

- 2.2 Any exercise by the Authority of any option set out above shall result in:
- (a) the Client Specification being amended so as to oblige the Contractor to deliver as required by such option;
 - (b) the Target Cost being adjusted as set out in the column above headed "Target Cost Adjustment"; and
 - (c) the nature and / or date for achievement of any affected Milestone and / or the date for achievement of the Interim End State being amended as set out in the column above headed "Impact to Milestones / Interim End State Date".
- 2.3 If, in respect of any of the options described above under the heading "Option Description", the circumstance described in Paragraph 2.2 above arises after the date set out above under the heading "Date by which option must be exercised", this shall be addressed by way of a Proposed Change.

3 Target Cost Adjustments

- 3.1 The following unit rates will be used to establish the Target Cost and Interim End State date changes to the respective items where there is an inconsistency between: (i) waste volumes or mass; and (ii) the quantities identified in Section 5.1 (*Waste Inventory*) of Schedule 1 (*Client Specification*), as further broken down in the table below, by more than plus five per cent (5%) or minus ten (10%). There will be no fractional adjustments for quantities less than m³ or tonne units (as applicable) set out in the table below. Where a measurement results in a fraction of a unit, such measurement shall be rounded down to the nearest whole unit. The unit rates will be subject to escalation/de-escalation in a like for like manner with the Target Cost.
- 3.1A Notwithstanding any contrary definition in Schedule 1 (*Client Specification*), the raw waste and Secondary Waste volume or mass (as applicable) in respect of the items described in the table below shall be measured at the time after the Commencement Date at which such waste can first be measured:
- (a) in respect of raw waste, prior to such waste being packaged and prior to any treatment or the addition of any post Commencement Date conditioning or treatment materials
 - (i) in respect of volume
 - (A) for liquid waste by the level in the tank/container holding the liquid waste,

- (B) for contaminated land by the space the waste takes up inside the waste container multiplied by an agreed fluff factor so as to eliminate any increase in volume following retrieval, and
 - (C) for all other waste by the volume prior to the waste being retrieved by the Contractor;
- (ii) in respect of mass, the raw mass is the mass of waste unless the waste was packaged prior to the Commencement Date, in which case the Parties will review the packaging efficiencies and methodologies used by the Contractor when the waste was first packaged and agree an appropriate adjustment to unit rates identified at Schedule 6 (*Finance*) Part 3 (*Target Cost*) Paragraph 3 to take account of any difference between those packaging efficiencies and methodologies and the packaging efficiencies and methodologies assumed in the Response to Final Tender;
- (b) where 3.1A (a) is not practicable due to the nature of the Contractor's solution, the mass or volume (as applicable) of such waste must be determined after subtracting the mass or volume of any materials that have been added by the Contractor after the Commencement Date to condition or treat such waste; and
- (c) in respect of Secondary Waste, such volume or mass existing prior to or created on or following the Commencement Date, provided that in relation to Secondary Waste existing prior to the Commencement Date the Parties will review the packaging efficiencies and methodologies used by the Contractor when that Secondary Waste was first packaged and agree an appropriate adjustment to unit rates identified at Schedule 6 (*Finance*) Part 3 (*Target Cost*) Paragraph 3 to take account of any difference between those packaging efficiencies and methodologies and the packaging efficiencies and methodologies assumed in the Response to Final Tender.

For the purposes of this Paragraph 3, "Secondary Waste" means additional waste created in the course of the treatment, handling, or processing of waste, excluding materials comprising packaging and grouting and further excluding any additional waste created that could reasonably have been avoided by the Contractor exercising Good Industry Practice following the Commencement Date or the creation of which is otherwise inconsistent with the achievement of Value for Money following the Commencement Date.

- 3.1B The categorisation of waste shall be based on the category of waste contained within DRWI or as otherwise agreed by both parties prior to removal of such waste and shall not be based on the radiological inventory of the waste after conditioning or treatment.

3.1C For the avoidance of doubt, any measurement carried out pursuant to this Paragraph 3 shall not, in any way, relieve the Contractor of its obligation to exercise Good Industry Practice in determining the appropriate number of waste packages that it requires.

3.1D Within one hundred and twenty (120) Working Days of the Commencement Date, the Contractor shall provide to the Authority for its approval, such approval not to be unreasonably withheld or delayed, a proposed methodology for measuring raw waste volume or raw waste mass and for converting, where appropriate, waste volume to mass. Such methodology shall set out:

- (a) the means by which the raw volume of waste can be accurately measured; and / or
- (b) where the raw volume of waste cannot be accurately measured, sets out a means by which the raw mass can be measured.

In the circumstances where the raw volume of waste is measured;

- i) the conversion factors set out in table A below (*Table A: Factors for Converting between Volume and Mass (as per the Client Specification)*) must be used unless otherwise agreed with the Authority; and
- ii) the Contractor must measure raw mass or volume directly and not rely on back calculation about the packing fraction that has been obtained in packaging the waste unless agreed with the Authority.

Following approval by the Authority, such methodology (including conversion factors) shall not be changed without the Authority's further approval, provided that such further approval shall not be unreasonably withheld or delayed.

3.1E The amount set out under the heading "Target Cost Adjustment per Unit (Unit Rate)(£)" in the table below 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 waste volume or mass (as applicable) within the relevant "Item Description / Unit" or "Further Categorisation" category set out in the table below.

3.1F At any time following the Commencement Date but prior to the Expiry Date, where the Contractor is able to demonstrate to the reasonable satisfaction of the Authority that any waste volume or mass shown in the table below has varied or will vary in delivery of the IES by more than plus five per cent (5%) or minus ten (10%), the Contractor shall submit a Proposed Change and will be entitled to a neutralising adjustment in accordance with Paragraphs 7.6A and 7.11 of Schedule 2 Part 2. To the extent that neither the relevant Maximum Additional Volume nor Validity Period for Adjustment is

exceeded, such neutralising adjustment shall be calculated applying the unit rates identified in the table below.

3.1G Following the Expiry Date, in the circumstance where the IES has been achieved, the Authority and the Contractor will agree as part of the process of Final Reconciliation described at Paragraph 10 (*Final Reconciliation of Allowable Costs*) of Part 2b (*Payment of Allowable Costs*) of Schedule 6 (*Finance*), the actual waste volume and mass as measured in accordance with Paragraph 3.1A. The reconciliation of the Target Cost will be based on:

- (ii) the unit rates identified in the table below to the extent that neither the relevant Maximum Additional Volume nor Validity Period for Adjustment is exceeded, or
- (iii) where (i) above does not apply, the principles set out in Paragraph 7.6A of Schedule 2 Part 2.

(1) Item Description / Unit	(2) Further categorisation of waste	(3) Mass (tonnes) and Volume (m ³)	(4) Target Cost Adjustment per Unit (Unit Rate) (£)	(5) Total Volume	(6) Validity Period for Adjustment
Remote Handlable Solid ILW ILW ^[1] Unit: 1 tonne / 1m ³	[Redacted content]				

S.43

[Redacted content]

S.43

(1) Item Description / Unit	(2) Further categorisation of waste	(3) Mass (tonnes) and Volume (m ³)	(4) Target Cost Adjustment per Unit (Unit Rate) (£)	(5) Total Volume	(6) Validity Period for Adjustment	
	Sludge Unit: 1 tonne / 1m ³					S.43

(1) Item Description / Unit		(2) Further categorisation of waste	(3) Mass (tonnes) and Volume (m ³)	(4) Target Cost Adjustment per Unit (Unit Rate) (£)	(5) Total Volume	(6) Validity Period for Adjustment
Contact Handlable ILW	Liquids (including solvent) Unit: 1 tonne / 1m ³					
	Solid Unit: 1 tonne / 1m ³					

S.43

(1) Item Description / Unit	(2) Further categorisation of waste	(3) Mass (tonnes) and Volume (m³)	(4) Target Cost Adjustment per Unit (Unit Rate) (£)	(5) Total Volume	(6) Validity Period for Adjustment
s.43					

(1) Item Description / Unit	(2) Further categorisation of waste	(3) Mass (tonnes) and Volume (m ³)	(4) Target Cost Adjustment per Unit (Unit Rate) (£)	(5) Total Volume	(6) Validity Period for Adjustment	
Low Level Waste ^[2]	Liquid Unit: 1 tonne / 1m ³ Solid Unit: 10 tonnes / 10m ³ Sludge Unit: 10 tonnes / 10m ³					S.43

² The combined total volume for the three Item Description / Units covered under Low Level Waste is 75,000m³.

(1) Item Description / Unit	(2) Further categorisation of waste	(3) Mass (tonnes) and Volume (m ³)	(4) Target Cost Adjustment per Unit (Unit Rate) (£)	(5) Total Volume	(6) Validity Period for Adjustment
Demolition ^[3] Unit: 10 tonnes / 10 m ³ Exempt Waste					
Inert Unit: 10 tonnes / 10 m ³					
Non-Hazardous Unit: 10 tonnes / 10 m ³					



s.43

(1) Item Description / Unit		(2) Further categorisation of waste	(3) Mass (tonnes) and Volume (m ³)	(4) Target Cost Adjustment per Unit (Unit Rate) (£)	(5) Total Volume	(6) Validity Period for Adjustment
Clean Waste	Hazardous Unit: 10 tonnes / 10 m ³					
	Inert Unit: 10 tonnes / 10 m ³					
	Hazardous Unit: 10 tonnes / 10 m ³					



S.43

(1) Item Description / Unit	(2) Further categorisation of waste	(3) Mass (tonnes) and Volume (m ³)	(4) Target Cost Adjustment per Unit (Unit Rate) (£)	(5) Total Volume	(6) Validity Period for Adjustment
Non Hazardous Unit: 10 tonnes / 10 m ³	n/a				

Table A: Factors for Converting between Volume and Mass (as per the Client Specification)

Item Description / Unit	Conversion (te/m3)	
Remote Handlable ILW (RHILW)	RHILW Solid Unit:	3.834
	RHILW Sludge Unit:	1.952
	RHILW Liquid Unit:	-
Contact Handlable ILW (CHILW)	CHILW Solid Unit:	1.2956
	CHILW Liquid Unit:	-
Low Level Waste (LLW)	LLW Solid Unit:	1.07235
	LLW Contaminated Land Unit:	1.25

	LLW Sludge Unit:	1.200
Demolition (HVLA)	HVLA Solids	1.5249
	LLW Contaminated Land Unit:	1.5249
Exempt Waste	Inert Unit:	1.5253
	Non-Hazardous Unit:	1.01702
	Hazardous Unit:	1.08657
Clean Waste	Inert Unit:	1.032009
	Hazardous Unit:	0.72373
	Non-Hazardous Unit:	0.81969

3.2 [Not Used]

3.3 If, in respect of any of the item types described above under the heading "Item Description", the circumstance described in Paragraph 3.1 above arises after the date set out above under the heading "Validity Period for Adjustment", then the impact of more or fewer items of such type being present on the Site or otherwise needing to be dealt with in order to achieve the Interim End State shall be addressed by way of a Proposed Change.

Special Items

4 At Appendix A (*Special Items*), provisional sums for inclusion in the Target Cost have been identified against a list of items set out therein. Subject to any different mechanism set out in Appendix A (*Special Items*) in relation to Customer Contracts, any difference between the actual Cost (or in relation to "Asbestos Removal" the agreed estimate) and the amount the Authority has directed should be included by the Contractor in respect of any of the matters set out at Appendix A (*Special Items*) of Schedule 6 (*Finance*) for the purposes of the Target Cost shall be addressed pursuant to Paragraphs 7.6A and 7.11 (k) of Schedule 2, Part 2 (*Change Control Procedure*).

Part 4: PBI and Target Fee

1 PBI and Target Fee

- 1.1 This Part 4 is divided into 3 sub-parts as follows:
 - (a) Part 4a. Calculation of the PBI Fee;
 - (b) Part 4b. Calculation of the Target Fee; and
 - (c) Part 4c. Arrangements for the payment of the PBI and Target Fee.
- 1.2 The Fee shall constitute 2 elements:
 - (a) PBI Fee, to be primarily used to incentivise the underlying performance aspects of the Contractor; and
 - (b) Target Fee, to be primarily used to incentivise the delivery of decommissioning deliverables and to be adjusted via the Shareline.
- 1.3 The Target Fee and the maximum PBI Fee are subject to escalation/de-escalation in accordance with Part 8 (*Indexation*) of this Schedule 6, up to the date scheduled for Achievement of the Interim End State.
- 1.4 For the avoidance of doubt, PBI Payment Milestones are not intended to drive performance beyond that which could reasonably be expected to be achieved by the Contractor using Good Industry Practice.

Part 4a: PBI Fee

1 Purpose

- 1.1 This Part 4a sets out the basis on which the PBI Fee shall be calculated.
- 1.2 The PBI Fee is tied to the performance of the Contractor. The PBI Fee shall therefore be paid on achieving previously agreed objectives and milestones (being the PBI Payment Milestones) which are agreed on an ongoing basis in accordance with this Part 4a (*PBI Fee*) and Part 5 (*Performance Agreement Form*) of this Schedule 6 (*Finance*).
- 1.3 Contractor performance that is of an ongoing or subsisting nature shall nonetheless be capable of being the subject of PBI Payment Milestones, through use of measures including:
- (a) formulating PBI Payment Milestones such that they measure timely achievement of any element comprised in or otherwise evidencing such ongoing or subsisting performance; and
 - (b) formulating PBI Payment Milestones such that they consist of the delivery of accurate reports evidencing a required level of performance over a period of time.

2 Establishing PBI Objectives

- 2.1 The range of potential subject matters for PBI Payment Milestones shall be limited to those matters set out in Appendix E (*Potential PBI Fee Subject Matters*), provided that the Authority shall, acting reasonably, be entitled to add to or otherwise amend the content of such Appendix, subject to:
- (a) providing the Contractor with no less than one (1) Months' Notice of such addition or other amendment; and
 - (b) the subject matter of any new or amended item in that Appendix E (*Potential PBI Fee Subject Matters*) following such addition or amendment falling within the Contractor's obligations under this Agreement.
- 2.2 There shall be no more than twenty (20) PBI Payment Milestones in any Contract Year.
- 2.3 The PBI Payment Milestones for the first Contract Year shall be as set out in the PAFs comprising Appendix F (*PAFs as at Commencement Date*).
- 2.4 During the first Contract Year, and each Contract Year thereafter, the Parties shall meet to agree (each acting reasonably), before the date falling forty (40) Working Days prior to the end of such Contract Year:

- (a) the list of subject matters for the PBI Payment Milestones for the following Contract Year (having regard to the provisions of Paragraph 2.1 (*Establishing PBI Objectives*) of Part 4a (*PBI Fee*) above);
- (b) the number of PBI Payment Milestones to apply to each such subject matter (having regard to the provisions of Paragraph 2.2 of Part 4a (*PBI Fee*) above); and
- (c) the amount of PBI Fee to be allocated to each such PBI Payment Milestone (having regard to the provisions of Paragraph 3.4 (*Maximum PBI Fee*) below, but using (for these purposes only) the figures set out in the table at Paragraph 3.4 (*Maximum PBI Fee*) below as if they had already been escalated or de-escalated (as the case may be) in accordance with Part 8 (*Indexation*) of this Schedule 6, notwithstanding that such escalation or de-escalation will not (pursuant to such Part 8 (*Indexation*)) take effect until the Indexation Adjustment Date), 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 scaleand furthermore:
 - (iii) taking into account the benefit to the Authority of achieving the relevant PBI Payment Milestone; and
 - (iv) ensuring that if any PBI Fee is to be allocated to a PBI Payment Milestone which relates to a Project in respect of which there are to be a number of PBI Payment Milestones, most of the PBI Fee that will accrue in respect of such PBI Payment Milestones shall accrue upon the completion of the relevant Project,

provided that if the Parties fail to so agree by such date, 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.

2.5 Following agreement or determination of the matters set out in Paragraph 2.4 (*Establishing PBI Objectives*) of Part 4a (*PBI Fee*) above, the Parties shall, in accordance with the provisions of Part 5 (*Performance Agreement Form*), establish a PAF in respect of each PBI Payment Milestone 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 Interim End State being reached, subject to Paragraph 3.2 below.
- 3.2 If Achievement of the Interim End State is delayed beyond the scheduled date for such Achievement (subject to any adjustment to that date in accordance with Schedule 2 (Part 2) (*Change Control Procedure*), the Contractor shall not (subject to Paragraph 3.3 below) be entitled to PBI Fee beyond the agreed Interim End State date.
- 3.3 If achievement of the Interim End State is delayed beyond the agreed date for achievement of the Interim End State (subject to any adjustment to that date in accordance with Schedule 2 (Part 2) (*Change Control Procedure*) the Authority shall, at its sole discretion, have the right to re-model 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 The maximum PBI Fee which can be earned by the Contractor in each of such Contract Year shall (subject to Paragraph 3.2 (*Maximum PBI Fee*) above) be as set out in the table below.

The Total Maximum PBI Fee stated in the table below is subject to any adjustment in accordance with Paragraph 7.6A of Schedule 2 (Part 2) (*Change Control Procedure*).

Contract Year	Maximum PBI Fee
Contract Year 1	s.43
Contract Year 2	
Contract Year 3	
Contract Year 4	

Contract Year	Maximum PBI Fee
Contract Year 5	s.43
Contract Year 6	
Contract Year 7	
Contract Year 8	
Contract Year 9	
Contract Year 10	
Contract Year 11	
Contract Year 12	
Total Maximum PBI Fee	

4 Changes to Apportionment of PBI Fee

4.1 In the event that the Authority or the Contractor wishes to make any change to the apportionment of PBI Fee across PBI Payment Milestones, then such change shall be made in accordance with Schedule 2 (Part 2) (*Change Control Procedure*).

5 PBI Fee Calculation

5.1 Upon achieving a PBI Payment Milestone the Contractor shall then become entitled to the PBI Fee which the Parties have agreed (or it is otherwise determined) is to be apportioned to such PBI Payment Milestone in accordance with Paragraph 2.4 (*Establishing PBI Objectives*) of Part 4a.

5.2 For each of the PBI Payment Milestones completed after its target completion date (with the exception of any PBI Payment Milestone in respect of which, pursuant to Paragraph 2.4(c)(i) (*Establishing PBI Objectives*) above, a set amount of PBI Fee is payable and is assessed on a pass or fail basis in terms of timeliness) the attendant PBI Fee paid will (unless the Parties have otherwise agreed) be adjusted as follows:

- (a) up to ten (10) Calendar Days late, no adjustment to PBI Fee;
- (b) more than ten (10) Calendar Days and less than thirty (30) Calendar Days late, a deduction of five (5)% of the PBI Fee allocated to such PBI Payment Milestone per Calendar Day (or part thereof) late; and
- (c) more than thirty (30) Calendar Days late, no PBI Fee shall be payable in respect of such PBI Payment Milestone.

6 PBI Payment Milestones — Delay Events

6.1 [Not Used]

7 PBI Fee Records Management

7.1 PBI Fee payment documentation, together with all of the associated supporting documentation, shall be maintained by the Contractor.

8 Reclaiming PBI Fee

8.1 If the Authority pays the Contractor PBI Fee in respect of the satisfaction of a PBI Payment Milestone and following such payment it is discovered that there was Defective Performance in respect of such PBI Payment Milestone the effect of which is that the PBI Payment Milestone has not been satisfied, the Authority shall be entitled to repayment of the relevant PBI Fee.

8.2 At the same time as making any repayment under this Paragraph 8 (Reclaiming PBI Fee), 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 (3) per cent above the Lloyds TSB Bank plc base rate from time to time.

8.3 Subject to Clause 37.9 (*Entire Agreement*) of this Agreement, the Authority's rights under this Paragraph 8 (*Reclaiming PBI Fee*) shall (notwithstanding termination of this Agreement) continue for a period of six (6) years from completion of the PBI Payment Milestones in relation to which the relevant Defective Performance arose, 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 Account to which PBI Fee Paid

9.1 All payments of PBI Fee including any payments on account of PBI Fee shall be made to the Contractor's Fee Account.

Part 4b: Target Fee

1 Calculation of Target Fee and Shareline

- 1.1 This Part 4b (*Target Fee*) sets out the basis on which the amount of Target Fee payable and the attendant Shareline shall be calculated.

SECTION A: FEE CALCULATION

Calculation of Target Fee

- 1.2 On Achievement of each Sub-Milestone and Major Work Package, and of the Interim End State, 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:

$$(ATF + SL) - PSL$$

where:

ATF means the Allocated Target Fee applicable to the Sub-Milestone or Major Work Package in question or the Interim End State;

SL, means the Shareline applicable at the time of such Achievement (as calculated pursuant to Paragraphs 1.3 (*Relevant Variance – Moderation Mechanism*) to 1.4 (*Calculation of Shareline*) below); and

PSL means the Shareline applicable at the time of Achievement of the last Sub-Milestone or Major Work Package to have previously been Achieved.

SECTION B: SHARELINE CALCULATION

Relevant Variance — Moderation Mechanism

- 1.3 In respect of Achievement of any Sub-Milestone or Major Work Package, the Relevant Variance shall be calculated at the end of the Contract Month in which such Achievement took place (provided that such calculation shall only be undertaken once, even where more than one Sub-Milestone and / or Major Work Package has been Achieved in such Contract Month) as follows:

(a) the Interim True Cost Variance as at the time of such Achievement shall be calculated;

(b) the following calculation shall be undertaken:

$$(TC - EAC) \times \%Complete$$

where:

TC means the Target Cost;

EAC is the most recent value of the Estimate at Completion as at the end of such Contract Month; and

%Complete means the amount of the actual activities that have (as at the end of such Contract Month) so far been undertaken, expressed as a percentage of the total amount of activities required to deliver the Interim End State 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

and the result shall be the "**Moderator**"; and

- (c) the Relevant Variance shall be the lesser of:
- (i) the Interim True Cost Variance as at the end of such Contract Month;
 - and
 - (ii) the Moderator.

1.3A In respect of Achievement of the Interim End State, Relevant Variance is, subject to Paragraph 2.2 (*True Cost Variance Adjustments*) of Part 4b (*Target Fee*) of Schedule 6 (*Finance*), the value derived from deducting the Actual Cost of Work Performed at the point of such Achievement from the Target Cost.

Calculation of Shareline

1.4 In respect of Achievement of any Sub-Milestone or Major Work Package, or the Interim End State, the Shareline shall be calculated as follows:

- (a) the following calculation shall be undertaken:

$$Band = \frac{RV}{TC}$$

where:

Band means the Shareline Band which is to be applied for the purposes of Paragraph 1.4(b) (*Calculation of Shareline*) below;

RV means the applicable Relevant Variance; and *TC* means:

- (i) the Target Cost of Work Performed as at the time of such Achievement;
or
 - (ii) where Shareline is being calculated in respect of the Interim True Cost Variance where the Relevant Variance is the Moderator, the Target Cost multiplied by the %Complete (as used in paragraph 1.3(b) (*Relevant Variance – Moderation Mechanism*) above); or
 - (iii) where Shareline is being calculated in respect of the Final True Cost Variance, the Target Cost;
- (b) the calculation set out in the column in the table below headed "Shareline Formula" that corresponds to the Shareline Band which is (pursuant to Paragraph 1.4(a) (*Calculation of Shareline*) above) to be applied shall be undertaken, and this shall be the "**Base Shareline**":

Underspend / Overspend	Shareline Band	Shareline Formula
Overspend	Less than minus 15%	$((TC \times -0.05) \times 20\%) + ((TC \times -0.1) \times 25\%) + ((RV - (TC \times -0.15)) \times 12.5\%)$
	Less than minus 5%, down to (and including) minus 15%	$((TC \times -0.05) \times 20\%) + ((RV - (TC \times -0.05)) \times 25\%)$
	Less than 0%, down to (and including) minus 5%	RV x 20%
Underspend	More than 0%, up to (and including) 5%	RV x 40%

	More than 5%, up to (and including) 15%	$((TC \times 0.05) \times 40\%) + ((RV - (TC \times 0.05)) \times 50\%)$
	More than 15%	$((TC \times 0.05) \times 40\%) + ((TC \times 0.1) \times 50\%) + ((RV - (TC \times 0.15)) \times 25\%)$

where:

RV and *TC* have the meanings given in Paragraph 1.4(a) above;

- (c) the Base Shareline shall be multiplied by the Shareline Modifier applicable following Achievement of the Sub-Milestone or Major Work Package in question, or the Interim End State (as the case may be), and the result of this calculation shall be the Shareline;

provided that the amount of any negative Shareline is capped such that the amount of Allocated Target Fee in respect of the Sub Milestones and Major Work Package Milestones (including the Interim End State) Achieved from the Commencement Date up to the time that the Relevant Variance is calculated, as adjusted by Shareline, is never less than zero.

2 True Cost Variance and Moderator Adjustments

2.1 The Interim 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 Actual Cost of Work Performed (but only to the extent that such Insurance Proceeds had not been taken into account in the Target Cost of Work Performed);
- (b) [Not Used];
- (c) [Not Used];
- (d) [Not Used];
- (e) by adding the amount of any Contractor Historical Costs and any Non Contractor Historical Costs not included in the Target Cost of Work Performed (to the extent such Contractor Historical Costs or, as the case may be, Non Contractor Historical Costs were included in the Actual Cost of Work Performed);

- (f) 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:
 - (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 18.4 (*Disallowable Costs*) of this Agreement; and
- (g) by adding the amount of any Disallowable Costs which were included within the Actual Cost of Work Performed.

2.2 The Final True Cost Variance shall, when 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 Actual Cost of Work Performed (but only to the extent that such Insurance Proceeds had not been taken into account in the Target Cost);
- (b) [Not Used];
- (c) [Not Used];
- (d) [Not Used];
- (e) by adding the amount of any Contractor Historical Costs and any Non Contractor Historical Costs not included in the Target Cost (to the extent such Contractor Historical Costs or, as the case may be, Non Contractor Historical Costs were included in the Actual Cost of Work Performed);
- (f) 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:
 - (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

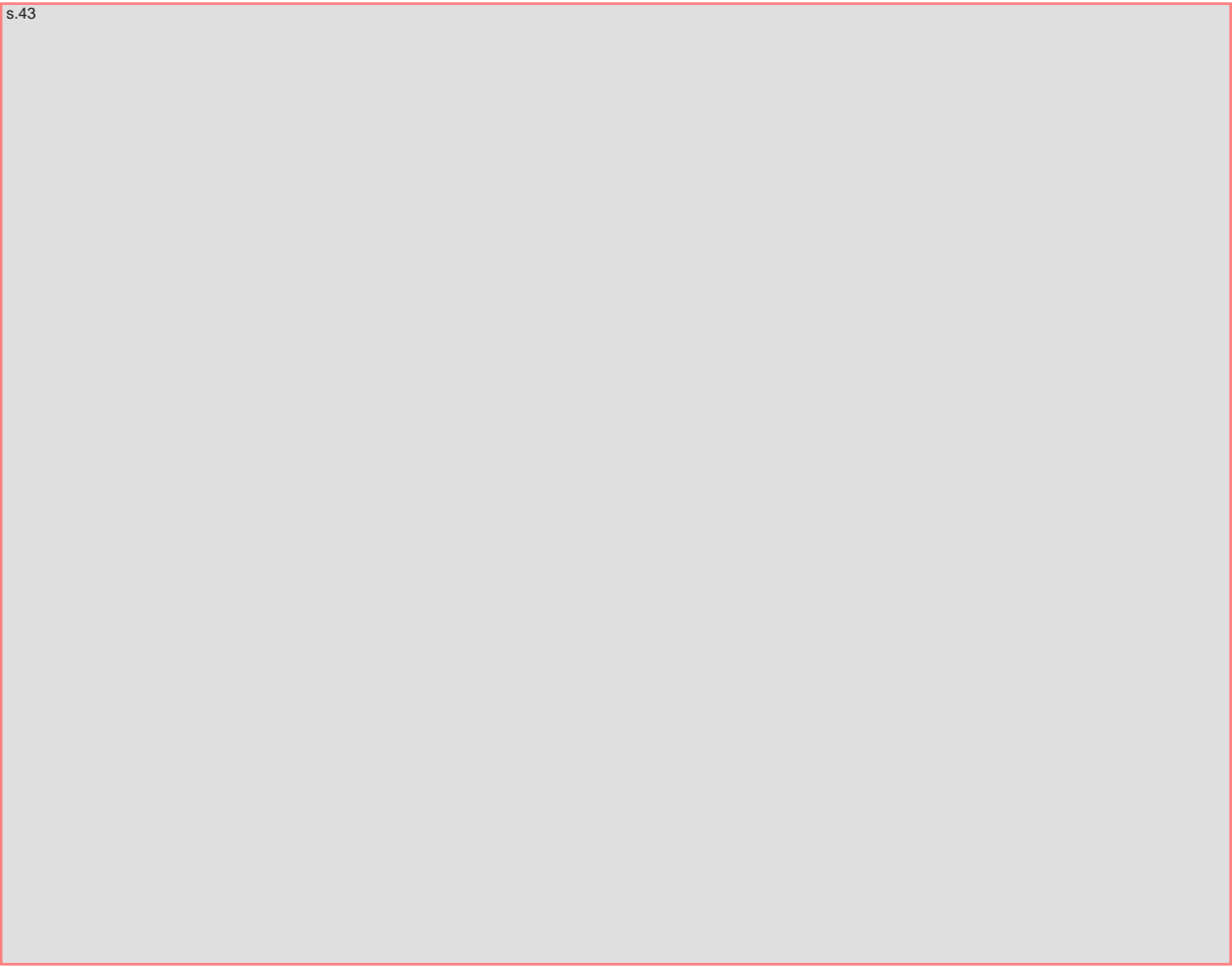
- (iii) such liability incurred by the Authority to a Third Party has not been reimbursed by the Contractor pursuant to the indemnity at Clause 18.4 (*Disallowable Costs*) of this Agreement; and
 - (g) by adding the amount of any Disallowable Costs which were included within the Actual Cost of Work Performed.
- 2.2A The Estimate at 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 Completion (but only to the extent that such Insurance Proceeds had not been taken into account in the Target Cost); and
 - (b) by deducting the amount of any Contractor Historical Costs and any Non Contractor Historical Costs not included in the Target Cost (to the extent such Contractor Historical Costs or, as the case may be, Non Contractor Historical Costs were included in the Estimate at Completion).
- 2.3 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 2.1(f) (*True Cost Variance Adjustments*) or Paragraph 2.2(f) (*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.
- 2.4 When applying Paragraphs 2.1(f)(ii) (*True Cost Variance Adjustments*) or 2.2(f)(ii) (*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.

SECTION C: PAYMENT MILESTONE DETAILS

3 Target Fee Payment Milestones

- 3.1 The Major Work Packages and Sub-Milestones, and the associated Target Fee payable (subject to adjustment in accordance with the provisions of this Part 4b (*Target Fee*)), together with the Target Fee payable (also subject to adjustment in accordance with the

provisions of this Part 4b (*Target Fee*) in respect of Achievement of the Interim End State, shall be as set out in the following tables and as further described in the relevant PAFs included at Appendix F (*PAFs as at Commencement Date*). Provided that, where the Parties have not agreed any such PAF prior to the Commencement Date, the Parties shall (each acting reasonably) seek to agree the relevant PAF prior to the end of the Consolidation Phase, such that each PAF is compliant with, and limited to, the subject matter of Annex 10 (*Target Fee Payment Milestones*) of Schedule 1 (*Client Specification*).

Major Work Package Description	Operating Plan Reference	Sub-Milestone	Allocated Target Fee	Shareline Increment
<div style="border: 1px solid black; padding: 5px;"> s.43  </div>				

Major Work Package Description	Operating Plan Reference	Sub-Milestone	Allocated Target Fee	Shareline Increment
s.43				

Major Work Package Description	Operating Plan Reference	Sub-Milestone	Allocated Target Fee	Shareline Increment
s.43				

Major Work Package Description	Operating Plan Reference	Sub-Milestone	Allocated Target Fee	Shareline Increment
s.43				

<i>Major Work Package Description</i>	<i>Operating Plan Reference</i>	<i>Sub-Milestone</i>	<i>Allocated Target Fee</i>	<i>Shareline Increment</i>
s.43				

Major Work Package Description	Operating Plan Reference	Sub-Milestone	Allocated Target Fee	Shareline Increment
s.43				

s.43



Major Work Package Description	Operating Plan Reference	Sub-Milestone	Allocated Target Fee	Shareline Increment
s.43				

s.43



Major Work Package Description	Operating Plan Reference	Sub-Milestone	Allocated Target Fee	Shareline Increment
s.43				

Major Work Package Description	Operating Plan Reference	Sub-Milestone	Allocated Target Fee	Shareline Increment
s.43				

s.43



Major Work Package Description	Operating Plan Reference	Sub-Milestone	Allocated Target Fee	Shareline Increment
s.43				

Major Work Package Description	Operating Plan Reference	Sub-Milestone	Allocated Target Fee	Shareline Increment
s.43				

Major Work Package Description	Operating Plan Reference	Sub-Milestone	Allocated Target Fee	Shareline Increment
s.43				

s.43

In	s.43	%
----	------	---

TOTAL TARGET FEE (Total of all Allocated Target Fee amounts)	s.43
--	------

- 3.2 If, pursuant to the Change Control Procedure, the Parties agree to any revision of any Target Fee Payment Milestone or addition of any new Target Fee Payment Milestone (or if any such revision or addition becomes necessary pursuant to any provision elsewhere in this Agreement), the Parties shall, in accordance with the provisions of Part 5 (*Performance Agreement Form*) and (as relevant) the Change Control Procedure or such other provision elsewhere in this Agreement, establish a PAF (or revised PAF, where relevant) in respect of each such revised or additional Target Fee Payment Milestone, provided that the Parties shall have particular regard to the provisions of Paragraph 7.2 (*"No Better and No Worse" Requirement*) of the Change Control Procedure when considering any revision to the Target Fee or any amount of Allocated Target Fee or any Shareline Increment as a result of any Proposed Change.

SECTION D: PAYMENT PROCEDURE

4 Arrangements for the Payment of Target Fee

- 4.1 For budgeting purposes for each Contract Year the Authority and the Contractor shall applying the principles and following the timetable applicable to Paragraph 2.1 (*Invoicing and Payment Process*) of Part 2b (*Payment of Allowable Costs*) of this Schedule 6, agree the estimated amount of Target Fee (including the estimate of Shareline) which the Contractor is likely to earn in respect of the relevant Contract Year.
- 4.2 Notwithstanding Paragraph 4.1 (*Arrangements for the Payment of Target Fee*) above, if the relevant estimate of Target Fee has not been determined by 24 March in the Contract Year immediately preceding the Contract Year in respect of which the Payment Milestones will apply, the Authority shall be entitled, acting reasonably, to determine such matters as it considers appropriate.

5 Target Fee — Invoicing Procedures

- 5.1 At the end of the Contract Month in which Achievement of a Major Work Package or Sub-Milestone or the Interim End State takes place, the Contractor shall submit a Target Fee invoice setting out:
- (a) details of the calculations set out at Paragraphs 1.2 (*Calculation of Target Fee*) to 1.4 (*Calculation of Shareline*) of this Part 4b (inclusive) above (as relevant);
 - (b) previous payments submitted pursuant to this Paragraph 5.1; and
 - (c) such other details as are required by Paragraph 2.4 (*Payments of PBI Fee and Target Fee*) of Part 4c (*Payment of Fee*), below,

provided that where Paragraph 5.2 (*Target Fee – Invoicing Procedures*) below applies, the invoice may be in the form of a credit.

5.2 If, at the end of a Contract Month in which any Sub-Milestone or Major Work Package or the Interim End State is due to be Achieved in accordance with the relevant Performance Agreement Form, and in the case of the Interim End State 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 Target Fee*) to 1.4 (*Calculation of Shareline*) (inclusive) of Part 4b (*Target Fee*) above (as relevant) shall be undertaken, and, for the purposes of such calculations only:

(i) the relevant Sub-Milestone or Major Work Package or the Interim End State (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 shall be deemed to be zero,

(and, for the avoidance of doubt, operation of this Paragraph 5.2 shall not constitute actual Achievement of such Sub-Milestone or Major Work Package or the Interim End State, 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 Target Fee*) to 1.4 (*Calculation of Shareline*) (inclusive) of Part 4b (*Target Fee*) and 5.2(a) above show that the Contractor owes the Authority any sum of money, the Contractor shall submit the invoice as required by Paragraph 5.1 (*Target Fee – Invoicing Procedures*) above (in the form of a credit note), notwithstanding the fact that such Sub-Milestone or Major Work Package or the Interim End State (as the case may be) has not been Achieved, provided that a further invoice shall be submitted pursuant to Paragraph 5.1 (*Target Fee – Invoicing Procedures*) above upon actual Achievement of the Sub-Milestone or Major Work Package in question or the Interim End State.

6 Late Achievement of the Interim End State

6.1 For each Working Day, or part Working Day, beyond the agreed date for Achievement of the Interim End State that such Achievement does not take place, up to and including the date of any subsequent termination of this Agreement in accordance with its terms, the Contractor shall (unless otherwise agreed pursuant to the Change Control Procedure) pay to the Authority the sum of five thousand pounds sterling (£5,000) (indexed) per Working Day or part Working Day, provided that:

(a) such payment shall be calculated and become payable on each of:

- (i) the date falling at the end of each successive three-Month period following the agreed date for Achievement of the Interim End State; and
 - (ii) if different to the date described in (i) above, the date on which the Interim End State is ultimately Achieved;
- (b) such aggregate sum may be set off against any amounts payable to the Contractor by the Authority.

7 Not Used

8 Failure to Achieve Milestones to which Target Fee is Attached

8.1 If any Target Fee Payment Milestone which it is agreed or determined will on a certain date cease to operate for the purposes of earning Target Fee, is not achieved by the relevant date, then the Contractor shall (subject to the provisions of Paragraph 5 (*Project Funding and PBI Reconciliation on Termination*) of Part 4c (*Payment of Fee*) of this Schedule 6 (*Finance*) and unless otherwise agreed pursuant to the Contract Change Procedure) cease to be entitled to earn the Target Fee attached to such Target Fee Payment Milestone. In respect of other Target Fee Payment Milestones to which Target Fee is attached, the Contractor shall (subject to the provisions of Paragraph 5 (*Project Funding and PBI Reconciliation on Termination*) of Part 4c (*Payment of Fee*) of this Schedule 6 (*Finance*) and notwithstanding the end of the relevant Contract Year) remain entitled to the relevant instalment of Target Fee attached to such Target Fee Payment Milestone upon Achievement of such Target Fee Payment Milestone (subject to this being before the termination of this Agreement or the Parent Body Agreement).

8A Deemed Approval of the Environmental Safety Case

8.A1 Prior to receipt of formal approval of the Environmental Safety Case from the Regulators completing Target Fee Payment/Cardinal Milestone M67 the Contractor may request that Target Fee Payment/Cardinal Milestone M67 is deemed to be completed provided that:

- (a) Target Fee Payment/Cardinal Milestone M67 is the final pre-cursor Target Fee Payment/Cardinal Milestone required to Achieve the Interim End State;
- (b) the Contractor has submitted the Environmental Safety Case, and the Authority is reasonably satisfied that such safety case:
 - (i) has been prepared in accordance with Good Industry Practice and satisfies the requirements for such a safety case, and
 - (ii) demonstrates that clean-up levels have been achieved in accordance with the requirements of this Agreement;

- (c) the Contractor is not aware of any outstanding concern or issue raised by the Regulator or the Authority that may prevent or delay formal approval of the Environmental Safety Case, including any such concern or issue in relation to the nature of engineering controls required in order to justify the Environmental Safety Case, unless the Contractor and the Authority have agreed that such concern or issue will not prevent deemed completion of Target Fee Payment/Cardinal Milestone M67; and
- (d) the Contractor has submitted evidence to the Authority's reasonable satisfaction that the Contractor has submitted the Environmental Safety Case to the Regulators.

8A.2 Where the conditions set out in Paragraph 8A.1 are satisfied Target Fee Payment/Cardinal Milestone M67 is deemed to be completed and Achieved and the Contractor shall also be deemed to have Achieved the Interim End State (Target Fee Payment/Cardinal Milestone M68) for all purposes under this Agreement, provided that subject to Clause 8A.7 for the purposes of Schedule 6 (*Finance*) Part 4b (*Target Fee*) Paragraph 5 (*Target Fee – Invoicing Procedure*) and Schedule 6 (*Finance*) Part 2b (*Payment of Allowable Costs*) Paragraph 10 (*Final Reconciliation of Allowable Costs*) only, such deemed Achievement of the Interim End State (Target Fee Payment/Cardinal Milestone M68) shall not apply and in such circumstances the following shall apply:

- (a) reference to Achievement of the Interim End State in Schedule 6 (Finance) Part 4b (*Target Fee*) Paragraph 5 (*Target Fee – Invoicing Procedure*) requires that the Interim End State is actually Achieved, so that the relevant Target Fee for Achievement of the Interim End State shall not be due and payable by the Authority until such time as the Regulators have granted their approval of the Environmental Safety Case as required for actual completion of Target Fee Payment/Cardinal Milestone M67 and therefore, for completion of Target Fee Payment/Cardinal Milestone M68, provided that for the purposes of Paragraphs 1.2 (*Calculation of Shareline*) to 1.4 (*Calculation of Shareline*) of this Part 4b (inclusive), any Costs incurred by the Contractor after termination or expiry of this Agreement but prior to actual Achievement of the Interim End State shall be included in ACWP to the extent that such Costs:
 - (i) were reasonably and properly incurred and would have constituted Allowable Costs if incurred prior to termination or expiry of this Agreement;

- (ii) were incurred in achieving clean-up levels in accordance with the requirements of this Agreement or otherwise in relation to any precursor to achievement of the Interim End State; and
- (iii) would not have been incurred had the Regulator not determined not to approve the Environmental Safety Case.

For the avoidance of doubt, any further or other Costs incurred by the Contractor following termination or expiry of this Agreement shall not be included in ACWP; and

- (b) in establishing the Expiry Date and the date of termination of this Agreement for the purposes of Schedule 6 (*Finance*) Part 2b (*Payment of Allowable Costs*) Paragraph 10 (*Final Reconciliation of Allowable Costs*) the date on which the Interim End State is actually Achieved shall be used.

8A.3 Within 10 (ten) Working Days after the later of receipt by the Authority of: (i) the Contractor's request; and (ii) evidence submitted by the Contractor; pursuant to Paragraph 8A.1, the Authority shall notify the Contractor whether or not it accepts that the conditions set out in Paragraph 8A.1 have been satisfied.

8A.4 Subject to Paragraph 8A.7, where in accordance with the above provisions Target Fee Payment/Cardinal Milestone M67 is deemed to be completed and this Agreement expires in accordance with Clause 2 (*Commencement and Duration*) and the Regulators have subsequently determined on reasonable grounds not to approve the Environmental Safety Case, the following shall apply.

- (a) Where any of the Regulators' reasonable grounds for non-approval of the Environmental Safety Case relate to failure of the Contractor to: achieve clean-up levels in accordance with the requirements of this Agreement; or otherwise relate to any pre-cursor to achievement of the Interim End State other than the grounds referred to at Paragraph 8A.4(b) below, at the Authority's option:
 - (i) the Contractor (acting under a successor contract entered into with the Authority) shall carry out any necessary remediation; or
 - (ii) the Authority shall appoint a Third Party to carry out any necessary remediation, such costs to be paid by the Contractor,

and to the extent that the costs of such remediation were reasonably and properly incurred and comprise costs of remediation of Defective Performance of the Contractor prior to the expiry and of this Agreement that would in accordance with Schedule 6 Part 2(a) (Allowable and Disallowable Costs) have comprised Disallowable Costs had they been incurred by the Contractor in

carrying out such remediation prior to termination of this Agreement and are costs that would not otherwise have been incurred by the Authority had the Interim End State actually been Achieved, such costs shall be deducted from the relevant Target Fee to be paid by the Authority pursuant to paragraph 8A.5. Where the relevant Target Fee is less than the amount of such costs, the remaining balance of such costs shall be reimbursed by the Parent Body Organisation subject to and in accordance with Clause 5 (Parent Body Organisation Guarantees and Indemnities) and other relevant provisions of the Parent Body Agreement.

(b) Where Paragraph 8A.4(a) above does not apply and the Regulators' reasonable grounds for non-approval of the Environmental Safety Case relate only to the content or presentation of the Environmental Safety Case or any supporting documentation, such that the Environmental Safety Case does not satisfy the requirements for such a safety case, the Contractor shall be deemed to have failed to prepare the Environmental Safety Case in accordance with Good Industry Practice and such failure shall constitute Defective Performance. The Contractor will at the Authority's option:

- (i) remediate any such Defective Performance by re-preparing the Environmental Safety Case in accordance with Good Industry Practice and so as to satisfy the requirements for such a safety case; or
- (ii) pay the costs and expenses of re-preparation of the Environmental Safety Case reasonably and properly incurred by a Third Party appointed by the Authority,

and to the extent such costs were reasonably and properly incurred, such costs shall be deducted from the relevant Target Fee to be paid by the Authority pursuant to paragraph 8A.5. Where the relevant Target Fee is less than the amount of such costs, the remaining balance of such costs shall be reimbursed by the Parent Body Organisation subject to and in accordance with Clause 5 (Parent Body Organisation Guarantees and Indemnities) and other relevant provisions of the Parent Body Agreement.

8A.5 Subject to Paragraph 8A.7, on approval by the Regulators of the Environmental Safety Case:

- (a) the Contractor shall submit a Target Fee invoice to the Authority in accordance with Paragraph 5.1 of this Part 4b and the Authority shall pay the Contractor the relevant Target Fee for completion of the Interim End State (Target Fee Payment/Cardinal Milestone M68) less any deduction pursuant to paragraph 8A.4(a) or paragraph 8A.4(b); and

- (b) where such approval is granted after the expiry or termination of this Agreement, the Authority shall procure that the holder of the A Share at such time procures the declaration and payment of a dividend to the B Shareholder in respect of such relevant Target Fee.

8A.6 The Contractor shall have no liability under Schedule 6 Paragraph 6 Part 4b (*Late Achievement of the Interim End State*) following deemed completion of Target Fee Payment/Cardinal Milestone M67 whether or not the Regulators subsequently determine to approve the Environmental Safety Case.

8A.7 Where in accordance with the above provisions of this Paragraph 8A Target Fee Payment/Cardinal Milestone M67 is deemed to be completed and Achieved and the Contractor is deemed to have Achieved the Interim End State (Target Fee Payment/Cardinal Milestone M68), the Contractor may by notice to the Authority elect that the provisions of this Paragraph 8A.7 shall apply. Where the Contractor makes such election the Contractor shall execute and procure that the M68 Deed of Variation is executed by the Parent Body Organisation and the Ultimate Parents; and that the M68 Deed of Variation as so executed is tendered to the Authority in duplicate for execution by the Authority. On receipt by the Authority of the M68 Deed of Variation duly executed by the Contractor, the Parent Body Organisation and the Ultimate Parents:

- (a) for the purposes of Schedule 6 (*Finance*) Part 4b (*Target Fee*) Paragraph 5 (*Target Fee – Invoicing Procedure*) reference to Achievement of the Interim End State in that Paragraph shall be to deemed Achievement of the Interim End State so that the relevant Target Fee for Achievement of the Interim End State shall be due and payable by the Authority;
- (b) the Contractor shall submit a Target Fee invoice to the Authority in accordance with Paragraph 5.1 of this Part 4b and the Authority shall pay the Contractor the relevant Target Fee for completion of the Interim End State (Target Fee Payment/Cardinal Milestone M68);
- (c) the provisions of Paragraphs 8A.4 shall cease to apply (all liabilities and obligations of the Contractor thereunder being replaced by liabilities and obligations of the Parent Body Organisation and the Ultimate Parents under the M68 Deed of Variation);
- (d) the provisions of Paragraph 8A.5 above shall cease to apply; and
- (e) the Authority shall execute and complete the M68 Deed of Variation and return one set of original counterparts or one original as the case may be, executed by all parties.

9 Reclaiming Target Fee

- 9.1 Subject to Paragraph 8A of this Schedule 6 Part 4b (*Target Fee*) above, if the Authority pays the Contractor Target Fee adjusted by Shareline in respect of satisfaction of any Sub-Milestone, Major Work Package or the Interim End State and it transpires that there has been Defective Performance as a result of which the Contractor has not satisfied such Sub-Milestone, Major Work Package or the Interim End State, 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 provided that if the Contractor remedies such Defective Performance thereby satisfying such Sub-Milestone, Major Work Package or the Interim End State, the amount of Target Fee adjusted by Shareline so repaid shall be reimbursed to the Contractor.
- 9.2 At the same time as making any repayment under this Paragraph 9, 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 (3) per cent above the Lloyds TSB Bank plc base rate from time to time.
- 9.3 The Authority's rights under this Paragraph 9 shall (notwithstanding termination of this Agreement) continue for a period of six (6) years following the relevant Defective Performance, 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.

10 Account to Which Fee Paid

- 10.1 All payments of Target Fee including any payments on account of Target Fee (in each case as adjusted pursuant to this Part 4b (Target Fee) shall be paid to the Contractor's Fee Account except any Target Fee relating to the completion of the Interim End State (Target Fee Payment/Cardinal Milestone M68) that is paid by the Authority after the expiry or termination of this Agreement which shall be paid into the SLCA Contractor's Fee Account.

Part 4c: Payment of Fee

1 Purpose

1.1 This Part 4c sets out how the PBI Fee and Target Fee shall be paid to the Contractor.

2 Payments of PBI Fee and Target Fee

2.1 When submitting a request for a payment of PBI Fee and/or Target Fee, the Contractor shall ensure that all documentation required to evidence completion of the relevant PBI Payment Milestone or Target Fee Payment Milestone is consistent with the Performance Agreement Form.

2.2 If the documentation submitted under Paragraph 2.1 (*Payments of PBI Fee and 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.

2.3 If the documentation submitted under Paragraph 2.1 (*Payments of PBI Fee and 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 an amount equal to the approved Fee into the Contractor's Fee Account.

2.4 The Contractor shall support any invoice with the following information:

- (a) description of the Sub-Milestone or Major Work Package that has been Achieved;
- (b) Fee calculation split between its constituent parts; and
- (c) value of payment including VAT.

3 VAT

3.1 Notwithstanding the provisions of Paragraph 2.4 (*Payments of PBI Fee and Target Fee*) above, and the provisions of Part 4a (*PBI Fee*) or Part 4b (*Target Fee*), 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 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.

4 Early Completion of Sub-Milestone or Major Work Package and Fee Reconciliation

4.1 Where the Contractor has reason to believe that it will complete a Sub-Milestone or Major Work Package earlier than the date for Achievement as specified in the relevant Performance Agreement Form, the Contractor shall notify the Authority of the same as soon as is reasonably practicable and the Authority shall make the payment of the Fee in accordance with the agreed payment arrangements.

4.2 Not more than sixty (60) Working Days after the end of each Contract Year and achievement of the Interim End State, 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) Milestones achieved in the relevant Contract Year; and
 - (ii) Milestones achieved prior to their respective Milestone Dates as specified in the relevant Performance Agreement Form and supporting evidence that such payment remains within the relevant funding limits as set out in Part 7 (*Financial Limits*) of this Schedule 6; and
- (d) Target Fee not earned, broken down as follows:
 - (i) Target Fee not earned and no longer earnable because achieving the relevant Milestone Date is no longer possible; and
 - (ii) Target Fee not earned but which can be carried over to subsequent Contract Years.

4.3 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.

4.4 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.

5 Project Funding and PBI Reconciliation on Termination

5.1 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.

5.2 For the purposes of Paragraph 5.1 (*Project Funding and PBI Reconciliation on Termination*) 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. This shall then be agreed with the Authority and in the absence of agreement the matter shall be determined in accordance with the provisions of Clause 36 (*Disputes*).

5.3 [Not Used].

6 Retention of Fee Pending Transition Out

6.1 Notwithstanding the foregoing provisions of this Part 4c (*Payment of Fee*), the Authority shall be entitled to withhold up to £1,000,000 (one million pounds sterling) (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 6.1 shall not exceed £2,000,000 (two million pounds sterling) (Indexed) in aggregate (excluding VAT).

6.2 Any withholding that shall be made by the Authority under Paragraph 6.1 (*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 21 (*Transition Out*) of the Parent Body Agreement.

6.3 The provisions of Paragraphs 6.1 and 6.2 above shall not apply to any termination or expiry of this Agreement on reaching the Interim End State.

- 6.4 In the event of termination pursuant to Clauses 33.1.4 or 33.1.5 (*Termination by the Authority*) or 33.2 (*Termination by the Contractor*), the Authority shall pay interest on any amounts withheld pursuant to Paragraphs 6.1 and 6.2 above calculated at the rate of three (3)% above the Lloyds TSB base rate from time to time for the period of such withholding.

Part 5: Performance Agreement Form

1 Performance Agreement Form

- 1.1 At the same time as agreeing the PBI Payment Milestones and any new or revised Payment Milestones (collectively, "**PAF Milestones**"), a Performance Agreement Form (a "**PAF**") in substantially the same form as that attached at Appendix B (*Performance Agreement Form*) shall be completed for each such PAF Milestone, which shall specify:
- (a) the factual basis for each PAF Milestone, and specific benefits to be derived from completion of the PAF Milestone;
 - (b) any criteria and metrics for validation, acceptance and valuation of performance of the PAF Milestone, 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.
- 1.2 The criteria for deciding whether a PAF Milestone has been satisfied shall be deemed to include the criterion that the Tasks which are the subject of that PAF Milestone must be completed in accordance with any standards specified in the PAF, the LTP 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 PAF Milestone.
- 1.4 Notwithstanding Paragraph 1.3 (*Performance Agreement Form*) above, if the relevant PAF for a PAF Milestone has not been determined by 24 March in the Contract Year immediately preceding the Contract Year in respect of which the PAF Milestone will apply, 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.
- 1.5 In respect of each Contract Year, the PAFs for each PAF Milestone 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 PAF Milestones for the relevant Contract Year.

2 PAF Milestone

- 2.1 The PAF Milestones and associated PAFs as agreed at the Commencement Date are those set out in Appendix F (*PAFs as at Commencement Date*).

3 Additional Payment Milestones and Changes to Payment Milestones

- 3.1 In the event that the Authority or the Contractor wishes to make any change to a Payment Milestone or its associated PAF or to propose any additional or replacement Payment Milestones, then such change shall be made in accordance with the Change Control Procedure.

4 Performance Monitoring, Validation and Reporting

- 4.1 The Authority shall monitor achievement of the relevant PAF Milestones, 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 PAF Milestones.

- 4.2 The Authority shall actively monitor the Contractor's progress against the PAFs via Contractor reports and on-the-job assessment in accomplishing PAF Milestones.

- 4.3 The Contractor shall be required to prepare and submit performance reports in a manner 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 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.

- 4.4 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*).

5 Milestone Records Management

- 5.1 The Contractor shall maintain an electronic master copy of all PAF Milestones and associated documentation. This will include, but is not limited to, all changes to PAFs in Appendix F (*PAFs as at Commencement Date*) and PAF Milestones whether approved or unapproved, all PAFs, the calculation of fee on a cumulative basis and the invoicing

of fee against calculation of fee. It shall also include the calculation of fee earned to date but not yet available for invoicing at the Authority's year end.

6 Change Control

6.1 The provisions of this Part 5 (*Performance Agreement Form*) are subject to any Change.

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 Funding Profile

2.1 **[Not Used].**

3 EAC Review

3.1 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 the EAC is 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.

3.2 The Authority shall provide the Contractor with at least three (3) months' prior notice of its intention to carry out a review of the EAC. The Contractor shall prepare a process for EAC review which is to be provided to the Authority at least one (1) Month prior to the planned commencement of the review, such process to be subject to Authority reasonable approval.

3.3 The Authority, along with any Third Parties supporting the Authority, shall review the processes applied and the preparation of the EAC, and shall have the right to be involved in the Authority's review of the EAC.

3.4 Changes to the EAC shall not result in changes to the Target Cost.

4 Not Used

[Not Used]

5 Working Capital Review

5.1 On an annual basis (but subject to Paragraph 5.2 (*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.

29 March 2012

5.2 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.

6 [Not Used]

7 Timing of Reviews

7.1 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

1 Dounreay Site Restoration

1.1 The ASFL for the first Contract Year and an indicative estimate for the succeeding two (2) Contract Years are set out in the table below:

Year 1 (Commencement Date to March 2013) Annual Site Funding Limit:

s.43

Current Budget - As at the Commencement Date all budget is categorised as Capital Budget

Capital Budget:

s.43

The Parties acknowledge that an additional [redacted] s.43 will be provided to the Contractor for the first Contract Year to fund certain additional activities in respect of the Civil Nuclear Constabulary and other additional security measures. On identification and incorporation of such activities into the LTP Performance Plan, the ASFL will be adjusted accordingly.

Year 2 (13/14)

Indicative estimates of:

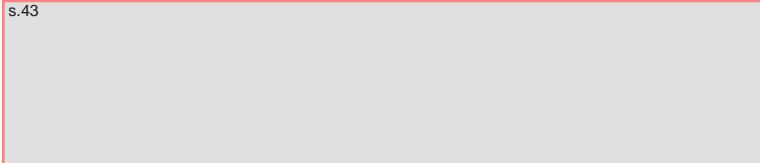
Annual Site Funding Limit:

s.43

Current Budget - As at the Commencement Date all budget is categorised as Capital Budget

Capital Budget:

s.43

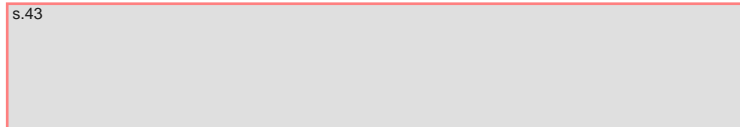


Year 3 (14/15)

Indicative estimates of:

Annual Site Funding Limit:

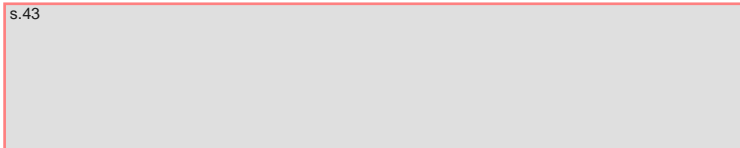
s.43



Current Budget - As at the Commencement Date all budget is categorised as Capital Budget

Capital Budget:

s.43



1.1A Three (3) months prior to the commencement of Year 2 (13/14) (referred to in the table above), and three (3) months prior to the commencement of each Contract Year thereafter, the Contractor shall provide to the Authority its proposed ASFL (separated into Current Budget and Capital Budget) for the following Contract Year and an estimate of the ASFL (separated into Current Budget and Capital Budget) for the two (2) succeeding Contract Years.

1.2 Subject to any increase in accordance with Appendix A (*Special Items*) to this Schedule 6 in relation to Customer Contracts, the Annual Site Funding Limit shall be as follows. For Contract Year 1, the Annual Site Funding Limit shall be the amount identified as the Annual Site Funding Limit for Year 1 in the table appearing above at Paragraph 1.1. For each subsequent Contract Year, the Annual Site Funding Limit shall be £159,181,000 (one hundred and fifty nine million one hundred and eighty one thousand pounds sterling) (Indexed); or

(a) such lesser figure as may be proposed by the Contractor; or

(b) such higher figure as may be agreed by the Parties,

in respect of the relevant Contract Year in accordance with Paragraph 1.1A above.

- 1.3 Each of the figures in the table appearing in Paragraph 1.1 (*Dounreay Site Restoration*) above and the figure of £159,181,000 (one hundred and fifty nine million one hundred and eighty one thousand pounds sterling referred to in Paragraph 1.2 (*Dounreay Site Restoration*) above) is based on 2012/13 economics and is therefore subject to escalation (or de-escalation), indexation being applied on the first anniversary of the Commencement Date and on each anniversary of the Commencement Date thereafter in accordance with Part 8 (*Indexation*) of this Schedule 6.

PBI Fee and Target Fee Profile

- 1.4 The Contractor shall provide to the Authority three (3) months prior to the commencement of each Contract Year or following a Change, a PBI Fee and Target Fee profile which shall cover the following:
- (a) PBI Fee allocated to the following and subsequent Contract Years;
 - (b) the value of each Target Fee Payment Milestone and the Contract Year during which each Target Fee Payment Milestone is expected to be achieved;
 - (c) the start and end date (Month and Year) of when work is expected to be conducted in respect of each Sub-Milestone or Major Work Package or the Interim End State, as the case may be;
 - (d) for each Target Fee Payment Milestone reference to whether the work progressed against achievement of the relevant Sub-Milestone or Major Work Package or Interim End State, 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 Sub-Milestone or Major Work Package or Interim End State, 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

- 1.5 The amount of any positive Shareline adjustment to Target Fee payable to the Contractor in each Contract Year will be funded from within the ASFL for that Contract Year and the ASFL 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) in the event that the Relevant Variance moves from positive to negative, due to the cumulative nature of the Shareline calculation, 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 ASFL 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 ASFL in the current or previous Contract Years; and provided that the maximum amount that may be carried forward to supplement the ASFL for the immediately following Contract Year is two million pounds sterling (£2,000,000) (Indexed) indexation being applied on the first anniversary of the Commencement Date and on each anniversary of the Commencement Date thereafter in accordance with Part 8 (*Indexation*) of this Schedule 6.. Notwithstanding any other provision of this Agreement, references to the ASFL are to the ASFL as so supplemented, and for the avoidance of doubt such supplementing of the ASFL shall not constitute an event as identified in Paragraph 7.11 (*Authority Acceptance and Implementation of the Proposed Change*) of Schedule 2, Part 2 (*Change Control Procedure*).

Part 8: Indexation

1 Indexation Mechanism

- 1.1 This Part 8 of this Schedule 6 sets out the process for annually adjusting the identified costs / prices and Funding Limits for movement in the underlying economic conditions. The aim of the adjustments shall be to achieve a neutral position such that the result of applying the indexation mechanism is balanced with that of the underlying economic conditions.

2 CPI Indexation

- 2.1 Unless otherwise stated, items in this Agreement which are expressed to be "Indexed" shall be dealt with in accordance with the provisions of Clause 1.2.14 (*Interpretation*) of this Agreement.

3 Special Indexation — Establishing the Indices Basket

- 3.1 The Parties shall, each acting reasonably and with the objective of achieving neutrality in relation to escalation and/or de-escalation, agree the content of a selection of input cost indices relevant to the Tasks to be performed under this Agreement, any appropriate supplementary factors and relative weightings to be applied to those cost indices, to be determined by reference to the relative values of the Tasks falling within the scope of each such index that are scheduled to be undertaken during the forthcoming Contract Year (by reference to the LTP Performance Plan) (the "**Indices Basket**"), such agreement to be reached on a provisional basis before 31 January 2013 and finalised by the first anniversary of the Commencement Date.

4 Special Indexation — Reviewing the Indices Basket

- 4.1 The Parties shall, each acting reasonably, and with the objective of maintaining neutrality, review the content and application of the Indices Basket in accordance with PCP09 (Cost Estimating) and PCP13 (Performance Reporting) and the principles set out in Paragraph 4.2 (*Special Indexation — Reviewing the Indices Basket*) below.
- 4.2 The review of the Indices Basket referred to in Paragraph 4.1 (*Special Indexation - Reviewing the Indices Basket*) above shall be carried out on a provisional basis by 31 January preceding each anniversary of the Commencement Date and finalised by the anniversary of the Commencement Date (in each case, subsequent to the first anniversary of the Commencement Date) in each Contract Year and such reviewed content and application will be used to produce the indexation factor to be applied on that anniversary of the Commencement Date. Each such review of the Indices Basket shall consist of:

- (a) a retrospective review (covering the period since the previous Indexation Adjustment Date) of the appropriateness of the indices comprising the Indices Basket and their relative weightings in terms of:
 - (i) the extent to which each such index represented a fair index in terms of reflecting generally prevailing cost and price movements in the subject matter of such index (as relevant to the Site and this Agreement, but excluding for these purposes any act or omission of either Party or the Parent Body Organisation which may have an impact on such movements), provided that it shall be for the Party alleging unfairness to demonstrate such unfairness (and its continued applicability having regard to forthcoming Tasks) to the reasonable satisfaction of the other Party; and
 - (ii) the extent to which the relative weightings given to each such index comprised in the Indices Basket as applied on the immediately preceding Indexation Adjustment Date were inappropriate given the extent of any variation between the estimated mix of Costs (to which that Indices Basket related) which informed such weightings at the time they were agreed and the actual mix of such Costs incurred in the period since the immediately preceding Indexation Adjustment Date, provided that it shall be for the Party alleging inappropriateness to demonstrate such inappropriateness to the reasonable satisfaction of the other Party; and
- (b) a forward-looking analysis of:
 - (i) the Tasks planned (by reference to the LTP Performance Plan) for the forthcoming Contract Year (until the next anticipated review of the Indices Basket pursuant to Paragraph 4.1 (*Special Indexation — Reviewing the Indices Basket*) above), and whether or not any new indices should be included in the Indices Basket for such forthcoming Contract Year; and
 - (ii) the relative weightings to be applied to the indices comprising the Indices Basket for the forthcoming Contract Year (until the next anticipated review of the Indices Basket pursuant to Paragraph 4.1 (*Special Indexation — Reviewing the Indices Basket*) above), to be determined by reference to the relative values of the Tasks falling within the scope of each such index that are scheduled to be undertaken during such forthcoming Contract Year,

provided in each case that, where the Contractor is proposing any change to the Indices Basket, the Contractor shall demonstrate to the Authority's reasonable satisfaction what specific assumptions have changed, providing detailed underpinning of the basis for such change and confirmation that no duplication with other changes exists.

4.3 Where the review undertaken pursuant to Paragraphs 4.1 (*Special Indexation - Reviewing the Indices Basket*) and 4.2 (a) (i) and (b) (*Special Indexation — Reviewing the Indices Basket*) above results in any changes to the Indices Basket to be applied on the date on which such review is finalised being agreed to be necessary, then:

(a) there shall be no retrospective adjustments in respect of such changes of any amounts in respect of any period prior to the date on which such review is (pursuant to Paragraph 4.1 (*Special Indexation - Reviewing the Indices Basket*) above) intended to take place;

(b) where an index is agreed to have been unfair pursuant to Paragraph 4.2(a)(i) (*Special Indexation - Reviewing the Indices Basket*) above, the Parties shall, acting reasonably, agree either:

(i) a replacement for such index; or

(ii) a supplementary factor to be applied to such index,

in each case with the intended effect of correcting such unfairness for the forthcoming and future Contract Years, and such change shall forthwith apply to the Indices Basket; and

(c) the relative weightings determined in accordance with Paragraph 4.2(b)(ii) (*Special Indexation - Reviewing the Indices Basket*) shall apply.

4.4 Where as a result of the review undertaken pursuant to Paragraphs 4.1 (*Special Indexation – Reviewing the Indices Basket*) and 4.2 (a)(ii) (*Special Indexation – Reviewing the Indices Basket*) the relative weightings given to the indices comprising the Indices Basket as applied on the immediately preceding Indexation Adjustment Date are agreed to have been inappropriate pursuant to Paragraph 4.2(a)(ii) (*Special Indexation - Reviewing the Indices Basket*) above:

(i) the Parties shall, acting reasonably, agree the appropriate replacement relative weightings (with the intended effect of correcting such inappropriateness in the relative weightings used in the Indices Basket as applied on the immediately preceding Indexation Adjustment Date); and

(ii) prior to application of Special Indexation the sums which are, pursuant to this Part 8 of Schedule 6 (*Finance*), expressed to be subject to

Special Indexation, shall first be updated (using such sums as they existed as at the date on which the Indices Basket review is (pursuant to Paragraph 4.1 (*Special Indexation - Reviewing the Indices Basket*) above) intended to take place) to reflect replacement of the relative weightings used in the Indices Basket as applied on the immediately preceding Indexation Adjustment Date so as to achieve a reset position to which Special Indexation can be applied for the forthcoming Contract Year.

5 Special Indexation - Application

5.1 The items identified in the table below shall, on each Indexation Adjustment Date falling before the agreed date for Achievement of the Interim End State be adjusted using the Indices Basket, as follows:

(a) multiplied by:

Indices Basket at date B

Indices Basket at date A

Where Indices Basket at date A is the value of the Indices Basket published for the September before the previous Indexation Adjustment Date or for the first indexation review, the Indices published for the September before the Commencement Date and Indices Basket at date B is the value of the Indices published for the September before the current Indexation Adjustment Date.;

(b) in each case subject to any specific refinements detailed in the table below,

(such adjustment process being "**Special Indexation**"), and the Contract Baseline shall be updated accordingly.

5.2 To the extent that any provision of this Agreement requires, for its proper operation visibility of the results of the calculation set out at Paragraph 5.1 (*Special Indexation – Application*) above in respect of any monetary value before the relevant Indexation Adjustment Date, the Parties shall be entitled to undertake such calculation as required, provided that:

(a) such calculation does not take place prior to the 30 September before such Indexation Adjustment Date; and

(b) no actual adjustment to such monetary value shall be made otherwise than pursuant to Paragraph 5.1 (*Special Indexation – Application*) above.

Special Indexation Items

Item	Specific Details of Indexation Subject Matter
Target Cost	The subject sum less the Contract Baseline BCWS for the period up to the relevant Indexation Adjustment Date.
Target Cost Adjustment, as set out in the table at Paragraph 2 (<i>Alternative Strategies</i>) of Part 3 (<i>Target Cost</i>)	The subject sum up to the point of the relevant option being exercised and the Target Cost updated pursuant to Paragraph 2 (<i>Alternative Strategies</i>) of Part 3 (<i>Target Cost</i>). Thereafter the exercised option becomes part of the Target Cost.
Target Cost Adjustment per Unit, as set out in the table at Paragraph 3 (<i>Target Cost Adjustments</i>) of Part 3 (<i>Target Cost</i>)	The subject sum up to the point of adjustment pursuant to Paragraph 3 (<i>Target Cost Adjustments</i>) of Part 3 (<i>Target Cost</i>). Thereafter, the adjustment becomes part of the Target Cost.
Maximum annual amount of PBI Fee, as set out in the table in Paragraph 3.4 (<i>Maximum PBI Fee</i>) of Part 4a (<i>PBI Fee</i>)	The subject sum for all Contract Years except those which have, as at the relevant Indexation Adjustment Date, expired.
Each amount of Allocated	The subject sum.
Target Fee that:	
(a) is not in respect of an Achievement that was planned in accordance with a relevant PAF to have taken place before the Indexation Adjustment Date in question; and	
(b) in respect of which an invoice has not yet been issued	
Daily amount payable under	The subject sum.

Paragraph 6.1 (*Late Achievement of the Interim End State*) of Part 4b (*Target Fee*),

Annual Site Funding Limit as established in accordance with Paragraph 1.2 (*Dounreay Site Restoration*) of Part 7 (*Financial Limits*) The subject sum.

5.3 [Not Used].

5.4 [Not Used]


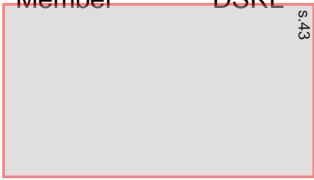

6 Non-Indexation Items

6.1 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) [Not Used]
- (c) the monetary amount included in the definition of "Dispute or Claim Negotiation";
- (d) the monetary amount set out in Clause 31.5.1.3.1 (*Notice to Authority of Disputes*);
- (e) the value of the Licence Fee; and
- (f) the monetary amounts set out in Schedule 3 (*Commercial*) and Schedule 5 (*Subcontracting and Procurement*).



Appendix A – Special Items

Item	Include as provisional sum (all at 12/13 index)	Variable rate	Mechanism	Inside 10% band at paragraph 7.2 (b) (ii) of Schedule 2	Treatment regarding Target Cost Special Indexation
Customer Contracts	<div style="border: 1px solid red; width: 80px; height: 20px; margin-bottom: 5px;"></div> S-43		<p>This provisional sum included in the Target Cost will be replaced on an annual basis with actual revenue (sales) generated from Customer Contracts.</p> <p>In the event that Customer Contract revenue increases beyond the provisional sum +10% (after the application of Special Indexation to the provisional sum) then the ASFL will be increased by a corresponding amount relative to the provisional sum (after the application of Special Indexation to the provisional sum). Such adjustment to the ASFL will only apply where there is a business case which reasonably demonstrates that the services to be provided under the Customer Contract will be commercially beneficial to the Contractor and/or the Authority.</p> <p>Unless the Parties agree otherwise, any such adjustment to the ASFL will be allocated to the Capital Budget.</p> <p>Where the value of Customer Contracts decreases from the provisional sum (after</p>	Yes	Excluded from escalation calculation

			the application of Special Indexation to the provisional sum) then the ASFL will be not be decreased.		
Pensions rate for CNPP Defined Benefit Scheme		 s.43	Should the Contractor contribution rate to the CNPP Defined Benefit Scheme vary then the Contractor will be entitled to request a corresponding change to the Target Cost.	Yes	Not applicable
Pension rate for CNPP Defined Contribution Scheme		Member DSRL  s.43	Should the employer contribution rates to the CNPP Defined Contribution Scheme vary then the Contractor will be entitled to request a corresponding change to the Target Cost.	Yes	Not applicable
Pensions levy	 s.43		This item relates to Contractor's contribution to the CNPP deficit. This provisional sum will be replaced retrospectively within the Target Cost, on an annual basis, with the actual amount levied by the pension fund administrators.	Yes	Excluded from escalation calculation
Other Pension related costs	TBA	TBA	Pension related costs for: (i) costs arising in connection with the termination or expiry of the SLCA Agreement or on the ending of active membership by the Contractor in relation to the CNPP Defined Benefit Scheme, including (without limitation) any costs pursuant to s.75 of the Pensions Act 1995 and the Occupational Pension Schemes (Employer Debt) Regulations 2005 (as amended); and	Yes	Excluded from escalation calculation

			(ii) the Contractor's direct employees for which it is liable as at the Commencement Date that have inadvertently not been listed elsewhere in this table shall be incorporated here when identified.		
Administrative Charge for Pensions	S.43		This item relates to Contractor's contribution to the administration of the pension scheme. This provisional sum will be replaced retrospectively within the Target Cost, on an annual basis, with the actual amount levied by the pension fund administrators.	Yes	Excluded from escalation calculation
Socio economic activities	S.43		This item relates to the element of the ASFL which the Authority instructs the Contractor to allocate to Socio Economic activities. Variations in the amount allocated to Socio Economic activities will not result in corresponding adjustments to the Annual Site Funding Limit. This provisional sum will be replaced within the Target Cost on an annual basis as of 1 April, with the actual amount allocated to socio economic funding by the Authority.	Yes	Excluded from escalation calculation
Redundancy Costs for DSRL employees	S.43		Allowance for a provisional figure for the average Redundancy Cost for DSRL employees. This allowance will be reviewed and amended by the Contractor to match the Contractor's appraisal of the average cost of redundancy and approved by NDA (such approval not to be unreasonably withheld or delayed). This shall take place within the first 12 months following the Commencement Date and the Target Cost shall be revised	Yes	Subject to escalation as part of the Target Cost following inclusion of Authority approved amendment to the Target Cost.

			<p>accordingly. The Target Cost will not be adjusted further if the Redundancy Cost of any DSRL employee exceeds or is less than such reviewed and approved allowance. If the Parties are unable to agree any revised average redundancy figure then the provisional figure, and the initial mechanism, shall remain until such time as agreement can be reached or such matter is determined in accordance with the Dispute Resolution Procedure.</p> <p>For the purposes of this Appendix A, "Redundancy Costs" means any statutory or contractual redundancy payment and any payment in lieu of notice.</p>		
<p>LLW Facility Fees</p> <p>Particles Off-shore programme.</p> <p>Post-BPEO Beach Monitoring will continue through to IES.</p> <p>Civil Nuclear Constabulary</p>	s.43		<p>Costs associated with the community benefit package associated with the operation of the LLW Disposal Facility. The Offshore Particles programme will continue until 2015. This provisional sum will be replaced retrospectively within the Target Cost, on an annual basis, with the actual amount paid under the sub-contract provided that such sub-contract has been managed by the Contractor in accordance with Good Industry Practice</p> <p>This provisional sum will be replaced retrospectively within the Target Cost, on an annual basis, with the actual amount paid under the subject sub-contract provided that such sub-contract has been managed by the Contractor in accordance with Good Industry Practice.</p> <p>The costs of the CNC levied on the Contractor. This provisional sum will be</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>	<p>Excluded from escalation calculation</p> <p>Excluded from escalation calculation</p> <p>Excluded from escalation calculation</p> <p>Excluded from escalation</p>

Regulatory Fees			<p>replaced retrospectively within the Target Cost, on an annual basis, with the actual amount levied by the CNC.</p> <p>The charges made by any Regulator and levied on the Contractor (including for inspections made by the Regulator of the Site from time to time and other charges levied by the Regulator for monitoring activities undertaken by the Regulator from time to time). This provisional sum will be replaced retrospectively within the Target Cost, on an annual basis, with the actual amount levied by the Regulators provided that such annual amount will exclude any additional Costs incurred by reason of any failure of the Contractor to manage the relationship with the Regulators in accordance with Good Industry Practice and/or any additional costs imposed by the Regulator which are the result of the Contractor's Defective Performance.</p>	Yes	<p>calculation</p> <p>Excluded from escalation calculation</p>
CRC Costs			<p>The costs of CRC units is provided for within the Target Cost at the denoted unit rate. This rate represents the purchase cost of CRC units set by Government. In the event that the rates are set at by Government at a different level then the denoted rate will be amended accordingly.</p>	Yes	<p>Excluded from escalation calculation</p>

			<p>It is intended that the Contractor takes CRC risk / opportunity with regard to the Target Cost for;</p> <ul style="list-style-type: none"> a) the number of units required; and b) any variance between the CRC unit rate set by Government and the rate at which units are purchased 		
Sandside Beach	s.43		<p>This item is the annual lease payment relating to access to Sandside Beach for Particle monitoring</p>	Yes	Excluded from escalation calculation
Asbestos Removal			<p>Given the degree of uncertainty in the quantification of asbestos on the Site a provisional sum within the Target Cost for removal of asbestos during demolition has been provided.</p> <p>The provisional sum covers the asbestos surveys, asbestos removal and subsequent disposal during demolition.</p> <p>The provisional sum does not cover the following items. Those items are allowed for within the Target Cost (as bid) only insofar as relating to the magnitude and nature of asbestos assumed in calculating the provisional sum;</p> <ul style="list-style-type: none"> (i) any ad-hoc asbestos removal undertaken during building or equipment maintenance or upgrade work; (ii) the Contractor's management of asbestos removal, including the 	Yes	Subject to escalation as part of the Target Cost following inclusion of Authority approved amendment to the Target Cost.

			<p>costs of running tier 2 competitions and managing subsequent Subcontracts;</p> <p>(iii) provision of access, including scaffolding or similar;</p> <p>(iv) delay, disruption or similar associated with the removal of asbestos.</p> <p>Within three years of the Commencement Date, the Contractor is required to carry out a detailed asbestos survey in order to provide the Authority with a fully underpinned, justified and benchmarked sum for asbestos removal during demolition. Subject to the paragraph below and to review by the Authority (or an Authority appointed third party) and approval by the Authority, such approval not to be unreasonably withheld or delayed, this sum will be used to adjust the Target Cost in respect of this item and replace the provisional sum referred to in this table.</p> <p>Prior to submission of the Contractor's response to the ITSFT, the Authority has disclosed certain data in relation to the magnitude of asbestos that is present across the Site (see ITPD Bulletin 49.1). To the extent that the detailed asbestos survey referred to above identifies a material increase in the magnitude of, or material change in the nature of, asbestos across the Site, which (i) could</p>		
--	--	--	---	--	--

			<p>not reasonably have been anticipated or understood by the Contractor from the information disclosed by the Authority in ITPD Bulletin 49.1; or (ii) is not otherwise provided for in the Delivery Plan, it shall be entitled to a Change pursuant to Paragraphs 7.6A and 7.11 of Part 2 of Schedule 2 (Change Control Procedure).</p> <p>For the avoidance of doubt, any delay or disruption associated with the magnitude or nature of asbestos disclosed by the Authority prior to the Contractor's response to the ITSFT that could reasonably have been anticipated by the Contractor from the information disclosed by the Authority in ITPD Bulletin 49.1 will not entitle the Contractor to a Change pursuant to Paragraphs 7.6A and 7.11 of Part 2 of Schedule 2 (Change Control Procedure).</p>		
<p>Early retirement payments (Continuing Annual Payments – CAPS) related to historical pension schemes prior to CNPP</p> <p>Make the Right Connections Programme 2012/13</p>	S43		<p>This item relates to Contractor's contribution to the CAPS. This provisional sum will be replaced retrospectively within the Target Cost, on an annual basis, with the actual amount levied by the pension fund administrators. No commitment beyond 2012/13. This is a three year transition programme co-funded by NDA and European Social Fund. The programme will be managed by Caithness Chamber of Commerce on</p>	<p>Yes</p> <p>Not applicable</p>	<p>Excluded from escalation calculation.</p> <p>Not applicable</p>

			behalf of the funding organisations.		
--	--	--	--------------------------------------	--	--

The above items are to be funded from within the ASFL, appropriate estimates should therefore be established within the ASFL budgeting arrangements.

Appendix B -

Performance Agreement Form

Fiscal Year _____

SECTION I - PERFORMANCE OBJECTIVE AND RELATED INFORMATION			
Performance Objective:	WBS Element No(s):	Target Cost of Work Performed Under This Objective: £	PBI Fee Associated With This Objective: £ Target 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 Payment Milestone:			
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 performance milestone or element, if any.

SIGNATURES	DATE SIGNED		
Contractor			
Authority – Site Programme Manager			
Authority – Programme Controls			
Authority – Contracts Manager			

29 March 2012

Appendix C -

[Not Used]

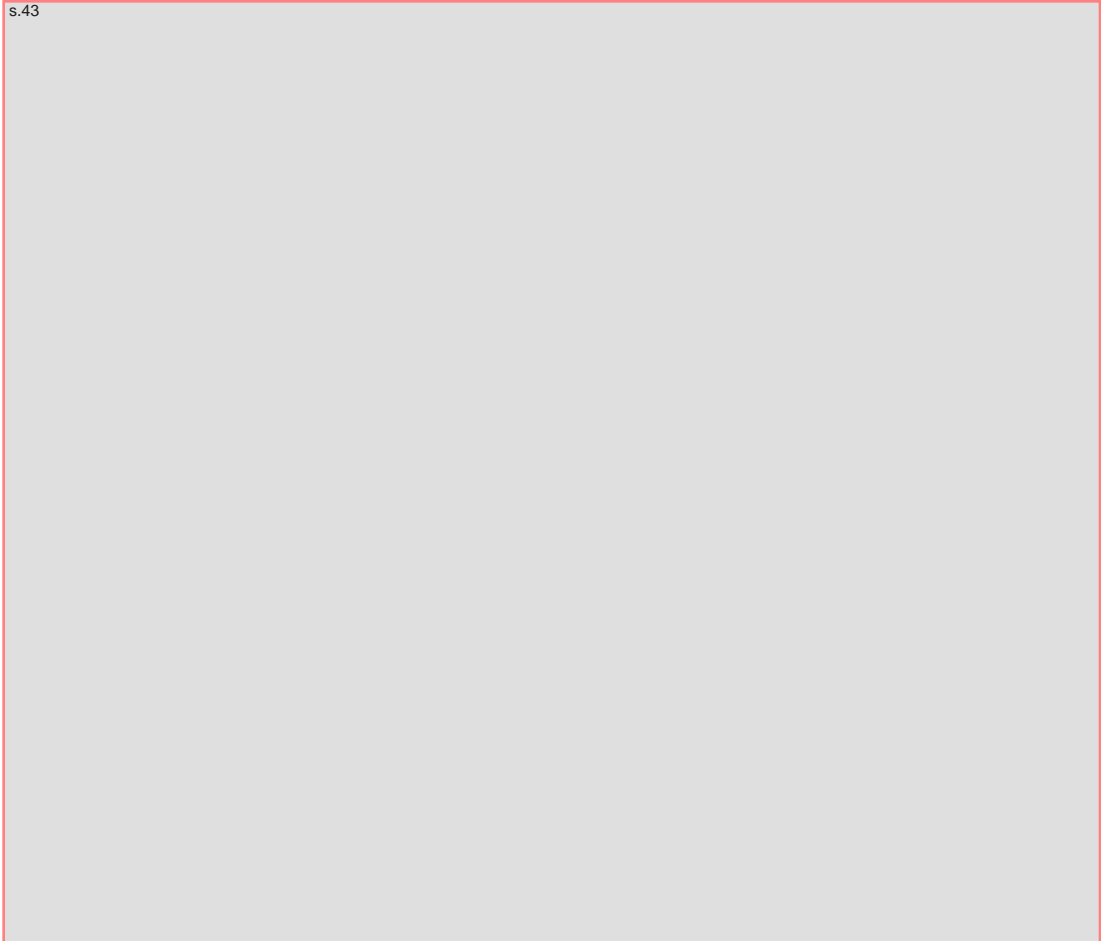
Appendix D -

Determining Liability for Disallowable Costs

6.2 This Appendix D sets out the principles for determining the Contractor's liability for Disallowable Costs in connection with Defective Performance.

6.3 Disallowable Costs will arise where the Contractor has undertaken work which amounts to Defective Performance, in which case the following rules shall apply:

(a)



(b)

(c)

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 2 (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*), independently of whether or not they relate to Defective Performance.

Appendix E -

Potential PBI Fee Subject Matters

The list set out below is an indicative but not exhaustive list from which Authority and Contractor shall agree on an annual basis PBI Fee applicable in the next Contract Year.

- 1 Balanced score card
- 2 Socio Economics
- 3 Regulator relations
- 4 Stakeholder relations
- 5 [Not Used]
- 6 FOI
- 7 Audit
- 8 Skills
- 9 Cross SLC Initiatives (including Collaborative procurement)
- 10 HSSSE e.g.
 - (a) Safety cases
 - (b) Security
- 11 [Not Used]
- 12 Review deliverables
- 13 Financial forecasting / reports
- 14 Integrated Management System
 - (a) Accreditation
 - (b) Compliance with Authority's Policies and Procedures
 - (c) Compliance with IMS
- 15 Application of gated review process
- 16 Business case submissions
- 17 Segregation of allowable / disallowable costs
- 18 Compliance with contract terms
- 19 Information / knowledge management
- 20 IP management
- 21 Services to third parties, eg Vulcan
- 22 Assets(including sale or disposal)
- 23 Supply chain
- 24 IT Systems
- 25 Communications (including <http://dounreay.com/>)
- 26 [Not Used]
- 27 Property management
- 28 Insurance
 - (a) Reporting
 - (b) Claims
- 29 Particles
- 30 [Not Used]
- 31 Reporting

29 March 2012

Appendix F -

PAFs as at Commencement Date

Appendix G -

First Contract Year Financials

Agreed Cash Flow Requirement, Agreed Payment Profile and Approved Working Capital Allowance

SLC:	DSRL
Effective Date:	1 April 2012
Financial Year:	2012-13

1. INVOICING

In accordance with Schedule 6 Part 2b.

2. INVOICING AND PAYMENT PROFILE

In accordance with Schedule 6 Part 2b.

3. EXCEPTIONAL COSTS

In accordance with Schedule 6 Part 2b Paragraph 4.

2012-2013 none forecast as Commencement Date.

4. FIRST YEAR CONTRACT FINANCIALS

Working Capital Facility Agreement Terms 2012/13

Facility	s.43
Interest receivable	
Interest payable	
Net interest receivable	
Commitment fee	
Net amount receivable by the Authority	

The agreed Cashflow Requirements, Agreed Payment Profile and Approved Working Capital Allowance in respect of the Approved Working Capital Facility for 2012/13 are set out in the following:

- DSRL ASFL Cashflow Model 2012-2013 (as provided under DSRL Correspondence Reference T1-010-05-eDSR-6643 on 23 March 2012)
- DSRL Working Capital models 2012-2013 assumptions (as provided under DSRL Correspondence Reference T1-010-05-eDSR-6643 on 23 March 2012)
- Working Capital Facility Agreement between the Parent Body Organisation and the Contractor dated 1 April 2012

29 March 2012

Appendix H -

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 H.
- 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 Target Cost for delivery of the Client Specification, and accordingly there shall be no adjustment of the 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 Target Cost.
- 3 For the purposes of Paragraph 4.1(tt) (*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 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 3.3 (*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 deliver the Client Specification.

	Cost per NS Support Month (£) – UK assignees		
	Unaccompanied	Accompanied	Family
Level 1 (UK)	s.43		
Level 2 (UK)			
Level 3 (UK)			
Level 4 (UK)			

	Cost per NS Support Month (£) – US Ex-pat assignees		
	Unaccompanied	Accompanied	Family
Level 1 (ExP)	s.43		
Level 2 (ExP)			
Level 3 (ExP)			
Level 4 (ExP)			
Level 5 (ExP)			

3.1A For the avoidance of doubt, the rates in the above tables are fixed, subject to Indexation in accordance with paragraph 3.4 (*Indexation*) below and adjustment in accordance with paragraph 3.1B (*Nominated Staff Recoverable Costs*) below.

3.1B The "Family" rates in the above tables 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.

3.1C The costs of mobilisation and demobilisation are set out in the table below for different categories of assignees. These costs shall be Indexed in accordance with paragraph 3.4 (*Indexation*) below.

Status	Combined Mobilisation and Demobilisation Costs (£)	
	UK Assignee	US Ex-pat Assignee
Unaccompanied	s.43	
Married Accompanied		
Family		

3.1D The "Family" rates in the table 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.

3.1E For the avoidance of doubt, the Authority recognises that the rates set out in this Appendix H are fixed and the Authority shall not audit their calculation.

3.2 The sum paid for each NS Support Month (*pro-rated* where relevant) shall include:

- (a) all benefits, including car allowances, bonuses, pensions, severance allowances, medical cover and insurances;
- (b) administration of payroll burdens;
- (c) all travel and subsistence, including Mobilisation and Demobilisation; and
- (d) all Seconding Employer overheads, financing, profit and other burdens,

arising out of the provision of the Nominated Staff to the Contractor.

3.3 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.

Indexation

3.4 The rate (s) referred to in Paragraph 3.1 (*Nominated Staff Recoverable Costs*) of this Appendix H shall be subject to indexation by application of an appropriate index on the first anniversary of the Commencement Date (and thereafter at yearly intervals). The appropriate index is to be agreed between the Parties.

29 March 2012

Appendix I –

Contract Baseline

Schedule 7

Property

Dounreay Nuclear Establishment and surrounding areas

1. Notice of Title by Nuclear Decommissioning Authority ("**NDA**") dated 21 May 2009 with receipted inventory form 4 (see attached appendix for underlying title documentation referred to).
2. Extract Lease between NDA and Dounreay Site Restoration Limited ("**DSRL**") dated 31 March and 10 and 15 April 2008 and registered in the Books of Council and Session on 16 October 2009 with receipted inventory form 4.
3. Disposition by NDA in favour of NDA Properties Limited dated 21 January 2011 with receipted inventory form 4.

Low Level Waste Facility

Draft Lease by NDA to DSRL (not concluded - latest version provided)

Part of Foreshore (A)

1. Land Certificate CTH1061.
2. Sub-Lease between NDA and DSRL (undated)

Part of Foreshore (B)

1. Grant of Servitude by The Crown Estate Commissioners in favour of United Kingdom Atomic Energy Authority ("**UKAEA**") dated 26 July and admitted in Chancery on 8 August 1961.
2. Lease between The Crown Estate Commissioners and UKAEA dated 28 October and 11 November both months 1988.
3. Minute of Amendment and Variation of Servitude between The Crown Estate Commissioner and UKAEA dated 12 November and 3 December both months 1992.
4. Regulating Lease (stamped as "Duplicate or Counterpart") between The Crown Estate Commissioners and UKAEA dated 24 June and 1 July both months 1998.
5. Correspondence dated 10 June 2002 formalising an increase in rent to £250 (with effect from 12 August 2002).
6. Extract Minute of Variation of Lease between The Crown Estate Commissioners and UKAEA dated 1 and 19 October 2004 and registered in the Books of Council and Session on 19 November 2004.
7. Correspondence dated 17 October 2008 formalising an increase in rent to £300 (with effect from 12 August 2007).
8. Sub-Lease between NDA and DSRL (undated).

Part of Foreshore (C)

1. Lease between The Crown Estate Commissioners and UKAEA dated 24 June and 1 July both months 1998.

2. Correspondence dated 24 March 1995 and 26 February 2001 formalising increase in rent to £450 and £500 (with effect from 13 February 2001).
3. Correspondence dated 17 October 2008 formalising increase in rent to £600 (with effect from 13 February 2006).
4. Sub-Lease between NDA and DSRL (undated).

Agreements relative to the Foreshore

1. Agreement between UKAEA, The Right Honourable Robin MacDonald Sinclair, Viscount Thurso of Ulbster and The Honourable John Archibald Sinclair dated 19 March and 4 April, both months 1979.
2. Minute of Agreement between the Crown Estate Commissioners and UKAEA dated 27 and 29 August 1968.
3. Consent by the Board of Trade to construction by UKAEA of an outfall, pump house and sea wall below High Water Mark of Ordinary Spring Tides at Dounreay dated 11 October 1967.
4. Agreement between UKAEA and North of Scotland Hydro-Electric Board re transmission connections for PFR dated 15 April 1967.
5. Plans re seawater pumphouse - PFR.

Access Agreements

1. Agreement between UKAEA and Steven Moss dated 18 June 1999 for Sandside Estate relative to Sandside Beach.
2. Agreement between UKAEA and Mr Hamish Pottinger dated 13 July 2006 relative to Dunnet Beach.
3. Agreement between UKAEA and Mr Michael Pottinger dated 15 September 2006 relative to Murkle Beach.
4. Agreement between UKAEA and Mr George Campbell dated 1 November 2006 relative to Dunnet Beach.
5. Agreement between UKAEA and Mr and Mrs K Draper dated 23 November 2006 relative to Peedie Sands.
6. Draft letters (unsigned) in respect of other beaches/owners.

Air Sampling Stations

Murkle

1. Extract Lease between George Calder Walker and UKAEA dated 19 January and 21 May and registered BCS 24 July, all months 2001.
2. Minute of Variation of Lease between George Calder Walker and UKAEA dated 18 December 2006 and 30 January 2007.
3. HPS Property Enquiry Certificate dated 9 February 2007.

Wick

1. Lease between BAA Scotland and UKAEA constituted by letter dated 18 May 2000 and dated 7 June 2000 and 5 March 2001.
2. Standard Terms and Conditions of Lease (Premises) of Highlands and Islands Airports Limited.
3. Minute of Agreement between Highlands and Islands Airports Limited and AEA Technology of Dounreay signed but undated.
4. HPS Property Enquiry Certificate dated 9 February 2007.

Lybster

1. Feu Disposition by the Commissioners of Woods in favour of the Board of Agriculture for Scotland dated 26 September and recorded GRS (Caithness) 27 November 1924.
2. Disposition by The Secretary of State for Scotland in favour of North of Scotland Hydro-Electric Board dated 18 September and recorded GRS (Caithness) 2 October 1979.
3. Disposition by The Secretary of State for Scotland with consent therein mentioned in favour of Mrs Dolly Horne or Sutherland and others dated 26 May and 10 June and recorded GRS (Caithness) 22 June 1983.
4. Disposition by James Horne Sutherland with consent therein mentioned in favour of UKAEA dated 28 May and recorded GRS (Caithness) 18 August 1997.
5. Land Court Order (Record Number SLC/1/97) dated 21 July 1997.
6. Highland Regional Council Planning Permission (Ref CA/1995/88) dated 19 June 1995.
7. HPS Property Enquiry Certificate dated 9 February 2007.
8. Plan.
9. Notice of Title by NDA dated 21 May 2009 with receipted inventory form 4.

Shebster

(High volume air sampler)

Draft Lease between Scottish Water and Nuclear Decommissioning Authority of 84 square metres (agreed form subject to plan - not yet concluded- latest version (6/4/11) attached).

Reay Golf Course

1. Disposition by Captain Simon Brian Taylor and Major Christopher Dodsworth Taylor in favour of United Kingdom Atomic Energy Authority dated 3 and 13 July and recorded GRS (Caithness) 18 September 1989.
2. HPS Property Enquiry Certificate dated 9 February 2007.
3. Form 10 Report dated 30 November 2006.
4. Notice of Title by NDA dated 21 May 2009 with receipted inventory form 4.

Upper Dounreay

1. Feu Disposition by Commissioners of Woods in favour of the Board of Agriculture for Scotland dated 26 September and recorded GRS (Caithness) 27 November 1924.
2. Disposition by Secretary of State for Scotland in favour of Angus Gunn dated 16 and 28 January and recorded GRS (Caithness) 11 February 1980.
3. Disposition by Angus Gunn in favour of United Kingdom Atomic Energy Authority dated 20 December 1990 and recorded GRS (Caithness) 13 September 1991.
4. Form 10 Report dated 30 November 2006.
5. HPS Property Enquiry Report dated 9 February 2007.
6. Notice of Title by NDA dated 21 May 2009 with receipted inventory form 4.

Traill House, Thurso

1. Ground Lease between Highland Regional Council and M.D.W. Developments Limited recorded GRS (Caithness) 15 June 1979.
2. Lease between M.D.W. Developments Limited and The Manpower Services Commission recorded GRS (Caithness) 27 October 1983.
3. Letter of consent by Russell Properties (Europe) Limited to Sub-Lease dated 6 February 2008.
4. Sub-Lease by the Secretary of State for Work and Pensions and NDA registered in the Books of Council and Session on 3 September 2008.
5. Notice on behalf of NDA to the Secretary of State for Work and Pensions dated 16 April 2010.
6. Draft Sub-sublease between NDA and DSRL (*not yet concluded- latest version to follow.*)

Naver

1. Sublease between Naver Limited and NDA dated 2 October and 12 November and registered in the Books of Council and Session on 8 December all 2008.
2. IPA Letter from Braemara Limited addressed to Nuclear Decommissioning Authority dated 31 July 2008.
3. Consent to Sublease by Braemara Limited dated 2008.
4. Lease between Braemara Limited and Naver Limited dated 5 March and recorded in the General Register of Sasines (Caithness) on 30 April 2002.
5. Draft Sub-sublease between NDA and DSRL (of ground and first floors) (*not yet concluded - latest version (24/5/11) attached*).

Sandside Beach

Lease not yet completed pending determination of rent

.

Schedule referred to in foregoing inventory

Underlying title documentation referred to in Notice of Title:

Principal Nuclear Site

1. Instrument of Sasine in favour of Sir John Gordon Sinclair of Murkle, Baronet, dated 26 April and recorded PRS etc (Shire of Caithness at Wick) 16 May 1797.
2. Disposition by Cecil George Pelham Lennox Sinclair in favour of Donald Innes dated 25 November and recorded GRS (Caithness) 23 December 1915.
3. Notarial Instrument in favour of The Trustees of the late Donald Innes dated 23 and recorded (GRS) Caithness 26 March 1923.
4. Disposition by John McLennan and others as trustees thereinmentioned in favour of Patrick Donald Innes dated 29 October 1929 and subsequent dates and recorded GRS (Caithness) 1 July 1930.
5. Disposition by Patrick Donald Innes in favour of John Henry Davidson dated 13 May and recorded GRS (Caithness) 8 June 1931.
6. Disposition by Cordelia Mary Emma Lane Brimacombe or Gordon-Lennox-Sinclair or Day in favour of Henry Henderson dated 28 July and recorded GRS (Caithness) 31 August both months 1933.
7. Certificate of Service of Notice by the Commissioners of His Majesty's Works and Public Buildings to John Henry Davidson in regard to Cnoc-na-H'Uiseig Monument dated and served 29 December 1933 and recorded GRS (Caithness) 10 January 1934.
8. Disposition by Mrs Isabella (or Isobel) Davidson, John Archibald MacLeod Scott and George Custer as Trustees thereinmentioned in favour of the Secretary of State for Air dated 13 and 20 December 1944 and recorded GRS (Caithness) 27 February 1945.
9. Disposition by Peter Oag in favour of The Commissioners for Executing the Office of Lord High Admiral of the United Kingdom of Great Britain and Ireland dated 10 and recorded GRS (Caithness) 17 February 1948.
10. Disposition by The Commissioners for Executry Office of Lord High Admiral of the United Kingdom of Great Britain and Ireland in favour of The Secretary of State for Air dated 16 and 17 November and recorded GRS (Caithness) 13 December 1955.
11. Disposition by the Secretary of State for Air in favour of UKAEA dated 24 June and recorded GRS (Caithness) 28 June 1957.
12. Disposition by United Kingdom Atomic Energy Authority in favour of Caithness County Council dated 9 February and recorded GRS (Caithness) 23 February 1973.
13. Certificate by the Secretary of State for Scotland in regard to Dounreay Castle dated 24 June 1996 and recorded GRS (Caithness) 29 June 1999.
14. Form 10 Report dated 13 December 2006.
15. Search Sheet.
16. Letter from UKAEA to Mr Robinson dated 20 January 1987 with plan.
17. HPS Property Enquiry Certificate dated 8 February 2007.

Farm of Lower Dounreay, Caithness

1. Instrument of Sasine in favour of Sir John Gordon Sinclair of Murkle, Baronet, dated 26 April and recorded PRS etc (Shire of Caithness at Wick) 16 May 1797.
2. Disposition by Cecil George Pelham Lennox Sinclair in favour of Donald Innes dated 25 November and recorded GRS (Caithness) 23 December 1915.
3. Disposition by Cecil George Pelham Gordon Lennox Sinclair in favour of Peter Henderson dated 19 June and recorded GRS (Caithness) 23 July 1920.
4. Disposition by John McLennan and others as trustees thereinmentioned in favour of Patrick Donald Innes dated 29 October 1929 and subsequent dates and recorded GRS (Caithness) 1 July 1930.
5. Disposition by Patrick Donald Innes in favour of John Henry Davidson dated 13 May and recorded GRS (Caithness) 8 June 1931.
6. Certificate of Service of Notice by the commissioners of His Majesty's Works and Public Buildings to John Henry Davidson in regard to Knock Urray Monument dated and served 26 May and recorded GRS (Caithness) 7 July 1938.
7. Disposition by Mrs Isabella (or Isobel) Davidson, John Archibald MacLeod Scott and George Custer as Trustees thereinmentioned in favour of Peter Oag dated 13 and 20 December 1944 and recorded GRS (Caithness) 10 January 1945.
8. Disposition by Mrs Isabella (or Isobel) Davidson, John Archibald MacLeod Scott and George Custer as Trustees thereinmentioned in favour of Peter Oag dated 9 and 15 and recorded GRS (Caithness) 28 June 1945.
9. Disposition by Peter Oag in favour of The Commissioners for Executing the Office of Lord High Admiral of the United Kingdom of Great Britain and Ireland dated 10 and recorded GRS (Caithness) 17 February 1948 (with duplicate plan).
10. Disposition by Peter Oag in favour of Morris Pottinger dated 19 and 20 November and recorded GRS (Caithness) 11 December both months 1953.
11. Disposition by Morris Pottinger in favour of UKAEA dated 18 February and recorded GRS (Caithness) 14 April 1956.
12. Disposition by UKAEA in favour of North of Scotland Hydro-Electric Board dated 11 December and recorded GRS (Caithness) 24 December 1969.
13. Search.
14. Correspondence regarding Knock Urray Broch.
15. HPS Property Enquiry Certificate dated 8 February 2007.

Ground at Isauld, Reay

1. Scheme framed by the Commissioners appointed and acting under the Church of Scotland (Property and Endowments) Act 1925 dated 19 October and recorded GRS (Caithness) 24 October 1934.
2. Disposition by Church of Scotland General Trustees in favour of UKAEA dated 25 May and recorded GRS (Caithness) 31 May 1956 (plus copy extract).
3. Form 10 report dated 30 November 2006.

4. HPS Property Enquiry Certificate dated 8 February 2007.

Farm of Isauld

1. Instrument of Sasine in favour of Sir John Gordon Sinclair of Murkle, Baronet dated 26 April and recorded PRS etc (Shire of Caithness at Wick) 16 May 1797.
2. Disposition by Cecil George Pelham Lennox Sinclair in favour of Donald Innes dated 5 November and recorded GRS (Caithness) 23 December 1915.
3. Disposition by the Trustees of the late Donald Innes in favour of Miss Bessie Innes dated 7 March and recorded GRS (Caithness) 29 May 1923.
4. Disposition by Miss Bessie Innes in favour of Alan Douglas Pilkington dated 7 May and recorded GRS (Caithness) 23 May, both dates 1938.
5. Disposition by Alan Douglas Pilkington in favour of Mrs Isabella Mary Milbro Mackay or MacDonald dated 16 and recorded GRS (Caithness) 21 May 1949.
6. Disposition by Mrs Isabella Mary Milbro Mackay or MacDonald in favour of UKAEA dated 4 May and recorded GRS (Caithness) 14 May 1956.
7. Disposition by UKAEA in favour of Grace Adams dated 30 September and recorded GRS (Caithness) 8 December 1975.
8. Disposition by United Kingdom Atomic Energy Authority in favour of Derrick Herbert Milnes and Mrs Dawn Elspeth Milnes dated 27 September and recorded GRS (Caithness) 17 October 1990.
9. Extract Excambion between UKAEA and John Edward Jennings and Mrs Marion Gibson MacIver Jennings dated 12 July and 1 August and recorded GRS (Caithness) 11 December 1996.
10. Deed of Servitude by UKAEA in favour of Peter John Thompson and Mrs Heather Anne Thompson dated 17 June and recorded GRS (Caithness) 17 July 2002.
11. Form 10 Report dated 30 November 2006.
12. Search over Subjects.
13. Certificate of payment of Teind dated 4 March 1957.
14. HPS Property Enquiry Certificate dated 8 February 2007.

Ground at Lochside, Isauld, Reay

1. Instrument of Sasine in favour of Sir John Gordon Sinclair of Murkle, Baronet, dated 26 April and recorded PRS etc (Shire of Caithness at Wick) 16 May 1797.
2. Disposition by Cecil George Pelham Lennox Sinclair in favour of Donald Innes dated 25 November and recorded GRS (Caithness) 23 December 1915.
3. Disposition by the Trustees of Donald Innes in favour of Bessie Innes dated 7 March and recorded GRS (Caithness) 29 May 1923.
4. Disposition by Alan Douglas Pilkington in favour of George Mackay dated 2 May and recorded GRS (Caithness) 9 June 1950.

5. Wayleave Agreement between George Mackay and North of Scotland Hydro-Electric Board dated 17 February 1956 (unregistered).
6. Disposition by George Mackay in favour of UKAEA dated 1 June and recorded GRS (Caithness) 10 June 1957.
7. Form 10 Report dated 30 November 2006.
8. HPS Property Enquiry Report dated 8 February 2007.
9. Search.

Subjects at Isauld, Reay

1. Instrument of Sasine in favour of Sir John Gordon Sinclair of Murkle, Baronet dated 26 April and recorded PRS etc (Shire of Caithness at Wick) 16 May 1797.
2. Crown Charter of Confirmation in favour of Sir Robert Charles Sinclair, Baronet, recorded in the Register of the Great Seal 28 August 1871.
3. Disposition by Cecil George Pelham Lennox Sinclair in favour of Donald Innes dated 25 November and recorded GRS (Caithness) 23 December 1915.
4. Disposition by Cecil George Pelham Lennox Sinclair in favour of Alan Douglas Pilkington dated 12 and recorded GRS (Caithness) 15 May 1917.
5. Disposition by the Trustees of the late Donald Innes in favour of Miss Bessie Innes dated 7 March and recorded GRS (Caithness) 29 May 1923.
6. Disposition by Alan Douglas Pilkington in favour of Captain Herbert Anderson Taylor dated 28 January and recorded GRS (Caithness) 11 February 1932.
7. Disposition by Miss Bessie Innes in favour of Alan Douglas Pilkington dated 7 and recorded GRS (Caithness) 23 May 1938.
8. Disposition by Alan Douglas Pilkington in favour of William Alexander Lawson dated 2 May and recorded GRS (Caithness) 9 June 1950.
9. Wayleave Agreement granted by George Mackay in favour of North of Scotland Hydro-Electric Board dated 17 February 1956 (unrecorded).
10. Disposition by William Alexander Lawson in favour of UKAEA dated 26 April and recorded GRS (Caithness) 8 May 1957.
11. Wayleave agreement granted by UKAEA in favour North of Scotland Hydro-Electric Board dated 19 June 1979 (unrecorded).
12. Deed of Servitude by UKAEA in favour of Anthony Charles Bradford and Mrs Valerie Rosalie Whitmarsh or Bradford dated 26 June and recorded GRS (Caithness) 18 July 1979.
13. Disposition by UKAEA in favour of Mrs Catherine Elizabeth Lawson and James Alexander Lawson dated 9 June and recorded GRS (Caithness) 15 August 1988.
14. Form 10 Report dated 30 November 2006.
15. HPS Property Enquiry Report dated 8 February 2007.

Buldoe

1. Disposition by Cordelia Mary Emma Lane Brimacombe or Gordon-Lennox-Sinclair or Day in favour of Henry Henderson dated 28 July and recorded GRS (Caithness) 31 August 1933.
2. Disposition by Henry Henderson in favour of Henry Robert Burns Henderson dated 17 October and recorded GRS (Caithness) 5 November both months in 1947.
3. Disposition by Henry Robert Burns Henderson in favour of UKAEA dated 7 and recorded GRS (Caithness) 13 August 1956.
4. Letter from UKAEA to Mr M Pottinger dated 7 August 1986 relative to environmental and air sampling station.
5. Form 10 Report dated 13 December 2006.
6. Search.
7. Receipt for Redemption of Stipend dated 9 December 1958.
8. Receipt for Payment of Teind dated 4 March 1957.
9. HPS Property Enquiry Certificate dated 8 February 2007.
10. Letter from UKAEA to Morris Pottinger dated 7 August 1986 regarding HVA Station within title.

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
- 5 Register of contractual IP rights
- 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
- 10 System to monitor Third Party patents to help avoid their infringement

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

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:

- (a) 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.
- (b) 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).
- (c) 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.
- (d) 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*)).
- (e) 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:

- (a) 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).
- (b) Where appropriate the ITT should request information on:
 - (i) the tenderer's track record of innovation and knowledge transfer to its customers; and
 - (ii) plans for identifying what will be Developed IP and undertaking knowledge transfer to the Contractor; and
 - (iii) 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.
- (c) Where appropriate the procurement process should:
 - (i) take due account of the tenderer's track record of innovation, knowledge transfer and identifying Developed IP; and
 - (ii) give feedback to winners and losers to reinforce the importance of innovation and IP management to the Contractor.
- (d) 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.
- (e) 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:

- (a) The Contractor will evaluate the merits of patenting each innovation and make a recommendation on the action to be taken to the Authority.

- (b) The Authority may seek input from the Contractor before deciding whether a patent should be filed and the Contractor will provide this input.
- (c) Where the Authority decides:
 - (i) 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
 - (ii) 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:
 - (A) within three (3) months of the invention being notified;
 - (B) nine (9) months after first filing;
 - (C) 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);
 - (D) a reasonable time before grant fees are due;
 - (E) a reasonable time before renewals; and
 - (F) when abandonment is proposed for any reason, including the anticipated failure to win a worthwhile grant.
- (d) 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).
- (e) 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. 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:

- (a) in relation to Developed IP developed by the Contractor and/or a Sub-Contractor;
- (b) 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;
- (c) under Subcontracts entered into by the Contractor;
- (d) 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
- (e) 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:

- (a) the internal owner of the agreement is confirmed on a not-less than annual basis;
- (b) the internal owners (and others as appropriate) are reminded of time limited obligations / events (e.g. licence expiry, contract expiry, etc); and
- (c) 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 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:
- (a) commercially sensitive or valuable information is not released other than in accordance with the requirements of this Agreement;
 - (b) the Authority does not lose the opportunity to seek patent protection by early publication of technical information;
 - (c) 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);

- (d) to ensure all communications are consistent with the Authority's strategic and communications objectives; and
- (e) 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:

- (a) Contractor-created Developed IP;
- (b) Developed IP created by the Contractor's Subcontractors;
- (c) improvements made to IP owned by or licensed to the Parent Body Organisation; and
- (d) 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 introduced Parent IP 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.

- (a) 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).
- (b) The Authority will review and sanction the description to ensure it provides a sufficiently robust description.
- (c) The Authority will review and check the rights recorded are consistent with those granted under the Parent Body Agreement or other agreement.
- (d) 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.

8.4 For the purposes of Clause 29.3.5 (*IP Contributed by Parent Body Organisation*), the following shall be regarded as Reserved Parent IP:

Reserved Parent IP	IP Owning Organisation	Notice
None	N/A	N/A

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:

- (a) potentially patentable innovations; and
- (b) 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:

- (a) to help ensure that valid Third Party patent rights are not infringed;
- (b) to enable the grant of restrictive patents to be opposed where possible; and
- (c) as a source of market intelligence.

10.2 The system adopted by the Contractor should involve as a minimum the following elements:

- (a) the identification of search parameters in the areas of technical or commercial relevance;
- (b) a review of the search terms on an annual basis;
- (c) the performance of searches of published European Patents, United Kingdom or US patents using these search parameters not less frequently than every three months;
- (d) the distribution of information on patents so identified, to suitably qualified and experienced individuals in relevant technical and commercial areas;
- (e) a system to ensure any potential infringement is tracked and responded to appropriately – reporting such issues to the Authority; and
- (f) 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.

Part B

Guidance on the choice of IP Ts&Cs in Subcontracts

1 INTRODUCTION

1.1 This Part B (*Guidance on the choice of IP Ts&Cs in Subcontracts*) provides guidance on the circumstances where the Authority may permit a Subcontractor to own Developed IP which that Subcontractor has created in accordance with Clause 29 (*Intellectual Property*).

1.2 The following activities are required in all circumstances:

- (a) the Contractor will keep records relating to ownership/licensing of Subcontractor-created Developed IP and/or Background IP in a form that can be inspected by the Authority; and
- (b) where the Contractor is negotiating with an Affiliate of the Contractor or of the Parent Body Organisation and the Contractor wishes to change the provisions indicated in the original ITT relating to Subcontractor created Developed IP, then the prior written approval of the Authority is required before any undertaking is made to the Subcontractor.

1.3 Where Clause 29.4.4 (*Ownership of Developed IP created by or on behalf of Subcontractors*) refers to this Schedule in relation to the ownership and/or licensing of Subcontractor created Developed IP and/or Background IP, the decision making rationale set out in this Part B (*Guidance on the choice of IP Ts&Cs in Subcontracts*) should be adopted.

1.4 The Contractor should assess, before an ITT (or similar) is issued, whether a Subcontract will lead to the creation of Developed IP, and if so whether under this Schedule 8 the Subcontractor may own the Developed IP. This position should be reflected in the ITT and in the final Subcontract subject to the following guidance and Authority approvals if required.

2 AUTHORITY OWNERSHIP OF SUBCONTRACTOR CREATED DEVELOPED IP

2.1 The Authority should always be granted ownership of Subcontractor-created Developed IP:

- (a) if Clause 29.4.2 (*Ownership of Developed IP by the Authority*) applies; and
- (b) in all other circumstances **unless** one or both of the following provisions apply:

- (i) Paragraph 3.2 below (*Subcontractor Ownership of Subcontractor Created Developed IP*); and/or
- (ii) Paragraph 2.2 (*Authority Ownership of Subcontractor Created Developed IP*) below.

2.2 Developed IP which the Contractor is required to own in accordance with Legislation shall be owned by the Contractor ("**Contractor Required IP**"). If the Contractor is no longer required to own Contractor Required IP in accordance with Legislation, such Contractor Required IP shall immediately transfer into the ownership of the Authority and become Authority IP.

3 SUBCONTRACTOR OWNERSHIP OF SUBCONTRACTOR CREATED DEVELOPED IP

3.1 Where Clause 29.4.4 (*Ownership of Developed IP created by or on behalf of Subcontractors*) refers to this Schedule in relation to rights to any Subcontractor created Developed IP being owned by a Subcontractor, the decision making rationale set out in this Paragraph 3 should be adopted in determining the rights which may be owned by a Subcontractor in respect of such Developed IP.

3.2 Provided that:

- (a) the Subcontractor is obliged to make to the Contractor (and the Contractor is required to make to the Authority) a full report of such Developed IP; and
- (b) the Authority has the rights set out in Clause 29.4.9 (*Licence of Developed IP from the Subcontractor to the Authority*); and
- (c) the Contractor's IP management systems are capable of ensuring, and the Contractor does ensure that, the migration and subsequent use of any Developed IP is tracked such that the neither the Authority nor the Contractor will unintentionally apply, or onward license, contract deliverables in a way that the violates the rights granted to it by the Subcontractor,

then, subject to Paragraph 2.1(a) (*Authority Ownership of Subcontractor Created Developed IP*) above and Paragraphs 3.3 (*Subcontractor Ownership of Subcontractor Created Developed IP*) and 3.4 (*Royalties and other payments*) below, the Contractor may (provided that this is reflected within the ITT and, where relevant, the final Subcontract) allow the Subcontractor to retain ownership of Developed IP created by that Subcontractor if it can demonstrate to the Authority (and has recorded the justification) that one or more of the following applies:

- (i) the Subcontractor will make a materially greater investment in further developing the technology if it has ownership of the relevant Developed IP, and such action would lead to the development of technology/methods that would be of material benefit to the Authority; and/or
- (ii) it would be impossible for anyone except the Subcontractor to exploit the relevant Developed IP without access to know-how, or IP, to which the Subcontractor has unique access; and/or
- (iii) the Subcontractor has, as part of the overall Subcontract, made material concessions that benefit the Authority which justify Subcontractor ownership of the relevant Developed IP; and/or
- (iv) the Authority can expect to receive royalties or other payments under Paragraph 3.4 (*Royalties and other payments*) below on the use or sublicensing of the relevant Developed IP by the Subcontractor, at a level that justifies Subcontractor ownership of that Developed IP; and/or
- (v) the Subcontractor is best placed to license the relevant Developed IP for use outside of the Authority's estate.

3.3 Where Paragraph 3.2 (*Subcontractor Ownership of Subcontractor Created Developed IP*) above applies, the Contractor requires no prior consent from the Authority **unless** one or more of the following applies:

- (a) the Authority may wish to:
 - (i) enforce IP rights in the Developed IP in order to prevent others from using the Developed IP and/or competing technology; and/or
 - (ii) commercially exploit the Developed IP (or the portfolio of IP rights that it forms part of) for use outside the Authority's estate; and/or
- (b) there could be arising patentable inventions which the Subcontractor is not likely to protect through patenting.

If either or both of Paragraph 3.3(a) (*Subcontractor Ownership of Subcontractor Created Developed IP*) and/or 3.3(b) (*Subcontractor Ownership of Subcontractor Created Developed IP*) above applies, the Contractor may **not** allow the Subcontractor to retain ownership of Subcontractor-created Developed IP **unless** the Authority has provided express prior written consent to the Contractor.

Royalties and other payments

3.4 Where the Subcontractor is likely to be given ownership (or, in accordance with Clause 29.4.12 (*Use of Developed IP by the Subcontractor*) and Paragraph 5 (*Use of Developed IP by the Subcontractor*) below, a licence) of Developed IP created under the Subcontract and that Developed IP:

- (a) relates to a stand alone product (e.g. instruments, mechanical devices, jigs, etc) developed in whole under the Subcontract (i.e. it is not an improvement on the Subcontractor's existing offerings); and/or
- (b) is likely to be licensable by the Subcontractor,

then, unless the Authority provides express prior written consent to the Contractor, the Contractor shall include within the ITT (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 a royalty or other payment if such Developed IP is exploited or licensed by the Subcontractor.

4 DECLARATION AND RIGHTS TO USE SUBCONTRACTOR BACKGROUND IP

4.1 Where Clause 29.4.10 (*Licence of Background IP from Subcontractor to Authority*) refers to this Schedule in relation to the requirement placed on Subcontractors to grant a right to use their Background IP, the decision making rationale set out in this Paragraph 4 should be adopted.

Right of Use

4.2 Subject to Paragraph 4.3 (*Rights of Use*) below, the Contractor shall procure a licence on the terms set out in Clause 29.4.10 (*Licence of Background IP from Subcontractor to Authority*) to Background IP owned by any Subcontractor (at any Tier).

4.3 Subject to Clause 29.4.18 (*Register of IP*), lesser rights (for example just rights within the Authority's estate, or rights in connection with only one project) to Subcontractor-owned Background IP than those set out in Paragraph 4.2 (*Rights of Use*) above can be sought (provided that this is reflected within the ITT and, where relevant, the final Subcontract), **without consulting with the Authority**, where the Contractor can demonstrate that:

- (a) the commercial arrangement as a whole represents good value for money, provided that the Contractor shall notify the Authority of the additional cost of obtaining the licence terms identified in Clause 29.4.10 (*Licence of Background IP from Subcontractor to Authority*) and follow the Authority's reasonable instructions as to which licence terms should be agreed with the Subcontractor in view of the different cost; or

- (b) the value of IP rights being sought from the Subcontractor would be greater than the value of the Subcontract; or
- (c) the impact on the Subcontractor of granting such rights (e.g. lost opportunities to win work at other Authority sites) would be a material disincentive to them providing innovative or cost effective technologies in the tender or during performance of the Subcontract.

Non-Binding Illustrative Examples

4.4 The following are non-binding, illustrative examples of the potential operation of the Paragraph 4.3 (*Rights of Use*) above:

- (a) In relation to a Subcontract for technology development or evaluation, where the value of the Subcontractor's historic investment in the technology is substantively more than the value of the Subcontract being placed by the Contractor, and the Authority's estate is the principal market for this technology – Paragraph 4.3(b) (*Rights of Use*) would apply and the Contractor may judge it appropriate not to seek rights to the Subcontractor's Background IP for use outside the scope of the Subcontract.
- (b) In relation to university agreements (or agreements with other organisations that are primarily involved in research) the Contractor may wish to enter into a research agreement that does not secure such rights to Background IP, provided that the Contractor can demonstrate that the commercial arrangement as a whole represents good value for money and complies with Paragraph 4.3(a) (*Rights of Use*) above.
- (c) Where the Authority is only contributing a share of the total funding of work, Paragraph 4.3(b) (*Rights of Use*) would apply and then the value of all parties' contributions (whether financial or in kind) will need to be considered when determining the rights being granted to the Authority.

5 USE OF DEVELOPED IP BY THE SUBCONTRACTOR

5.1 In relation to the use of Authority-owned Developed IP by the Subcontractor pursuant to Clause 29.4.12 (*Use of Developed IP by the Subcontractor*), the decision making rationale set out in this Paragraph 5 should be adopted.

5.2 If the Contractor anticipates that a Subcontract will lead to the creation of Subcontractor-created Developed IP which will be owned by the Authority then:

- (a) the Contractor may not grant any rights in that Developed IP to any Subcontractor if:

- (i) Clause 29.4.2 (*Ownership of Developed IP by the Authority*) applies to such Developed IP; and/or
 - (ii) the Authority is likely to wish to provide exclusive or sole grants (in any market) to any potential licensee in relation to such Developed IP;
- (b) subject to Paragraphs 3.4 (*Royalties and other payments*) and 5.2(a) (*Use of Developed IP by the Subcontractor*) above, the Contactor may (provided that this is reflected within the ITT and, where relevant, the final Subcontract), **without further Authority approval**, grant to the creating Subcontractor a non-exclusive licence to exploit any Developed IP it has created outside the Authority Field of Use, where:
- (i) it would be difficult in practice for the Subcontractor to isolate such Developed IP from its other IP assets; or
 - (ii) the Subcontractor would be expected to enhance such IP, in the future, and hence ultimately offer an improved service to the Authority estate under future contracts,

in any situation other than in Paragraphs 5.2(a) (*Use of Developed IP by the Subcontractor*) and 5.2(b) (*Use of Developed IP by the Subcontractor*) above, the Contractor may not grant any rights in that Developed IP to any Subcontractor unless the Authority has given express prior written consent.

6 RELATED ENTITIES

6.1 Notwithstanding any other provision of this Schedule, where the Subcontractor is an Affiliate of the Parent Body Organisation or the Contractor, then (unless the following was the position advanced in the ITT from the Contractor to the Subcontractor) the Authority's approval in writing is required before the Contractor may:

- (a) allow the Subcontractor to own Subcontractor created Developed IP; and/or
- (b) grant to the Subcontractor rights to use Developed IP; and/or
- (c) fail to obtain an irrevocable, world-wide, royalty free licence for the Authority to use pre-existing Subcontractor Background IP which is required to enable the exploitation of any deliverables by the Authority, the Contractor or any Third Party.

6.2 Notwithstanding any other provision of this Schedule, where the Subcontract is a sole source agreement with an Affiliate of the Parent Body Organisation or the Contractor the prior written approval of the Authority is required before the Contractor may:

- (a) allow the Subcontractor to own Subcontractor created Developed IP; and/or
- (b) grant to the Subcontractor rights to use Developed IP; and/or
- (c) fail to obtain an irrevocable, world-wide, royalty free licence for the Authority to use pre-existing Subcontractor Background IP which is required to enable the exploitation of any deliverables by the Authority, the Contractor or any Third Party.

7 THE AUTHORITY'S ACCESS TO, AND USE OF, INFORMATION

7.1 When interpreting the Clauses in this Agreement that are concerned with the Authority's right to access and use information, the decision making rationale set out in this Paragraph 7 should be adopted.

7.2 In general the Authority requires the ability to access, use and disclose all and any information:

- (a) created, received or maintained by the Contractor while performing this Agreement;
- (b) created, received or maintained by a Subcontractor while performing its Subcontract.

7.3 However, the Authority accepts that the Contractor and its Subcontractors will on occasion need to enter into obligations of confidentiality with individuals and organisations that may prevent these obligations from being met:

- (a) In respect of information created by the Contractor such restrictive undertakings may only be entered into with the prior written consent of the Authority.
- (b) Without consulting with the Authority the Contractor may enter into reasonable obligations of confidentiality for information it receives from a Third Party. Where such information is passed onto the Contractor or the Authority then the appropriate limited rights marking should be applied before release to the Contractor or Authority.
- (c) The Authority must have the ability to access, use and disclose information generated by a Subcontractor, or its Subcontractors, during the performance of its Subcontract. Where aspects of this information are subject to the Subcontractor's Background IP rights to which the Contractor has won only limited rights then such information should be highlighted and the appropriate limited rights marking applied by the Subcontractor. The Contractor should have systems in place to review and challenge the use of such markings to

ensure Subcontractors are not misusing or systematically over applying this marking.

- (d) Without consulting with the Authority the Contractor may permit the Subcontractor, during the performance of its Subcontract, to enter into reasonable obligations of confidentiality for information it receives from its Subcontractors or Third Parties. Where such information is passed onto the Contractor or the Authority then the appropriate limited rights marking should be applied before release to the Contractor or Authority.

ANNEX 1 to Schedule 8

Technologies, processes and systems which are considered by the Authority to be of strategic interest to the Authority are set out below, as may be amended by the Authority from time to time:

- (1) Pu monitoring and handling where it relates to proliferation.

29 March 2012

SCHEDULE 9
INFORMATION TECHNOLOGY

[Not Used]

FINAL VERSION

Schedule 10

Insurance Schedule

- Part 1 Details of Contractor Required Insurances
- Part 2 Synopsis of Authority Insurances
- Part 3 Insurance Procedures
- Part 4 Insurance Excess Table

PART 1 – DETAILS OF CONTRACTOR REQUIRED INSURANCES

[Not Used]

PART 2 – SYNOPSIS OF AUTHORITY INSURANCES

The document entitled "Register of Insurances 2011 Dounreay Site Restoration Limited April 2011" (the **Register of Insurances**) is attached at Appendix A. The Register of Insurances describes the Authority Insurances that are in force and effect until 31 March 2012. The Authority anticipates that the Authority Insurances that shall be in full force and effect as of 1 April 2012 shall be the same or substantially similar to those set out in the Register of Insurances. Without prejudice to provisions of Clause 18.1, the Authority shall ensure that neither the Contractor nor the Parent Body Organisation has any greater financial exposure due to the unavailability of or diminution of protection in cover, scope or amount under the Authority Insurances than would have been the case had the Authority Insurances described in the Register of Insurances been in full force and effect as at the Commencement Date.

The Authority anticipates that the document describing the Authority Insurances in relation to the period 1 April 2012 to 31 March 2013 shall be available to the Contractor within three (3) months of the date of this Agreement.

PART 3 – INSURANCE PROCEDURES

INSURANCE BROKER

- The Authority/ Contractor Insurance Broker: Marsh Ltd; or such other insurance broker the identity of which is notified by the Authority to the Contractor from time to time.
- The Contractor shall be entitled to request from the Insurance Broker and the Authority shall procure that the Insurance Broker shall provide in a timely fashion such information as the Contractor may reasonably require from time to time including confirmation that Authority Insurances are in full force and effect.

FUNCTION

To assist the Authority with the effective and professional management of the insurance programme protecting the Contractor, which is procured by the Authority, the Contractor shall:

- maintain the appointment of the Authority's nominated insurance broker as insurance broker to the Contractor;
- provide underwriting information to the Contractor's/Authority's broker for renewal and mid-term (continuing obligation);
- ensure Contractor compliance with insurance policy terms and conditions;
- maintain compliant Motor Insurers' Database records;
- participate in and facilitate presentations to insurers;
- arrange site surveys;
- record, process, submit, collect claims in accordance with policy/programme requirements including historical employers' liability claims – typical claims procedures are attached;
- issue employers' liability/ motor certificates;
- liaise with brokers on a day to day basis – to "whom it may concern" letters etc;
- deal with work experience queries;
- process requirements for Certificates of Financial Security;

- administer contract works declarations to insurers, issue policies and claims handling procedures;
- administer Subcontractors' nuclear damage plant declarations;
- conduct claims reviews;
- attend and participate in Authority insurance workshops; and
- any other task that would normally be carried out by a commercial insurance buyer to maintain a responsive insurance programme and in general to assist the Authority in securing value for money.

PART 4 – INSURANCE EXCESS TABLE

[Not Used]

Appendix A

Register of Insurances

Appendix B

Claims Handling

The Contractor shall comply with the claims handling instructions in relation to the Authority Insurances as issued by the Authority or the Insurance Broker from time to time.

Appendix C

[Not Used]

29 March 2012

SCHEDULE 11
AUTHORITY DELIVERABLES

[Not Used]

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 the SLC Agreement and Clause 1.1 (*Definitions*) of the Parent Body 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:

"Agreement" means the SLC Agreement (as defined in the Parent Body Agreement) and the Parent Body Agreement and the expression **"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 HGCR Act;

"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 an Agreement including, but not limited to, any question regarding its existence, interpretation, validity, construction or termination;

"Dispute Notice" has the meaning given in Rule 3.1 (*Senior Representatives*);

"LCIA" means the London Court of International Arbitration;

"LCIA Rules" has the meaning given in Rule 6.2 (*Arbitration*);

"HGCR Act" 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 an 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 an Agreement in the event a Dispute arises:

- (a) 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*);
- (b) if the Senior Representatives are unable to resolve the Dispute in accordance with Rule 3 (*Senior Representatives*):
 - (i) the Parties may at any time refer the Dispute to mediation in accordance with Rule 5 (*Mediation*);
 - (ii) 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*);

- (iii) 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;
- (iv) 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:

- (a) refer a Construction Act Dispute to adjudication in which case the adjudication procedure set out in Rule 4 (*Adjudication*) shall apply;
- (b) apply to or bring a claim in the English Courts for:
 - (i) an order restraining a Party from doing any act or compelling a Party to do any act;
 - (ii) a judgment to enforce a Senior Representative Settlement Agreement, the decision of an adjudicator, or an arbitral award; or
 - (iii) for judicial review; and/or
- (c) serve a Notice of Arbitration so as to prevent the expiry of any applicable limitation period.

3 SENIOR REPRESENTATIVES

3.1 Any Party may refer any Dispute to the Dispute Resolution Procedure by notice in writing to all other Parties to the Dispute (a "**Dispute Notice**"). The Dispute Notice shall include the following details:

- (a) the subject matter of the Dispute and the issues to be resolved;
- (b) the position the referring Party believes is correct and the referring Party's reasons for that position;
- (c) the identity of the other Parties to the Dispute;
- (d) the identity of the referring Party's Senior Representative;
- (e) copies of any documents in the referring Party's possession which the referring Party considers to be important and relevant; and

- (f) 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:
- (a) the nature and a brief description of the Dispute and the Parties involved (including as appropriate their addresses for service of any notices);
 - (b) details of where, when and/or how the Dispute has arisen;
 - (c) the nature of the redress sought;

- (d) 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:
- (a) his willingness and availability to act;
 - (b) that he has no interest in the Dispute; and
 - (c) 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 send a submission to the Adjudicator which shall include the following:
- (a) the subject matter of the Dispute and the issues to be resolved;
 - (b) a detailed statement of the facts, including relevant dates, names of personnel involved (if any) and references to specific parts of relevant documents;
 - (c) the position the Claimant believes is correct and the Claimant's reasons for that position;
 - (d) copies of all the documents which the Claimant considers to be important and relevant; and
 - (e) 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 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:
- (a) act fairly and impartially;
 - (b) establish the timetable and procedure for the adjudication;
 - (c) reach his decision in accordance with the applicable Legislation in relation to the Dispute referred to him;
 - (d) 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
 - (e) render his decision as an Adjudicator for the purposes of the HGCR Act in relation to Construction Act Disputes; the Arbitration Act 1996 (or any re-enactment or amendment thereof) and the law relating to arbitrators and arbitrations shall not apply to the Adjudicator or his decision or the procedure by which he reaches his decision 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:
- (a) considering any written representations, statements and experts' reports submitted to him by the Parties;

- (b) 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;
 - (c) 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);
 - (d) 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
 - (e) open up, review and revise any opinion certificate, instruction, determination or decision of whatsoever nature given or made under an Agreement.
- 4.11 If a Party, 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:
- (a) continue the adjudication in the absence of that Party or of the document or written statement requested;
 - (b) draw such inferences from that failure to comply as circumstances may, in the Adjudicator's opinion, justify; and
 - (c) 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.
- 4.12 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 to act or continue to act:
- (a) 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

- (b) 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:
 - (a) unless that Dispute has first been referred to the Parties' Senior Representatives in accordance with Rule 3 (*Senior Representatives*); or
 - (b) 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:

- (a) whether any evidentiary hearing on the merits of the Dispute in the original Request for Arbitration has begun;
- (b) whether the Dispute in the original Request for Arbitration has already been finally determined as to liability; and
- (c) 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:

- (a) any evidentiary hearing on the merits of the Dispute in the original Request for Arbitration has not begun; and/or
- (b) 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.

Ref	Name of Report	Report or data only	Frequency	Source of requirement	Clause reference	Description
1	Electronic Data Submission (EDS)	Data only	Monthly / Quarterly	PCP-M	2.2	Standard proforma to be completed in accordance with PCP-M
2	Inflation	Data only	Quarterly	PCP-M	9.2.7	Format is updated on a frequent basis to support Franklin & Andrews report to the Authority
3	Estimate Summary	Report	Annual	PCP-M	9.3.1	Illustration/ Proforma to be completed in accordance with PCP-M
4	NDA Flash (Day 6 Deliverable)	Report	Monthly (Critical Programme likely to be quarterly)	PCP-M	13.4	Standard proforma to be completed in accordance with PCP-M
5	Monthly Performance (Day 12 Deliverable)	Report	Monthly	PCP-M / SLCA	10.6,16.5,13.6.3 / 13.6.4 / 13.6.2. Schedule 2, Part 2, 12.4, Schedule 5 4.1 and 4.2, PCP-M 7 3.16, Schedule 5,5	- Combination of reports that are generated by for internal reporting, with the exception of the Flash report (template) and F01 Risk report (template). - Schedule 2, Part 2, 12.4
6	Quarterly Business	Report	Quarterly	PCP-M	13.6	Content of report driven by agenda issued by the Authority
7	Audited financial statements of the Contractor	Report	Annual	SLCA	14.3.3	Standard set of financial statements
8	Cashflow forecasting	Report	Monthly	SLCA	16.6.2, FNP-02	Monthly forecast of daily cashflows to and from the Authority for the following 2 months and A rolling forecast of monthly cashflows to and from the Authority for the following 12 months
9	Cashflow forecasting	Report	Annual	SLCA	16.6.2, Schedule 6 Part 2b 2.11	Cash flow forecast including Agreed Cashflow Requirement, Agreed Payment Profile and Approved Working Capital Allowance
10	Tax pack for Authority owner books	Report	9 and 12 months	SLCA	16.12.2.3, FNP-02	Tax pack

Ref	Name of Report	Report or data only	Frequency	Source of requirement	Clause reference	Description
11	Supporting information to monthly invoice for allowable costs	Report	Monthly	SLCA	Schedule 6, Part 2b, 3.1	Monthly invoice certified by Finance Director with the ability to request additional information from Contractor to satisfy payment
12	Reconciliation report	Report	Monthly	SLCA	Schedule 6, Part 2b, 7.1	Financial report reconciling costs and cash, allowable and disallowable costs etc
13	Reconciliation report	Report	Annual	SLCA	Schedule 6, Part 2b, 8.1	Annual financial report reconciling costs and cash, allowable and disallowable costs etc
14	Fee Reconciliation report	Report	Annual	SLCA	Schedule 6, Part 4c, 4.2	Fee Reconciliation report covering PBI Fee, Target Fee including Shareline and any further category of fee that may be agreed in any contract year
15	Proposed ASFL	Report	Annual	SLCA	Schedule 6, Part 7, 1.1A	ASFL projection
16	PBI and Target Fee profile	Report	Annual	SLCA	Schedule 6, Part 7, 1.4	PBI and Target Fee profile
17	Statutory Reporting and Representation Pack (including interim reporting)	Report	9 and 12 months	FNP02	4.1	Requirements as issued prior to the start of the interim and year-end processes.
18	Annual Financial Business Plan Pack	Report	Annual	FNP02	4.1	Requirements as issued at the start of each planning process.
19	Inter SLC Service Contract report	Report	Annual	SLCA	23.4	To provide details of all Inter SLC Service Contracts on an annual basis (on anniversary of Commencement Date) and as and when any area amended or created.
20	Work Activity Sanction Schedule	Report	Annual	SLCA	Schedule 2, Part 3, 12, PCP-M	A rolling 12 month Work Activity Sanction Schedule (the RSS) is required annually or monthly if the plan for the next 6 months has changed
21	Annual estimate of subcontractor plant, equipment and assets	Report	Annual	SLCA	Schedule 5, 13.1, (E)	Notification of the estimated value of subcontractors plant, equipment and assets on an annual basis. In addition if the value changes by 20% or more during any one year the Authority must be informed.
22	Minimum Performance Standards	Report	Quarterly	SLCA	Schedule 17	A report against each of the MPS criteria described in Schedule 17.

Ref	Name of Report	Report or data only	Frequency	Source of requirement	Clause reference	Description
23	Contractor Audit Plan	Report	Annual	ADP02	4.2	Draft Internal Audit plan provided to the Authority prior to the plan being finalised through an appropriate governance forum within the Contractor.
24	Quarterly Internal Audit Review Report	Report	Quarterly	ADP02	4.4	Contractor submits report within two weeks prior to the Authority's quarterly Audit Committee for which dates will be provided at the start of each financial year, which: <ul style="list-style-type: none"> • describes progress against 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 any fraud or bribery investigations and ongoing actions or issues; and • provides an update on tracking of management actions and audit close-out
25	Annual Internal Audit Report	Report	Annual	ADP02	4.3	To summarise the activities undertaken during the last year and findings, the effectiveness of the Internal Audit function and contains a statement of Assurance and Exclusions.
26	Balanced Score Card Reporting	Report	Quarterly / Monthly	PBI		The balanced score card provides a means to incentivise and measure Contractor behaviour, approach and overall performance against a defined set of criteria including the balanced score card. Report will be produced quarterly. However, some of the metrics that make up the report are reported on different timescales, including Strategy, Business Planning, Risk Management, Sanction and Business Cases, Performance Reporting
27	Scenario Impact Assessments	Report	Annual	AOG -01		Scenario information from Contractor to inform Spending Reviews
28	Liability Cap Analysis	Report	Monthly	SLCA	18.3	Report allocating disallowable costs between Class A and Class B
29	Project update	Report	Weekly			A one page summary consisting of a sentence or two to update on key projects.
30	Annual Environmental Sustainability Data	Data only	Annual			As per report name - standard data
31	HSSSEQ highlights	Report	Weekly			Short briefs on highlights and incidents in previous week

Ref	Name of Report	Report or data only	Frequency	Source of requirement	Clause reference	Description
32	National Waste Inventory	Report	Tri-annual	Client Specification	Req 23a	Details on radioactive waste
33	Quinquennial Interim End State review	Report	Every 5 years	Client Specification	Req 27 (v)	Periodic review and at least every 5 years of Commencement Date
34	Information Risk Management Assessment	Report	Quarterly	Client Specification	Req 51 (iii)	To support NDA submission into DECC report on Managing Information Risk
35	Information Risk Management Assessment	Report	Annual	Client Specification	Req 51 (iii)	To support NDA annual submission into DECC report on Managing Information Risk
36	Information Assurance Maturity Model Assessment	Report	Annual	Not in Place		List of questions to be completed on excel spreadsheet
37	Environmental Impact Updates	Report	Every 6 months	Client Specification	Req 55	Stakeholder engagement website report
38	Production of TBuRD	Report	Annual	PCP-07 & EGG10		Technical underpinning and short, medium and long-term R&D requirements to deliver IES report
39	Regular Financials	Report	Monthly	FNP-02	4.1	Monthly financial reporting pack using Proforma Pack
40	Budget Pack	Report	Annual	FNP-02	4.1	Annual financial reporting pack using Proforma Pack
41	Socio Economic Development Plan	Report	Annual	SLCA	Schedule 1, Requirement 52	3 year rolling Socio-Economic Development Plan which sets out how the Contractor shall comply with the Authority's Socio Economic Policy, interpreted locally as the Authority's Socio Economic Caithness and North Sutherland Priority Area Plan July 2009, or as later amended
42	Integrated Waste Strategy	Report	Annual	ENG -01, ENG -02		A description of the site's integrated approach to waste management; waste streams and expected discharges from current and future operations & actions required to improve the site's approach to waste management.

Ref	Name of Report	Report or data only	Frequency	Source of requirement	Clause reference	Description
43	Critical asset performance risk	Report	Quarterly	Client Specification	Requirement 58 within Schedule 1 of the contract.	Current and forward looking view of critical and non critical asset performance risk and status of activities to mitigate
44	Hazard baseline	Report	Annual	EGG-06		Reporting of the safety and environment detriment of the site.
45	Strategy dashboard	R	Monthly	PCP-M		
46	Staff Metrics	Report	Quarterly			Details to be developed but will address a range of relevant staff metrics, such as; vacancies, attrition, sickness, training and similar
47	Fee Recognition Proforma	Report	Quarterly			In summary the report will contain: a) PBI Fee allocated to each Contract Year b) Each Target Fee payment milestone value (Sub-milestone, Major Work Package and Interim End State) and the Contract Year when the milestone is expected to be achieved c) The start and end date (Month and Year) of when work will be done for each milestone project d) For each milestone, explanation as to whether the work performed in order to achieve that milestone is conducted on a linear or non-linear basis. In the case of the latter, a profile of projected delivery against the milestone by Contract Year in % terms is required e) The total projection of PBI and Target Fee which should total the maximum Fee to be earned over the contract duration (excluding Shareline)
48	Inter SLC Service Contract report	Report	Annual	SLCA	23.4	Summary of all cross nuclear estate contracts

SCHEDULE 14
European State Aid

The State Aid Decision discussed in Clause 37.2 of this Agreement is referenced as follows:

**“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)”**

SCHEDULE 15 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.

29 March 2012

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;
- 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).
- 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

29 March 2012

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,
- 6.3 or 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.

29 March 2012

SCHEDULE 16
KNOWLEDGE MANAGEMENT

[Not Used]

Schedule 17

Minimum Performance Standards

1 Purpose

- 1.1 This Schedule defines the minimum performance standards that the Contractor is required to not to breach during the Term in relation to the elements listed below (being together the "**Minimum Performance Standards**").

2 Minimum Performance Standards

- 2.1 Subject to Clause 11.6 (*Defective Performance*) and Paragraph 3 (*Termination and Remediation*) below, if any of the circumstances listed in Paragraphs 2.1(a) to 2.1(l) (inclusive) occurs at any time during the Term, it shall be capable of constituting a Contractor Default.

Performance Metrics

- (a) The Estimate at Completion, is an amount which is greater than the Target Cost plus s.43
- (b) The forecast date for Achievement of the IES is a later date than the date specified by the Contractor for Achievement of the IES stated in 3.5 Cardinal Milestones of the Client Specification plus five hundred and forty (540) Calendar Days.

Capability

- (c) The Contractor is unable to demonstrate that:
- (i) it is reasonably likely to maintain capability such that IES can be achieved on or prior to the date on which the period of Calendar Days set out at Paragraph 2.1(b) (*Performance Metrics*) above expires;
- (ii) it is reasonably likely that there will be sufficient capability to maintain and operate the Site post IES in accordance with the Contractor's plan for operating and maintaining the Site post IES.

HSSSE

- (d) The Contractor:
- (i) has a DSRL RIDDOR Score that is greater than s.43 s.43 above the Authority Contractors' RIDDOR Scores, provided that if and when the total number of individuals taken into account in the

calculation of the DSRL RIDDOR Score drops below a full time equivalent of s.43 individuals, in assessing whether the Contractor has met the Minimum Performance Standard set out in this Paragraph 2.1(d)(i) the Authority will take due account of statistical volatility and anomalies that may arise in calculation of the DSRL RIDDOR Score by reason of the number of individuals taken into account in that calculation.

At any time after the potential total number of individuals taken into account in the calculation of the DSRL RIDDOR Score drops below a full time equivalent of s.43 individuals, either Party may require that the other Party works with it in good faith to jointly develop and agree a replacement for the Minimum Performance Standard set out in this Paragraph 2.1(d)(i) in order to address potential statistical volatility or anomalies in the calculation of the DSRL RIDDOR Score in Paragraph 2.1(d)(i) above;

- (ii) has any INES event above a level 2 event.
- (e) The Contractor has any unplanned individual dose limits beyond 5mSv, save for any such unplanned dose limit resulting from a Force Majeure Event.
- (f) The Contractor has any work related fatality that occurs on Site or off Site, where a subsequent HSE enquiry finds that the Contractor has culpability for such fatality and such finding of culpability is accepted by the Contractor or upheld by a court of competent jurisdiction.

Socio Economic Requirements

- (g) The Contractor materially fails to comply with the socio-economic requirements described at Clause 9 (*Socio Economic Development*) of this Agreement and at Requirement 52 of Schedule 1 (*Client Specification*).

Employees

- (h) The Contractor materially fails to comply with its obligations under Clause 31.9 (*Terms and Conditions of Employment*) or Clause 31.10 (*Trade Union Agreements*) of this Agreement.
- (i) Subject to Clause 31 (*Employees*) of this Agreement, the Contractor materially fails to maintain Nominated Staff in their posts for the periods set out in the column entitled "Appointment Duration" in the table at Part 1 (*Nominated Staff*) of Schedule 4 (*Employment and Pensions*).

Make/Buy

- (j) The Contractor materially fails to implement the Contractor's make/buy procedure and plan.

- (k) There is more than one successful challenge made by a Third Party against the Contractor in any five year period with respect to its compliance with the EU Procurement Rules unless: (i) such successful challenge relates to activities of the Contractor in compliance with Authority instructions or requirements; or (ii) the Contractor can demonstrate that such successful challenge was made despite having complied with Good Industry Practice.

For the purposes of this sub-paragraph (k), "successful challenge" means a challenge resulting in (i) a finding by a court of competent jurisdiction that the Contractor has failed to comply with the EU Procurement Rules or (ii) the Contractor, acting reasonably, acknowledging to the Authority (without necessarily admitting any liability to the Third Party) that it has failed to comply with the EU Procurement Rules.

Reporting

- (l) There are one or more instances of reporting which deliberately materially misrepresents the Contractor's position with respect to:
 - (i) Performance Metrics, as defined in Paragraph 2.1(a) or (b) (*Performance Metrics*) above;
 - (ii) HSSSE, as defined in Paragraph 2.1(d), (e) or (f) (*HSSSE*) above;
 - (iii) socio-economic requirements as defined in Paragraph 2.1(g) (*Socio Economic Requirements*) above;
 - (iv) Defective Performance; or
 - (v) the mass or volumes (as applicable) of waste measured by the Contractor pursuant to Paragraph 3 (*Target Cost Adjustments*) of Part 3 (*Target Cost*) 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 (l) or

- (i) in the case of Paragraph 2.1(l) (iv), would have led to Costs being Disallowable rather than Allowable Costs, or

- (ii) in the case of Paragraph 2.1(l) (v), would have led to an increase in the Target Cost.

3 Termination and Remediation

- 3.1 Except where a member of the Nominated Staff has caused such failure, the Authority shall not terminate this Agreement for Contractor Default pursuant to the Contractor's failure to meet a Minimum Performance Standard and neither shall the relevant remediation costs incurred by the Contractor be capable of constituting Disallowable Costs pursuant to Appendix D (*Determining Liability for Disallowable Costs*) of Schedule 6 (*Finance*) or 4.1 (qq) (*Disallowable Costs*) of Part 2a (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) unless either:
- (a) a period of twelve (12) months has passed since the Commencement Date; or
 - (b) within such twelve (12) months period, the Nominated Staff have had a reasonable opportunity to identify, address and avoid such failure.
- 3.2 For the avoidance of doubt, where a failure to comply with the Minimum Performance Standards is a direct result of a Force Majeure Event or a Dependency Event, such failure shall not constitute a Contractor Default.
- 3.3 The provisions set out in this Schedule shall be without prejudice to the Contractor's right to remediation pursuant to Clause 11.6 (*Defective Performance*) except in relation to Paragraph 2.1(f) (*HSSSE*) where such failure shall be non remediable and the Authority shall be entitled, at its absolute discretion, to terminate this Agreement pursuant to Clause 11.14.3.2 (*Defective Performance*).