

Dated

27 AUGUST

2014

PARENT BODY AGREEMENT

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

NUCLEAR DECOMMISSIONING AUTHORITY (1)

and

MAGNOX LIMITED (2)

and

RESEARCH SITES RESTORATION LIMITED (3)

and

CAVENDISH FLUOR PARTNERSHIP LIMITED (4)

Contract Ref: NDA-PBA-MXR-14

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THIS AGREEMENT is made as a deed on 27 AUGUST 2014

BETWEEN:

- (1) **NUCLEAR DECOMMISSIONING AUTHORITY** a non-departmental public body whose head office is at Herdus House, Westlakes Science and Technology Park, Moor Row, Cumbria, CA24 3HU (the "**Authority**");
- (2) **MAGNOX LIMITED** a company incorporated under the laws of England and Wales with registered number 02264251 whose registered office is at Berkeley Centre, Berkeley, Gloucestershire, GL13 9PB the company which holds the nuclear site licences (and other regulatory approvals) to operate the Magnox Sites (the "**Magnox Contractor**");
- (3) **RESEARCH SITES RESTORATION LIMITED** a company incorporated under the laws of England and Wales with registered number 05915837 whose registered office is at Building 392.10/Room 1.05, Harwell Oxford, Didcot, Oxfordshire, OX11 0DF the company which holds the nuclear site licences (and other regulatory approvals) to operate the RSRL Sites (the "**RSRL Contractor**"); and
- (4) **CAVENDISH FLUOR PARTNERSHIP LIMITED** a company incorporated in England and Wales with registered number 08980374 whose registered office is at 33 Wigmore Street, London, W1U 1QX (the "**Parent Body Organisation**"),

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

WHEREAS:

- (A) the Authority requires the appointment of a parent body organisation to hold the share capital of the Magnox Contractor and RSRL Contractor and to provide Nominated Staff and other services and support to the Magnox Contractor and RSRL Contractor for the purpose of promoting and supporting the delivery of improved value for money in the Magnox Contractor's and RSRL Contractor's operations without compromising health, safety, security or the protection of the environment;
- (B) by an advertisement in the Supplement to the Official Journal of the European Union dated 18 July 2012 (reference 227570-2012), the Authority invited expressions of interest from economic operators wishing to be appointed as such parent body organisation for the term of this Agreement;
- (B) the Parent Body Organisation submitted an expression of interest and a pre-qualification questionnaire response dated 12 October 2012 and was selected to participate in the competitive dialogue leading to the appointment of the Parent Body Organisation as the parent body organisation of the Magnox Contractor and RSRL Contractor;

- (C) following the conclusion of competitive dialogue the Parent Body Organisation submitted its final tender to the Authority on 1 November 2013 and the Authority determined that the Parent Body Organisation's tender was the most economically advantageous in accordance with the Authority's disclosed evaluation criteria;
- (D) the Authority and the Parent Body Organisation entered into the Transition Agreement on 15 April 2014 which required certain conditions be met before the Parent Body Organisation could acquire the requisite share capital of the Magnox Contractor and RSRL Contractor (being the Magnox A Share and the RSRL A Share) and thereby take on the responsibilities of the parent body organisation as required by the Authority. Those conditions have now been met and on or about the date of this Agreement the Parent Body Organisation has acquired the Magnox A Share and the RSRL A Share;
- (E) the Authority, the Magnox Contractor and the RSRL Contractor have entered into the SLC Agreement on or about the date of this Agreement. This Agreement is intended to operate alongside and should be read in conjunction with the SLC Agreement;
- (F) the Parties have agreed that this Agreement should be executed as a deed.

IT IS AGREED AS FOLLOWS:

Part 1: Interpretation

1 INTERPRETATION

1.1 Interpretation

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

- 1.1.1 in the event of any conflict between the Clauses contained in this Agreement and the Schedules, the Clauses shall take precedence over the Schedules, 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 23 (*Dispute Resolution*);
- 1.1.2 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;
- 1.1.3 all references to Clauses and Schedules are references to clauses of and schedules to this Agreement and all references to Paragraphs and Parts are references to paragraphs and parts contained in the Schedules;

- 1.1.4 the Schedules (including any appendices to such schedule) are an integral part of this Agreement and reference to this Agreement includes reference to the Schedules;
- 1.1.5 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;
- 1.1.6 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);
- 1.1.7 words importing the singular include the plural and vice versa;
- 1.1.8 words importing a particular gender include all genders;
- 1.1.9 "**person**" includes an individual, partnership, firm, trust, body corporate, government department, corporation sole, governmental body, authority, agency or unincorporated body of persons or associations;
- 1.1.10 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;
- 1.1.11 references to "**Party**" and "**Parties**" means a party or the parties to this Agreement as applicable;
- 1.1.12 all monetary amounts are expressed in pounds sterling;
- 1.1.13 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;

- 1.1.14 a reference to a balance sheet or profit and loss account includes a reference to any note forming part of or attached to it;
- 1.1.15 references to the word "**includes**" or "**including**" are to be construed without limitation;
- 1.1.16 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;
- 1.1.17 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;
- 1.1.18 a reference to the "**Site**" shall include any part of the Site;
- 1.1.19 all references to a time of day are references to UK time; and
- 1.1.20 save where otherwise stated, for the purposes of this Agreement, references to the SLC Agreement and any terms defined in it shall be treated as reference to the SLC Agreement and such defined terms in the form applicable at the relevant time during the Term, and in the case of any liability arising after the Term, in the form applicable immediately prior to the Transfer Date.

- 1.2 The Parent Body Organisation acknowledges the provision of Paragraph 2 (*Ad Hoc Adjustments for Inflation*) of Part 8 (*Indexation*) of Schedule 6 (*Finance*) of the SLC Agreement and agrees to be bound by those provisions to the extent that they pertain to items that are used within or are otherwise relevant to this Agreement.

Part 2: Term and Transition

2 COMMENCEMENT AND DURATION

- 2.1 This Agreement shall commence on the Commencement Date and shall (subject to any earlier termination in accordance with its terms, and subject to any clauses of this Agreement which survive such termination pursuant to Clause 30 (*Continuing Obligations*)) remain in full force and effect until the Expiry Date.

Part 3: Core Obligations

3 WARRANTIES

3.1 Parent Body Organisation and Authority Warranties

Without prejudice to any warranties or conditions either express or implied by any applicable Legislation, the Parent Body Organisation warrants and undertakes that as at the Commencement Date it is duly incorporated under the laws of England and Wales and each of the Parent Body Organisation and the Authority warrants and undertakes to the other that as at the Commencement Date:

3.1.1 [Not used]

3.1.2 it has the legal right and the requisite power and authority to enter into and perform its obligations under this Agreement and any other related documents which, when executed, will constitute valid and binding obligations on it in accordance with its terms; and

3.1.3 it has taken all necessary action to authorise the execution and the performance of its obligations under this Agreement and any other related documents (including authority for the transfer of the Magnox B Share and the RSRL B Share to the Parent Body Organisation in accordance with this Agreement).

3.2 Each of the Parent Body Organisation and the Authority confirms to the other that:

3.2.1 in entering into this Agreement it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out in this Agreement, the Transition Agreement, the SLC Agreement, the Parent Company Guarantees or Alternative Credit Support (as appropriate), the Nuclear Indemnity, the Magnox Property Leases or the RSRL Property Deeds of Variation; and

3.2.2 in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, its only rights or remedies in relation to any breach, representation, warranty, assurance, covenant, indemnity, guarantee, undertaking or commitment given or action taken, omission or default arising out of or in connection with, or termination of, this Agreement together with the SLC Agreement, the Transition Agreement, the Parent Company Guarantees or Alternative Credit Support (as appropriate), the Nuclear Indemnity, the Magnox Property Leases or the RSRL Property Deeds of Variation or the documents referred to in them are those available under (including for breach of) this Agreement, the SLC Agreement, the Transition Agreement, the Parent Company Guarantees or Alternative Credit Support (as appropriate), the Nuclear Indemnity, the Magnox Property Leases or the RSRL Property Deeds

of Variation or the documents referred to in them, and for the avoidance of doubt and without limitation, each of the Parent Body Organisation and the Authority has no right or remedy, whether by way of a claim for contribution or otherwise, in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in, this Agreement) or otherwise howsoever.

3.3 Subject to any Authority Assumptions on entering into this Agreement, the Parent Body Organisation shall be deemed to have:

3.3.1 satisfied itself as to the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Agreement; and

3.3.2 gathered all information necessary to perform its obligations under this Agreement.

3.4 Without prejudice to the Contractor's rights under the SLCA Change Control Procedure in the event of a change to or inaccuracy in the position identified in an Authority Assumption, the Parent Body Organisation shall not be relieved from any obligation under this Agreement nor shall it be entitled to claim against the Authority on grounds that any information, whether obtained from the Authority or otherwise (including information made available by the Authority) is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

3.5 Without prejudice to Clause 5.12 (*Non-excluded Liability*), the Parent Body Organisation's liability towards the Contractor in relation to any breach, representation, warranty, assurance, covenant, indemnity, guarantee, undertaking or commitment given or action taken, omission or default arising out of or in connection with, or on termination of, this Agreement together with the SLC Agreement, the Transition Agreement and the Property Leases shall expire on the earlier of:

3.5.1 the termination or expiry of this Agreement;

3.5.2 the Transfer Date; and

3.5.3 the date on which the legal or beneficial ownership of the Magnox A Share and the RSRL A Share is transferred from the Parent Body Organisation under Clause 21 (*Retransfer of Shares in Contractor under Energy Act*) or Clause 22 (*Retransfer of Shares in Contractor on Termination or Expiry*).

3A STANDARD OF PERFORMANCE

3A.1 The Parent Body Organisation shall at all times act and perform its obligations under this Agreement, having due regard to the PBO Requirements in the Client Specification:

- 3A.1.1 in accordance with all applicable Legislation;
- 3A.1.2 in a transparent and co-operative manner with both the Authority and the Regulators;
- 3A.1.3 in a manner that will facilitate the fulfilment by the Authority of its statutory functions and duties and does not place the Authority in breach of such functions and duties;
- 3A.1.4 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 Parent Body Organisation pursuant to and in accordance with Clause 23 (*Dispute Resolution*) shall amount to a breach of this Clause 3A.1.4 (*Standard of Performance*); and
- 3A.1.5 with integrity, 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).

3B PROHIBITED ACTS

3B.1 The Parent Body Organisation warrants that:

- 3B.1.1 in entering into this Agreement it has not committed any Prohibited Act;
- 3B.1.2 it shall comply with and shall not contravene the Relevant Requirements;
- 3B.1.3 it has and will throughout the duration of this Agreement have in place adequate procedures (as referred to in section 7(2) of the Bribery Act 2010) designed to prevent persons associated with the Parent Body Organisation from bribing any person with the intention of obtaining or retaining business for the Parent Body Organisation or with the intention of obtaining or retaining advantage in the conduct of business for the Parent Body Organisation;
- 3B.1.4 it shall not do, or omit to do, any act that will cause or lead the Authority to be in breach of any of the Relevant Requirements;
- 3B.1.5 so far as it is aware, except to the extent notified to the Authority in writing prior to the Commencement Date, neither it nor any PBO Affiliate, or subcontractor of the Parent Body Organisation (or anyone employed by or acting on behalf of any of them) or any of their affiliates or agents or shareholders has been (in the three (3) years prior to the Commencement Date) or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Relevant Requirements; and

- 3B.1.6 if requested, it shall provide the Authority with any reasonable assistance to enable the Authority to perform any activity required by any relevant government agency in any relevant jurisdiction for the purpose of compliance with the Relevant Requirements relating to or required in connection with this Agreement.
- 3B.2 To the extent permitted by law, the Parent Body Organisation shall immediately notify the Authority if, at any time during the term of this Agreement, it concludes that it, the Contractor or any Affiliate, Subcontractor, or subcontractor of the Parent Body Organisation (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 or the SLC Agreement:
- 3B.2.1 engages in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 3B.2.2 has been or is listed by any government agency in the European Union or United States of America as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts; or
- 3B.2.3 has committed any offence relating to a Relevant Requirement.
- 3B.3 The Parent Body Organisation shall not, and shall use reasonable endeavours to procure that the Contractor (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.

4 GOVERNANCE

4.1 Restrictions on Parent Body Organisation

- 4.1.1 The Parent Body Organisation hereby undertakes that it will not, without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):
- 4.1.1.1 make any amendment to the agreed articles of association of the Contractor;
- 4.1.1.2 make any alteration to the share capital of the Contractor;
- 4.1.1.3 appoint any directors to the board of the Contractor;

- 4.1.1.4 remove or cause the removal of any of the Agreed Directors from the board of either the Magnox Contractor or the RSRL Contractor (as applicable) other than as permitted by section 168 of the Companies Act 2006;
- 4.1.1.5 make any change to the nature of the Contractor's business;
- 4.1.1.6 cause or permit the Contractor to undertake any activity otherwise than in fulfilment of its obligations under the SLC Agreement;
- 4.1.1.7 cause or permit the Contractor to use the Sites (or parts thereof) other than in fulfilment of its obligations under the SLC Agreement;
- 4.1.1.8 cause or permit the Contractor to dispose, let or otherwise part with the possession of the whole of or any part of the Sites (save as permitted by the Property Leases), 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;
- 4.1.1.9 make any change to the Contractor's accounting reference date;
- 4.1.1.10 make any change to the Accounting Policies and Procedures save as required by applicable Legislation, the Accounting Standards or any government reporting requirements including those specified in the Government Financial Reporting Manual (FReM) as maintained and issued by the Government from time to time;
- 4.1.1.11 cause or permit the Contractor to give any form of guarantee or other security;
- 4.1.1.12 cause or permit the Contractor to create or permit to subsist any Security Interest over any Authority Assets or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than as permitted by the SLC Agreement;
- 4.1.1.13 [Not used]
- 4.1.1.14 save for borrowings under an Approved Working Capital Facility, cause or permit the Contractor to borrow (including intra-group) or make any payment under any intra-group borrowings;
- 4.1.1.15 cause or permit the Contractor to create or acquire any subsidiary or dispose of any shareholding in a subsidiary or make or have any

investment in any other entity, except for the deposit of funds with a bank as permitted by the SLC Agreement;

4.1.1.16 cause or permit the Contractor to commence any litigation or arbitration other than:

4.1.1.16.1 for the purposes of satisfying Clause 6.8 (*Necessary Consents*), Clause 29 (*Intellectual Property*) or Clause 17 (*Claims Handling*) of the SLC Agreement;

4.1.1.16.2 in accordance with the Dispute Resolution Procedure;

4.1.1.16.3 in any attempt to commence judicial review proceedings against the Authority in connection with the SLC Agreement;

4.1.1.16.4 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 Sites or carry out the Commercial Operations Tasks in accordance with Legislation; or

4.1.1.16.5 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);

4.1.1.17 save in respect of borrowings under an Approved Working Capital Facility, cause or permit the Contractor to incur any liability or financial indebtedness or except as expressly permitted by the SLC Agreement;

4.1.1.18 cause or permit the Contractor to make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than the deposit of funds with a financial institution or office of the Paymaster General as permitted by the SLC Agreement);

- 4.1.1.19 cause or permit the Contractor to enter into any finance or operating leases;
- 4.1.1.20 notwithstanding the Permitted Activities, cause or permit the Contractor to enter into any Customer Contract or Subcontract where a material liability or Cost is likely to crystallise after the expiry of this Agreement;
- 4.1.1.21 save as set out in Clause 16.11.10 (*Payments to Parent*) of the SLC Agreement, cause or permit the Contractor to make any payments to the Parent Body Organisation or to any Affiliates which:
 - 4.1.1.21.1 are not provided for and made in accordance with Subcontracts specifically approved by the Authority pursuant to Clause 22 (*Subcontracting/Procurement*) of the SLC Agreement;
 - 4.1.1.21.2 have not been agreed to under an Advance Agreement; or
 - 4.1.1.21.3 are not made in accordance with the provisions of Clause 4.7 (*Provision of Call-Off Support to the Authority*) and Schedule 20 (*Call-Off Support*) of the SLC Agreement;
- 4.1.1.22 cause or permit the Contractor to undertake hedging activities (except in accordance with the Currency Hedging Strategy);
- 4.1.1.23 cause or permit the Contractor to enter into any contract, agreement or arrangement the terms of which are not on arm's length terms or which gives rise to less value for money for the Contractor and/or the Authority because of any direct or indirect benefit or advantage which accrues to the Parent Body Organisation or to any Affiliate or to any Subcontractor;
- 4.1.1.24 cause or permit the Contractor to 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
- 4.1.1.25 cause or permit the Contractor to open any bank, building society or similar account.

4.1.2 For the purposes of Clause 4.1.1 (*Restrictions on Parent Body Organisation*), other than where the Authority has expressly withheld its consent in writing, the Contractor and the Parent Body Organisation shall be deemed to have the prior written consent of the Authority to carry out any of the activities in Clauses 4.1.1.1 (*Restrictions on Parent Body Organisation*) to 4.1.1.25 (*Restrictions on Parent Body Organisation*) to the extent the relevant activity is expressly:

- 4.1.2.1 necessary for (or necessarily ancillary to) the performance of the Contractor's obligations set out in the Client Specification;
- 4.1.2.2 contained in a Subcontract or Customer Contract which is specifically approved by the Authority. For the avoidance of doubt and notwithstanding any other provision of this Agreement, any Subcontract or Customer Contract which enables the Contractor to do any of the matters set out in Clause 16.3 (*Financial Restrictions*) of the SLC Agreement requires the approval of the Authority notwithstanding the Permitted Activities;
- 4.1.2.3 contained in an Internal Procedure approved by the Authority in accordance with Clause 8.5 (*Integrated Management System*) of the SLC Agreement and as defined in the SLC Agreement;
- 4.1.2.4 save in the case of this Clause 4.1 (*Restrictions on Parent Body Organisation*), a Permitted Activity or otherwise approved by the Authority following the Contractor's compliance with Clause 20.2 (*Obligation to consult the Authority*) of the SLC Agreement;
- 4.1.2.5 in the case of this Clause 4.1 (*Restrictions on Parent Body Organisation*), permitted by Clause 6.1 (*Right to Deal with Authority Assets*) of the SLC Agreement;
- 4.1.2.6 permitted pursuant to Schedule 6 (*Finance*) of the SLC Agreement;
or
- 4.1.2.7 required as a term of an Approved Working Capital Facility.

4.2 **Change in Control and Relevant Partnering Arrangements**

4.2.1 The Parent Body Organisation shall notify the Authority immediately of:

- 4.2.1.1 any proposed Change in Control of the Parent Body Organisation and/or any Parent Company Guarantor; or
- 4.2.1.2 any proposed Relevant Partnering Arrangement,

provided that this Clause 4.2.1 (*Change in Control and Relevant Partnering Arrangements*) shall not require any company having shares that are listed on a recognised investment exchange (as defined in Section 285 of the Financial Services and Markets Act 2000) or other regulated stock exchange to make any disclosure that would cause such company (or any PBO Affiliate that is so listed) to be in breach of any Legislation or mandatory listing rules or regulations applicable to such recognised investment exchange or regulated stock exchange.

4.2.2 The Authority shall be entitled to terminate this Agreement pursuant to Clause 19 (*Termination*) if:

4.2.2.1 the Parent Body Organisation and/or any Parent Company Guarantor is subject to a Change in Control other than a Permitted Change in Control or enters into a Relevant Partnering Arrangement without first obtaining the written consent of the Authority, such consent not to be unreasonably withheld or delayed; or

4.2.2.2 following a Permitted Change in Control of the type specified in Clause 4.2.3.2 (*Change in Control and Relevant Partnering Arrangements*) below, the transferee ceases to be a PBO Affiliate and the shares or interests which were the subject of that Permitted Change in Control are not within ten (10) Working Days of the transferee ceasing to be a PBO Affiliate transferred to another PBO Affiliate.

4.2.3 For the purposes of Clause 4.2.2 (*Change in Control and Relevant Partnering Arrangements*) above, "**Permitted Change in Control**" means:

4.2.3.1 a Change in Control arising solely from a change in the legal or beneficial ownership of any shares that are listed on a recognised investment exchange (as defined in Section 285 of the Financial Services and Markets Act 2000) or other regulated stock exchange where the legal or beneficial ownership of such shares has not transferred to an Unsuitable Transferee;

4.2.3.2 a Change in Control under which Control transfers to a PBO Affiliate; or

4.2.3.3 where the ownership interests of a PBO Shareholder or PBO Affiliate are not listed on a recognised investment exchange or

other regulated stock exchange, a Change in Control under which Control transfers to either:

- 4.2.3.3.1 beneficial owners of such PBO Shareholder or PBO Affiliate who were already beneficial owners of such PBO Shareholder or PBO Affiliate as at the Commencement Date; or
- 4.2.3.3.2 individuals who are active in the management of such PBO Shareholder or PBO Affiliate at the time they acquire such a beneficial ownership interest.

4.3 **Parent Body Organisation Undertaking**

The Parent Body Organisation undertakes:

- 4.3.1 save as otherwise provided in this Agreement, not to transfer, dispose of, charge or otherwise encumber all or any part of the Shares or any interest therein;
 - 4.3.2 not to exert or attempt to exert any direct influence over the Contractor's activities or obligations arising under or relating to the Nuclear Installations Act 1965 or the Contractor's nuclear site licence conditions other than through the provision of the Nominated Staff, whose influence is designed to improve the Contractor's performance of and compliance with the terms of the SLC Agreement;
 - 4.3.3 not to do or omit to do anything which may adversely affect the Contractor's ability to comply with the obligations of its nuclear site licence or any other licence, authorisation, permit or consent or fulfil any Regulatory Requirement; and
 - 4.3.4 to procure declaration and payment by the Contractor of dividends to the Magnox B Shareholder and RSRL B Shareholder subject to and in accordance with Clause 16.12 (*Payment to Magnox B Shareholder following Commencement Date*) and Clause 16.13 (*Payment to RSRL B Shareholder following Commencement Date*) of the SLC Agreement.
- 4.4 The Parent Body Organisation hereby agrees to comply with any reasonable requests of the Authority to amend or procure the amendment of the articles of association of the Contractor, or any of the Contractor's wholly-owned subsidiaries, so that such articles reflect and are consistent with this Clause 4 (*Governance*) and with any Regulatory Requirements.

4.5 The Parent Body Organisation hereby agrees to use all reasonable endeavours to assist the Contractor in complying with its obligations under Clause 16 (*Finance*) of the SLC Agreement to include, without limitation, the provision of a full guarantee of the Contractor's obligations under any Approved Working Capital Facility for so long as the Parent Body Organisation holds the Magnox A Share and the RSRL A Share. The amount of capital guaranteed by any such guarantee taken together with the amount of any Approved Working Capital Facility provided by the Parent Body Organisation shall not exceed a sum equal to fifteen million pounds sterling (£15,000,000) (Indexed).

4.6 [Not used]

4.7 **Consortium Arrangements**

Without prejudice to Clause 4.2 (*Change in Control and Relevant Partnering Arrangements*), neither the Parent Body Organisation nor the Contractor shall make any change to the joint venture agreement attached at Schedule 3 (*Consortium Arrangements*) without first obtaining the written consent of the Authority (and the Parent Body Organisation and the Contractor shall have due regard to and act reasonably in respect of any comments raised by the Authority in connection with such change).

5 PARENT BODY ORGANISATION GUARANTEES, INDEMNITIES AND LIABILITIES

5.1 Subject to Clauses 5.9 (*Excluded Losses*), 5.10 (*Liability Caps*) and 5.11 (*Limits of Liability under the PBO Guarantee*), the Parent Body Organisation irrevocably and unconditionally:

5.1.1 guarantees to the Authority the due and punctual payment and discharge by the Contractor of all sums, liabilities, awards, losses, damages, charges and expenses that may be or become due, owing or payable to the Authority under or arising out of the SLC Agreement pursuant to its terms, or by reason of or as a consequence of any breach by the Contractor thereof (including legal fees, losses and any other costs, on a full indemnity basis, incurred by the Authority in connection with or arising out of the Authority validly and justifiably seeking to enforce any of the above) which accrue during the Term including any amounts payable by the Contractor pursuant to Schedule 6 (*Finance*) of the SLC Agreement which are owing in respect of the period from the Commencement Date to the end of the Term (the "**Guaranteed Obligations**") and the Parent Body Organisation undertakes to the Authority that, if and whenever the Contractor fails to pay any amount due to the Authority under the Guaranteed Obligations, the Parent Body Organisation shall pay that amount as if it were the principal obligor under the SLC Agreement (provided that the

Parent Body Organisation shall be entitled to the same rights of defence that the Contractor has under the SLC Agreement);

- 5.1.2 agrees with the Authority, as a separate, independent, primary and additional obligation (and without prejudice to Clauses 5.1.1 (*Parent Body Organisation Guarantees, Indemnities and Liability*) and 5.1.3 (*Parent Body Organisation Guarantees, Indemnities and Liability*)), to indemnify the Authority for a period of three (3) years from the end of the Term (or, in respect of any claim under the indemnity which was commenced before three (3) years from the end of the Term, until such time as that claim has been settled or withdrawn) and on an after-tax basis in respect of all losses, damages, costs, claims, liabilities, demands and expenses arising from the Contractor failing to pay, perform and/or discharge and/or being otherwise in default of any of the Guaranteed Obligations provided that such losses, damages, costs, claims, liabilities, demands and expenses would otherwise have been recoverable by the Authority from the Contractor under the SLC Agreement; and
- 5.1.3 guarantees to the Authority the due and punctual payment of all costs, fees and expenses which the Authority reasonably and properly incurs or is required to pay as a direct result of the Contractor, the Authority or the Incoming Parent remediating, after the end of the Term, any Defective Performance that occurred during the Term, provided that:
 - 5.1.3.1 the Authority has used reasonable endeavours to mitigate such costs, fees and expenses;
 - 5.1.3.2 the Contractor has carried out such remedial works in accordance with Good Industry Practice; and
 - 5.1.3.3 such costs, fees and expenses either:
 - 5.1.3.3.1 would have comprised Disallowable Costs in accordance with Appendix I (*Liability for Costs in the event of Defective Performance*) of Schedule 6 (*Finance*) to the SLC Agreement had they been incurred by the Contractor in carrying out such remedial work under the SLC Agreement; or
 - 5.1.3.3.2 comprise a reasonable level of fee payable to the Contractor in connection with carrying out such remedial work after the end of the Term,

(the "**Defective Performance Obligation**").

- 5.2 If, following expiry of the Term or termination of this Agreement, the Parent Body Organisation makes any payment to the Authority pursuant to any of the provisions of this Clause 5 (*Parent Body Organisation Guarantees, Indemnities and Liability*) in respect of any amounts payable by the Contractor under the terms of Schedule 6 (*Finance*) of the SLC Agreement, the Parent Body Organisation will not be entitled to exercise any rights of recovery which it might otherwise have against the Contractor in respect thereof and the Contractor will be under no obligation to repay such amount to the Parent Body Organisation.
- 5.3 Subject to Clauses 5.9 (*Excluded Losses*), 5.10 (*Liability Caps*) and 5.11 (*Limits of Liability under the PBO Guarantee*), the obligations of the Parent Body Organisation under the PBO Guarantee will not be reduced, discharged, impaired or otherwise affected by (and the intention of the Parent Body Organisation is that its obligations shall continue in full force and effect notwithstanding) any act, omission, matter or thing which, but for this Clause 5.3 (*Parent Body Organisation Guarantees, Indemnities and Liability*), would reduce, release or prejudice any of its obligations under the PBO Guarantee (without limitation and whether or not known to it or the Authority) including:
- 5.3.1 any termination, alteration, amendment, variation, omission, extension or supplement (however fundamental) of or to this Agreement (other than to any part of the PBO Guarantee) or of or to the SLC Agreement or any variation in the obligations undertaken under or pursuant to this Agreement (with the exception of the PBO Guarantee) or the SLC Agreement (including, without limitation, the nature, extent, timing and method of performance of this Agreement or the SLC Agreement) or novation of this Agreement (in whole or in part) except for any such alteration, amendment, variation, omission, extension or supplement (however fundamental) of or to the SLC Agreement or any variation in the obligations undertaken under or pursuant to the SLC Agreement (including, without limitation, the nature, extent, timing and method of performance of the SLC Agreement) that occurs after the Transfer Date;
 - 5.3.2 the granting by the Authority of any time, indulgence, concession, consent or waiver to, or any concession or arrangement made with, the Parent Body Organisation or any other person (including the Contractor), whether expressly or by conduct;
 - 5.3.3 any legal limitation on the capacity of, incapacity or lack of power, authority or legal personality of or any dissolution, merger, amalgamation, reconstitution, reorganisation or change in the members, name, status or constitution of the Parent Body Organisation, the Authority or any other person;

- 5.3.4 the granting of any other bond, security or guarantee now or hereafter held by the Authority for all or any part of the Guaranteed Obligations and/or the Defective Performance Obligation;
- 5.3.5 the enforcement, delay or failure in enforcement, release or waiver of any such bond, security or guarantee referred to in Clause 5.3.4 (*Parent Body Organisation Guarantees, Indemnities and Liability*) or any amendment, addition, omission, extension or variation thereto;
- 5.3.6 any un-discharged claim or attempted enforcement of payment from the Contractor or any other person;
- 5.3.7 any act or omission which would not have discharged or affected the liability of the Parent Body Organisation had it been a principal debtor instead of a guarantor;
- 5.3.8 any delay or forbearance by the Authority in exercising its rights or remedies under the PBO Guarantee, or the enforcement or absence of enforcement of the PBO Guarantee;
- 5.3.9 the invalidity or unenforceability of any Guaranteed Obligation(s) or the Defective Performance Obligation for any reason, or any defect in any provision of this Agreement or the SLC Agreement or any other security given in relation to the Guaranteed Obligations or the Defective Performance Obligation;
- 5.3.10 anything that the Authority may do, or omit or neglect to do which, but for this provision, might exonerate, discharge, reduce or extinguish the liability of the Parent Body Organisation under the PBO Guarantee (other than a written express exoneration, discharge reduction or extinguishment of such liability by the Authority); and
- 5.3.11 the insolvency, liquidation, winding-up or administration of (or the appointment of an administrator or receiver of) or similar proceedings or compromise or arrangement with creditors of the Contractor or any other person or the amalgamation, reconstruction, reorganisation, change in status, function, control or ownership of the Contractor.

5.3A Obligation to fund Disallowable Costs

- 5.3A.1 Subject to Clause 5.10 (*Liability Caps*), the Parent Body Organisation shall ensure that at all times during the Term the Contractor has sufficient funds to meet any Disallowable Costs incurred during the Term. To the extent that such Disallowable Costs are not met by the Contractor out of amounts that

would otherwise be available to distribute as dividend to the Parent Body Organisation, the Parent Body Organisation shall procure that the Contractor invoices the Parent Body Organisation for such Disallowable Costs.

5.4 Continuing Guarantee

- 5.4.1 Subject to Clause 5.4.3 (*Continuing Guarantee*), the PBO Guarantee in respect of the Guaranteed Obligations is a continuing guarantee which shall remain in full force and effect regardless of any intermediate discharge, performance or payment of any of the Guaranteed Obligations (in whole or in part) for three (3) years from the end of the Term (or, in respect of any claim under the PBO Guarantee which was commenced before three (3) years from the end of the Term, until such time as that claim has been settled or withdrawn).
- 5.4.2 Subject to Clauses 5.4.3 (*Continuing Guarantee*), the PBO Guarantee in respect of the Defective Performance Obligation is a continuing guarantee which shall remain in full force and effect regardless of any intermediate discharge, performance or payment of any Defective Performance Obligation (in whole or in part) for three (3) years from the end of the Term (or, in respect of any claim under the PBO Guarantee which was commenced before three (3) years from the end of the Term, until such time as that claim has been settled or withdrawn).
- 5.4.3 The time limits specified in Clauses 5.4.1 (*Continuing Guarantee*) and 5.4.2 (*Continuing Guarantee*) shall not apply to any payment by the Parent Body Organisation under any of the provisions of this Clause 5 (*Parent Body Organisation Guarantees, Indemnities and Liability*) in respect of any amounts payable by the Contractor under the terms of Schedule 6 (*Finance*) of the SLC Agreement to the extent that a longer or shorter time limit is specified in the relevant provision of Schedule 6 (*Finance*) of the SLC Agreement and in such case the time limit in the relevant provision of Schedule 6 (*Finance*) of the SLC Agreement shall replace the time limit in Clauses 5.4.1 (*Continuing Guarantee*) and/or 5.4.2 (*Continuing Guarantee*).
- 5.4.4 Subject to Clause 5.4.7 (*Continuing Guarantee*), the PBO Guarantee is in addition to, without prejudice to and is not to merge with any other security, right of action, bond, other guarantee or indemnity or other right or remedy which the Authority may at any time hold in respect of the Guaranteed Obligations or the Defective Performance Obligation.
- 5.4.5 No single exercise of any right, power or privilege conferred by the PBO Guarantee shall preclude any other or future exercise thereof or the exercise of

any other right, power or privilege, nor shall any failure or delay by the Authority in exercising any right, power or privilege under the PBO Guarantee or this Agreement operate as a waiver thereof.

5.4.6 The Authority is entitled to make any number of demands under the PBO Guarantee.

5.4.7 Where this Agreement or the SLC Agreement expressly provides that any obligation of the Parent Body Organisation or the Contractor to make any payment to the Authority under or in connection with this Agreement or the SLC Agreement, or any right of the Authority to claim such payment, is limited by a specified time period, the Parent Body Organisation and the Contractor shall have no obligation to pay or provide any equitable remedy (including specific performance or injunction), and the Authority shall have no right to claim payment or such equitable remedy, after such time period has elapsed, regardless of whether (but for this Clause 5.4.7 (*Continuing Guarantee*)) such obligation or right would arise in contract (including under any indemnity or guarantee), tort (including negligence or misrepresentation), strict liability or otherwise.

5.4.8 The PBO Guarantee shall expire three (3) years after the end of the Term (or, in respect of any claim under the PBO Guarantee which was commenced before three (3) years after the end of the Term, at such time as that claim has been settled or withdrawn), and following such time neither the Contractor nor the Parent Body Organisation shall have any obligation to make any payment (or to provide any equitable remedy (including specific performance or injunction)) to the Authority in connection with this Agreement or the SLC Agreement, and the Authority shall have no right to claim such payment or equitable remedy, regardless of whether (but for this Clause 5.4.8 (*Continuing Guarantee*)) such obligation would arise in contract (including under any indemnity or guarantee), tort (including negligence or misrepresentation), strict liability or otherwise.

5.5 **Deferral of Parent Body Organisation's Rights**

5.5.1 Unless the Authority otherwise directs, the Parent Body Organisation will not exercise any rights which it may have by reason of performance by it of its obligations under the PBO Guarantee:

5.5.1.1 to be indemnified by the Contractor or to make or enforce any claim or right against the Contractor;

- 5.5.1.2 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Authority against the Contractor under the SLC Agreement or of any other guarantee or security taken pursuant to, or in connection with, the SLC Agreement by the Authority;
- 5.5.1.3 to prove or claim in competition with the Authority in the insolvency or administration of the Contractor or otherwise have or exercise any rights of subrogation or as surety in competition with the Authority; or
- 5.5.1.4 to call on the Authority to commence Legal Proceedings against the Contractor or raise a defence, set-off or counterclaim of the Contractor against the Authority

save that if the Parent Body Organisation makes a payment to the Authority under the PBO Guarantee at any time during the Term of any monies owing by the Contractor to the Authority, the Parent Body Organisation may, during the Term, recover such sum paid to the Authority from the Contractor provided the Parent Body Organisation and/or the Contractor has discharged in full the amount due to the Authority under the PBO Guarantee and the Contractor has sufficient monies available to repay the Parent Body Organisation.

- 5.5.2 The Parent Body Organisation warrants that it has not taken or received, and undertakes that until all the Guaranteed Obligations and/or Defective Performance Obligations or other amounts due under the PBO Guarantee have been performed, paid or discharged in full, it will not take or receive, the benefit of any security or encumbrance of any kind from the Contractor or any other person in respect of its obligations under the PBO Guarantee, provided that this provision shall not prevent the receipt by the Parent Body Organisation of dividends from the Contractor where such dividend payments have been made by the Contractor in accordance with the Dividend Payment Policy.

- 5.6 Notwithstanding any other provision contained in this Clause 5 (*Parent Body Organisation Guarantees, Indemnities and Liability*) or in any Parent Company Guarantee, during the Term the Authority shall not be able to claim:

- 5.6.1 against the Parent Body Organisation under the PBO Guarantee;
- 5.6.2 against any Parent Company Guarantor pursuant to any Parent Company Guarantee; or
- 5.6.3 under any Alternative Credit Support,

in respect of any liability or obligation of the Contractor (regardless of whether the obligations of the Parent Body Organisation or such Parent Company Guarantor (as the case may be) are expressed as primary obligations) without first having claimed payment from the Contractor (in the case of a claim under the PBO Guarantee) or the Contractor and the Parent Body Organisation (in the case of the Parent Company Guarantee and Alternative Credit Support). Prior to making any claim under the PBO Guarantee the Authority must have issued a demand for payment to the Contractor requiring settlement within ten (10) Working Days, and the Contractor must have failed to so pay. The Authority must then issue a Demand to the Parent Body Organisation requiring settlement of the sum within ten (10) Working Days and the Parent Body Organisation must then also fail to so pay before the Authority can claim under the Parent Company Guarantees or Alternative Credit Support.

- 5.7 For the avoidance of doubt, after the Term, Clause 5.6 (*Deferral of Parent Body Organisation's Rights*) above shall cease to apply and any claim that the Authority may have against the Parent Body Organisation under the PBO Guarantee shall be made in the first instance against the Parent Body Organisation and not the Contractor.

5.8 Parent Body Organisation Indemnities

5.8.1 [Not used]

5.8.2 The Parent Body Organisation hereby indemnifies the Authority against all liabilities, losses, costs and expenses to the extent they arise directly or indirectly as a result of the termination of the employment of any of the Nominated Staff and such indemnity shall remain in force until the date three (3) years from the end of the Term (or, in respect of any claim under this indemnity which was commenced before three (3) years from the end of the Term, until such time as that claim has been settled or withdrawn).

5.8.3 [Not used]

5.8.4 The Parent Body Organisation hereby agrees that within ten (10) Working Days of receipt of a Demand from the Authority (setting out an amount properly due to the Authority under the PBO Guarantee and claimed by the Authority and the basis of such claim pursuant to Clause 5 (*Parent Body Organisation Guarantees, Indemnities and Liability*)) or, if later, within ten (10) Working Days of resolution of a dispute directly relating to such Demand pursuant to the Dispute Resolution Procedure (if the determination arising from the Dispute Resolution Procedure is that such amount or, as applicable, any other amount, is payable), the Parent Body Organisation will pay the amount properly due as aforesaid and forming the subject of such Demand (or the other amount

determined in accordance with the Dispute Resolution Procedure, if relevant) to the Authority.

5.9 Excluded Losses

5.9.1 Subject to Clause 5.12 (*Non-excluded Liability*) and the Authority's obligations under the Nuclear Indemnity and the Claims Handling Agreement, and without prejudice to any express right of a Party under this Agreement or the SLC Agreement to receive payment of an amount specified in or calculated in accordance with the terms of this Agreement or the SLC Agreement, no Party shall be liable to any other Party for:

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

5.9.1.2 any loss of profits, turnover, revenue, business opportunities, or savings or damage to goodwill, in each case whether direct or indirect or whether actual or anticipated,

arising out of or in connection with this Agreement and/or the SLC Agreement whether arising in contract (including under any indemnity or guarantee), tort (including negligence or misrepresentation), strict liability or otherwise.

5.10 Liability Caps

5.10.1 Subject to Clause 5.10.1B (*Liability Caps*) and Clause 5.12 (*Non-excluded Liability*):

5.10.1.1 in each Contract Year throughout the Term, the Parent Body Organisation's liability to the Authority for Capped PBO Liabilities shall be limited to

s.43(2)

s.43(2)

5.10.1.2 in any Post-Term Year, the Parent Body Organisation's liability to the Authority for Capped PBO Liabilities shall be limited to the

s.43(2)

s.43(2)

5.10.1.3 the Parent Body Organisation's aggregate liability to the Authority for Capped PBO Liabilities shall be limited to

s.43(2)

Disallowable Costs

s.43(2)

5.10.1A Where a PBO Default of the type described at Clause 19.2.9 (*Liability Caps*) has occurred, the Authority shall ensure that the Contractor has sufficient funds to meet any Class A Disallowable Costs incurred by the Contractor that are:

5.10.1A.1 in excess of the Annual Liability Cap, when taken together with any liabilities of the Contractor or the Parent Body Organisation to the Authority arising in the same Contract Year or Post-Term Year under this Agreement, the SLC Agreement, the Inter SLC Service Contracts and the Property Leases, plus the aggregate of any other Disallowable Costs incurred by the Contractor in the same Contract Year or Post-Term Year; or

5.10.1A.2 in excess of the Aggregate Liability Cap, when taken together with any liabilities of the Contractor or the Parent Body Organisation to the Authority under this Agreement, the SLC Agreement, the Inter SLC Service Contracts and the Property Leases, plus the aggregate of any other Disallowable Costs incurred by the Contractor at any time,

provided that this Clause 5.10.1A (*Liability Caps*) shall be without prejudice to the Contractor's obligations under the SLC Agreement, and the PBO's obligations under this Agreement, to meet any Class A Disallowable Costs falling within the Annual Liability Cap and the Aggregate Liability Cap. For the avoidance of doubt, the Authority shall not be entitled to satisfy its obligations

under this Clause 5.10.1A (*Liability Caps*) by pursuing the Parent Body Organisation for any amounts for which the Parent Body Organisation is not otherwise liable under or in connection with this Agreement.

5.10.1B If this Agreement terminates or expires on any date other than 31 March, the Annual Liability Cap for the first Post-Term Year shall be deemed to be the remaining balance of the Annual Liability Cap for the last Contract Year.

5.10.2 For the purposes of this Agreement:

5.10.2.1 the "**Annual Liability Cap**" shall be:

5.10.2.1.1 prior to the date on which Phase 1 Completion is Achieved, s.43 (Indexed); and

5.10.2.1.2 on and after the date on which Phase 1 Completion is Achieved, s.43 (Indexed); and

5.10.2.2 [Not used]

5.10.2.3 the "**Aggregate Liability Cap**" shall be:

5.10.2.3.1 prior to the date on which Phase 1 Completion is Achieved, s.43 (Indexed); and

5.10.2.3.2 on and after the date on which Phase 1 Completion is Achieved, s.43 (Indexed),

provided that, for the avoidance of doubt, on the date on which Phase 1 Completion is Achieved, the Annual Liability Cap and the Aggregate Liability Cap shall reduce from the amounts specified in 5.10.2.1.1 and 5.10.2.3.1 respectively to the amounts specified in 5.10.2.1.2 and 5.10.2.3.2 respectively, and those amounts shall not be cumulative.

5.10.3 The Annual Liability Cap and the Aggregate Liability Cap shall only be adjusted as a consequence of a PBA Change which shall be dealt with in accordance with the PBA Change Control Procedure.

5.10.4 For the purposes of this Agreement "**Capped PBO Liabilities**" shall mean any and all of:

- 5.10.4.1 liabilities of the Parent Body Organisation arising in respect of Class A Disallowable Costs; and
 - 5.10.4.2 any other liabilities of the Parent Body Organisation to the Authority arising out of or in connection with this Agreement, the SLC Agreement, the Inter SLC Service Contracts and/or the Property Leases, whether arising in contract (including under any indemnity or guarantee), tort (including negligence or misrepresentation), strict liability or otherwise, to the extent that such liabilities are not Uncapped PBO Liabilities.
- 5.10.5 For the purposes of this Agreement "**Uncapped PBO Liabilities**" shall mean any and all of:
- 5.10.5.1 liabilities of the Parent Body Organisation arising in respect of Class B Disallowable Costs;
 - 5.10.5.2 [Not used]
 - 5.10.5.3 [Not used]
 - 5.10.5.4 any liability of the Parent Body Organisation to the Authority under this Agreement for costs incurred by the Authority in enforcing the PBO Guarantee;
 - 5.10.5.5 interest payable by the Parent Body Organisation under this Agreement on any monies owed by the Parent Body Organisation pursuant to the PBO Guarantee; and
 - 5.10.5.6 liabilities of the Parent Body Organisation arising in respect of fraud or Wilful Default of any of the Nominated Staff.
- 5.10.6 For the purposes of the Annual Liability Cap, Capped PBO Liabilities are to be treated as arising:
- 5.10.6.1 in the case of Class A Disallowable Costs, on the date on which such Class A Disallowable Costs first become due and payable by the Contractor; and
 - 5.10.6.2 in the case of any other Capped PBO Liabilities, on the earlier of:
 - 5.10.6.2.1 the date on which such liabilities first become due and payable by the Contractor; and
 - 5.10.6.2.2 the date on which such liabilities first become due and payable by the Parent Body Organisation.

5.11 Limits of Liability under the PBO Guarantee

5.11.1 Where the PBO Guarantee relates to any obligation or liability of the Contractor, the Parent Body Organisation shall be entitled to the benefit of any defence, limitation period, set-off, exclusion or limitation of liability that the Contractor would have been entitled to raise against the Authority in respect of such obligation or liability.

5.11.2 Without prejudice to Clause 5.1.3 (*Parent Body Organisation Guarantees, Indemnities and Liability*), the PBO Guarantee shall not apply in respect of any act or omission of the Contractor or in respect of any obligation or liability arising out of or in connection with the SLC Agreement that arises at any time after the earlier to occur of:

5.11.2.1 the termination or expiry of this Agreement;

5.11.2.2 the Transfer Date; and

5.11.2.3 the date on which the legal or beneficial ownership of the Magnox A Share and the RSRL A Share is transferred from the Parent Body Organisation under Clause 21 (*Retransfer of Shares in Contractor under Energy Act*) or Clause 22 (*Retransfer of Shares in Contractor on Termination or Expiry*)

(in each case the "**Transfer of Responsibility Date**").

5.12 Non-excluded Liability

5.12.1 Without prejudice to the Authority's obligations under the Nuclear Indemnity, nothing in this Agreement, the Transition Agreement, the Inter SLC Service Contracts or the SLC Agreement shall limit or exclude the Parent Body Organisation's and/or the Contractor's liability for:

5.12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or Subcontractors (as applicable) to the extent it would be unlawful for the Parent Body Organisation and/or the Contractor to exclude or restrict such liability;

5.12.1.2 fraud or fraudulent misrepresentation or Wilful Default of any Nominated Staff; or

5.12.1.3 any other matter to the extent it would be unlawful for the Parent Body Organisation and/or the Contractor to exclude or restrict liability.

5.13 Class B Disallowable Costs

5.13.1 The following types of Disallowable Costs shall be "**Class B Disallowable Costs**":

- 5.13.1.1 Costs of the type described at Paragraph 4.1(a) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) of the SLC Agreement;
- 5.13.1.2 Costs of the type described at Paragraph 4.1(b) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) of the SLC Agreement;
- 5.13.1.3 Costs of the type described at Paragraph 4.1(c) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) of the SLC Agreement;
- 5.13.1.4 Costs of the type described at Paragraph 4.1(e) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) of the SLC Agreement;
- 5.13.1.5 Costs of the type described at Paragraph 4.1(f) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) of the SLC Agreement;
- 5.13.1.6 Costs of the type described at Paragraph 4.1(h) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) of the SLC Agreement;
- 5.13.1.7 Costs of the type described at Paragraph 4.1(i) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) of the SLC Agreement;
- 5.13.1.8 Costs of the type described at Paragraph 4.1(j) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) of the SLC Agreement;
- 5.13.1.9 Costs of the type described at Paragraph 4.1(l) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) of the SLC Agreement;
- 5.13.1.10 Costs of the type described at Paragraph 4.1(n) or 4.1(o) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) of the SLC Agreement, 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 5;

- 5.13.1.11 Costs of the type described at Paragraph 4.1(s) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) of the SLC Agreement;
- 5.13.1.12 Costs of the type described at Paragraph 4.1(t) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) of the SLC Agreement;
- 5.13.1.13 Costs of the type described at Paragraph 4.1(v) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) of the SLC Agreement;
- 5.13.1.14 Costs of the type described at Paragraph 4.1(w) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) of the SLC Agreement;
- 5.13.1.15 Costs of the type described at Paragraph 4.1(cc) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) of the SLC Agreement;
- 5.13.1.16 Costs of the type described at Paragraph 4.1(hh) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) but only to the extent that such Costs arise as a result of the fraud or Wilful Default of a member of Nominated Staff;
- 5.13.1.17 Costs of the type described at Paragraph 4.1(ii) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) of the SLC Agreement;
- 5.13.1.18 Costs of the type described at Paragraph 4.1(kk) (*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 5.13.1 (*Class B Disallowable Costs*);
- 5.13.1.19 Costs of the type described at Paragraph 4.1(nn) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) of the SLC Agreement;

5.13.1.20 Costs of the type described at Paragraph 4.1(oo) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) of the SLC Agreement;

5.13.1.21 Costs of the type described at Paragraph 4.1(pp) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*) of the SLC Agreement; and

5.13.1.22 Costs of the type described at Paragraph 4.1(qq) (*Disallowable Costs*) of Part 2A (*Allowable and Disallowable Costs*) of Schedule 6 (*Finance*).

5.14 Meeting Allowable Costs and Disallowable Costs

5.14.1 Where the Contractor is legally obliged to pay any sum of money other than to the Authority, the Contractor will pay that sum in full regardless of whether that sum is Allowable or Disallowable under the SLC Agreement and regardless of any joint liability with the Contractor or the Parent Body Organisation or any Affiliates (other than any liability of any Affiliate incurred in its capacity as a Subcontractor).

5.14.2 For the avoidance of doubt, the provision of Clause 5.14.1 (*Meeting Allowable Costs and Disallowable Costs*) above shall have no effect on the Parent Body Organisation's obligations to the Authority under this Agreement or the obligations of the Parent Company Guarantors to the Authority under any Parent Company Guarantee.

5.15 Return of Excess Distributions

If at any time during the Term it is determined that dividends have been paid by the Contractor in breach of Clause 16.11.10.2 (*Payments to Parent*) of the SLC Agreement, then the Parent Body Organisation will repay any dividends paid in breach to the Authority or Contractor (as the Authority may direct). Any payment will be on the basis that the tax effect of the payment does not put the Authority and/or Contractor in any worse position than it would have been in if the excess dividends had never been paid.

5.16 Nuclear Indemnity

The Nuclear Indemnity shall be in the form set out at Schedule 8 (*Nuclear Indemnity*) (or as applicable, in the form set out at the Annex to Schedule 8 (*Nuclear Indemnity*)).

6 INSURANCE

6.1 Without prejudice to the Authority's obligations and liabilities to the Parent Body Organisation under this Agreement, the Parent Body Organisation shall take out and

maintain (or procure the taking out and maintaining of) the following insurances for the Term (the "**PBO Insurances**");

- 6.1.1 public liability insurance in respect of all activities of the Parent Body Organisation in the sum of not less than s.43(2)
s.43(2) per occurrence; and
 - 6.1.2 employer's liability insurance as required by all applicable Legislation in respect of all activities of the Parent Body Organisation; and
 - 6.1.3 directors' and officers' liability insurance in respect of the Contractor and the Parent Body Organisation.
- 6.2 The Parent Body Organisation shall ensure that the PBO Insurances shall at all times for the duration of the Term:
- 6.2.1 be maintained with an insurer whose security rating is not less than Standard and Poor's BBB+ (or equivalent); and
 - 6.2.2 include an indemnity in favour of the Authority in respect of any claims made against the Authority arising from the activities of the Parent Body Organisation.
- 6.3 Within fourteen (14) Calendar Days of the Commencement Date and thereafter as and when reasonably required by the Authority, the Parent Body Organisation shall provide evidence to the Authority's reasonable satisfaction that the relevant insurances are in force and are being maintained in accordance with Clauses 6.1 (*Insurance*) and 6.2 (*Insurance*).
- 6.4 The Authority shall provide to the Parent Body Organisation policy terms and requirements of the insurers with whom the Authority Insurances are placed and the Parent Body Organisation shall comply with such requirements insofar as such requirements relate to the Parent Body Organisation. The Parent Body Organisation will notify the Authority of any act, occurrence or failure which may:
- 6.4.1 lead to any claim being made under the Authority Insurances; or
 - 6.4.2 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.
- 6.5 The Parent Body Organisation 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.

- 6.6 Subject to Clause 6.7 (*Insurance*), the Authority shall take out and maintain the Authority Insurances in accordance with the SLC Agreement. Insofar as such insurance provides protection to the Parent Body Organisation, the Authority's obligations under this Clause 6.6 (*Insurance*) shall not be diminished or otherwise affected by any variation to the SLC Agreement made after the end of the Term. The Authority accepts and agrees that the protection afforded to the Contractor and the Parent Body Organisation by:

6.6.1 the Authority Insurances; or

6.6.2 where the Authority elects not to take out and maintain the Authority Insurances, an equivalent level of protection to that afforded by the Authority Insurances,

will remain in place during any applicable limitation period such that the Parent Body Organisation's financial exposure to any liability does not increase on or after termination or expiry of this Agreement and/or the SLC Agreement.

- 6.7 If:

6.7.1 the Authority Insurances become unavailable (including where rendered void, voidable, unenforceable, suspended or impaired in whole or in part) or the protection or cover or reasonableness of the terms available to the Contractor or the Parent Body Organisation under the Authority Insurances diminishes in cover, scope or amount (save where such unavailability or diminution in cover, scope or amount is caused by a breach of Clause 6.5 (*Insurance*) by the Parent Body Organisation or any act of neglect, fraud, misrepresentation, non-disclosure or material breach of any warranty or condition of the relevant Authority Insurance, committed by the Parent Body Organisation); or

6.7.2 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 the Authority shall ensure that the Parent Body Organisation has no greater financial exposure due to the occurrence of such circumstances than as at the date immediately prior to the occurrence of such circumstances. If and to the extent that the Authority fails to comply with its obligations under this Clause 6.7 (*Insurance*) (or any action the Authority proposes to take pursuant to Clause 6.7A (*Insurance*) below would fail to comply with this Clause 6.7 (*Insurance*)) the Parent Body Organisation shall be

entitled to take out and maintain such insurances as are required to ensure that it has no greater financial exposure due to the occurrence of the circumstances described in 6.7.1 and 6.7.2 (*Insurance*) above than as at the date immediately prior to the occurrence of such circumstances. The Parent Body organisation shall be entitled to invoice the Contractor for the costs reasonably incurred in taking out and maintaining such insurances and the Contractor shall pay such costs.

6.7A The Authority shall notify the Parent Body Organisation of the occurrence of the circumstances described in Sub-Clauses 6.7.1 and 6.7.2 (*Insurance*) above as soon as reasonably practicable after becoming aware of the same, and shall consult with the Parent Body Organisation on the action the Authority proposes to take, provided that, without prejudice to the Authority's obligation under Clause 6.7 (*Insurance*) above to ensure the Parent Body Organisation has no greater financial exposure due to the occurrence of any such circumstances, the Authority shall not be required to notify or consult with the Parent Body Organisation in relation to minor or immaterial variations to the cover, scope or amount of the protection or the terms available under the Authority Insurances agreed by the Authority in the normal course of procuring and maintaining the Authority Insurances.

6.8 Where the Parent Body Organisation has notified the Authority pursuant to Clause 6.4.1 (*Insurance*) and the Parent Body Organisation is entitled to recover Insurance Proceeds as an insured party under an Authority Insurance but does not have a right to claim directly from the insurer under such Authority Insurance, or where the Parent Body Organisation does have such a right but it is agreed by the Parties, acting reasonably, that the Authority shall have conduct of the insurance claim:

6.8.1 the Authority shall take all reasonable steps to pursue such claim;

6.8.2 the Parent Body Organisation shall give to the Authority such assistance as may reasonably be required in pursuing such claim; and

6.8.3 the Authority shall pay to the Parent Body Organisation any Insurance Proceeds recovered under such claim in respect of insured losses suffered by the Parent Body Organisation.

7 PROVISION OF STAFF TO THE CONTRACTOR

7.1 Nominated Staff

7.1.1 The Parent Body Organisation shall provide or procure the provision of the Nominated Staff in accordance with this Agreement and the SLC Agreement. Notwithstanding any other provision of this Agreement, the Parent Body Organisation shall procure that the Nominated Staff hold all relevant security clearances and the Nominated Staff identified in Schedule 7 (Employment and

Pensions) of the SLC Agreement are available to be seconded to the Contractor as at the Commencement Date and shall enter into and procure that each person who is a member of Nominated Staff and, if relevant, the Seconding Employer, enters into and complies with a Secondment Agreement.

7.1.2 The Contractor shall use all reasonable endeavours to facilitate the performance by the Nominated Staff of their obligations under the Secondment Agreements including but not limited to:

7.1.2.1 providing Site induction programmes for the Nominated Staff; and

7.1.2.2 providing information which the Parent Body Organisation may reasonably require in relation to the provision of the Nominated Staff.

7.1.3 The Parent Body Organisation shall at all times during the Term notify the Contractor and the Authority of any intention to withdraw any individual member of the Nominated Staff from full time employment on any Site and shall not, save in the circumstances set out in Clause 31.9.2 (*Authority Approval of Redundancy*) of the SLC Agreement, withdraw (or permit to be withdrawn by the Seconding Employer) any such person from full time employment without first obtaining the prior written agreement of the Contractor and the prior written consent of the Authority, such consent not to be unreasonably withheld or delayed.

7.1.4 If any individual member of the Nominated Staff is proposed to be withdrawn and replaced by the Parent Body Organisation (or the Seconding Employer) from full time employment on a Site for any reason (with the exception of withdrawal on the grounds of redundancy where such member of Nominated Staff is not replaced), the Parent Body Organisation shall ensure that he is replaced by an individual with a level of skills and experience comparable to that of the Nominated Staff member being withdrawn or, if more appropriate depending on the relevant job position, is otherwise suitably qualified and experienced for the proposed job position.

7.1.5 The Parent Body Organisation shall submit the curriculum vitae of each proposed replacement individual to the Authority for its review. The Authority will either approve the replacement within thirty (30) Calendar Days or will notify the Parent Body Organisation in writing of its reasons for the rejection of the proposed replacement. The Parent Body Organisation shall not, and if the Seconding Employer is not the Parent Body Organisation, the Parent Body Organisation shall procure that the Seconding Employer shall not, withdraw the

relevant individual member of Nominated Staff until the Authority has approved a replacement, such approval not to be unreasonably withheld.

- 7.1.6 Reference to "withdrawal" of Nominated Staff or to any such persons being "withdrawn" in this Clause 7 (*Provision of Staff to the Contractor*) shall not include withdrawal due to long-term illness or voluntary resignation from the employment of the Parent Body Organisation or Seconding Employer, provided that the provisions above relating to the appointment of a replacement shall apply as if such member of the Nominated Staff had been withdrawn.

7.2 Non-Contract Activities

- 7.2.1 If the Parent Body Organisation wishes to use the services of any of the Nominated Staff for any period of time for a purpose other than in fulfilment of the Contractor's obligations under the SLC Agreement, it must submit to the Authority a plan which demonstrates to the reasonable satisfaction of the Authority:

7.2.1.1 that the relevant period of time is finite;

7.2.1.2 how the Parent Body Organisation and the Contractor will ensure that there is no diminution in the standard of the Contractor's performance of the SLC Agreement during such relevant period of time; and

7.2.1.3 that the time costs for the relevant Nominated Staff will not be charged to the Authority whether by way of the Allowable Costs regime or otherwise.

- 7.2.2 The Authority will not unreasonably withhold or delay its consent to the implementation of such a plan provided that it is satisfied that there will be no adverse consequence for the timetable, cost and standard of performance of the Contractor. For the avoidance of doubt, appointment of any of the Nominated Staff to the board of the Parent Body Organisation shall not constitute a breach of this Agreement provided such appointment does not materially detract from the Nominated Staff member's ability to perform his or her obligations to the Contractor in accordance with the SLC Agreement, this Agreement and the relevant Secondment Agreement.

7.3 Key Personnel

- 7.3.1 The Parent Body Organisation shall at all times during the Term procure that the Contractor complies with the provisions of Clause 31.3 (*Magnox Key*

Personnel) and Clause 31.4 (*RSRL Key Personnel*) of the SLC Agreement and the Parent Body Organisation shall not take any action with the effect of causing the Contractor to breach Clause 31.1 (*Magnox Nominated Staff*) or Clause 31.2 (*RSRL Nominated Staff*) of the SLC Agreement.

7.4 **Non-Solicitation**

- 7.4.1 The Parent Body Organisation covenants with the Contractor and the Authority that until the expiration of two (2) years from the earlier of: (i) the date of transfer of the Magnox A Share and the RSRL A Share pursuant to Clause 21 (*Retransfer of Shares in Contractor under Energy Act*); and (ii) the date of transfer of the Magnox A Share and the RSRL A Share pursuant to Clause 22 (*Retransfer of Shares in Contractor on Termination or Expiry*) (in each case the "**Relevant Date**"), it shall not, unless it has 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 Contractor any person (other than a member of Nominated Staff) who is, and was at the Relevant Date, directly or indirectly employed or engaged by the Contractor in an executive, sales, marketing, research, regulatory or technical capacity or whose departure from the Contractor might reasonably be expected to have a material adverse effect on the Contractor's standard of performance of the SLC Agreement, 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).
- 7.4.2 Notwithstanding Clause 7.4.1 (*Non-Solicitation*), any recruitment of any person by the Parent Body Organisation as a result of that person independently responding to any Parent Body Organisation's general recruitment advertisement in general or specialist publications shall not constitute a breach of this Agreement.
- 7.4.3 Subject to Clause 7.5 (*Continuing Nominated Staff*), the Parent Body Organisation shall procure that all of the Nominated Staff are removed from their secondment to the Contractor and undertakes to the Authority to offer to all of the Nominated Staff continuity of employment rights and to offer them a right to return to work for the Parent Body Organisation (or other Seconding Employer) on the later of:
- 7.4.3.1 the date of transfer of the Magnox A Share and the RSRL A Share pursuant to Clause 21 (*Retransfer of Shares in Contractor under Energy Act*) and the date of transfer of the Shares pursuant to

Clause 22 (*Retransfer of Shares in Contractor on Termination or Expiry*); and

7.4.3.2 the agreement of the ONR to the replacement of such Nominated Staff pursuant to Licence Condition 36.

7.4.4 The Parent Body Organisation shall, subject to the terms of this Clause 7 (*Provision of Staff to the Contractor*), any relevant Secondment Agreement, and Clause 31 (*Employees*) of the SLC Agreement, procure that each member of Nominated Staff continues to work for the Contractor from the Commencement Date for the period specified in the column entitled "Appointment Duration" in the tables at Part 1 (*Nominated Staff*) of Schedule 7 (*Employment and Pensions*) of the SLC Agreement relevant to each member.

7.5 Continuing Nominated Staff

In the event of expiry or termination of this Agreement for whatever reason, the following provisions shall apply in respect of Nominated Staff:

7.5.1 as soon as reasonably practicable after the Authority or Parent Body Organisation (as applicable) has given notice to the other to terminate this Agreement in accordance with Clause 19 (*Termination*), or within the last Month of the Term, the Authority shall specify (acting reasonably) which of the Nominated Staff it requires to remain seconded (and whether such Nominated Staff are to be seconded on a full time or other basis) to the Contractor following expiry or termination of this Agreement (the "**Continuing Nominated Staff**");

7.5.2 the Authority shall use its reasonable endeavours to procure the replacement of the Continuing Nominated Staff as soon as practicable;

7.5.3 the Parent Body Organisation shall procure that the Continuing Nominated Staff remain seconded to the Contractor on the required basis until such time as the Authority notifies the Parent Body Organisation that such staff are no longer required, such period to be no longer than six (6) Months from the Date of Termination or Expiry Date (as applicable);

7.5.4 for such time as the Continuing Nominated Staff remain seconded to the Contractor the Authority shall make such arrangements as are reasonably necessary to ensure the Continuing Nominated Staff are remunerated for their services on the same rates and on the same terms as at the expiry or termination of this Agreement;

- 7.5.5 the payment arrangements for Continuing Nominated Staff shall continue to be as set out in Appendix F (*Nominated Staff Recoverable Costs*) of Schedule 6 (*Finance*) of the SLC Agreement and shall be no different to the arrangements prevailing as at the date of expiry or termination of this Agreement;
- 7.5.6 prior to the replacement of Continuing Nominated Staff, the Authority shall give notice of termination in accordance with the terms of the relevant secondment agreement or contract of employment; and
- 7.5.7 the Parent Body Organisation shall have no liability for any losses, damages, costs, claims, demands or expenses for or in connection with any act or omission of any member of the Continuing Nominated Staff, except where such liability arises as a result of fraud of the Parent Body Organisation.

8 PBO SOCIO-ECONOMIC COMMITMENTS

- 8.1 The Parent Body Organisation shall comply with the provisions of Schedule 9 (*PBO Socio-Economic Commitments*).
- 8.2 [Not used]

Part 4: Financial Matters

9 ALTERNATIVE PAYMENT MECHANISM

- 9.1 If at any time during the Term the Authority agrees (acting reasonably) to make a payment to the Parent Body Organisation which either:
 - 9.1.1 the Authority would ordinarily pay to the Contractor under the terms of the SLC Agreement; or
 - 9.1.2 the Contractor would ordinarily pay to the Parent Body Organisation under the terms of this Agreement or the SLC Agreement

(the "**PBO Payment**"), then the Authority will make such a payment to the Parent Body Organisation subject to the following provisions:

- 9.1.2.1 the Parties shall at all times comply with the reporting standards adopted by the Authority from time to time;
- 9.1.2.2 the Parties shall continue to comply with the provisions of this Agreement and the SLC Agreement in particular Clause 4 (*Governance*) of this Agreement and Schedule 6 (*Finance*) of the SLC Agreement;

- 9.1.2.3 the Authority shall have a right to deduct an amount equal to the PBO Payment from any future sum paid to the Contractor and if no future sum becomes payable, the PBO Payment shall be treated as a Guaranteed Obligation under this Agreement;
- 9.1.2.4 the Parent Body Organisation shall pay such sum to the Authority as is necessary to put the Authority in no worse a tax position than if the PBO Payment had not been made; and
- 9.1.2.5 the Authority shall not be obliged to make any payment to the Contractor or the Parent Body Organisation in respect of any tax payable or tax relief lost by the Contractor, the Parent Body Organisation, or any of their respective parents (of whatever tier) or other Affiliates as a result of the PBO Payment being made.

9.2 Opening Position Protection

9.2.1 The Authority will ensure (whether by means of additional payment to the Contractor, additional payment to the Parent Body Organisation or by other means) that the net economic position of the Parent Body Organisation (on an after tax basis) is not at any time adversely affected by:

9.2.1.1 any delay to, reduction in the amount of or inability of the Contractor to make any Relevant Payment to the Parent Body Organisation; or

9.2.1.2 any other circumstance or matter

to the extent caused by any Adverse Opening Position.

9.2.2 For the purposes of Clause 9.2.1 (*Opening Position Protection*):

9.2.2.1 "**Adverse Opening Position**" means the profits available for distribution (as defined in Section 830 Companies Act 2006) of the Contractor at 9am on the Commencement Date being less than zero pounds sterling (£0) using for these purposes the Accounting Policies and Procedures; and

9.2.2.2 "**Relevant Payment**" means any sum (whether by way of dividend or otherwise) to which the Parent Body Organisation would have been entitled but for an Adverse Opening Position.

9.2.3 The Parent Body Organisation and the Contractor shall co-operate with the Authority to do all that is reasonable and practical (including where appropriate and reasonable undertaking a capital restructuring of the Contractor (without

any financial contribution from the Parent Body Organisation) to eliminate any shortfall in the profits available for distribution) to ensure that the liabilities of the Authority under this Clause are minimised so far as reasonably practicable.

10 DEFAULT INTEREST

If any Party fails to pay any amount due and payable by it in accordance with this Agreement, such Party shall pay to the Party to whom the same was due, compound interest on such overdue amount, from the due date until the date of actual payment at the rate of three per cent (3%) above the Bank of England bank rate from time to time.

11 COMPENSATION FOR REDUCED DIVIDEND DUE TO PRE-COMMENCEMENT BREACHES

11.1 Subject to the provisions of this Clause 11 (*Compensation for Reduced Dividend Due to Pre-Commencement Breaches*), if the Parent Body Organisation suffers a Relevant Loss the Authority shall pay the amount of the Relevant Loss to the Parent Body Organisation ("**Regulatory Breach Compensation**").

11.2 A "**Relevant Loss**" shall be any reduction in any dividend or other payment payable to the Parent Body Organisation under the SLC Agreement and paid by the Contractor (or, in the case of the Alternative Payment Mechanism, by the Authority), to the extent attributable to the Contractor incurring Disallowable Costs in the form of any fine or other financial penalty (including any interest payable on such fines and financial penalties) or any civil damages payable to any person (other than the Authority):

11.2.1 in respect of an event which occurred prior to the Commencement Date but where the fine or other financial penalty or civil damages is not imposed until after the Commencement Date; and/or

11.2.2 in respect of any specification, improvement notice or other condition imposed specifically on the Contractor by any Regulator, where the date on which such condition came into force had passed before the Commencement Date.

11.3 The Relevant Loss shall not in any event exceed the amount of the fine or financial penalty or civil damages the subject of the Regulatory Breach Compensation Claim and the Authority shall not be liable to the Parent Body Organisation or the Contractor for any indirect, special or consequential loss or damage or any loss of profits, turnover, business opportunities, damage to goodwill (whether direct or indirect) or anticipated savings arising from any event the subject of or giving rise to a Regulatory Breach Compensation Claim.

11.4 Any Regulatory Breach Compensation Claim shall give rise only to an action by the Parent Body Organisation for damages and shall not entitle the Parent Body

Organisation to rescind or terminate this Agreement, the SLC Agreement or any other related document, except in the case of fraud.

- 11.5 The Authority shall not be liable in respect of a Regulatory Breach Compensation Claim unless notice in writing of the Regulatory Breach Compensation Claim (setting out reasonable details of the nature and, so far as practicable, the amount of the Regulatory Breach Compensation Claim) has been given to the Authority before the expiry of or earlier termination of this Agreement.
- 11.6 The Parent Body Organisation shall provide or shall procure that the Contractor provides the Authority with all documents and correspondence requested by the Authority applicable to a Regulatory Breach Compensation Claim.
- 11.7 The Parent Body Organisation may make more than one Regulatory Breach Compensation Claim but subject always to the terms of this Clause 11 (*Compensation for Reduced Dividend Due to Pre-Commencement Breaches*).
- 11.8 The Parent Body Organisation shall not be entitled to make more than one Regulatory Breach Compensation Claim in respect of the same Relevant Loss.
- 11.9 The Authority shall not be liable in respect of any Regulatory Breach Compensation Claim to the extent that the matter giving rise to the Regulatory Breach Compensation Claim is a contingent liability which has not become an actual liability.
- 11.10 Nothing in this Clause 11 (*Compensation for Reduced Dividend Due to Pre-Commencement Breaches*) shall derogate from the Parent Body Organisation's obligation to take reasonable steps to mitigate any loss in respect of which it makes a Regulatory Breach Compensation Claim.

12 CLAIMS HANDLING

12.1 Third Party Claims

- 12.1.1 For the purposes of this Clause 12 (*Claims Handling*) "**Third Party Claim**" shall mean any claim or any matter which is likely to give rise to a claim against the Authority, the Contractor or the Parent Body Organisation by a Third Party or Affiliate.
- 12.1.2 As soon as reasonably practicable after any of the Authority, the Contractor or the Parent Body Organisation becomes aware of a Third Party Claim the Authority, the Contractor or the Parent Body Organisation as applicable shall notify each other Party.

12.2 Insurance

- 12.2.1 Where a Third Party Claim is wholly in respect of an insured risk covered by a policy of insurance taken out by the Authority or the Parent Body Organisation the provisions of Clauses 12.3 (*Provision of Information and Assistance*) to 12.6 (*Parent Body Organisation Handling*) shall not apply to the extent that they are inconsistent with the terms of such policy.
- 12.2.2 Where a Third Party Claim is partly in respect of an insured risk covered by a policy of insurance taken out by the Authority or the Parent Body Organisation the provisions of Clauses 12.3 (*Provision of Information and Assistance*) to 12.6 (*Parent Body Organisation Handling*) shall apply to the balance of the Third Party Claim only where the Parties agree, acting reasonably, that the operation of those clauses will not have an adverse effect on the defence of the Third Party Claim.
- 12.2.3 The Parent Body Organisation shall ensure that the Authority is aware of the terms and conditions of any policy of insurance taken out by the Parent Body Organisation which is capable of affecting the application of the provisions of this Clause 12 (*Claims Handling*).

12.3 Provision of Information and Assistance

- 12.3.1 Subject to Clause 12.3.2 (*Provision of Information and Assistance*), following notification as set out in Clause 12.1.2 (*Third Party Claims*) each Party will within five (5) Working Days provide each of the other Parties with such information concerning the Third Party Claim as the other Parties shall reasonably request.
- 12.3.2 Any Party, acting reasonably:
- 12.3.2.1 may decline to provide such information to one or either of the others in order to prevent production of privileged information in any Legal Proceedings and/or to protect confidential information from disclosure to Third Parties; and
 - 12.3.2.2 shall be entitled to carry out its obligations under this Clause 12 (*Claims Handling*) in such a manner as it considers most likely to ensure that its communications and documents relating to a Third Party Claim are privileged from production in any existing or future Legal Proceedings that may arise out of or in connection with such Third Party Claim (including on the grounds of legal advice privilege, litigation privilege, common interest privilege and/or without prejudice privilege).

12.3.3 Subject to Clause 12.3.2 (*Provision of Information and Assistance*), each of the Parties shall give to the Party with conduct of any Legal Proceedings in respect of a Third Party Claim all such assistance in resisting any such Third Party Claim as the Party with conduct shall reasonably request.

12.4 **Contractor's Compliance with Instructions**

Subject to the remainder of this Clause 12 (*Claims Handling*), the Parent Body Organisation shall comply and procure that the Contractor complies with all of the instructions of the Authority in relation to any Third Party Claim against the Contractor except where the Authority notifies the Contractor that the provisions of Clause 12.5 (*Authority's Handling*) or the provisions of Clause 12.6 (*Parent Body Organisation Handling*) apply.

12.5 **Authority's Handling**

Subject to Clause 12.6A (*Claims in the Public Interest*), if a Third Party Claim is made against the Authority, the Contractor or the Parent Body Organisation in respect of which the Parent Body Organisation and the Authority agree (acting reasonably, and without any admission as to liability or the amount claimed) by operation of the terms of this Agreement and/or the SLC Agreement, the Authority would bear the majority of the liability of that Third Party Claim, the Authority shall have the right, upon giving notice to the Contractor and the Parent Body Organisation, to have the conduct (or take over the conduct) of all Legal Proceedings in respect of any such Third Party Claim, and:

12.5.1 the Contractor and the Parent Body Organisation shall:

12.5.1.1 subject to Clause 12.3.2 (*Provision of Information and Assistance*), give or cause to be given to the Authority all such assistance as the Authority may reasonably require in resisting any such Third Party Claim and conducting any Legal Proceedings including providing access to records which the Parent Body Organisation (acting reasonably) considers relevant to the Third Party Claim and which are in the possession, custody or control of the Parent Body Organisation; and

12.5.1.2 instruct such solicitors or other professional advisers (including for the avoidance of doubt expert witnesses and counsel) as the Authority may reasonably nominate to act on behalf of the Contractor or Parent Body Organisation as applicable, but in accordance with the instructions of the Authority; and

12.5.2 the Authority shall:

12.5.2.1 not without the prior written approval of the Parent Body Organisation:

12.5.2.1.1 make any admission, settlement or compromise of the Third Party Claim the subject of the Legal Proceedings;

12.5.2.1.2 agree to any matter in the conduct of Legal Proceedings which may affect the amount of the liability in connection with such Third Party Claim; or

12.5.2.1.3 make any representation or statement in relation to such Third Party Claim,

provided that the Parent Body Organisation shall not be entitled to withhold its approval unless, in its reasonable opinion, the Authority's proposed action would adversely affect any future Legal Proceedings involving the Parent Body Organisation or the Contractor, or the proposed action would materially increase the Parent Body Organisation's or the Contractor's liability in connection with the Third Party Claim or the proposed action would adversely impact on the reputation of the Parent Body Organisation and/or the Contractor. Unless otherwise agreed in connection with any such approval, any such approval shall not constitute (whether as to liability and/or the amount claimed) an admission nor shall it prejudice any defence of the Parent Body Organisation and/or the Contractor pursuant to this Agreement and/or the SLC Agreement;

12.5.2.2 keep the Contractor and Parent Body Organisation reasonably informed of the progress of any Legal Proceedings of which it has conduct and shall give the Parent Body Organisation the opportunity to comment on any matter which may impact on the reputation or business of the Parent Body Organisation and the Authority shall consider such comments received from the Parent Body Organisation as it is reasonably practicable to consider in the relevant circumstances; and

12.5.2.3 indemnify and keep the Contractor or Parent Body Organisation, as applicable, indemnified in respect of all reasonable claims and all costs arising directly out of its conduct of the Legal Proceedings to the extent such costs are not recovered by the Contractor under the Authority Insurances.

12.6 Parent Body Organisation Handling

Subject to Clause 12.6A (Claims in the Public Interest), if a Third Party Claim is made against the Authority, the Parent Body Organisation or the Contractor in respect of which the Authority and the Parent Body Organisation agree (acting reasonably, and without any admission as to liability or the amount claimed) by operation of the terms of this Agreement and/or the SLC Agreement, the Parent Body Organisation or the Contractor would bear the majority of the liability of that Third Party Claim, the Parent Body Organisation shall have the right, upon giving notice to the Contractor and the Authority, to have the conduct (or take over the conduct) of all Legal Proceedings in respect of any such Third Party Claim and:

12.6.1 subject to Clause 12.3.2 (*Provision of Information and Assistance*) the Authority and the Contractor shall give or cause to be given to the Parent Body Organisation all such assistance as the Parent Body Organisation may reasonably require in resisting any such Third Party Claim and conducting Legal Proceedings including providing access to records which the Authority (acting reasonably) considers relevant to the Third Party Claim and which are in the possession, custody or control of the Authority; and

12.6.2 the Contractor shall instruct such solicitors or other professional advisers (including for the avoidance of doubt expert witnesses and counsel) as the Parent Body Organisation may reasonably nominate to act on behalf of the Contractor, but in accordance with the instructions of the Parent Body Organisation;

12.6.3 the Parent Body Organisation shall:

12.6.3.1 keep the Authority and the Contractor reasonably informed of the progress of any Legal Proceedings of which it has conduct and shall give the Authority the opportunity to comment on any matter which may impact on the reputation of the Authority or the exercise by the Authority of its statutory functions and duties and the Parent Body Organisation shall consider such comments received from the Authority as it is reasonably practicable to consider in the relevant circumstances;

12.6.3.2 not without the prior written approval of the Authority:

12.6.3.2.1 make any admission, settlement or compromise of the Third Party Claim the subject of the Legal Proceedings;

12.6.3.2.2 agree to any matter in the conduct of Legal Proceedings which may affect the amount of the liability in connection with such Third Party Claim; or

12.6.3.2.3 make any representation or statement in relation to such Third Party Claim,

provided that the Authority shall not be entitled to withhold its approval unless, in its reasonable opinion, the Parent Body Organisation's proposed action would adversely affect any future Legal Proceedings involving the Authority or the Contractor or the proposed action is contrary to the public interest or the proposed action would adversely impact on the reputation of the Authority. Unless otherwise agreed in connection with any such approval, any such approval shall not constitute (whether as to liability and/or the amount claimed) an admission nor shall it prejudice any defence of the Authority pursuant to this Agreement and/or the SLC Agreement; and

12.6.3.3 indemnify and keep the Contractor and the Authority indemnified in respect of all reasonable claims and all costs arising directly out of its conduct of the Legal Proceedings to the extent such costs are not recovered by the Authority under the Authority Insurances.

12.6A Claims in the Public Interest

Clause 12.5 (*Authority's Handling*) and Clause 12.6 (*Parent Body Organisation Handling*) are subject to the proviso that the Authority shall not be obliged to permit the Parent Body Organisation to have conduct of (or take over conduct of) Legal Proceedings where the Authority reasonably considers that it is in the public interest that the Authority should have conduct of the Legal Proceedings or that the Third Party Claim is likely to have a material adverse impact on the reputation of the Authority or the exercise by the Authority of its statutory functions and duties. Where this Clause 12.6A (*Claims in the Public Interest*) applies, Clauses 12.5.1 and 12.5.2 (*Authority's Handling*) shall apply to the relevant Legal Proceedings.

12.7 Pursuing Claims

12.7.1 Where the Authority reasonably believes that the Contractor has a claim against a Third Party or Affiliate and that the pursuit of such claim would be beneficial to the Authority for reputational, public policy or financial reasons the Authority shall be entitled to direct the Contractor to pursue the relevant claim against the Third Party or Affiliate. The Contractor shall pursue the relevant

claim against the Third Party or Affiliate in accordance with the Authority's reasonable instructions. The Contractor shall retain the right to instruct the solicitors and experts of its choice.

12.7.2 Where the Parent Body Organisation reasonably believes that the Contractor has a claim against a Third Party or Affiliate and that the pursuit of such claim would be beneficial to the Parent Body Organisation for reputational or financial reasons the Parent Body Organisation shall be entitled to request the Authority to direct the Contractor to pursue the relevant claim against the Third Party in accordance with Clause 12.7.1 (*Pursuing Claims*). Such request shall not be unreasonably refused by the Authority.

12.7.2A Nothing in this Clause 12.7 (*Pursuing Claims*) shall prevent the Contractor, the Parent Body Organisation or the Authority from seeking interim or interlocutory relief where such relief is (in the reasonable opinion of that Party) required urgently, provided that such Party shall notify the others of any such Legal Proceedings and the decision to seek interim or interlocutory relief as soon as reasonably practicable.

12.7.3 Following acceptance of a request pursuant to clause 12.7.2 (*Pursuing Claims*), the Parent Body Organisation shall have the option, upon giving notice to the Contractor and the Authority, to have the conduct (or take over the conduct) of all Legal Proceedings in respect of any such claim and:

12.7.3.1 subject to Clause 12.3.2 (*Provision of Information and Assistance*) the Authority and the Contractor shall give or cause to be given to the Parent Body Organisation all such assistance as the Parent Body Organisation may reasonably require in conducting Legal Proceedings including providing access to records which the Authority (acting reasonably) considers relevant to the claim and which are in the possession, custody or control of the Authority; and

12.7.3.2 the Contractor shall instruct such solicitors or other professional advisers (including for the avoidance of doubt expert witnesses and counsel) as the Parent Body Organisation may reasonably nominate to act on behalf of the Contractor, but in accordance with the instructions of the Parent Body Organisation;

12.7.3.3 the Parent Body Organisation shall:

12.7.3.3.1 keep the Authority and the Contractor reasonably informed of the progress of any Legal Proceedings of

which it has conduct and shall give the Authority the opportunity to comment on any matter which may impact on the reputation of the Authority or the exercise by the Authority of its statutory functions and duties and the Parent Body Organisation shall consider such comments received from the Authority as it is reasonably practicable to consider in the relevant circumstances; and

12.7.3.3.2 not without the prior written approval of the Authority:

12.7.3.3.2.1 make any admission, settlement or compromise of the claim the subject of the Legal Proceedings;

12.7.3.3.2.2 agree to any matter in the conduct of Legal Proceedings which may affect the amount of the liability in connection with such claim; or

12.7.3.3.2.3 make any representation or statement in relation to such claim,

provided that the Authority will not withhold its approval unless, in its reasonable opinion, the Parent Body Organisation's proposed action would adversely affect any future Legal Proceedings involving the Authority or the Contractor or the proposed action is contrary to the public interest or the proposed action would adversely impact on the reputation of the Authority. Unless otherwise agreed in connection with any such approval, any such approval shall not constitute (whether as to liability and/or the amount claimed) an admission nor shall it prejudice any defence of the Authority pursuant to this Agreement and/or the SLC Agreement;

12.7.3.4 indemnify and keep the Contractor and the Authority indemnified in respect of all reasonable claims and all costs arising directly out of its conduct of the Legal Proceedings.

12.8 **Opinion of a legal expert**

12.8.1 The Parties shall refer any dispute or difference between them as to:

12.8.1.1 which Party would bear the majority of liability of a Third Party Claim for the purposes of Clause 12.5 (*Authority's Handling*) or Clause 12.6 (*Parent Body Organisation Handling*);

12.8.1.2 the reasonableness or otherwise of an act or omission of any Party in connection with this Clause 12 (*Claims Handling*); and/or

12.8.1.3 the matters set out in Clause 12.9.1 (*Contribution for Third Party Claims*),

to a Queen's Counsel of the Bar of England and Wales, selected by agreement of the Parties, or failing agreement, selected by the Chairman of the Bar as appropriate having regard to experience in the nuclear industry (the "**Legal Expert**"). The Legal Expert shall be jointly instructed by the Parties to provide a nonbinding written opinion on the matter in dispute or the difference and the Parties shall give due regard to the opinion of the Legal Expert in seeking to resolve the dispute or difference.

12.8.2 The costs of the Legal Expert shall be borne equally between the Parent Body Organisation and the Authority.

12.8.3 If the Parties remain unable to resolve the dispute or difference having due regard to the opinion of the Legal Expert, either Party may refer the dispute or difference for resolution in accordance with Clause 23 (*Dispute Resolution*).

12.9 **Contribution for Third Party Claims**

12.9.1 Where a Third Party Claim is made against the Parent Body Organisation and the Authority and the Parent Body Organisation agree (acting reasonably, and without any admission as to liability or the amount claimed) that:

12.9.1.1 such Third Party Claim reasonably could or should have been made against the Contractor, or

12.9.1.2 in respect of such Third Party Claim the Parent Body Organisation could reasonably claim a contribution against the Contractor,

and provided that if:

12.9.1.3 a claim were made against the Contractor; or

12.9.1.4 a contribution were paid by the Contractor,

the costs incurred by the Contractor in respect of such claim or contribution would be Allowable Costs, the Contractor shall be liable, as between the Contractor and the Parent Body Organisation, to pay such claim or contribution together with all costs

reasonably incurred by the Parent Body Organisation in or in connection with the Third Party Claim.

Part 5: Information

13 CONFIDENTIALITY

13.1 Confidential Information

13.1.1 Subject to Clauses 13.3 (*Disclosure by the Authority*) to 13.9 (*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 Parties (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.

13.1.2 Neither the Parent Body Organisation nor the Contractor shall 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.

13.2 Parent Body Organisation Right to Request Confidentiality

The Parent Body Organisation 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 Parent Body Organisation may further request in writing at any time that, where the Authority discloses Information pursuant to Clause 13.3 (*Disclosure by the Authority*), the Authority make representations to the recipient of such Information as to the desirability of keeping such Information confidential. Any such request by the Parent Body Organisation shall be accompanied by a document setting out in writing the requested representations. The Authority shall consider whether to make such representations.

13.3 Disclosure by the Authority

The Authority, having reasonably considered any request made by the Parent Body Organisation under Clause 13.2 (*Parent Body Organisation Right to Request Confidentiality*) 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 13.3 (*Disclosure by the Authority*) holds all relevant security clearances), disclose any and all information acquired by it under or pursuant to this Agreement (the "Information"):

- 13.3.1 to the Parliamentary Commissioner for Administration, a Minister of the Crown, any Government department, the United Kingdom Parliament, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, Greater London Authority or any department, officer, agent, representative, employee, consultant or adviser of any of them;
- 13.3.2 to the Regulators;
- 13.3.3 to the extent required by applicable Legislation or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Procedure;
- 13.3.4 to bidders who have pre-qualified to participate in any relevant forthcoming tender process, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 13.1 (*Confidential Information*) above, except that in no instance shall financial information provided to the Authority in connection with the Parent Company Guarantees be disclosed;
- 13.3.5 to insurers upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 13.1 (*Confidential Information*);
- 13.3.6 to professional advisers, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 13.1 (*Confidential Information*) for the purpose of:
 - 13.3.6.1 the examination and certification of the Authority's or the Parent Body Organisation's accounts; or
 - 13.3.6.2 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;
- 13.3.7 to the Authority's legal advisors;
- 13.3.8 to consultees under the Energy Act; and/or

- 13.3.9 to the National Audit Office.
- 13.4 So far as is practicable, the Authority shall give the Parent Body Organisation reasonable notice of any proposed disclosure pursuant to Clause 13.3 (*Disclosure by the Authority*).
- 13.5 Notwithstanding the provisions of Clause 13.1 (*Confidential Information*), the Authority may, with the consent of the Parent Body Organisation such consent not to be unreasonably withheld or delayed, further disclose the Information to persons not referred to in Clause 13.3 (*Disclosure by the Authority*).
- 13.6 Any determination as to whether it is reasonable for the Parent Body Organisation to withhold its consent to disclosure under Clause 13.5 (*Disclosure by the Authority*) shall have regard to:
- 13.6.1 compliance with the Authority's statutory functions and duties, including in particular the promotion of effective competition and value for money;
 - 13.6.2 relevant Government policy (or, to the extent applicable in the United Kingdom, relevant policy of the legislative bodies of the European Union);
 - 13.6.3 the requirement to maintain security;
 - 13.6.4 the public interest; and
 - 13.6.5 the requirement to maintain openness and transparency.
- 13.7 **Publication**
- 13.7.1 The Authority, having considered any request made by the Parent Body Organisation pursuant to Clause 13.2 (*Parent Body Organisation Right to Request Confidentiality*) may publish, in such form and at such times as it sees fit, the following information:
- 13.7.1.1 the amounts of payments to the Contractor and any deductions made from the Contractor under the SLC Agreement;
 - 13.7.1.2 performance statistics;
 - 13.7.1.3 monitoring reports; and
 - 13.7.1.4 such information as the Authority reasonably requires to publish having regard to the list of considerations set out in Clause 13.6 (*Disclosure by the Authority*), including information it includes in its annual report.

13.7.2 The Authority shall give the Parent Body Organisation reasonable notice of any proposed publication pursuant to Clause 13.7 (*Publication*).

13.8 Disclosure by the Parent Body Organisation or the Contractor

For the purposes of performing their 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 Parent Body Organisation or 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 (unless the recipient of information pursuant to this Clause 13.8 (*Disclosure by Parent Body Organisation or the Contractor*) holds all relevant security clearances) to:

13.8.1 the Regulators;

13.8.2 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;

13.8.3 insurers, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 13.1 (*Confidential Information*);

13.8.4 professional advisers including lenders, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 13.1 (*Confidential Information*);

13.8.5 Affiliates or Subcontractors upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 13.1 (*Confidential Information*);

13.8.6 any department, officer, agent, representative, employee, consultant or adviser of any of the entities referred to in Clauses 13.8.1 (*Disclosure by Parent Body Organisation or the Contractor*) to 13.8.4 (*Disclosure by Parent Body Organisation or the Contractor*) subject, in any case where the entity in question would be required to provide an undertaking of confidentiality equivalent to that contained in Clause 13.1 (*Confidential Information*), to obtaining such an undertaking of confidentiality.

13.9 National Audit Office

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

13.10 Announcements

13.10.1 Subject to the remaining provisions of this Clause 13.10 (*Announcements*), 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 Parties.

13.10.2 Nothing in this Clause 13.10 (*Announcements*) shall prohibit any Party (or, in the case of the Contractor or the Parent Body Organisation, any Affiliates) from making any announcement or despatching any circular as required by Legislation or the rules or regulations of any stock exchange or regulatory authority having the force of law, or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned, in which case, to the extent not inconsistent with such legal obligations, rules or regulations, the announcement shall only be released or the circular despatched after consultation with the other Party and after taking into account the reasonable requirements of the other Party as to the content of such announcement or circular.

13.11 Delivery Up

On termination of this Agreement, the Parent Body Organisation and the Contractor shall ensure or procure that the Nominated Staff return to the Parent Body Organisation or the Authority or the Contractor (as applicable) all documents, materials or any information belonging to the Parent Body Organisation or the Authority or the Contractor (as the case may be).

13.12 Damages not the only remedy

Without prejudice to any other rights or remedies that the Authority may have, the Parties acknowledge and agree that damages alone would not be an adequate remedy for any breach by the Parent Body Organisation of this Clause 13 (*Confidentiality*) and that the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this Clause 13 (*Confidentiality*) by the Parent Body Organisation are appropriate remedies.

14 FREEDOM OF INFORMATION

14.1 Freedom of Information Act

14.1.1 This Clause 14 (*Freedom of Information*) 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 PBO's attention is drawn specifically to the Lord Chancellor's Code of Practice on Freedom of Information.

- 14.1.2 The Parent Body Organisation shall assist and cooperate with the Authority to enable the Authority to comply with its disclosure obligations under the FOIA and the EIR. The Parent Body Organisation shall also comply with the Protocol attached at Schedule 14 (*Freedom of Information*) of the SLC Agreement.
- 14.1.3 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 Parent Body Organisation, the Contractor or any of its Subcontractors but not the Authority then the Parent Body Organisation shall provide such information to the Authority as soon as reasonably practicable. The Parent Body Organisation 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.
- 14.1.4 Where the Parent Body Organisation receives, or the Contractor or any of its Subcontractors receive, a Request for Information relating to information held by or on behalf of the Authority, the Parent Body Organisation shall, and shall also procure that the Contractor and its Subcontractors shall, transfer to the Authority any such Request for Information received as soon as reasonably practicable.
- 14.1.5 The Parent Body Organisation 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 14 and the Protocol contained in Schedule 14 (*Freedom of Information*) of the SLC Agreement.
- 14.1.6 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.
- 14.1.6A Subject to Clause 14.1.6 (*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 Parent Body Organisation 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.

- 14.1.7 The Parent Body Organisation 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 Parent Body Organisation, any Site or this Agreement without consulting the Parent Body Organisation, or following consultation with the Parent Body Organisation and having taken its views into account.
- 14.1.8 The Parent Body Organisation 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 14 (*Freedom of Information*).
- 14.1.9 In no event shall the Parent Body Organisation respond to a Request for Information in relation to information that the Parent Body Organisation is holding on the Authority's behalf unless expressly authorised to do so in writing by the Authority.

Part 6: Intellectual Property and IT

15 INFORMATION TECHNOLOGY

- 15.1 In the event that any Software the IP in which is proprietary to the Parent Body Organisation is made available to the Contractor for the purpose of fulfilling its obligations under the SLC Agreement, the Parent Body Organisation shall deposit the Source Code of such Software in escrow with the Escrow Agent for the benefit of the Contractor and the Authority on the Escrow Terms. The Parent Body Organisation shall ensure that any such deposit is at all times complete and up to date such that it accurately reflects the relevant Software as the same is installed and used by the Contractor from time to time. In the event that any such Source Code is released to the Authority in accordance with the Escrow Terms, the licence referred to in Clause 16.1 (*IP Contributed by Parent Body Organisation*) shall include all IP subsisting in such Source Code.

16 INTELLECTUAL PROPERTY

16.1 IP Contributed by Parent Body Organisation

Licence to Authority and Contractor

16.1.1 Save for Special Parent IP (as provided in Clause 16.1.6), in respect of IP that is owned by or licensed (with appropriate sub-license rights) to the Parent Body Organisation:

16.1.1.1 any such IP that is made available (whether as of the date of commencement of the SLC Agreement or at any time during the term of the SLC Agreement) to the Contractor by the Parent Body Organisation for the purpose of fulfilling its obligations under the SLC Agreement or is used by the Contractor for the purposes of fulfilling its obligations in relation to a Site under the SLC Agreement, but excluding the Required Parent IP (the "**Delivered Parent IP**"); and

16.1.1.2 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 sub-license such right as set out in Clauses 16.1.2 to 16.1.4 (*Licence to Authority and Contractor*) below) in perpetuity to the Authority (in its application as of the date of commencement of the SLC Agreement where applicable) for utilisation in the Authority Field of Use at or in relation to the Designated Sites or, in the case of Required Parent IP, limited to the extent required to enable the Authority or its licensee to use or exploit the relevant Developed IP, without payment of royalty fees (except to the extent otherwise agreed in writing between the Authority and the Parent Body Organisation). The Delivered Parent IP and the Required Parent IP shall together be referred to as the "**Parent IP**". The Parent Body Organisation warrants and undertakes that the Parent IP shall be either owned by or licensed to (with appropriate sub-license rights) the Parent Body Organisation.

16.1.2 The Authority shall have the right to sub-license (on terms consistent with the Authority's licence (although the Sub-Licences may be narrower than the Authority's licence)) the Parent IP to the Contractor in perpetuity who in turn shall be entitled to grant Sub-Licences to its subcontractors (with a right to sub-license) to use the Parent IP solely in the performance of their subcontracts in respect of the Sites, in each case without payment of royalty fees. Such Sub-Licence of Parent IP to the subcontractors shall contain terms that are materially similar to the terms contained in the Authority's licence from the Parent Body Organisation and the Contractor's follow-on licence from the Authority.

- 16.1.3 The Authority shall have the right to sub-license the Delivered Parent IP to other SLCs solely for use in relation to their activities falling within the Authority Field of Use on the Authority's Designated Sites (including the right for such SLCs to grant further Sub-Licences to their subcontractors with a right to sub-license, in each case solely limited to such purpose) without payment of royalty fees provided always that such Sub-Licences are consistent with the Authority's licence of Delivered Parent IP (although the Sub-Licence may be narrower than the Authority's licence). The Authority's right to use and sub-license the Delivered Parent IP shall remain in force during the term of this Agreement and shall continue notwithstanding the termination or expiry of either or both of this Agreement and the SLC Agreement until the Authority reasonably determines that the Delivered Parent IP is no longer needed in relation to any Authority Designated Sites for which the Authority has obtained the rights to use the Delivered Parent IP.
- 16.1.4 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 any Developed IP without payment of royalty fees and who shall themselves be entitled to grant Sub-Licences to their subcontractors (with a right to sub-license) solely to use the Required Parent IP where necessary to enable the use or exploitation of Developed IP, without payment of royalty fees provided always that such Sub-Licences are consistent with the terms of the Authority's licence of the Required Parent IP (although the Sub-Licence may be narrower than the Authority's licence). The Authority's right to use and sub-license the Required Parent IP shall remain in force during the term of this Agreement and shall continue notwithstanding the termination or expiry of either or both of this Agreement and the SLC Agreement until the Authority reasonably determines that the Required Parent IP is no longer needed to enable the use of any Developed IP.
- 16.1.5 The Parent Body Organisation shall provide all necessary information and support to the Contractor to enable the Contractor to comply with its obligations under Clauses 29.3.5 and 29.3.10 (*IP Contributed by the Parent Body Organisation*) of the SLC Agreement.
- 16.1.6 The Parent Body Organisation and/or the PBO Affiliates have now or may in the future have ownership of or licences to use further IP that the Parent Body Organisation may, with the Authority's agreement, wish to introduce to the Site on terms different to those set out in this Clause 16 (*Intellectual Property*). Such IP is referred to in this Agreement as "**Special Parent IP**".

- 16.1.7 Before the Parent Body Organisation or a PBO Affiliate allows any Special Parent IP to be introduced to any Site the Authority and the Parent Body Organisation or relevant PBO Affiliate (as the case may be) will agree 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 16.1.4 such Special Parent IP shall not be treated as Required Parent IP.
- 16.1.8 With the exception of Clause 16.1.6 (*Intellectual Property*) to Clause 16.1.10 (*Intellectual Property*), the provisions of this Clause 16 (*Intellectual Property*) shall not apply in relation to any Special Parent IP.
- 16.1.9 Neither the Final Tender nor compliance with the Contractor's obligations under the SLC 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.
- 16.1.10 Without prejudice to Clause 16.1.1 (*Licence to Authority and Contractor*) above, the Contractor shall implement such procedures and systems as are reasonably required and agreed by the Authority (including without limitation under the IP Schedule) to identify and track any IP (save to the extent that such IP is both immaterial and operationally insignificant) 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 then the Authority will be deemed to have the ability to use, exploit and license such IP without further restrictions and the Contractor shall indemnify the Authority in full in respect of any third party claim or action that the Authority's (or its licensees') use, exploitation and/or licensing of such IP outside the scope of any identified restrictions infringes that third party's rights. Where the Authority intends to use, exploit or license such IP in a manner (or with a scope) which is materially different from the use made of it at the Sites, the Authority shall give to the Contractor thirty (30) Calendar Days' prior written notice detailing the IP. The

Contractor shall have no liability under this indemnity to the extent that the relevant IP has been introduced by a previous parent body organisation and:

16.1.10.1 is used by or on behalf of the Parent Body Organisation only at the Sites where it has been introduced by that parent body organisation; and

16.1.10.2 to the extent that restrictions on use of such IP were not identified by that parent body organisation before the date of this Agreement,

provided that, for the avoidance of doubt, this shall not release the Contractor from any obligation to (i) notify the Authority of restrictions on such IP of which it becomes aware, or (ii) track the use of such IP during this Agreement and, in each case, indemnify the Authority in respect of any failure to do so.

Infringement of Parent IP by Third Parties

16.1.11 In the case of any infringement or suspected infringement by any Third Party of Parent IP which is licensed to the Authority pursuant to this Clause 16.1 (*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.

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

The Contractor shall establish procedures (which shall be audited on reasonable notice by the Authority from time to time) for the identification, protection, exploitation, management and ownership of IP (save to the extent that such IP is both immaterial and operationally insignificant) in accordance with this Agreement and the SLC 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 Intellectual Property*) of the SLC Agreement) whether in the name of the Contractor or the Authority and regardless of the date such rights were secured. Subject to Clause 16.1.6, 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, acting reasonably and without unreasonable delay,

be owned in accordance with the following provisions:

Ownership by Authority of Developed IP created by the Contractor

16.2.1 Subject to any pre-existing rights of Third Parties and of the Parent Body Organisation and to Paragraph 2.2 (*Authority Ownership of Subcontractor created Developed IP*) of Part B (*Guidance on this choice of IP Ts&Cs in Subcontracts*) of the IP Schedule:

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

16.2.1.2 the Contractor shall assign to the Authority all its right, title and interest in any Developed IP created by it on or at any time after the Commencement Date.

Ownership of Developed IP by the Authority

16.2.2 Without prejudice to Clause 16.2.1 (*Ownership by Authority of Developed IP created by the Contractor*) 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.

16.2.3 Subject to Clause 16.2.4 (*Ownership of Developed IP created by or on behalf of Subcontractors*) and without prejudice to Clause 16.2.1 (*Ownership by Authority of Developed IP created by the Contractor*) above, the Authority shall own any and all IP in all output (including information, results, test data, safety cases and other reports) obtained by and arising from the application and use of any Authority-owned IP (including Authority-owned Developed IP). The Contractor hereby assigns to the Authority all right, title and interest in such IP (to the extent not already owned by the Authority or otherwise assigned under the provisions of this Clause 16 (*Intellectual Property*)) created on or at any time after the Commencement Date.

Ownership of Developed IP created by or on behalf of Subcontractors

16.2.4 Save as expressly set out in this Clause 16.2.4:

16.2.4.1 Developed IP that is created by or on behalf of any Subcontractor under its Subcontract shall be owned by the Authority and the Contractor shall procure that the Subcontractor assigns to the Authority all right, title and interest in such Developed IP (to the extent not already owned by the Authority or otherwise assigned under the provisions of this Clause 16 (*Intellectual Property*)) created by the Subcontractor on or at any time after the date of the SLC Agreement. However, the Authority acknowledges that it may be appropriate in certain circumstances described in the IP Schedule, for an alternative IP solution to be adopted and for such Developed IP that falls outside the provisions of Clause 16.2.2 (*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 16.2.9 (*Licence of Developed IP from Subcontractor to Authority*) below.

16.2.4.2 if, at the Commencement Date, the Contractor already has Sub-contracts which allow the Sub-contractor to own Developed IP, then such Sub-contracts may continue, provided that:

16.2.4.2.1 where Clause 16.2.2(i) or (ii) applies in respect of such Developed IP;

and in any event

16.2.4.2.2 on renewal of such Sub-contracts on their expiry or termination,

such Sub-Contracts shall be reviewed in accordance with the provisions of Clause 16.2.4.1 and the IP Schedule (including Commercial Guidance 02) to determine the appropriate party to own such Developed IP.

Access to and use of information by the Authority

16.2.5 Subject to the provisions of Clause 13 (*Confidentiality*), and without prejudice to the provisions Clause 14 (*Performance Management, Performance Assurance and Records*) and Clause 15 (*Inspection and Audit*) of the SLC Agreement, 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 the SLC Agreement or any obligation of confidence imposed on the Contractor by an agreement before the date of the SLC Agreement in respect of such information as was held by the Contractor before that date. Further, notwithstanding ownership of any Developed IP developed by any Subcontractor and without prejudice to the provisions of Clause 14 (*Performance Management, Performance Assurance and Records*) of the SLC Agreement and Clause 15 (*Inspection and Audit*) of the SLC Agreement, the Contractor shall ensure that the Authority shall be entitled to access, use and disclose all and any information created, received or maintained by any Subcontractor during the course of carrying out obligations under the relevant Subcontract that is part of the Developed IP created by the Subcontractor, or is reasonably necessary for the purpose of using, exploiting or licensing either Developed IP or any contract deliverable under the Subcontract including products, information, data, results and records ("**Output**"). For the avoidance of doubt information shall not be treated as having been received by the Contractor on the basis that it is known to or in the possession of any Nominated Staff, unless such information is used by the Nominated Staff or such personnel in relation to the Sites, this Agreement or the SLC Agreement.

Further Assurance

16.2.6 In respect of any Developed IP owned by the Authority pursuant to Clauses 16.2.1 (*Ownership by Authority of Developed IP created by the Contractor*), 16.2.2 (*Ownership of Developed IP by the Authority*), 16.2.3 (*Ownership of IP Developed by the Authority*) and/or 16.2.4 (*Ownership of Developed IP created by or on behalf of Subcontractors*) and Clauses 29.4.1 to 29.4.4 (*Authority's Rights to IP developed by or on behalf of the Contractor and/or Subcontractors*) of the SLC Agreement (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 16 (*Intellectual Property*) and Clause 29.4.6 (*Further Assurance*) of the SLC Agreement 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

16.2.7 The Contractor shall procure that each Subcontractor identifies and declares to the Contractor prior to entering into its Subcontract where it is reasonably practicable to do so, and in any event within thirty (30) Calendar Days, any material IP relevant to the performance of the Subcontract which the Subcontractor owns immediately prior to the commencement of the Subcontract which relates to the Subcontract deliverables and could be reasonably judged necessary for the Authority, the Contractor or any licensee of either the Authority or the Contractor to use, exploit or license any Output or Developed IP arising from the Subcontract. In respect of any such IP, the Contractor shall procure that the Subcontractor shall grant to the Authority a licence in accordance with Clause 16.2.10 (*Licence of Background IP from Subcontractor to Authority*) below and Clause 29.4.10 (*Licence of Background IP from Subcontractor to Authority*) of the SLC Agreement.

Licence to the Authority of IP licensed to the Subcontractor

16.2.8 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:

16.2.8.1 identifies and declares to the Contractor prior to entering into its Subcontract (or, where such IP is licensed to it or becomes relevant later, then at the point such IP is licensed to the relevant Subcontractor or otherwise becomes relevant) any material Subcontractor-licensed Background IP that is licensed to that Subcontractor; and

16.2.8.2 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 solely in order to use and exploit the relevant Output or Developed IP. This licence shall include the right to sub-license that Subcontractor-licensed Background IP to any third party (including any SLC):

16.2.8.2.1 solely as necessary for such use or exploitation of any Output or Developed IP;

16.2.8.2.2 without the consent of the licensor or Subcontractor;
and

16.2.8.2.3 permitting any SLC (and its sublicensees) to sub-license its rights under any such Sub-Licence to any of its subcontractors without the consent of the licensor or Subcontractor provided always that such Sub-Licence are consistent with the terms of the Authority's licence of Subcontractor licensed Background IP (although the Sub-Licence may be narrower than the Authority's licence).

Without prejudice to Clause 29.4.18 (*Introduction of IP*) of the SLC Agreement and Clause 16.2.15 (*Exclusion of Parent IP from Developed IP*) below, where such rights cannot be procured, the Contractor and the Authority, acting reasonably, shall determine whether the Subcontract should be entered into and if so its provisions.

Licence of Developed IP from Subcontractor to Authority

16.2.9 Subject to Clause 16.2.10 (*Licence of Background IP from Subcontractor to Authority*) in the event that any Developed IP is owned by a Subcontractor, the Contractor shall procure that the Subcontractor shall grant to the Authority;

16.2.9.1 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 other SLC (and its sub-licensees) to sub-license its rights under any such Sub-Licence to any of its sub-contractors without the consent of the Subcontractor provided always that such Sub-Licence are consistent with the terms of the Authority's licence of such Developed IP (although the Sub-licence may be narrower than the Authority's licence); and

16.2.9.2 rights for the Authority to:

16.2.9.2.1 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 reasonably requested by the Authority into the patent application (provided that the Authority acts and responds

promptly and does not cause any unreasonable delay to the filing of such patent application);

16.2.9.2.2 extend the territorial coverage of a patent relating to Developed IP, at the Authority's own cost;

16.2.9.2.3 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, France or Germany).

Without prejudice to Clause 29.4.18 (*Introduction of IP*) of the SLC Agreement and Clause 16.2.15 (*Exclusion of Parent IP from Developed 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 16.2.9 (*Licence of Developed IP from Subcontractor to Authority*) without the express prior written consent of the Authority, not to be unreasonably withheld or delayed.

Licence of Background IP from Subcontractor to Authority

16.2.10 Without prejudice to Clause 29.4.18 (*Introduction of IP*) of the SLC Agreement and Clause 16.2.15 (*Exclusion of Parent IP from Developed IP*) below, the Contractor shall review the IP Schedule and the Commercial Guidance 02 to identify the scope of rights needed from the Subcontractor and procure that either:

16.2.10.1 each Subcontractor shall grant to the Authority a non-exclusive, perpetual, irrevocable, royalty-free licence to use any IP owned by that Subcontractor that is reasonably needed to use its Background IP solely in order to use, exploit and license the relevant Output and Developed IP within the Authority Field of Use and in relation to the Designated Sites. This licence shall include the right to sub-license such Background IP to any third party (including any SLC):

- 16.2.10.1.1 solely as necessary for such use or exploitation of any Output or Developed IP within the Authority Field of Use and in relation to the Designated Sites;
 - 16.2.10.1.2 without the consent of the Subcontractor;
 - 16.2.10.1.3 without payment of royalty fees, and
 - 16.2.10.1.4 permitting any SLC (and its sublicensees) to sub-license its rights under any such Sub-Licence on terms consistent with the licence to the Authority to any of its subcontractors to enable their use or exploitation of any Output or Developed IP without the consent of the Subcontractor and without payment of royalty fees (although the Sub-Licence may be narrower than the Authority's licence); or
- 16.2.10.2 lesser rights are obtained in accordance with the provisions of the IP Schedule and/or the Commercial Guidance 02, in which case the minimum requirement is that each Subcontractor shall grant to the Authority a non-exclusive, perpetual, irrevocable and (unless the Authority expressly agrees otherwise) royalty-free licence to use its Background IP solely in order to use, exploit and license the relevant Output and Developed IP in respect of the Sites, with a right to sub-license to the relevant SLC (and its sublicensees) in respect of the Sites.

Contractor's Notification of Developed IP

- 16.2.11 The Contractor shall procure that any Subcontractor shall promptly notify the Contractor of any IP which is created and/or developed by the Subcontractor relevant to and during the performance of its Subcontract, in accordance with the requirements of the IP Schedule. The Contractor shall promptly notify the Authority of any such Developed IP and/or any Developed IP created by the Contractor itself, in accordance with the requirements of the IP Schedule.

Use of Developed IP by the Subcontractor

- 16.2.12 The Contractor may, if permitted by the provisions of the IP Schedule, grant a non-exclusive licence (with rights to sub-license) to a Subcontractor enabling the Subcontractor to exploit outside the Authority Field of Use any Developed IP developed by the Subcontractor or its sub-contractors. Where required by the IP Schedule, the Contractor shall include within the invitation to tender (and, if the Subcontractor is given ownership or a licence of Developed IP

created under the Subcontract, also in the final Subcontract) provision for the Authority to receive an appropriate (at market rate) royalty or other payment if such Developed IP is exploited or licensed by the Subcontractor.

Licence to Parent Body Organisation

16.2.13 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 worldwide licence (which is freely assignable or sub-licensable) to use for purposes other than activities falling within the Authority Field of Use any Developed IP 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*) of the SLC Agreement and/or this Agreement but not, for the avoidance of doubt, 29.4.2 (*Ownership of Developed IP by the Authority*) of the SLC Agreement and/or Clause 16.2.2 (*Ownership of Developed IP by the Authority*) of this Agreement.

Exclusion of Parent IP from Developed IP

16.2.14 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 16.2.1 (*Ownership by Authority of Developed IP created by the Contractor*), 16.2.2 (*Ownership of Developed IP by the Authority*), 16.2.3 (*Ownership of Developed IP by the Authority*) and/or 16.2.4 (*Ownership of Developed IP created by or on behalf of Subcontractors*) and 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*) of the SLC Agreement shall exclude any Parent IP under Clause 16.1 (*IP Contributed by Parent Body Organisation*) or any Third Party IP under Clause 29.6 (*Third Party IP*) of the SLC Agreement that may form the basis or background of such Developed IP.

16.2.15 The PBO must not (and must procure that the Contractor shall not) in each case unless the PBO or the Contractor has the Authority's express prior written consent allow IP to be introduced in relation to a Site unless the Authority owns, or has been granted a licence to use that IP at least in relation to that particular Site.

Part 7: Personnel Matters

17 TUPE

- 17.1 It is the intention of the Parties that no member of the Nominated Staff will transfer to the Authority, the Incoming Parent, the Contractor or any sub-contractor of the Authority, the Incoming Parent or the Contractor under TUPE on the termination of this Agreement.
- 17.2 Save as provided in Clause 17.3 (*TUPE*), the Parent Body Organisation shall indemnify and keep indemnified the Authority, the Incoming Parent, the Contractor and any sub-contractor of the Authority, the Incoming Parent or the Contractor against all liabilities, obligations, Legal Proceedings, fines and penalties, damages, expenses, costs (including reasonable legal costs) arising out of or in connection with any Legal Proceedings, claims or demands arising or alleged to arise by virtue of the operation of TUPE in connection with the termination of this Agreement and brought by or on behalf of any member or former member of the Nominated Staff or any individual who at or before the date of such termination is or was employed or engaged by the Parent Body Organisation, a Seconding Employer or any Affiliate in any activities relating to this Agreement or the SLC Agreement and which relate to circumstances or events arising or occurring at any time (including any dismissal or alleged dismissal of any such individual by the Authority, Incoming Parent, Contractor or any of their sub-contractors).
- 17.3 If any contract of employment of any member or former member of the Nominated Staff takes effect or is alleged by the person employed under it to take effect as if originally made between such person and the Authority, the Incoming Parent, the Contractor or any sub-contractor of the Authority (any such person being an "**Alleged Transferee**") under TUPE on the termination of this Agreement, then:
- 17.3.1 the Authority shall, as soon as reasonably practicable after it becomes aware of such effect or allegation, notify the Parent Body Organisation in writing of any claim from such person that his contract of employment has such effect and the Authority shall then allow the Parent Body Organisation a period of twenty (20) Working Days to consult with that person concerning such claim;
- 17.3.2 if following the period of twenty (20) Working Days referred to in Clause 17.3.1 (*TUPE*), that person continues with such claim, the relevant Alleged Transferee may within a further period of twenty (20) Working Days (or such other period as may be agreed in writing between the Authority and the Parent Body Organisation) give notice to such person to terminate such contract of employment with immediate effect; and
- 17.3.3 the indemnity in Clause 17.2 (*TUPE*) shall not apply to any liabilities, obligations, Legal Proceedings, fines, penalties, damages, expenses, costs (including reasonable legal costs) suffered or incurred by an Alleged

Transferee in respect of any such contract of employment which has not been terminated on or before the expiry of the period of forty (40) Working Days following notification to the Parent Body Organisation by the Authority of any such claim (or such other period if a different period is agreed under Clause 17.3.2 (*TUPE*) above).

17.4 Save as provided in Clause 17.6 (*TUPE*), the Authority shall indemnify and keep indemnified the Parent Body Organisation against all liabilities, obligations, Legal Proceedings, fines and penalties, damages, expenses, costs (including reasonable legal costs) arising out of any claims and demands:

17.4.1 brought by or on behalf of any individual who before the Commencement Date was seconded to the Magnox Contractor or the RSRL Contractor as applicable or any individual providing service to the Magnox Contractor or the RSRL Contractor who is or was employed or engaged by the Outgoing Parent (a "**Former Seconded**"); and

17.4.2 arising out of or in connection with a claim by such individual that their employment has, or any liabilities relating to their employment or its termination have, transferred to the Parent Body Organisation pursuant to *TUPE* as a result of the Parent Body Organisation entering into this Agreement.

17.5 The Parent Body Organisation shall take reasonable steps to mitigate any loss in respect of which it makes a claim under the indemnity referred to in Clause 17.4 (*TUPE*).

17.6 If any contract of employment of any Former Seconded takes effect or is alleged by the person employed under it to take effect as if originally made between such person and the Parent Body Organisation under *TUPE* on the commencement of this Agreement, then:

17.6.1 the Parent Body Organisation shall, as soon as reasonably practicable after it becomes aware of such effect or allegation, notify the Authority in writing of any claim from such person that his contract of employment has such effect and the Parent Body Organisation shall then allow the Authority a period of twenty (20) Working Days to consult with that person and/or his previous employer concerning such claim;

17.6.2 if following the period of twenty (20) Working Days referred to in Clause 17.6.1 (*TUPE*), that person continues with such claim, the Parent Body Organisation may within a further period of twenty (20) Working Days (or such other period as may be agreed in writing between the Authority and the Parent Body

Organisation) give notice to such person to terminate such contract of employment with immediate effect; and

17.6.3 the indemnity in Clause 17.4 (*TUPE*) shall not apply to any liabilities, obligations, Legal Proceedings, fines, penalties, damages, expenses or costs (including reasonable legal costs) suffered or incurred by the Parent Body Organisation in respect of any such contract of employment which has not been terminated on or before the expiry of the period of forty (40) Working Days following notification to the Authority by the Parent Body Organisation of any such claim (or such other period if a different period is agreed under Clause 17.6.2 (*TUPE*) above).

18 PENSIONS

In the event that any Employees transfer or are deemed to transfer to the Parent Body Organisation, the Parent Body Organisation shall in relation to such Employees comply with all obligations required of the Contractor under Clause 32 (*Pensions*) of the SLC Agreement as if the Parent Body Organisation were the Contractor.

Part 8: Termination

19 TERMINATION

19.1 Termination Events

This Agreement may be terminated prior to the Expiry Date in accordance with this Clause 19 (*Termination*) and Clause 21 (*Re-transfer of Shares in Contractor under the Energy Act*).

19.2 PBO Default

The following events set out in Clauses 19.2.1 (*Breach of Parent Body Organisation or Contractor Obligations*) to 19.2.10 (*Exceeding increased Nuclear Indemnity Threshold*) below shall each constitute a "**PBO Default**" and shall give rise to an Authority right to terminate (and in the case of the events set out in Clause 19.2.9 (*Liability Caps*) a Parent Body Organisation right to require the Authority to terminate):

19.2.1 Breach of Parent Body Organisation or Contractor Obligations

A material breach by the Parent Body Organisation or the Contractor of any of their obligations under this Agreement which, in the reasonable opinion of the Authority is either:

19.2.1.1 remediable, but has not been remedied in accordance with Clause 19.5.3 (*Remediable Breach*); or

19.2.1.2 irremediable.

19.2.2 Insolvency

The occurrence of a Threatened Insolvency notice that is not disputed by the Parent Body Organisation within two (2) Working Days of such notice being served, or an Insolvency Event in respect of the Contractor, the Parent Body Organisation or any shareholder of the Parent Body Organisation or any Parent Company Guarantor, provided that in the case of the Contractor, such Threatened Insolvency or Insolvency Event does not arise as a result of an Authority Default.

19.2.3 SLC Agreement

The Authority being entitled to terminate the SLC Agreement for Contractor Default or Persistent Breach.

19.2.4 Change in Control

Either:

19.2.4.1 the Parent Body Organisation and/or a Parent Company Guarantor is subject to a Change in Control other than a Permitted Change in Control or enters into a Relevant Partnering Arrangement without first obtaining the written consent of the Authority; or

19.2.4.2 following a Permitted Change in Control of the type specified in Clause 4.2.3.2 (*Change in Control and Relevant Partnering Arrangements*), the transferee ceases to be a PBO Affiliate and the shares or interests which were the subject of that Permitted Change in Control are not within ten (10) Working Days of the transferee ceasing to be a PBO Affiliate transferred to another PBO Affiliate.

19.2.5 Share Transfer

The Parent Body Organisation transferring or purporting to transfer all or any of the Shares or disposing of, charging or otherwise encumbering (or purporting to do so, in each case) all or any part of the Shares or any interest therein, other than in accordance with this Agreement.

19.2.6 Failure to Remedy

A failure by the Parent Body Organisation to remedy the breach specified in a Final Performance Warning Notice in accordance with Clause 19.3 (*Termination for Failure to Remedy*).

19.2.7 Parent Company Guarantees

Any of the following prior to the PBO Guarantee Expiry Date:

- 19.2.7.1 any withdrawal of a Parent Company Guarantee in circumstances where Alternative Credit Support is required to be provided and there is a failure to supply such Alternative Credit Support in accordance with the terms of this Agreement;
- 19.2.7.2 the Authority being entitled to and making a claim in accordance with the provisions of a Parent Company Guarantee or under the Alternative Credit Support; and/or
- 19.2.7.3 a Parent Company Guarantor being in breach of any provision of a Parent Company Guarantee, unless such breach is an Alternative Credit Support Trigger Event and the Parent Body Organisation provides Alternative Credit Support in accordance with the provision of Clause 24.1.3.

19.2.8 Alternative Credit Support

Any of the following prior to the PBO Guarantee Expiry Date:

- 19.2.8.1 any Alternative Credit Support is not renewed (for the minimum period specified in the definition of "Alternative Credit Support" in Schedule 1) or replaced by the Parent Body Organisation (whether by Alternative Credit Support or Parent Company Guarantees pursuant to Clause 24.1.8), if required to do so pursuant to the terms of this Agreement, at least twenty (20) Working Days prior to its expiry date;
- 19.2.8.2 any provider of Alternative Credit Support ceases to have a rating for its long-term unsecured and non credit-enhanced debt obligations of at least BBB by Standard & Poor's Rating Services or Fitch Ratings Limited or Baa2 by Moody's Investors Service Limited, and the Parent Body Organisation fails to procure either replacement Alternative Credit Support or Parent Company Guarantees in accordance with the provisions of Clause 24.1.6;

- 19.2.8.3 any Alternative Credit Support is withdrawn for any reason unless such Alternative Credit Support is replaced by Alternative Credit Support complying with the terms of this Agreement or Parent Company Guarantees in accordance with Clause 24.1.8 within ten (10) Working Days (or such other period as may be agreed by the Parent Body Organisation and the Authority, each acting reasonably, in advance of the withdrawal of the Alternative Credit Support) of such withdrawal; or
- 19.2.8.4 there is a failure to provide Alternative Credit Support if required to be provided in accordance with the terms of this Agreement.

19.2.9 Liability Caps

Any of the following:

- 19.2.9.1 at any time the Contractor's and the Parent Body Organisation's aggregate liability to the Authority arising in any one Contract Year under this Agreement, the SLC Agreement, the Inter SLC Service Contracts and the Property Leases, plus the aggregate of any Disallowable Costs incurred by the Contractor in that Contract Year, exceeds the Annual Liability Cap; or
- 19.2.9.2 at any time the Contractor's and the Parent Body Organisation's aggregate liability to the Authority under this Agreement, the SLC Agreement, the Inter SLC Service Contracts and the Property Leases, plus the aggregate of any Disallowable Costs incurred by the Contractor, exceeds the Aggregate Liability Cap; or
- 19.2.9.3 at any time the Contractor's and the Parent Body Organisation's aggregate liability to the Authority arising in any one Contract Year under this Agreement, the SLC Agreement, the Inter SLC Service Contracts and the Property Leases plus the aggregate of any Disallowable Costs incurred by the Contractor in that Contract Year, exceeds s.43(2) of the Annual Liability Cap and there is no reasonable prospect that such liabilities will not exceed the Annual Liability Cap; or
- 19.2.9.4 the Contractor's and the Parent Body Organisation's aggregate liability to the Authority under this Agreement, the SLC Agreement, the Inter SLC Service Contracts and the Property Leases, plus the aggregate of any Disallowable Costs incurred by the Contractor, exceeds s.43(2) of the Aggregate Liability Cap

and there is no reasonable prospect that such liabilities will not exceed the Aggregate Liability Cap.

19.2.10 Claim under Nuclear Indemnity as a Result of Fraud or Wilful Misconduct

An Indemnified Party being entitled to and making a claim under Clause 4 (*Indemnity*) of the Nuclear Indemnity where the Nuclear Incident has arisen as a result of any act or omission of the Parent Body Organisation or any Indemnified Party, or any employee, secondee (including the Nominated Staff) or agent thereof that constitutes fraud or Wilful Misconduct.

19.3 **Termination for Failure to Remedy**

19.3.1 Except where the occurrence is caused by an Authority Default, if:

19.3.1.1 there is a breach of this Agreement, (or the Authority reasonably believes that there may be such a breach) whether or not such breach is itself of a material nature; or

19.3.1.2 the Parent Body Organisation fails (or the Authority reasonably believes that the Parent Body Organisation may fail) to make any payment required under this Agreement or the SLC Agreement when due

then the Authority may serve a notice on the Parent Body Organisation (the "**Performance Warning Notice**");

19.3.1.2.1 specifying that it is a formal warning notice;

19.3.1.2.2 giving reasonable details of the breach and specifying the Authority's concerns;

19.3.1.2.3 stating that if such breach continues or recurs it may result in the service of a Final Performance Warning Notice and ultimately constitute a PBO Default in accordance with Clause 19.3.2 (*Termination for Failure to Remedy*) of this Agreement;

19.3.1.2.4 stating that if such anticipated PBO Default occurs it may result in a termination of this Agreement; and

19.3.1.2.5 specifying what steps, if any, the Authority requires the Parent Body Organisation to take to remedy the breach or anticipated PBO Default to include a specific deadline.

19.3.2 If, following service of a Performance Warning Notice, the breach specified or a substantially similar breach has continued beyond the specified date set out in the Performance Warning Notice pursuant to Clause 19.3.1.2.5 (*Termination for Failure to Remedy*) or has recurred one or more times within six (6) Months after the date of service, then the Authority may serve another notice on the Parent Body Organisation (the "**Final Performance Warning Notice**"):

19.3.2.1 specifying that it is the final warning notice;

19.3.2.2 stating that the breach specified or a substantially similar breach has been the subject of a Performance Warning Notice served within six (6) Months prior to the date of service of the Final Performance Warning Notice; and

19.3.2.3 stating that if such breach continues or recurs one or more times within three (3) Months after the date of service of the Final Performance Warning Notice, the same shall constitute a PBO Default with the result that this Agreement may be terminated with immediate effect.

19.3.3 A Performance Warning Notice may not be served in respect of any breach or a substantially similar breach in respect of which a previous Performance Warning Notice has already been served until three (3) Months has elapsed since the date of service of the previous Performance Warning Notice or related Final Performance Warning Notice.

19.4 **Duty to Notify**

As soon as reasonably practicable after becoming aware of the same, the Parent Body Organisation shall notify the Authority of the occurrence of any event which may give the Authority the right to terminate this Agreement under Clause 19.2 (*PBO Default*) including all significant information about the event.

19.5 **Termination or Remedy for PBO Default**

19.5.1 Authority Termination Notice

19.5.1.1 If a material breach of the Contractor's or the Parent Body Organisation's obligations under this Agreement has occurred the Authority may serve a termination notice (the "**Authority's Termination Notice**") on the Parent Body Organisation.

19.5.1.2 The Authority's Termination Notice shall specify the type and nature of the material breach that has occurred, giving reasonable details.

19.5.2 Irremediable Breach

If there has been a material breach of this Agreement by the Parent Body Organisation or the Contractor and the Authority (acting reasonably) decides that such breach is incapable of remedy, the Authority shall specify this in the Authority's Termination Notice and this Agreement shall then terminate on the date falling thirty (30) Working Days after the date of receipt by the Parent Body Organisation of the Authority's Termination Notice.

19.5.3 Remediable Breach

19.5.3.1 If there has been a material breach of this Agreement by the Parent Body Organisation or the Contractor and the Authority (acting reasonably) decides that such breach is capable of remedy, the Authority's Termination Notice shall require the Parent Body Organisation at the Parent Body Organisation's option either:

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

19.5.3.1.2 to propose within thirty (30) Calendar Days of the date of the Authority's Termination Notice a programme to remedy the breach (the "**Remediation Programme**") such programme to be agreed in accordance with Clause 19.6 (*Remediation Programme*).

19.5.3.1.3 If:

19.5.3.1.3.1 the breach is not remedied within the period specified in the Authority's Termination Notice: or

19.5.3.1.3.2 the Parent Body Organisation fails to achieve any element of the Remediation Programme (including any milestones not being met by specified dates) or fails to remedy

the breach within the date specified in the Remediation Programme, or the Remediation Programme is rejected by the Authority as not being reasonable pursuant to Clause 19.6.2 (*Remediation Programme*) and the Dispute Resolution Procedure does not find against that rejection

then the Authority may serve an Authority Termination Notice terminating this Agreement on not less than five (5) Working Days' prior written notice and otherwise on such period of notice not exceeding twelve (12) Months as it reasonably determines to be appropriate.

19.6 Remediation Programme

- 19.6.1 The Remediation Programme shall specify in detail how the Parent Body Organisation proposes to remedy its or the Contractor's breach of this Agreement (as applicable), the steps required to remedy the breach (including milestones to be met by specific dates), the anticipated costs associated with the remediation and the latest date by which the Parent Body Organisation anticipates that the breach will be remedied.
- 19.6.2 Where the Parent Body Organisation proposes a Remediation Programme in accordance with Clause 19.5.3.1.2 (*Remediable Breach*), the Authority shall within thirty (30) Calendar Days from the date of receipt of the proposed Remediation Programme notify the Parent Body Organisation whether the Authority accepts the proposed Remediation Programme (such acceptance not to be unreasonably withheld or delayed).
- 19.6.3 Where the Authority notifies the Parent Body Organisation that it does not accept the Remediation Programme, the Authority and the Parent Body Organisation shall endeavour within the following thirty (30) Calendar Days to agree any necessary amendments to the Remediation Programme. In the absence of agreement within such thirty (30) Calendar Day period, the question of whether or not the Authority's withholding of acceptance is reasonable may be referred by either Party to be resolved in accordance with the Dispute Resolution Procedure.

19.7 Other PBO Defaults

Where a PBO Default:

19.7.1 of the type described at Clauses 19.2.2 (*Insolvency*), 19.2.4 (*Change In Control*), 19.2.5 (*Share Transfer*), 19.2.7 (*Parent Company Guarantee*), 19.2.8 (*Alternative Credit Support*) 19.2.9 (*Liability Caps*) or 19.2.10 (*Claim under Nuclear Indemnity as a Result of Fraud or Wilful Misconduct*) has occurred, the Authority shall be entitled to terminate this Agreement immediately by written notice to the Parent Body Organisation; or

19.7.2 of the type described at Clause 19.2.3 (*SLC Agreement*) has occurred, this Agreement shall terminate at the same time as the SLC Agreement.

19.7A PBO Right to Require Termination

19.7A.1 Where a PBO Default of the type described at Clause 19.2.9 (*Liability Caps*) has occurred, and provided that the aggregate of any Disallowable Costs taken into account for the purposes of that Clause does not include Class B Disallowable Costs, the Parent Body Organisation shall be entitled to require the Authority to terminate this Agreement by giving written notice to the Authority (a "**PBO Termination Notice**").

19.7A.2 Within thirty (30) Calendar Days after receipt of a valid PBO Termination Notice the Authority shall notify the Parent Body Organisation in writing of the date on which this Agreement will terminate and this Agreement shall terminate on such date, provided that such date shall not be more than (30) Calendar Days after the date of service of the PBO Termination Notice.

19.7A.3 Where a valid PBO Termination Notice has been issued the Authority shall not terminate this Agreement for PBO Default pursuant to any provision of this Clause 19 (*Termination*) other than this Clause 19.7A (*PBO Right to Require Termination*).

19.8 Termination for Convenience

19.8.1 The Authority shall be entitled to terminate this Agreement at any time and for any reason on giving not less than thirty (30) Working Days' notice to the Parent Body Organisation ("**Termination for Convenience**").

19.8.2 Where the Authority gives notice of termination to the Contractor pursuant to Clause 33.1.4 (*Termination by the Authority*) of the SLC Agreement, the Contractor shall serve a copy of such notice on the Parent Body Organisation

and the Authority's notice shall be deemed to be notice of Termination for Convenience pursuant to Clause 19.8.1 (*Termination for Convenience*) above.

19.9 [Not used]

19.10 **Authority Default**

The following events shall give rise to a Parent Body Organisation right to terminate for Authority Default:

19.10.1 The Authority:

- 19.10.1.1 not funding or reimbursing any undisputed Allowable Costs in accordance with the provisions of the SLC Agreement;
- 19.10.1.2 failing to make any undisputed payment of Fee to the Contractor in accordance with the provisions of the SLC Agreement;
- 19.10.1.3 failing to pay any undisputed sum under any indemnity provision contained in this Agreement or the SLC Agreement; or
- 19.10.1.4 failing to take out and maintain an Authority Insurance in accordance with the SLC Agreement where, as a result of such failure, the Contractor has failed to comply with Legislation requiring the maintenance of such insurance,

provided always that in each of the cases specified in 19.10.1.1, 19.10.1.2 and 19.10.1.3 above the Authority has failed to pay the Contractor any amount of money exceeding one million pounds sterling (£1,000,000) (Indexed) that is due and payable by the Authority under this Agreement or the SLC Agreement within thirty (30) Calendar Days of service of a formal written demand by the Contractor, where the amount fell due and payable two (2) (or more) months prior to the date of service of the written demand.

19.11 **Termination or Remedy for Authority Default**

19.11.1 If an Authority Default has occurred and the Parent Body Organisation wishes to terminate this Agreement, the Parent Body Organisation shall be entitled to serve a termination notice (the "**PBO's Termination Notice**") on the Authority within thirty (30) Calendar Days of becoming aware of the Authority Default.

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

19.11.3 This Agreement will terminate on the day falling thirty (30) Working Days after the date on which the Authority received the PBO's Termination Notice, unless

the Authority rectifies the Authority Default within twenty one (21) Calendar Days of receipt of the PBO's Termination Notice.

19.11.4 Where the Parent Body Organisation has terminated this Agreement for Authority Default, the Authority shall provide reasonable assistance to the Contractor and/or the Parent Body Organisation in its discussions with ONR regarding Licence Condition 36 and its discussions with the EA, SEPA and the equivalent Welsh authorising body as appropriate regarding any applicable RSA 93 Authorisation Schedule 1 Condition 6 with a view to enabling the Contractor to replace the Nominated Staff as soon as is reasonably practicable.

19.12 Termination for Long Term Force Majeure

If the performance by the Authority, the Contractor or the Parent Body Organisation of substantially all of its obligations under this Agreement is materially prevented, hindered or delayed by reason of a Force Majeure Event for a period of more than sixty (60) consecutive Working Days, any non-affected Party other than the Contractor may terminate this Agreement on not less than thirty (30) Working Days' prior written notice to the other Parties on or at any time after the expiry of such notice.

19.13 Payments on Termination

19.13.1 In the event of:

19.13.1.1 [Not used]

19.13.1.2 Termination for Convenience pursuant to Clause 19.8 (Termination for Convenience) or termination of the SLC Agreement pursuant to Clause 33.1.4 (*Termination by the Authority*) of the SLC Agreement, the Authority shall pay to the Contractor and/or the Parent Body Organisation (as applicable) the amounts specified in Part B (*Termination for Convenience*) of Schedule 2 (*Payments on Termination*);

19.13.1.3 [Not used]

19.13.1.4 termination for Authority Default pursuant to Clause 19.10 (*Authority Default*), the Authority shall pay to the Contractor and/or the Parent Body Organisation (as applicable) the amounts specified in Part D (*Termination for Authority Default*) of Schedule 2 (*Payments on Termination*); or

19.13.1.5 termination following a Force Majeure Event pursuant to Clause 19.12 (*Termination for Long Term Force Majeure*), the Authority shall pay to the Contractor and/or the Parent Body Organisation (as applicable) the amounts specified in Part E (*Termination for Long Term Force Majeure*) of Schedule 2 (*Payments on Termination*)

on the later of the relevant termination event occurring and the date thirty (30) Calendar Days after the receipt by the Authority of a duly issued invoice in respect of the relevant payment.

19.13.2 Any payments made by the Authority pursuant to Clause 19.13.1 (*Payments on Termination*) above and Schedule 2 (*Payments on Termination*) shall be in full satisfaction of any claim which can be made against the Authority by the Parent Body Organisation or the Contractor in relation to termination of this Agreement or the SLC Agreement and such payments shall be the sole remedy of the Parent Body Organisation and the Contractor against the Authority in respect of termination of this Agreement or the SLC Agreement.

19.13.3 In the event of termination for PBO Default pursuant to Clause 19.2 (*PBO Default*), the Parent Body Organisation shall pay to the Authority the Re-Appointment Costs, such amount being agreed by the Parties to be a genuine pre-estimate of the losses incurred by the Authority in identifying and appointing a new owner of the shares in the Contractor, whether through a competition for the appointment of a replacement parent body organisation or otherwise. Such payment shall be in full satisfaction of any claim which can be made by the Authority against the Parent Body Organisation for losses likely to be incurred by the Authority in identifying and appointing a new owner of the shares in the Contractor and the cost to the Authority of the continued provision of the services that would otherwise have been provided to the Authority under this Agreement and the SLC Agreement, but shall be without prejudice to the Defective Performance Obligation and any other right or remedy of the Authority under this Agreement or the SLC Agreement for any other matter.

19.14 **Accrued Liabilities**

Termination of this Agreement pursuant to this Clause 19 (*Termination*) shall be without prejudice to the Parties' liabilities which accrued prior to the date of termination (including for the avoidance of doubt any Allowable Costs or Fee earned by the Contractor properly owed by the Authority to the Contractor).

19.15 Termination of SLC Agreement

Unless the Parties agree otherwise and subject to any prior termination or expiry of the Term or this Agreement, if for any reason the SLC Agreement is terminated then this Agreement will terminate automatically with effect from the time of termination of the SLC Agreement and where the SLC Agreement is terminated:

19.15.1 pursuant to Clause 33.1.1 (*Termination by the Authority*) or Clause 33.1.2 (*Termination by the Authority*) of the SLC Agreement, Clause 19.13.3 (*Payments on Termination*) shall apply;

19.15.2 pursuant to Clause 33.1.3 (*Termination by the Authority*) or Clause 33.2.2 (*Termination by the Contractor*) or Clause 33.2.3 (*Termination by the Contractor*) of the SLC Agreement, Clause 19.13.1.5 (*Payments on Termination*) shall apply;

19.15.3 pursuant to Clause 33.1.4 (*Termination by the Authority*) of the SLC Agreement, Clause 19.13.1.2 (*Payments on Termination*) shall apply; or

19.15.4 pursuant to Clause 33.2.1 (*Termination by the Contractor*) of the SLC Agreement, Clause 19.13.1.4 (*Payments on Termination*) shall apply.

19.16 Return of Working Capital

19.16.1 Subject to Clause 19.16.3 (*Return of Working Capital*), upon the termination or expiry of this Agreement, the Authority shall procure that the Contractor pays:

19.16.1.1 such amounts owed by the Contractor to the Parent Body Organisation pursuant to and in accordance with any Approved Working Capital Facility; plus

19.16.1.2 any interest accruing thereon (at the interest rates applicable to the relevant Approved Working Capital Facility)

to the Parent Body Organisation.

19.16.2 Subject to Clause 19.16.3 (*Return of Working Capital*), if in accordance with this Agreement, the Parent Body Organisation has guaranteed any Approved Working Capital Facility provided by any third party, upon the termination or expiry of the Term the Authority will procure:

19.16.2.1 the release of such guarantee by the third party provider (whether by means of offering substitute guarantees or otherwise); or

19.16.2.2 that the Contractor pays any amount owed to such third party pursuant to the Approved Working Capital Facility and that such facility is cancelled.

19.16.3 Nothing in this Clause 19.16 (*Return of Working Capital*) shall apply in relation to any amount drawn down from any Approved Working Capital Facility that is attributable to expenditure other than on Allowable Costs.

20 TRANSITION OUT

20.1 The Parent Body Organisation acknowledges that the Authority may wish, before the expiry of the Term, to invite persons to tender for the right to own the Shares after termination of this Agreement and to negotiate:

20.1.1 a transition agreement dealing with the transition in of the Incoming Parent between the Authority and the Incoming Parent;

20.1.2 a replacement parent body agreement between the Authority and the Incoming Parent to replace this Agreement after the termination of this Agreement; and/or

20.1.3 alternative contractual arrangements to replace the SLC Agreement after the termination of this Agreement;

20.1.4 to acquire the Shares in the Contractor itself after termination of this Agreement; or

20.1.5 any such other arrangement as the Authority may reasonably require in respect of a Site after termination of this Agreement

(the "**Competition**").

20.2 The Parent Body Organisation acknowledges the importance to the Authority of:

20.2.1 the Competition being conducted in accordance with EU Procurement Rules; and

20.2.2 the perception by all interested parties that the Competition is fair and unbiased.

Transition In of an Incoming Parent

20.3 Not later than a period of six (6) Months less one day before the Expiry Date or immediately following service of any notice of termination under this Agreement the Authority shall by written notice to the Parent Body Organisation propose a Transition In Plan setting out the Authority's proposals as to the scope of any assistance to be

provided by the Parent Body Organisation in connection with the transition in of an Incoming Parent. Such proposals may include establishment of a transition board to oversee and direct transition. The Parties shall discuss and agree the terms of a Transition In Plan, and:

20.3.1 the Parties shall comply with the provisions of the agreed Transition In Plan and any reasonable instructions of a transition board established pursuant to such Transition In Plan; and

20.3.2 the Authority shall pay the Parent Body Organisation's reasonable incremental costs incurred under the Transition In Plan (such costs to include a reasonable payment for time committed by personnel pursuant to the Transition In Plan (such payment to be based on payroll costs)) referable to assistance to the Authority in connection with the transition in of an Incoming Parent.

20.4 During the final twelve (12) months before the date on which this Agreement is (pursuant to Clause 2 (*Commencement and Duration*)) due to expire, or during any notice period applying to an earlier termination of this Agreement, the Parent Body Organisation 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 a Site (as the case may be), such transfer of responsibility or such other arrangements to take effect on expiry or earlier termination of this Agreement.

20.5 For the purposes of this Clause 20 (*Transition Out*) the meaning of the term "co-operate" shall include:

20.5.1 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; and

20.5.2 providing to the Authority and/or to the Incoming Parent all and any information which is reasonably required for the efficient transfer of responsibility for performance of the Parent Body Organisation's obligations, but excluding any information which is commercially sensitive to the Contractor and/or the Parent Body Organisation (and for the purpose of this Clause 20.5.2 (*Transition In of an Incoming Parent*) "commercially sensitive" shall mean information which would, if disclosed to a competitor of the Contractor and/or the Parent Body Organisation, give that competitor a competitive advantage over the Contractor and/or the Parent Body Organisation and thereby prejudice the business of the Contractor and/or the Parent Body Organisation, but shall not include any information referred to in Clause 31 (*Employees*) of the SLC Agreement).

20.6 The Parent Body Organisation shall use all reasonable endeavours to, pursuant to the agreed Transition In Plan and subject to the Authority paying the Parent Body Organisation's reasonable incremental costs under Clause 20.3.2 (*Transition In of an Incoming Parent*), 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 Parent Body Organisation shall take no action at any time during the term of this Agreement or thereafter which is calculated or intended, directly or indirectly, to:

20.6.1 prejudice, frustrate or make more difficult such transfer; and/or

20.6.2 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.

Participation in the Competition

20.7 If the Parent Body Organisation (or any consortium including any PBO Affiliates) wishes to participate in the Competition then, immediately on receipt of notice from the Authority that the Competition is about to commence the Contractor shall, and the Parent Body Organisation shall procure that the Contractor shall, provide the Authority with a list of the Nominated Staff who will participate in the Competition on behalf of the Parent Body Organisation.

20.8 The Parent Body Organisation may not allow any Nominated Staff to participate in the Competition on behalf of the Parent Body Organisation unless:

20.8.1 the Parent Body Organisation has complied with Clause 7 (*Provision of Staff to the Contractor*); and

20.8.2 the relevant member of Nominated Staff is included in the list provided to the Authority pursuant to Clause 20.7 (*Transition Out*), and

the Parent Body Organisation may not involve any of the Contractor's staff in the Competition other than the Nominated Staff on behalf of the Parent Body Organisation.

20.9 The Parent Body Organisation may from time to time require the Contractor to update the list of Nominated Staff participating in its bid in the Competition.

Conduct in respect of the Competition

20.10 During the Competition the Parent Body Organisation and the Contractor shall:

- 20.10.1 provide equality and access to information to all potential bidders and not treat the Parent Body Organisation (or any consortium including any PBO Affiliates) in a preferential way; and
 - 20.10.2 procure that all such Nominated Staff shall, so far as they are reasonably able, provide equality and access to information to all potential bidders and not treat the Parent Body Organisation (or any consortium including any PBO Affiliates) in a preferential way, and comply with Paragraph 3.9 (*Duties of the Seconded*) of Part 3 of the Secondment Agreement.
- 20.11 Save as where otherwise required by applicable Legislation and Regulatory Requirements, during the twelve (12) Months prior to the planned commencement date for any alternative contractual arrangements proposed by the Authority pursuant to Clause 20.1 (*Transition Out*), the Parent Body Organisation shall not, without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):
- 20.11.1 vary or purport or promise to vary or terminate a Secondment Agreement;
 - 20.11.2 vary or purport or promise to vary the terms and conditions of employment of the Nominated Staff to the extent which would adversely affect the performance of the persons working at any Site or would materially increase the cost to the Contractor or the Authority of the relevant secondment arrangements;
 - 20.11.3 subject to Clause 7 (*Provision of Staff to the Contractor*) above, make any changes to the identity of any Key Personnel or to any of the Nominated Staff.
- 20.12 **Final Dividend Reconciliation**
- 20.12.1 Following the termination or expiry of this Agreement, the provisions of Clauses 16.11.4 (*SLCA Contractor's Fee Account*) and 16.11.10 (*Payments to Parent*) of the SLC Agreement shall be applied to determine whether the Contractor has distributed to the Parent Body Organisation all of the profits available for distribution (as defined in Section 830 Companies Act 2006) of the Contractor earned by the Contractor during the period between the Commencement Date and the date on which this Agreement expires or terminates (inclusive) or otherwise comprising Fee or other sums that, in accordance with Clause 16.11.4 (*SLCA Contractor's Fee Account*) of the SLC Agreement are to be received or paid into the SLCA Contractor's Fee Account or interest on any sums standing to the credit of the SLCA Contractor's Fee Account. The outcome of this process shall be the **"Final Dividend Reconciliation"**.

- 20.12.2 To the extent that the Final Dividend Reconciliation shows that the Contractor has not distributed to the Parent Body Organisation all of such profits available for distribution, then the Authority will procure, or (if there is any Incoming Parent) procure that any Incoming Parent shall be required to procure, that the Contractor distributes any such undistributed profits to the Parent Body Organisation together with any interest accrued on the SLCA Contractor's Fee Account as a dividend declared in respect of the Magnox B Share and the RSRL B Share and payable to the Parent Body Organisation as holder of the Magnox B Share and the RSRL B Share. To the extent that the Final Dividend Reconciliation shows that the level of profits distributed to the Parent Body Organisation exceeds such profits available for distribution, the Parent Body Organisation shall be required to repay the excess to the Authority or the Contractor (as the Authority may direct). Payments under this Clause 20.12.2 (*Final Dividend Reconciliation*) shall be made within five (5) Working Days of the Final Dividend Reconciliation being agreed or determined.
- 20.12.3 Without prejudice to Clause 20.12.2 above, subject to such amounts being available for distribution by the Contractor the Authority will procure, or (if there is any Incoming Parent) procure that any Incoming Parent shall be required to procure, that within twenty (20) Working Days following receipt or payment of any sum into the SLCA Contractor's Fee Account, the Contractor declares a dividend in respect of the Magnox B Share and RSRL B Share payable to the Parent Body Organisation as holder of the Magnox B Share and RSRL B Share of an amount equal to such sum together with any interest standing to the credit of the SLCA Contractor's Fee Account.
- 20.12.4 If following the Final Dividend Reconciliation, further liabilities of the Contractor come to light which would have reduced the level of such profits available for distribution if they had been included within the Final Dividend Reconciliation, then the Parent Body Organisation will be required to pay the Authority or the Contractor (as the Authority may direct) the amount by which the profits available for distribution would have been reduced. This obligation shall continue, where it relates to Defective Performance, for a period of three (3) years from the end of the Term or for an unlimited period where the liability arises as a result of fraud or Wilful Default on the part of the Contractor or the Parent Body Organisation.
- 20.12.5 Any payment to the Authority will need to be on the basis that the tax effect of the payment does not put the Authority and/or the Contractor in any worse position than it would have been in if the excess dividends had never been paid.

20.12.6 Following termination or expiry of this Agreement the Authority shall procure that all sums that in accordance with the SLC Agreement are to be received or paid into the SLCA Contractor's Fee Account are so received or paid.

20.12.7 The Authority shall not act or omit to act, and shall procure that neither the Contractor (whether acting under a successor contract entered into with the Authority or otherwise) nor any Incoming Parent shall act or omit to act, in any manner that may frustrate or prejudice payment of any amount to the Parent Body Organisation in accordance with this Clause 20.12 or reduce the quantum of any such payment. Without limitation to the foregoing, the Authority shall ensure that there is no change to the articles of association or other constitutional documents of the Contractor that would have any such effect.

21 RETRANSFER OF SHARES IN CONTRACTOR UNDER ENERGY ACT

The Parent Body Organisation hereby undertakes that if directed pursuant to a nuclear transfer scheme made under Section 41 of the Energy Act (recovery of property from private ownership), the Parent Body Organisation will transfer the Magnox A Share and the RSRL A Share to the Authority (or the Authority's nominee or the transferee pursuant to the nuclear transfer scheme) at such time as directed by the Authority for a consideration of one pound sterling (£1) with Full Title Guarantee free from any claim, option, charge, lien, equity, encumbrance, rights of pre-emption or other Third Party rights (other than the rights of the Authority). In the event of any such transfer of the Magnox A Share and the RSRL A Share, this Agreement will terminate immediately following such transfer, and such termination shall be treated as a Termination for Convenience for the purposes of Clause 19.13 (*Payments on Termination*) and Schedule 2 (*Payments on Termination*).

21A TRANSFER OF MAGNOX B SHARE AND RSRL B SHARE TO PARENT BODY ORGANISATION

21A.1 Within forty (40) Working Days of the final Magnox B Share Dividend being paid by the Contractor to the Magnox B Shareholder and in any event prior to termination or expiry of this Agreement, the Authority shall procure the transfer of the Magnox B Share to the Parent Body Organisation for a consideration of one pound sterling (£1) with Full Title Guarantee free from any claim, option, charge, lien, equity, encumbrance, rights of pre-emption or other Third Party rights (other than such rights of the Authority as are expressly set out in this Agreement, if any).

21A.2 Within forty (40) Working Days of the final RSRL B Share Dividend being paid by the Contractor to the RSRL B Shareholder and in any event prior to termination or expiry of this Agreement, the Authority shall procure the transfer of the RSRL B Share to the

Parent Body Organisation for a consideration of one pound sterling (£1) with Full Title Guarantee free from any claim, option, charge, lien, equity, encumbrance, rights of pre-emption or other Third Party rights (other than such rights of the Authority as are expressly set out in this Agreement, if any).

22 RETRANSFER OF SHARES IN CONTRACTOR ON TERMINATION OR EXPIRY

- 22.1 On the expiry or termination of this Agreement for whatever reason pursuant to Clause 19 (*Termination*) the Parent Body Organisation shall transfer the Magnox A Share and the RSRL A Share to the Authority (or the Authority's nominee or any person nominated by the Authority) in accordance with this Clause 22 (*Retransfer of Shares in Contractor on Termination or Expiry*) for one pound sterling (£1).
- 22.2 Subject to Clause 22.4 (*Retransfer of Shares in Contractor on Termination or Expiry*), on or before the Date of Termination or the Expiry Date (as applicable) the Parent Body Organisation shall execute and deliver to the Authority a share transfer form in favour of the Authority (or its nominee) and deliver to the Authority the share certificate for the Magnox A Share and the RSRL A Share, or a letter fully indemnifying the Authority against the consequences of the Parent Body Organisation's failure to deliver such share certificate to the Authority, to be effective from the Date of Termination or the Expiry Date (as applicable).
- 22.3 On the Date of Termination or the Expiry Date (as applicable) the Parent Body Organisation and the Contractor shall procure that:
- 22.3.1 the Contractor holds a board meeting at which the transfer of the Magnox A Share and the RSRL A Share is approved and the Agreed Directors resign; and
- 22.3.2 the Contractor delivers to the Authority the statutory registers and minute books of the Contractor (written up to the Date of Termination or the Expiry Date (as applicable)), the common seal (if any), certificate of incorporation and any certificates of incorporation on change of name.
- 22.4 Before the Date of Termination or the Expiry Date (as applicable) the Authority may in its sole discretion require or agree that the Parent Body Organisation transfers the Magnox A Share and the RSRL A Share on a date immediately prior to the Date of Termination or the Expiry Date (as applicable).
- 22.5 Notwithstanding any other provision of this Agreement but subject to Clause 22.6 below, this Agreement does not require and the Authority undertakes that it shall not and it shall procure that any future Incoming Parent or other Magnox A Shareholder and RSRL A Shareholder shall not require transfer by the Parent Body Organisation of the Magnox B Share and the RSRL B Share, whether to the Magnox A Shareholder and

RSRL A Shareholder, the Authority (or its nominee) or otherwise, until such time as the Parent Body Organisation in its capacity as the Magnox B Shareholder and the RSRL B Shareholder following termination or expiry of this Agreement has received all dividends that are or may be due to be paid to it in accordance with this Agreement and/or the SLC Agreement. Furthermore, the Authority shall procure that until such time as the Parent Body Organisation as Magnox B Shareholder and RSRL B Shareholder has received all such dividends, the B Shareholder shall receive dividends out of the profits of the Contractor available for distribution in priority to any payment of dividends to the holders of any other class of share in the capital of the Contractor.

- 22.6 Immediately upon a written undertaking being given by the Authority to the Parent Body Organisation to pay the Parent Body Organisation sums equal to all amounts that in accordance with this Agreement have been or are to be received or paid into the SLCA Contractor's Fee Account together with any interest on sums standing to the credit of the SLCA Contractor's Fee Account (such sums to be paid to the Parent Body Organisation at the times at which such amounts would have been received or paid into the SLCA Contractor's Fee Account in accordance with this Agreement or immediately in the case of amounts already received or paid into the SLCA Contractor's Fee Account), the Parent Body Organisation shall transfer the Magnox B Share and the RSRL B Share to the Authority or its nominee for a consideration of one pound sterling (£1) with Full Title Guarantee free from any claim, option, charge, lien, equity, encumbrance, rights of pre-emption or other Third Party rights (other than such rights of the Authority as are expressly set out in this Agreement, if any).

Part 9: Disputes

23 DISPUTE RESOLUTION

23.1 Requirement to Refer Disputes

- 23.1.1 Save as otherwise expressly provided in this Agreement, any Dispute shall, if it cannot be resolved between the Parties by agreement, be resolved in accordance with the Dispute Resolution Procedure.
- 23.1.2 No Party shall commence any Legal Proceedings save in accordance with the Dispute Resolution Procedure.
- 23.1.3 Nothing in this Clause 23.1 (*Requirement to Refer Disputes*) shall prevent or restrict the right of any Party to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court.

Part 10: Contract Administration and Miscellaneous Provisions

24 GENERAL

24.1 Parent Company Guarantees and Alternative Credit Support

24.1.1 Subject to Clause 24.1.2 and 24.1.3 (*Parent Company Guarantees and Alternative Credit Support*), the Parent Body Organisation shall procure that a guarantee in the agreed form of that attached at Schedule 4 (*Parent Company Guarantee*), is provided with effect from the Commencement Date by each Parent Company Guarantor.

24.1.2 The Parent Body Organisation may:

24.1.2.1 with effect from the Commencement Date: or

24.1.2.2 with effect from such later date as may be notified to the Authority in writing with no less than twenty (20) Working Days' notice,

elect to provide to the Authority Alternative Credit Support instead of the Parent Company Guarantees.

24.1.3 If an Alternative Credit Support Trigger Event occurs, the Parent Body Organisation shall notify the Authority of such event as soon as practicable and shall in any event within twenty (20) Working Days of the Alternative Credit Support Trigger Event procure the provision of Alternative Credit Support.

24.1.4 The Authority shall, in the absence of provision of Alternative Credit Support, upon receipt of the Annual Financial Test Certification from each Parent Company Guarantor, calculate the aggregate net worth of the Parent Company Guarantors. The aggregate net worth shall be the sum of the sterling figures in line 7 of each Annual Financial Test Certification from each Parent Company Guarantor. The aggregate net worth must be equal to or greater than 10 x the amount showing in line 1b of each Annual Financial Test Certification (the "**Aggregate Annual Financial Net Worth Test**").

24.1.5 If the Parent Body Organisation has provided Alternative Credit Support pursuant to Clause 24.1.2 or 24.1.3 (*Parent Company Guarantees and Alternative Credit Support*) above then:

24.1.5.1 the Authority shall within five (5) Working Days of the provision of such Alternative Credit Support, release the Parent Company Guarantors from their obligations under the Parent Company Guarantees save in respect of any demands previously notified thereunder; and

- 24.1.5.2 the Parent Body Organisation shall, as soon as practicable after the occurrence of any Material Adverse Change, notify the Authority of such event in writing together with a written explanation of such Material Adverse Change.
- 24.1.6 If any provider of Alternative Credit Support ceases to have a rating for its long-term unsecured and non credit-enhanced debt obligations of at least BBB by Standard & Poor's Rating Services or Fitch Ratings Limited or Baa2 by Moody's Investors Service Limited (an "**Investment Grade Rating**"):
- 24.1.6.1 the Parent Body Organisation shall notify the Authority as soon as practicable; and
- 24.1.6.2 the Parent Body Organisation shall either:
- 24.1.6.2.1 procure replacement Alternative Credit Support within fifteen (15) Working Days of becoming aware of the loss of such provider's Investment Grade Rating; or
- 24.1.6.2.2 subject to providing the Authority with such documentation specified in Clauses 24.1.8.1 to 24.1.8.4 (inclusive), provide to the Authority Parent Company Guarantees within fifteen (15) Working Days of becoming aware of the loss of such provider's Investment Grade Rating.
- 24.1.7 Subject to Clause 5.6 (*Deferral of Parent Body Organisation's Rights*) and Clause 24.1.7A (*General*), and without prejudice to the Authority's right to claim under any Alternative Credit Support, the Authority may enforce and draw the full amount of any Alternative Credit Support by issue of a written demand to the issuer of the Alternative Credit Support and without further notice to the Parent Body Organisation:
- 24.1.7.1 if the Parent Body Organisation fails to replace (and to confirm to the Authority that it has replaced) any Alternative Credit Support (either by replacement Alternative Credit Support or Parent Company Guarantees in accordance with Clause 24.1.8):
- 24.1.7.1.1 at least twenty (20) Working Days prior to the expiry of such Alternative Credit Support if obliged to do so pursuant to the terms of this Agreement;

24.1.7.1.2 in accordance with the provisions of Clause 24.1.6;
or

24.1.7.1.3 within ten (10) Working Days (or any such other period has been agreed in accordance with Clause 19.2.8.3) of the withdrawal for any reason of Alternative Credit Support.

24.1.7.2 [Not used]

24.1.7A Subject to Clause 5.6 (*Deferral of Parent Body Organisation's Rights*), the Authority shall be entitled to use any amounts of the Alternative Credit Support drawn pursuant to Clause 24.1.7 above to meet amounts due and payable by the Parent Body Organisation under this Agreement and which the Parent Body Organisation has failed to pay. To the extent that such amounts are not so used (the "**Remaining Credit Support**"), the Authority shall be entitled to retain the Remaining Credit Support until the earlier of:

24.1.7A.1 such time as the Parent Body Organisation has replaced (and confirmed to the Authority that it has replaced) the Alternative Credit Support (either by replacement Alternative Credit Support or Parent Company Guarantees in accordance with Clause 24.1.8);
and

24.1.7A.2 the PBO Guarantee Expiry Date.

On the PBO Guarantee Expiry Date, or as soon as reasonably practicable after receipt of confirmation pursuant to 24.1.7A (as applicable), the Authority shall procure the return of the Remaining Credit Support (less any costs reasonably incurred by the Authority in enforcing the Alternative Credit Support or procuring the return of the Remaining Credit Support) to the Parent Body Organisation. If the Authority does not procure the return of such amount within sixty (60) Calendar Days after receipt of confirmation pursuant to 24.1.7A, the Authority shall pay to the Parent Body Organisation interest on such amount, from the sixtieth (60th) Calendar Day until the date of actual return of such amount, at the rate of three per cent (3%) above the Bank of England bank rate.

24.1.8 The Parent Body Organisation may at any time whilst Alternative Credit Support is in place or where Alternative Credit Support has been withdrawn for any reason, elect to provide to the Authority Parent Company Guarantees instead of Alternative Credit Support, provided that the Parent Body Organisation has provided to the Authority the following documentation:

- 24.1.8.1 an executed guarantee in the agreed form of that attached at Schedule 4 (*Parent Company Guarantee*) from each Parent Company Guarantor;
 - 24.1.8.2 a CFO Compliance Certificate from each Parent Company Guarantor in relation to the most recent set of audited financial statements;
 - 24.1.8.3 Auditor's Confirmation Letters relating to each CFO Compliance Certificate;
 - 24.1.8.4 an Annual Financial Test Certification in relation to the most recent set of audited financial statements; and
 - 24.1.8.5 such other information relating to the creditworthiness of each proposed Parent Company Guarantor as the Authority may reasonably require, having regard to the time elapsed since its most recent set of audited financial statements was published.
- 24.1.9 The Parent Body Organisation may, where it has already provided Alternative Credit Support pursuant to Clause 24.1.2 or 24.1.3, change the provider of its Alternative Credit Support by giving the Authority at least fifteen (15) Working Days' prior notice.
- 24.1.10 The Authority shall within five (5) Working Days of any written request, where it has received all documentation and evidence referred to in Clause 24.1.8 in relation to the provision of Parent Company Guarantees, in form and substance satisfactory to it or where replacement Alternative Credit Support has been issued pursuant to Clause 24.1.6.2 or Clause 24.1.9, return any Letter of Credit provided by way of Alternative Credit Support which is no longer being relied upon by the Authority, in accordance with the instructions of the Parent Body Organisation.

24.2 **Assignment**

- 24.2.1 The Parent Body Organisation 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.
- 24.2.2 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:

24.2.2.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975; or

24.2.2.2 any other public body whose obligations under this Agreement are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Parent Body Organisation) 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.

24.3 Entire Agreement

Each of the Parties confirms that this Agreement, together with the SLC Agreement, the Transition Agreement, the Nuclear Indemnity, the Records Agreement, the Overarching Cost Management Agreement, the Property Leases and the documents referred to in them, represents the entire understanding, and constitutes the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto and, without prejudice to the generality of the foregoing, excludes (to the extent permitted by Legislation) any warranty, condition or other undertaking implied by Legislation or by custom.

24.4 Waiver

24.4.1 A failure or delay by any Party at any time to enforce any provision of this Agreement or to require performance by any 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.

24.4.2 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 contract, 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 contract 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) of this Agreement) leading to such fault, negligence, tort, strict liability, breach of contract, or otherwise was fraudulent and/or constitutes Wilful Default.

24.4.3 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 of this Agreement) other than the Contractor or the Parent Body Organisation 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:

24.4.3.1 is entitled to seek recovery of such Losses from the Contractor or Parent Body Organisation; or

24.4.3.2 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

24.4.3.3 would have been so entitled but for any insolvency or lack of capacity of or any other similar matter in respect of the Contractor or Parent Body Organisation

provided that this restriction shall not operate to limit or exclude any liability that the Contractor or the Parent Body Organisation may have for the acts or omissions of any such individuals.

24.5 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 and Parent Body Organisation shall include the Nominated Staff). 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', agents' and contractors' liability when taken together in aggregate (and not per person).

24.6 Severability

24.6.1 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.

24.6.2 If the circumstances referred to in Clause 24.6.1 (*Severability*) 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.

24.7 Further assurance

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

24.8 Set off

24.8.1 The Parent Body Organisation 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 Parent Body Organisation or the Contractor under this Agreement or the SLC Agreement which has fallen due and payable against any amount due to the Parent Body Organisation under this Agreement.

24.8.2 If the payment or deduction of any amount referred to in Clause 24.8.1 (*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.

24.9 Variation

24.9.1 Any Proposed PBA Change and PBA Change shall be made in accordance with the provisions of Schedule 6 (*PBA Change Control Procedure*).

24.9.2 Subject to the PBA Change Control Procedure (and except where expressly provided otherwise in this Agreement), this Agreement, the Nuclear Indemnity, the Parent Company Guarantees and/or the Alternative Credit Support may only be varied with the written agreement of the parties to the relevant agreement.

24.10 Costs

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

24.11 No double recovery

No Party shall be entitled to recover or otherwise obtain compensation or restitution under this Agreement, the SLC Agreement, the Inter SLC Service Contracts or the Property Leases to the extent that it has received compensation or obtained restitution from any other source or as a result of the pursuance of other legal remedies in respect of the same loss or damage.

25 REPRESENTATIVES AND DELEGATION OF AUTHORITY TO ACT

25.1 Each of the Authority, the Parent Body Organisation and the Contractor shall appoint the person whose name, address and telephone number is set out in Clause 26 (*Notices*) as their respective Representatives in connection with this Agreement.

25.2 Each of the Authority's Representative, the Parent Body Organisation'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 Authority, the Parent Body Organisation or the Contractor and the other Party's Representative shall not be required to determine whether authority has in fact been given.

25.3 Each Party shall procure that its Representative acts in accordance with the relevant Representative's powers and functions in the Agreement.

Change in Representative

25.4 Each Party may propose a change in the identity of its Representative by giving the other Parties written notification of such change and the Representative's details in Clause 26.3 (*Notices*) shall be updated accordingly.

25.5 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 Parties' Representatives' approval, delegate his functions to another suitable and appropriate person (the "**Delegated Representative**") by giving the other Parties' 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

- 25.6 Subject to Clause 26 (*Notices*), any Notice, information, instructions or public communication given to:
- 25.6.1 the Parent Body Organisation's Representative shall be given in writing and shall be deemed to have been given to the Parent Body Organisation; and
 - 25.6.2 the Magnox Contractor's Representative shall be given in writing and shall be deemed to have been given to the Contractor; and
 - 25.6.3 the RSRL Contractor's Representative shall be given in writing and shall be deemed to have been given to the Contractor; and
 - 25.6.4 the Authority's Representative shall be given in writing and shall be deemed to have been given to the Authority.
- 25.7 The Authority shall not be responsible for and the Parent Body Organisation 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 Parent Body Organisation or 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.

26 NOTICES

- 26.1 A notice, approval, consent, or other communication ("**Notice**") in connection with this Agreement and the documents referred to in it must be in written form in the English language. Notices must be delivered either:
- 26.1.1 by electronic mail recorded and referenced in accordance with the Correspondence Process; or
 - 26.1.2 by hand or by first class prepaid post (or airmail if posted to or from a place outside the United Kingdom), and copied by electronic mail recorded and referenced in accordance with the Correspondence Process,

marked clearly with the words "Parent Body Agreement Communication", to the relevant Party's Representative. Notices must be delivered to the address specified in Clause

26.3 (*Notices*) below, and in the case of electronic mail, to the address for the time being agreed for that purpose in accordance with the Correspondence Process.

26.2 All Notices must be marked for the attention of the relevant Party's Representative as contained in Clause 26.3 (*Notices*) below.

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

Authority's Representative

Addressee: Chief Financial Officer

Address: Nuclear Decommissioning Authority, Herdus House, Westlakes Science & Technology Park, Moor Row, Cumbria, CA24 3HU

Telephone: s.40

Email: s.40 (for correspondence from the Magnox Contractor); s.40 s.40 (for correspondence from the RSRL Contractor); s.40 and s.40 (for correspondence from the Parent Body Organisation)

With a copy to:

Addressee: NDA Lead Contract Manager (Magnox and RSRL)

Address: Nuclear Decommissioning Authority, Hinton House, Birchwood, Warrington, WA3 6GR

Telephone: s.40

Email: s.40

Parent Body Organisation's Representative

Addressee: Cavendish Fluor Partnership Limited

Address: Babcock Corporate Secretaries Limited, 33 Wigmore Street, London, W1U 1QX

Telephone:

Email: s.40

Magnox Contractor's Representative

Addressee: Company Secretary

Address: Magnox Limited, Berkeley Centre, Berkeley, Gloucestershire, GL13 9PB

Telephone:

Email:

s.40

RSRL Contractor's Representative

Addressee: Company Secretary

Address: Research Sites Restoration Limited, Building 392.10/Room 1.05, Harwell Oxford, Didcot, Oxfordshire, OX11 0DF

Telephone:

Email:

s.40

- 26.4 Any change to the e-mail address, postal address or telephone number of the Party Representative must be notified by the relevant Party to the other Parties as soon as reasonably practicable by Notice given in accordance with Clause 25 (*Representatives and Delegation of Authority to Act*). The Parties' respective Representatives' addresses and telephone numbers must be within the United Kingdom.
- 26.5 The Parties shall in relation to all Notices:
- 26.5.1 adhere to the use of unique identifiers for each item of correspondence: and
- 26.5.2 maintain records of all Notices (including the author, date, subject, reference and whether a response is required),
- in each case as mandated by the Correspondence Process.
- 26.6 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 26.7 (*Notices*) below.
- 26.7 Subject to Clause 26.8 (*Notices*), a Notice is deemed to be received:
- 26.7.1 on the second Calendar Day after the electronic mail recorded and referenced in accordance with the Correspondence Process was sent; or
- 26.7.2 if there was no Correspondence Process agreed by the Parties and in place at the time the Notice was sent:
- 26.7.2.1 where the Notice was delivered by hand, upon delivery at the address of the addressee;

26.7.2.2 where the Notice was delivered by posted letter, on the third (3rd) Calendar Day after posting or, if posted to or from a place outside the United Kingdom, on the seventh (7th) Calendar Day after posting; and

26.7.2.3 [Not used]

26.7.2.4 where the Notice was sent by electronic mail, on the second (2nd) Calendar Day after such electronic mail was sent.

The place of receipt of electronic mail shall be deemed to be the postal address of the addressee given in, or amended in accordance with, Clause 26.3 (*Notices*) above.

26.8 A Notice received or deemed to be received in accordance with Clause 26.7 (*Notices*) 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.

26.9 The Parent Body Organisation and the Contractor shall ensure that all Notices sent from the Parent Body Organisation or 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 Parent Body Organisation and the Contractor from time to time.

27 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.

28 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

28.1 Save as expressly provided in this Clause 28, no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Agreement. Clause 24.4.3 (*Waiver*) shall be enforceable by any person referred to in that clause.

28.2 Notwithstanding that any term of this Agreement may be or become enforceable by a person who is not a party to it, the terms of this Agreement or any of them may be varied, amended or modified or this Agreement may be suspended, cancelled or terminated by agreement in writing between the Parties, or this Agreement may be rescinded (in each case), without the consent of any such third party.

29 GOVERNING LAW AND JURISDICTION

- 29.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 29.2 Subject to the Dispute Resolution Procedure, the Parties irrevocably agree that the Courts of England and Wales shall have exclusive jurisdiction (save in relation to enforcement matters) to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

30 CONTINUING OBLIGATIONS

30.1.1 Save as otherwise expressly provided in this Agreement:

30.1.1.1 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

30.1.1.2 termination of this Agreement shall not affect the continuing rights, remedies or obligations of either Party under:

30.1.1.2.1 Clause 1 (*Interpretation*);

30.1.1.2.2 Clause 4 (*Governance*);

30.1.1.2.3 Clause 5 (*Parent Body Organisation Guarantees and Indemnities*);

30.1.1.2.4 Clause 6 (*Insurance*);

30.1.1.2.5 Clause 7 (*Provision of Staff to the Contractor*);

30.1.1.2.6 Clause 10 (*Default Interest*);

30.1.1.2.7 Clause 12 (*Claims Handling*);

30.1.1.2.8 Clause 13 (*Confidentiality*);

30.1.1.2.9 Clause 14 (*Freedom of Information*);

30.1.1.2.10 Clause 15 (*Information Technology*);

30.1.1.2.11 Clause 16 (*Intellectual Property*);

- 30.1.1.2.12 Clause 17 (*TUPE*);
- 30.1.1.2.13 Clauses 19.13 (*Payments on Termination*), 19.14 (*Accrued Liabilities*) and 19.16 (*Return of Working Capital*);
- 30.1.1.2.14 Clause 20 (*Transition Out*);
- 30.1.1.2.15 Clause 21 (*Retransfer of Shares in Contractor under Energy Act*);
- 30.1.1.2.16 Clause 22 (*Retransfer of Shares in Contractor on Termination or Expiry*);
- 30.1.1.2.17 Clause 23 (*Dispute Resolution*);
- 30.1.1.2.18 Clause 24.3 (*Entire Agreement*);
- 30.1.1.2.19 Clause 24.4 (*Waiver*);
- 30.1.1.2.20 Clause 24.6 (*Severability*);
- 30.1.1.2.21 Clause 24.11 (*No Double Recovery*);
- 30.1.1.2.22 Clause 25 (*Representatives and Delegation of Authority to Act*);
- 30.1.1.2.23 Clause 26 (*Notices*);
- 30.1.1.2.24 Clause 28 (*Contracts (Rights of Third Parties) Act 1999*);
- 30.1.1.2.25 Clause 29 (*Governing Law and Jurisdiction*);
- 30.1.1.2.26 this Clause 30 (*Continuing Obligations*);
- 30.1.1.2.27 Clause 31 (*No Agency*);
- 30.1.1.2.28 Clause 32 (*Capacity of the Authority*); or
- 30.1.1.3 any Schedule to this Agreement that is necessary to give full effect to any of the above; or
- 30.1.1.4 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.

31 NO AGENCY

- 31.1 Nothing in this Agreement shall be construed as creating a partnership or as a contract of employment between the Authority and the Parent Body Organisation.
- 31.2 Save as expressly provided otherwise in this Agreement, the Parent Body Organisation shall not be, or be deemed to be, an agent of the Authority and the Parent Body Organisation shall not hold itself out as having authority or power to bind the Authority in any way.
- 31.3 No Party shall place or cause to be placed any orders with suppliers or otherwise incur liabilities in the name of any of the other Parties or any representative of the other Parties.

32 CAPACITY OF THE AUTHORITY

Save as otherwise expressly provided, the obligations of the Authority under this Agreement are obligations of the Authority in its capacity as a contracting counterparty and nothing in this Agreement shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under this Agreement (howsoever arising) on the part of the Authority to the Parent Body Organisation.

IN WITNESS of which the Parties have executed and delivered this agreement as a deed on the date first above written.

Executed as a deed by affixing the common)
seal of the **NUCLEAR DECOMMISSIONING**)
AUTHORITY in the presence of:)

ADRIAN SIMPER
.....
Director

DAVID BATTERS
.....
Director

Executed as a deed by **CAVENDISH**)
FLUOR PARTNERSHIP LIMITED)
acting by a director in the presence of:)

s.40

.....
Director

s.40

.....
Witness

2nd Floor, Blue Fin Building.....
110 Southwark Street.....
London SE1.....
Address
Solicitor.....
Occupation

Executed as a deed by [s.40])
as attorney for **MAGNOX LIMITED** under a)
power of attorney dated 18 July 2014)
in the presence of:)

..... [s.40]
as attorney for **MAGNOX LIMITED**

[s.40]
Witness

2nd Floor, Blue Fin Building.....

110 Southwark Street.....

London SE1.....

Address

Solicitor.....

Occupation

Executed as a deed by **RESEARCH SITES**)
RESTORATION LIMITED acting by a)
director in the presence of:)

..... [s.40]
Director

... [s.40]

Witness

2nd Floor, Blue Fin Building.....

110 Southwark Street.....

London SE1.....

Address

Solicitor.....

Occupation

Schedule 1

Definitions

Definitions

In this Agreement the defined terms used shall have the same meaning as defined terms used in the Energy Act 2004 and the SLC Agreement except to the extent that such defined terms are given a different meaning below or are expressly otherwise defined elsewhere in this Agreement. Defined terms used in this Agreement (including in the recitals and Schedules) shall have the meaning specified below.

"Adverse Opening Position" has the meaning given in Clause 9.2.2.1 (*Opening Position Protection*);

"Aggregate Annual Financial Net Worth Test" has the meaning given to that term in Clause 24.1.6;

"Aggregate Liability Cap" has the meaning given to it in Clause 5.10.2.3 (*Liability Caps*);

"Agreed Directors" means the Magnox Agreed Directors and the RSRL Agreed Directors;

"Alleged Transferee" has the meaning given to it in Clause 17.3 (*TUPE*);

"Alternative Credit Support" means a valid and effective Letter of Credit having a minimum duration of 12 months (or, if shorter, a minimum duration of the period between the effective date of the Letter of Credit and the PBO Guarantee Expiry Date), and fulfilling the Minimum Credit Requirements;

"Alternative Credit Support Trigger Event" means the occurrence of any event listed at Clause 6.2 of a Parent Company Guarantee or a failure to satisfy the Aggregate Annual Financial Net Worth Test;

"Alternative Payment Mechanism" means the alternative payment mechanism referred to in Clause 9 (*Alternative Payment Mechanism*);

"Annual Financial Test Certification" means a certification in the form of Schedule 5 to a Parent Company Guarantee (*Form of Annual Financial Test Certification*);

"Annual Liability Cap" has the meaning given to it in Clause 5.10.2.1 (*Liability Caps*);

"Auditor's Confirmation Letter" means a letter substantially in the applicable form set out in Schedule 3 to a Parent Company Guarantee (*Form of Auditor's Confirmation Letter*);

"Authority Default" means any of the events of default by the Authority set out in Clause 19.9 (*Authority Default*);

"Authority's Representative" means the person identified as the Authority's Representative in Clause 26.3 (*Notices*) or any successor appointed to that role in accordance with Clause 25.4 (*Change in Representative*);

"Authority's Termination Notice" has the meaning given in Clause 19.5.1.1 (*Termination or Remedy for PBO Default*);

"Bid Costs" means a maximum of s.43(2) in Contract Year 1 and s.43(2) in Contract Year 2, such amount to be pro-rated depending on where in the relevant Contract Year the date of termination occurs;

"Breakage Costs" means the lower of:

- (a) the s.43(2) Indexed); and
- (b) the Parent Body Organisation's reasonable costs arising directly from termination of this Agreement, but excluding:
 - (i) any costs falling within the Nominated Staff Demobilisation Costs or otherwise arising in connection with the demobilisation of Nominated Staff; and
 - (ii) any losses excluded by Clause 5.9 (Excluded Losses)

and provided that the Parent Body Organisation has used reasonable endeavours to mitigate such costs;

"Capped PBO Liabilities" has the meaning given to it in Clause 5.10.4 (*Liability Caps*);

"CEO Compliance Certificate" means a certificate substantially in the form set out in Schedule 1 to a Parent Company Guarantee (*Form of CEO Compliance Certificate*) and executed by either the Chief Executive Officer of a Parent Company Guarantor or an officer of such Parent Company Guarantor with appropriately delegated authority (a copy of such authority to be provided to the Authority together with the CEO Compliance Certificate);

"CFO Compliance Certificate" means a certificate substantially in the form set out in Schedule 2 to a Parent Company Guarantee (*Form of CFO Compliance Certificate*) and executed by either the Chief Financial Officer of the Parent Company Guarantor or an officer of such Parent Company Guarantor with appropriately delegated authority (a copy of such authority to be provided to the Authority together with the CFO Compliance Certificate);

"Class A Disallowable Costs" means all Disallowable Costs which are not Class B Disallowable Costs;

"Class B Disallowable Costs" has the meaning given to it in Clause 5.13.1 (*Liability Caps*);

"Commencement Date" means 1 September 2014;

"Competition" has the meaning given to it in Clause 20.1 (*Transition Out*);

"Continuing Nominated Staff" has the meaning given in Clause 7.13.1 (*Continuing Nominated Staff*);

"Contract Change Note" or **"CCN"** has the meaning given in Paragraph 1.2 (*Principles*) of Schedule 6 (*PBA Change Control Procedure*);

"Date of Termination" means the date of expiry of the Authority's Termination Notice or the PBO's Termination Notice, as appropriate;

"Defective Performance Obligation" has the meaning given to it in Clause 5.1.3 (*Parent Body Organisation Guarantees and Indemnities*);

"Delegated Representative" has the meaning given to it in Clause 25.5 (*Representatives and delegation of authority to Act*);

"Delivered Parent IP" has the meaning given to it in Clause 16.1.1.1 (*Intellectual Property*);

"Demand" means any written demand for payment served in accordance with Clause 26 (*Notices*);

"Employee Liability Information" means the employee liability information specified and required by regulations 11 and 12 of TUPE;

"Final Performance Warning Notice" has the meaning given in Clause 19.3.2 (*Termination for Failure to Remedy*);

"Final Dividend Reconciliation" has the meaning given to it in Clause 20.12.1 (*Transition Out*);

"Financial Net Worth Test" has the same meaning as the Semi-Annual Financial Test;

"Financial Quarter" means the period commencing on the day after one Quarter Date and ending on the next Quarter Date;

"Financial Year" means the annual accounting period of a Parent Company Guarantor;

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

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

"Guaranteed Obligations" has the meaning given to it in Clause 5.1.1 (*Parent Body Organisation Guarantees and Indemnities*);

"Indemnified Party" has the meaning given to it in the Nuclear Indemnity;

"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 1.1.13 (*Interpretation*);

"Information" has the meaning given in Clause 13.3 (*Disclosure by the Authority*);

"Insurance Schedule" means the Insurance Schedule attached as Schedule 10 (*Insurance Schedule*) of the SLC Agreement;

"Legal Expert" has the meaning given to it in Clause 12.8.1 (*Opinion of a legal expert*);

"Letter of Credit" means a letter of credit, bank guarantee, performance bond, indemnity or other instrument agreed by the Authority acting reasonably;

"Losses" has the meaning given to it in Clause 24.4.3 (*General*);

"Loss of PBI Fee Amount" means:

(a) in the case of termination for Authority Default:

- (i) the Maximum PBI Fee for any Contract Years falling wholly within the 24-month period following the date of termination; and
- (ii) a proportional amount of the Maximum PBI Fee for any Contract Years falling partly within such period

subject to a proportional reduction reflecting the amount (if any) by which the PBI Fee actually earned by the Contractor in the last full Contract Year prior to the date of termination was less than the Maximum PBI Fee which could have been earned for that Contract Year; or

(b) in the case of Termination for Convenience:

- (i) the Maximum PBI Fee for any Contract Years falling wholly within the period between the date of termination and the date falling 24 months after the date on which the notice of termination was given; and
- (ii) a proportional amount of the Maximum PBI Fee for any Contract Years falling partly within such period

subject to a proportional reduction reflecting the amount (if any) by which the PBI Fee actually earned by the Contractor in the last full Contract Year prior to the date of termination was less than the Maximum PBI Fee which could have been earned for that Contract Year;

"Loss of Target Fee Amount" means the sum of the Allocated Target Fee amounts for Target Fee Payment Milestones scheduled to be Achieved (in accordance with the LTP Performance Plan as at the date of termination):

- (a) in the case of termination for Authority Default pursuant to Clause 19.10 (*Authority Default*), during the 24-month period following the date of termination; and
- (b) in the case of Termination for Convenience pursuant to Clause 19.8 (*Termination for Convenience*), during the period between the date of termination and the date falling 24 months after the date on which the notice of termination was given;

"Magnox Agreed Directors" means Kenneth Douglas, Beverley Grey, Roger Hardy, Susan Jee, Peter Knollmeyer, Chris Marchese, Paul Thomas and Anthony Wratten, or such other directors of the Magnox Contractor as are agreed by the Authority from time to time in accordance with Clause 4 (*Governance*);

"Magnox Contractor's Representative" means the person identified as the Magnox Contractor's Representative in Clause 26.3 (*Notices*) or any successor appointed to that role in accordance with Clause 25.4 (*Change in Representative*);

"Material Adverse Change" means a material adverse change to the business operations, condition (financial or otherwise) of:

- (a) (at any time during which Parent Company Guarantees have been provided) a Parent Company Guarantor; or
- (b) (at any time during which Alternative Credit Support has been provided) a PBO Shareholder;

"Maximum PBI Fee" means, in respect of each Contract Year, the maximum amount of PBI Fee which can be earned by the Contractor in that Contract Year, in accordance with Paragraph 3.4 (*PBI Fee*) of Part 4A (*Calculation of PBI Fee*) of Schedule 6 (*Finance*) of the SLC Agreement;

"Minimum Credit Requirements" means:

- (a) the Alternative Credit Support must be irrevocable and issued by a financial institution of good standing (with a rating for its long-term unsecured and non credit-enhanced debt obligations of at least BBB by Standard & Poor's Rating Services or Fitch Ratings Limited or Baa2 by Moody's Investors Service Limited);
- (b) the Alternative Credit Support must be in a form and substance that is to the reasonable satisfaction of the Authority and if it is provided instead of a Parent Company Guarantee on entry into this Agreement it must take effect as at the Commencement Date;

- (c) the beneficiary of the Alternative Credit Support must be the Authority; and
- (d) the Alternative Credit Support shall be expressed in sterling and shall (subject to the Aggregate Liability Cap) entitle the Authority to draw on amounts up to the Annual Liability Cap. The Alternative Credit Support must be payable on first written demand and without further enquiry by the Alternative Credit Support provider and there must be no other restriction as to the quantum or number of times that the Alternative Credit Support may be drawn;

"Nominated Staff Demobilisation Costs" means the amounts for demobilisation of Nominated Staff set out in Appendix F (*Nominated Staff Recoverable Costs*) of Schedule 6 (*Finance*) of the SLC Agreement which are recoverable as Allowable Costs under the SLC Agreement;

"Notice" has the meaning given to it in Clause 26.1 (*Notices*);

"Output" has the meaning given to it in Clause 16.2.5 (*Intellectual Property*);

"Parent Body Organisation's Representative" means the person identified as the Parent Body Organisation's Representative in Clause 26.3 (*Notices*) or any successor appointed to that role in accordance with Clause 25.4 (*Change in Representative*);

"Parent Company Guarantee" means a guarantee given pursuant to Clause 24.1 (*Parent Company Guarantees and Alternative Credit Support*) of this Agreement;

"Parent Company Guarantors" means each of:

- (a) Babcock International Group plc, a company incorporated in England and Wales with registered number 2342138 whose registered office is at 33 Wigmore Street, London, W1U 1QX; and
- (b) Fluor Corporation, a company incorporated in the United States of America with Federal Employer Identification Number 330927079 whose registered office is at 6700 Las Colinas Boulevard, Irving, Texas, 75039,

and/or any other person(s) who provides a Parent Company Guarantee in accordance with Clause 24.1.8 (*Parent Company Guarantees and Alternative Credit Support*);

"Parent IP" has the meaning given to it in Clause 16.1.1 (*Intellectual Property*);

"PBA Change" means any change to this Agreement, the Nuclear Indemnity, a Parent Company Guarantee and/or the Alternative Credit Support (including any schedules, appendices or annexes);

"PBA Change Control Procedure" means the procedure outlined in Schedule 6 (*PBA Change Control Procedure*);

"PBO Default" means any of the events of default set out in Clause 19.2 (*PBO Default*);

"PBO Guarantee" means the guarantees and indemnities given by the Parent Body Organisation pursuant to Clause 5.1 (*Parent Body Organisation Guarantees, Indemnities and Liabilities*);

"PBO Guarantee Expiry Date" means the date on which the PBO Guarantee is expressed to expire in accordance with Clause 5.4 (*Continuing Guarantee*);

"PBO Insurances" has the meaning given in Clause 6.1 (*Insurance*);

"PBO Minimum Performance Standards" means the minimum performance standards set out in Schedule 5 (*PBO Minimum Performance Standards*);

"PBO Payment" has the meaning given in Clause 9.1 (*Alternative Payment Mechanism*);

"PBO's Termination Notice" has the meaning given in Clause 19.11.1 (*Termination or Remedy for Authority Default*);

"Performance Based Incentives" or **"PBI"** means in respect of each Contract Year those indicators of performance and milestones as such are more fully described in Part 4 (*Fee*) of Schedule 6 (*Finance*) of the SLC Agreement;

"Performance Warning Notice" has the meaning given in Clause 19.3.1 (*Termination for Failure to Remedy*);

"Permitted Change in Control" has the meaning given in Clause 4.2.3 (*Change in Control and Relevant Partnering Arrangements*);

"Post-Term Year" means:

- (a) the period commencing on the date immediately following the date of expiry or termination of this Agreement and ending on the 31 March first occurring thereafter; and
- (b) each subsequent period of twelve (12) Months starting on 1 April and ending on 31 March first occurring thereafter;

"Prohibited Acts" means:

- (a) offering, promising or giving another person any financial or other advantage, whether offered, promised or given directly or indirectly, as an inducement or reward:
 - (i) for improperly doing or not doing (or for improperly having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Authority; or

- (ii) for improperly showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Authority;
- (b) requesting, agreeing to receive or accepting from another person any financial or other advantage, whether requested, agreed to receive or accepted directly or indirectly, as an inducement or reward:
 - (i) for improperly doing or not doing (or for improperly having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Authority; or
 - (ii) for improperly showing or not showing favour or disfavour to any person in relation to this Agreement or any other agreement with the Authority;
- (c) entering into this Agreement or any other agreement with the Authority in connection with which commission has been paid or has been agreed to be paid by the Parent Body Organisation or on its behalf, or to its knowledge, unless, before the relevant contract is entered into, particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Authority;
- (d) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under any applicable Legislation creating offences in respect of fraudulent acts; or
 - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Authority; or
- (e) defrauding or attempting to defraud or conspiring to defraud the Authority;

"Proposed Change Paper" has the meaning given in Paragraph 2.1 (*Procedure*) of Schedule 6 (*PBA Change Control Procedure*);

"Proposed PBA Change" means a proposal for a PBA Change which is initiated by the Authority, the Contractor or the Parent Body Organisation but not yet approved in accordance with the provisions of the PBA Change Control Procedure;

"Quarter Date" means each of 31 March, 30 June, 30 September and 31 December;

"Re-Appointment Costs" means:

- (a) the sum of five million pounds sterling (£5,000,000) (Indexed); or

- (b) if the date of termination falls less than 24 Months before the Phase 2 Scheduled Completion Date (as at the date the notice of termination is given), the sum of two million five hundred thousand pounds sterling (£2,500,000);

"Regulatory Breach Compensation" has the meaning given in Clause 11.1 (*Compensation for Reduced Dividend due to Pre-Commencement Breaches*);

"Regulatory Breach Compensation Claim" means any claim by the Parent Body Organisation for Regulatory Breach Compensation;

"Relevant Date" has the meaning given in Clause 7.4.1 (*Non-Solicitation*);

"Relevant Loss" has the meaning given in Clause 11.2 (*Compensation for Reduced Dividend due to Pre-Commencement Breaches*);

"Relevant Payment" has the meaning given in Clause 9.2.2 (*Opening Position Protection*);

"Remediation Programme" has the meaning given in Clause 19.5.3.1.2 (*Remediable Breach*);

"Remediation Works" means works required to remedy a material breach of this Agreement;

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

"Required Parent IP" has the meaning given to it in Clause 16.1.1.2 (*Intellectual Property*);

"RSRL Agreed Directors" means Kenneth Douglas, Stanley Gordelier, Beverley Grey, Peter Knollmeyer, Roger Hardy, Richard Pentreath, Andrew Staples, Gareth Thomas, Stephen White and Anthony Wratten or such other directors of the RSRL Contractor as are agreed by the Authority from time to time in accordance with Clause 4 (*Governance*);

"RSRL Contractor's Representative" means the person identified as the RSRL Contractor's Representative in Clause 26.3 (*Notices*) or any successor appointed to that role in accordance with Clause 25.4 (*Change in Representative*);

"Semi-Annual Financial Test" means the test contained within the Semi-Annual Financial Test Certification;

"Semi-Annual Financial Test Certification" means a certification in the form of Schedule 4 to a Parent Company Guarantee (*Semi-Annual Financial Test Certification*);

"Semi-Annual Test Date" shall have the meaning given to it in Clause 6.1.2 of a Parent Company Guarantee;

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

"SLC Agreement" means the agreement of that name of even date herewith between the Authority, Magnox Limited and Research Sites Restoration Limited;

"SLCA Change Control Procedure" means the Change Control Procedure as defined in the SLC Agreement;

"Special Parent IP" has the meaning given to it in Clause 16.1.6 (*Intellectual Property*);

"Subcontractor-licensed Background IP" has the meaning given to it in Clause 16.2.8 (*Intellectual Property*);

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

"Termination for Convenience" has the meaning given in Clause 19.8 (*Termination for Convenience*);

"Third Party Claim" has the meaning given in Clause 12.1 (*Third Party Claims*);

"Third Party Semi-Annual Financial Test Confirmation Letter" shall have the meaning given to it in Clause 6.1.2 of a Parent Company Guarantee;

"Threatened Insolvency" means that the Authority, acting reasonably, has good reason (including supporting evidence) to consider that an Insolvency Event is likely to occur within the succeeding thirty (30) Calendar Days in relation to:

- (a) (at any time during which Parent Company Guarantees have been provided) the Parent Body Organisation and/or any shareholder (direct or indirect) in the Parent Body Organisation up to the level of the Parent Company Guarantors; or
- (b) (at any time during which Alternative Credit Support has been provided) the Parent Body Organisation or any PBO Shareholder,

provided that where the Parent Body Organisation disputes that such an Insolvency Event is likely, the Parent Body Organisation and the Authority will within two (2) Working Days of receipt by the Authority of the Parent Body Organisation's notice disputing that such an Insolvency Event is likely jointly appoint an independent expert (being a firm of recognised international accountants which is not auditor or adviser to any of the Authority, the Parent Body Organisation or any other PBO Affiliate) to determine whether such an Insolvency Event is likely to occur, and the determination of the independent expert shall be final and binding on the Parties;

"Transfer Date" means the date on which the Incoming Parent replaces the Parent Body Organisation;

"Transfer of Responsibility Date" has the meaning given in Clause 5.11.2 (*Limits of Liability under the PBO Guarantee*);

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

"UK GAAP" means UK Generally Accepted Accounting Practice, consisting of all reporting and accounting requirements in the Statements of Standard Accounting Practice (SSAPs), Financial Reporting Standards (FRSs), Companies Act 1985, Companies Act 2006; Urgent Issues Task Force (UITF) abstracts, Statements of Recommended Practice and pronouncements by the Financial Reporting Review Panel and any statutory instruments issued up to 31 July 2006;

"Uncapped PBO Liabilities" has the meaning given to it in Clause 5.10.5 (*Liability Caps*);

"Unsuitable Transferee" means any person:

- (a) who poses a threat to national security; or
- (b) whose business interests or activities are incompatible with the Authority's statutory functions and duties;
- (c) [Not used]

"Wilful Misconduct" has the meaning given to it in the Nuclear Indemnity.

Schedule 2

Payments on Termination

Part A – [Not used]

Part B – Termination for Convenience

- 1 [Not used]
- 2 In the event of Termination for Convenience pursuant to Clause 19.8 (*Termination for Convenience*) of this Agreement, where the notice given by the Authority to the Parent Body Organisation pursuant to that Clause is less than 24 Months, the Authority shall pay:
 - 2.1 to the Contractor:
 - 2.1.1 [Not used]
 - 2.1.2 the Loss of Target Fee Amount; and
 - 2.1.3 the Loss of PBI Fee Amount; and
 - 2.2 to the Parent Body Organisation:
 - 2.2.1 the Breakage Costs; and
 - 2.2.2 where the date of termination falls within the first Contract Year or the second Contract Year, the Bid Costs,

and for the avoidance of doubt the Authority shall have no obligation to pay such amounts in the event of Termination for Convenience pursuant to Clause 19.8 (*Termination for Convenience*) of this Agreement where the notice given by the Authority to the Parent Body Organisation pursuant to that Clause is equal to or greater than 24 Months.

Part C – [Not used]

Part D – Termination for Authority Default

- 1 In the event of termination for Authority Default pursuant to Clause 19.10 (*Authority Default*) of this Agreement, the Authority shall pay:
 - 1.1 to the Contractor:
 - 1.1.1 [Not used]
 - 1.1.2 the Loss of Target Fee Amount; and

- 1.1.3 the Loss of PBI Fee Amount; and
- 1.2 to the Parent Body Organisation:
 - 1.2.1 the Breakage Costs; and
 - 1.2.2 where the date of termination falls within the first Contract Year or the second Contract Year, the Bid Costs.

Part E – Termination for Long Term Force Majeure

- 1 In the event of termination following a Force Majeure Event pursuant to Clause 19.12 (*Termination for Long Term Force Majeure*) of this Agreement, the Authority shall pay:
 - 1.1 [Not used]
 - 1.2 to the Parent Body Organisation:
 - 1.2.1 the Breakage Costs; and
 - 1.2.2 where the date of termination falls within the first Contract Year or the second Contract Year, the Bid Costs.

Schedule 3

Consortium Arrangements

14 April 2014

CAVENDISH NUCLEAR LIMITED
and
FLUOR ENTERPRISES, INC
and
CAVENDISH FLUOR PARTNERSHIP LIMITED

**SHAREHOLDERS' AGREEMENT as amended
by the DEED OF AMENDMENT dated 26
August 2014**

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Pages 130 through 176 redacted for the following reasons:

s.43(2)

SCHEDULE 3
ARTICLES OF ASSOCIATION

No. 08980374

CAVENDISH FLUOR PARTNERSHIP LIMITED

ARTICLES OF ASSOCIATION

(Adopted by Special Resolution passed on April 2014)

SCHEDULE 4

TAXATION

1. SURRENDER OF LOSSES – GROUP AND CONSORTIUM RELIEF

- 1.1 Unless the Members otherwise expressly agree in writing, each Member shall co-operate with a view to ensuring that so far as reasonably possible and to the extent permitted by law, all losses and other amounts eligible for relief from corporation tax under Part 5 of the CTA ("**Tax Losses**") which arise to the Company in any accounting period of the Company shall be surrendered to Magnox and/or RSRL without payment to the Company by Magnox and/or RSRL in respect of the amount surrendered.
- 1.2 If in any accounting period neither Magnox or RSRL has sufficient taxable profits to utilise the Tax Losses which can be surrendered by the Company, any unutilised Tax Losses shall, if a Member so requests, be surrendered or made available to the Member or any Group Company in an amount not exceeding the Agreed Proportions at that time, provided that no such Tax Losses shall be surrendered to the extent that the Company is able to utilise the Tax Losses in that accounting period or in any previous accounting period or that the Board of Directors determine that there is a reasonable prospect that the Company will be able to use such Tax Losses in any future accounting period and provided that no act or omission to be done by the Company or a Member in order to effect such surrender and claim is in contravention of any PBA. For this purpose, the following provisions shall apply:
- 1.2.1 each Member shall give and procure that the Company gives its consent, and each Member shall take and procure that the Company takes, such other action as may reasonably be required to ensure that such surrenders are effectively made within any relevant time limits;
- 1.2.2 each Member shall or shall procure that, in respect of each surrender, the relevant Group Company claimant shall make a payment to the Company in respect of the amount surrendered (as referred to in section 183 of the CTA) within thirty (30) Business Days of the relevant consortium relief claim having been submitted to HM Revenue & Customs;
- 1.2.3 any such payment made pursuant to the above paragraph 1.2.2 shall be the sum obtained by multiplying the amount so surrendered by a percentage equal to the effective percentage rate of corporation tax applicable in the United Kingdom to companies generally (excluding, for the avoidance of doubt, the small profits rate as defined in section 18 of the CTA) in respect of income profits for the claimant company's claim period within the meaning of section 130(2) or an amount equal to the Tax saved by the Member or relevant Group Company as a result of the surrender of the relevant Tax Losses to it;
- 1.2.4 any such payment made pursuant to the above paragraph 1.2.2 shall be subject to adjustment and return to the relevant Member or relevant Group Company if and to the extent that it is determined that the relevant Tax Losses are not available for surrender or there is an insufficiency of profits of the claimant company and any such payment shall be adjusted to the extent that it is subsequently found to have been incorrectly calculated. Any repayment shall be made on the earlier of (a) the date falling thirty (30) Business Days after HM Revenue and Customs determine (whether by issuing a Closure Notice or otherwise) that the relevant Tax Losses are not available for surrender or alternatively if there is an insufficiency of profits of the claimant company on the date falling thirty (30) Business Days after HM Revenue and Customs determine (whether by issuing a Closure Notice or otherwise) the extent of the reduced profits and (b) the date on which the Board of Directors determines that the Tax Losses will not be available or receive notice in writing from the relevant Member (with such supporting evidence as the Board of Directors shall reasonably require) that there is an insufficiency of profits of the claimant company.

- 1.3 Unless the Members otherwise expressly agree in writing, each Member shall be entitled to surrender or to procure that any relevant Group Company shall surrender to the Company in an amount not exceeding the Agreed Proportions at that time Tax Losses up to the maximum extent permitted by law. For this purpose, the following provisions shall apply:
- 1.3.1 each Member shall give and procure that any relevant surrendering Group Company gives all consents and each Member shall take and procure that any relevant surrendering Group Company takes such other action as may reasonably be required to ensure that such surrenders are effectively made within any relevant time limits;
 - 1.3.2 in respect of any such surrender, the Members shall procure that the Company shall make a payment to the relevant surrendering company as respects the amount surrendered (as referred to in section 183 of the CTA) within thirty (30) Business Days of the relevant consortium relief claim having been submitted to HM Revenue & Customs;
 - 1.3.3 the amount of payment referred to in the above paragraph 1.3.2 shall be equal to the extra amount of Tax which would have been payable by the Company in the absence of such surrender; and
 - 1.3.4 any such payment made pursuant to in the above paragraph 1.3.2 shall be subject to adjustment and return to the Company if, and to the extent, that it is determined that the relevant Tax Losses. are not available for surrender or there is an insufficiency of Profits of the Company and any such payment shall be adjusted to the extent that it is subsequently found to have been incorrectly calculated. Any repayment shall be made on the date falling on the earlier of (a) thirty (30) Business Days after HM Revenue and Customs determine (whether by issuing a Closure Notice or otherwise) that the relevant Tax Losses are not available for surrender or alternatively if there is an insufficiency of Profits of the Company on the date falling thirty (30) Business Days after HM Revenue and Customs determine (whether by issuing a Closure Notice or otherwise) the extent of the reduced Profits and (b). the date on which the Board of Directors receives notice in writing from the relevant Member (with such supporting evidence as the Board of Directors shall reasonably require) that the Tax Losses will not available or determines there is an insufficiency of Profits of the Company.
- 1.4 For the avoidance of doubt the provision of this paragraph 1 does not oblige any Member or any relevant Group Company to accept a surrender of Tax Losses from the Company pursuant to Part 5 of the CTA but nor will any Member seek to prevent another Member or any relevant Group Company making a valid claim to receive Tax Losses from the Company pursuant to Part 5 of the CTA.
2. **TRANSFER PRICING ADJUSTMENT AND PAYMENT**
- 2.1 In this paragraph 2 the following words and expressions shall have the following meanings:
- "Actual Provision"** shall have the meaning given to it in section 147 of the Taxation (international and Other Provisions) Act 2010 ("**TIOPA**");
 - "Adjustment"** shall have the meaning given to it in paragraph 2.3;
 - "Advantaged Person"** shall have the meaning given to it in section 174 of the TIOPA;
 - "Arm's Length Provision"** shall have the meaning given to it in section 147 of the TIOPA;
 - "Corresponding Adjustment"** means an adjustment to the computation of the profits and losses of the Disadvantaged Person as provided by section 174 or section 181 (as the case may be) of the TIOPA;
 - "Disadvantaged Person"** shall have the meaning given to it in section 174 of the TIOPA;
 - "Relevant Notice"** shall have the meaning given to it in section 190 of the TIOPA.
- 2.2 If, under the provisions of Part 4 of the TIOPA, an adjustment is required to be made in the corporation tax computation of the Company or of a Member in respect of any amount

payable by or to the Company under the arrangements contemplated by this Agreement, the Company and the relevant Member will consult in good faith and will co-operate in making all such elections and balancing payments and taking all such steps as are permitted under the terms of Part 4 of the TIOPA to mitigate the effects of such adjustment for each of the affected parties.

- 2.3 Without prejudice to the generality of the provisions of the above paragraph 2.1, where section 147(3) of the TIOPA applies to an Actual Provision which has been or is made or imposed between the Company and any Member pursuant to this Agreement and the profits and losses of the Advantaged Person for any period are either computed for Tax purposes as if the Arm's Length Provision had been made or imposed instead of the Actual Provision or the Advantaged Person receives a Relevant Notice from HM Revenue and Customs to that effect (the difference between the Actual Provision and the Arm's Length Provision being referred to in this paragraph 2 as the "**Adjustment**"), then:

2.3.1 the Advantaged Person shall either:

- (A) prior to the submission of the Advantaged Person's relevant tax return which incorporates that Adjustment; or
- (B) if the tax return for any period does not show an Adjustment but a Relevant Notice is subsequently received from HM Revenue and Customs in respect of that period, within fifteen (15) Business Days of receiving the Relevant Notice

Notify the Disadvantaged Person(s) in writing of the provisional amount of the Adjustment; and

2.3.2 either the Disadvantaged Person(s) or, where section 181 of the TIOPA applies, the Advantaged Person on behalf of the Disadvantaged Person(s), shall make a claim within the period specified by and in accordance with Part 4 of the TIOPA for a Corresponding Adjustment to be made and will promptly, after making such a claim, make a payment to the Advantaged Person in accordance with and to the extent that such a payment is permitted to be made without attracting UK corporation tax under the terms of Part 4 of the TIOPA.

- 2.4 In the event that there is any dispute between the Company and any Member or between the Members as to the amount of the Adjustment or as to any other matter in relation to this paragraph 2, any Member shall be entitled (with the approval of the other Member), such approval shall not be unreasonably withheld, conditioned or delayed) to request an independent firm of chartered accountants with relevant experience acting as experts and not as arbitrators to determine the dispute and such a determination or determinations shall, except in the case of manifest error, be final and binding. In the event that the Company and any Member, or in the event that the dispute does not involve the Company, the Members cannot agree on the appointment of an independent firm of chartered accountants suggested by any one of them, the dispute shall be determined by a firm of chartered accountants appointed for that purpose by the President for the time being of the Institute of Chartered Accountants of England and Wales. All costs relating to the resolution of any dispute under this paragraph 2 shall be borne by the Party or Parties as directed by the chartered accountants so appointed.

- 2.5 If a dispute arises between HM Revenue and Customs and any Member to this Agreement in respect of any Adjustment (including as to the amount of the required Adjustment or as to whether or not an Adjustment is required), the amount of any Corresponding Adjustment or as to any other matter in relation to the application of Part 4 of the TIOPA to any transaction between the Company and any Member(s):

2.5.1 such Member shall keep the other Member informed of all material correspondence, communications and negotiations in relation to such dispute and shall take into account any reasonable comments made by the other parties in relation to the dealing of such a dispute; and

2.5.2 upon resolution such dispute (whether by issue of a Closure Notice in respect of such dispute or otherwise), the Company and the Member(s) shall, within fifteen (15) Business Days of being notified of such resolution or of having received such Closure Notice take all such other steps as are necessary to put the parties in the position which would have resulted:

- (A) if the provisional Adjustment as referred to in paragraph 2.2 above had been equal to the amount of the Adjustment (if any) determined by such resolution or final determination; or
- (B) if no provisional Adjustment as referred to in paragraph 2.2 above had been made, if a provisional Adjustment had been made equal to the amount determined by such resolution or final determination; and/or

take all such other steps and do all such things as are necessary to give effect to or to reflect the terms upon which the dispute was resolved or determined.

3. **GENERAL**

- 3.1 All claims, disputes and differences between the Parties to this Agreement arising out of or in connection with this Schedule 4, shall in the first instance be referred to and discussed by tax managers nominated by each Member. In the event that these individuals cannot agree the matter between them then it shall be referred to a panel comprising two accountants and a solicitor experienced in the application of Part 4 of the TIOPA transfer pricing rules to be agreed between the parties to the dispute or failing agreement within ten (10) Business Days to be nominated by the President for the time being of the Chartered Institute of Taxation. The members of the panel shall act as expert and not as arbitrator. In the absence of manifest error or bad faith the panel's determination shall be final and binding. Each Member shall bear its own costs and the reasonable costs and expenses of the panel shall be borne equally between the Members.
- 3.2 Each Member is responsible for paying the tax, if any, on any dividends that it receives from the Company.
- 3.3 Each Member (for the purposes of this section, the "Non-Paying Member") agrees to pay to the other Member, on an after-tax basis, an amount equal to the amount of any Taxation for which the other Member (or its Affiliates) is or becomes liable and makes payment by virtue of the failure of such Non-Paying Member to pay, or procure that there is paid, when due, any Taxation properly assessed on it (or on any Affiliate), whether before, on or after the date on which the relevant person became a Member. The other Member shall provide adequate evidence that relevant Taxation payments were made on behalf of the Non-Paying Member as a result of the failure of the Non-Paying Member specified above. Whenever possible, the other Member shall give the Non-Paying Member notice of the incidence of such Taxation and shall cooperate with any reasonable efforts by the Non-Paying Member to address and cure or contest the Taxation before the other Member makes payment.
- 3.4 Each Member agrees to pay to the Company, on an after-tax basis, an amount equal to the amount of any Taxation for which the Company is, becomes or has been liable by virtue of the failure of such Member to pay, or procure that there is paid, when due any Taxation properly assessed on it, whether before, on or after the date on which the relevant person became a Member.

SCHEDULE 5
INTELLECTUAL PROPERTY

1. GENERAL PRINCIPLE

1.1

1.2

s.43(2)

1.3

SCHEDULE 6
SUMMARY OF MAJOR ACCOUNTING PRINCIPLES

1.

2.

2.1

2.2

s.43(2)

3.

Page 184 redacted for the following reason:

SCHEDULE 7
TRANSFER OF SHARES

1. DISPOSITIONS

1.1

1.2

1.3

s.43(2)

1.4

1.5

1.6

1.7

Pages 186 through 190 redacted for the following reasons:

s.43(2)

SCHEDULE 8

WARRANTIES IN RELATION TO THE COMPANY

1. The Company:
 - 1.1 has never engaged in the carrying on of any trade or business or in any activities of any sort except in connection with its incorporation, the appointment of its officers and the filing of documents pursuant to the laws of England and Wales and accordingly the Company:
 - 1.2 does not have, and never has had, any indebtedness, mortgages, charges, debentures, guarantees or other commitments or liabilities (present or contingent) outstanding;
 - 1.3 does not have, and never has had, any employees;
 - 1.4 is not, and has never been, a party to any contract;
 - 1.5 has never given any power of attorney;
 - 1.6 is not, and has never been, a party to any litigation or arbitration proceedings;
 - 1.7 is not, and has never been, the lessee of any property; and
 - 1.8 is not and has never been, the owner of, or interested in, any assets whatsoever including, without limitation, the share capital of any other body corporate that is engaged in carrying on any trade or business.
2. The record books of the Company have been properly kept, are in its possession and contain an accurate and complete record of the matters which should be dealt with in those books in accordance with the laws of England and Wales and no notice alleging that any of them is incorrect or should be rectified has been received.
3. All returns, particulars, resolutions and other documents required to be filed with the Registrar of Companies under the Acts by the Company have been duly filed and all legal requirements in connection with the formation of the Company and issues of its shares have been satisfied.
4. Save as expressly provided for or contemplated by this Agreement, there are no outstanding rights, warrants, options, subscriptions, agreements or commitments giving anyone any right to subscribe for or acquire any share capital or other securities of the Company.

SCHEDULE 9

CONFLICT OF INTEREST, STEP-ASIDE PROCEDURE AND RELATED PARTY CONTRACTS

1. CONFLICT AND STEP ASIDE

- 1.1 Where there is a Cavendish Conflict Matter to be considered by the Board of Directors, the Directors nominated by Cavendish ("**Cavendish Directors**") shall be entitled to attend and speak at the meeting of the Board of Directors at which Cavendish Conflict Matter is considered but shall not be entitled to count in the quorum for or vote on a Cavendish Conflict Matter (whether the vote is taken at the meeting of the Board of Directors or otherwise). In such circumstances Clause 16.2 (*Directors' Meetings*) shall apply save that the Directors that have been nominated by Fluor and one Non-Executive Director shall constitute a quorum, and the resolution shall be passed only where the collective vote of those Directors is exercised in favour of the resolution.
- 1.2 Where there is a Fluor Conflict Matter, to be considered by the Board of Directors, the Directors nominated by Fluor ("**Fluor Directors**") shall be entitled to attend and speak at the meeting of the Board of Directors at which Fluor Conflict Matter is considered but shall not be entitled to count in the quorum for or vote on a Fluor Conflict Matter (whether the vote is taken at the meeting of the Board of Directors or otherwise). In such circumstances Clause 16.2 (*Directors' Meetings*) shall apply save that the Directors that have been nominated by Cavendish and one Non-Executive Director shall constitute a quorum, and the resolution shall be passed only where the collective vote of those Directors is exercised in favour of the resolution.
- 1.3 For the purposes of this Schedule a "**Cavendish Conflict Matter**" means the matters being matters where the Cavendish Directors and/or Cavendish (as the case may be) shall be considered to have a conflict (including, without implying limitation, any decision by or on behalf of the Company to enter into, terminate, materially amend or vary or provide any consent or issue any notice under any contract, arrangement or transaction with Cavendish or any of its Affiliates or to take any action under or in respect of any such contract, arrangement or transaction (including but not limited to by reason of any breach or alleged breach of contract and any decision relating to the provision or withholding of any consent in respect of such breach or alleged breach)).
- 1.4 For the purposes of this Schedule a "**Fluor Conflict Matter**" means the matters being matters where the Fluor Directors and/or Fluor (as the case may be) shall be considered to have a conflict (including without implying limitation, any decision by or on behalf of the Company to enter into, terminate, materially amend or vary or provide any consent or issue any notice under any contract, arrangement or transaction with Fluor or any of its Affiliates or to take any action under or in respect of any such contract, arrangement or transaction (including but not limited to by reason of any breach or alleged breach of contract and any decision relating to the provision or withholding of any consent in respect of such breach or alleged breach)).

2. STEP ASIDE PROVISIONS

- 2.1 Notwithstanding any other provision to the contrary in this Agreement or the Articles:
- 2.1.1 if Cavendish asserts the existence of a Claim against the Company or issues proceedings in respect of any Claim against the Company and, as a result, a Cavendish Conflict Matter arises;
- (A) the Fluor Directors shall have full authority (acting in the bona fide interests of the Company) to negotiate, litigate and settle such Claim in the name and at the expense of the Company;
- (B) each of the Cavendish Directors shall not be entitled to (and Cavendish shall procure that such Directors shall not) make (or participate in making) any decisions, vote at meetings of the Board of Directors or otherwise take any action on behalf of the Company in respect of the

- negotiation, litigation and/or settlement by the Company of such Claim;
and
 - (C) the quorum at any meeting of the Board of Directors convened to consider any such Claim shall be any two (2) Fluor Directors;
- 2.1.2 If Cavendish (acting in the bona fide interests of the Company) reasonably asserts that the Company has any Claim against Fluor or an Affiliate of Fluor and, as a result, a Fluor Conflict Matter arises:
- (A) the Cavendish Directors shall have full authority (acting in the bona fide interests of the Company) to negotiate, litigate and settle such Claim in the name and at the expense of the Company; and
 - (B) each of the Fluor Directors shall not be entitled to (and Fluor shall procure that each of the Fluor Directors shall not) make (or participate in making) any decisions, vote at meetings of the Board of Directors or otherwise take any action on behalf of the Company in respect of the negotiation, litigation and/or settlement of such Claim by the Company; and
 - (C) the quorum at any meeting of the Board of Directors convened in relation to any such Claim shall be any two (2) Cavendish Directors;
- 2.2 **Notwithstanding any other provision to the contrary in this Agreement:**
- 2.2.1 if Fluor or any Affiliate of Fluor asserts the existence of a Claim against the Company or issues proceedings in respect of any Claim against the Company and, as a result, a Fluor Conflict Matter arises:
- (A) the Cavendish Directors shall have full authority (acting in the bona fide interests of the Company) to negotiate, litigate and settle such Claim in the name and at the expense of the Company;
 - (B) the Fluor Directors shall not be entitled to (and Fluor shall procure that the Fluor Directors shall not) make (or participate in making) any decisions, vote at meetings of the Board of Directors or otherwise take any action on behalf of the Company in respect of the negotiation, litigation and/or settlement by the Company of such Claim; and
 - (C) the quorum at any meeting of the Board of Directors convened to consider any such Claim shall be any two (2) Cavendish Directors;
- 2.2.2 If Fluor (acting in the bona fide interests of the Company) reasonably asserts that the Company has any Claim against Cavendish and, as a result, a Cavendish Conflict Matter arises:
- (A) the Fluor Directors shall have full authority (acting in the bona fide interests of the Company) to negotiate, litigate and settle such Claim in the name and at the expense of the Company; and
 - (B) the Cavendish Directors shall not be entitled to (and Cavendish shall procure that the Cavendish Directors shall not make (or participate in making) any decisions, vote at meetings of the Board of Directors or otherwise take any action on behalf of the Company in respect of the negotiation, litigation and/or settlement of such Claim by the Company; and
 - (C) the quorum at any meeting of the Board of Directors convened in relation to any such Claim shall be any two Fluor Directors;
- 2.3 For the purposes of this Schedule 9, "**Claim**" shall mean a claim of any nature, whether for breach of contract, in tort, breach of statutory duty or otherwise.
- 2.4 Any money recovered/received by the Company from any Claim referred to in this Schedule 9 shall be applied in a proper and efficient manner and for its own benefit.

- 2.5 Where the provisions of this Schedule 9 apply and the Directors that are considering the matter or are required to take any actions also have a conflict of interest and are unable to act, the Directors shall refer the matter to the Members, who shall meet within five (5) Business Days of notification that such a circumstance has arisen and attempt to agree how the situation may be resolved to enable the Company to take appropriate actions under the direction of a person or persons who are not subject to a conflict of interest. If a resolution cannot be found within fifteen (15) Business Days of referral either Member may serve a Deadlock Notice (Clause 15.2.2 (*Deadlock*)).

3. **RELATED PARTY CONTRACTS WITH MEMBERS OR AFFILIATES OF MEMBERS**

- 3.1 In relation to the proposed entry into by the Company of a contract with a Member or an Affiliate of a Member ("**Related Party Contract**") the entry into by the Company of each such contract shall only be approved if:
- 3.1.1 a written report is provided to the Board of Directors at least twenty (20) Business Days prior to the proposed entry which summarises the material terms of the Related Party Contract (or the proposed material amendment or variation to the Related Party Contract as the case may be); and
 - 3.1.2 the Related Party Contract (or the proposed material amendment or variation to the Related Party Contract) as the case may be is approved at a meeting of the Board of Directors at which a quorum is present in accordance with paragraphs 1.1 and 1.2 of this Schedule 9 (*Conflict of Interest, Step-Aside Procedure and Related Party Contracts*).
- 3.2 Any dispute in relation to whether or not the proposed Related Party Contract (or the proposed material amendment or variation to the Related Party Contract as the case may be) is or is not on arm's length commercial terms shall be dealt with under Clause 27 (*Dispute Resolution*).

SCHEDULE 10
UNSHARED EXPENSES

1. UNSHARED EXPENSES

1.1

1.2

s.43(2)

SCHEDULE 11

MEMBER RESERVED MATTERS

1. MEMBER RESERVED MATTERS

1.1

1.2

s.43(2)

Page 197 redacted for the following reason:

s.43(2)

SCHEDULE 12

DIRECTORS' UNANIMOUS DECISIONS

1.

s.43(2)

SCHEDULE 13
FORM OF DEED OF ACCESSION

s.43(2)

Pages 200 through 201 redacted for the following reasons:

s.43(2)

SCHEDULE
[Shares and Member Loans to be Transferred]

IN WITNESS whereof this Deed has been entered into the day and year first before written.

[COMPANY:]

EXECUTED AS A DEED by)
[])
)
acting by [Name of)
a director]) Director
)
in the presence of:)

Signature of witness

.....

Name of witness
(in **BLOCK CAPITALS**)

.....

Address of witness

.....

.....

.....

.....

[TRANSFEROR:]

EXECUTED AS A DEED by)
[])
)
acting by [Name of)
a director]) Director
)
in the presence of:)

Signature of witness

.....

Name of witness
(in **BLOCK CAPITALS**)

.....

Address of witness

.....

.....

.....

.....

[NEW MEMBER:]

EXECUTED AS A DEED by

[]

acting by [Name of
a director]

in the presence of:

)
)
)
)
)
)

.....
Director

Signature of witness

.....

Name of witness

(in **BLOCK CAPITALS**)

.....

Address of witness

.....

.....

.....

.....

SCHEDULE 14
SUB-COMMITTEES

1. SAFETY SUB-COMMITTEE

1.1

1.2

2.

2.1

2.2

s.43(2)

3.

3.1

Page 206 redacted for the following reason:

s.43(2)

Schedule 4

Parent Company Guarantee

PARENT COMPANY GUARANTEE AND INDEMNITY

relating to the Parent Body Agreement for
Magnox Limited and Research Sites Restoration Limited

[NAME OF GUARANTOR] (1)

and

NUCLEAR DECOMMISSIONING AUTHORITY (2)

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4	Waiver of Defences	●
5	Representations and Warranties	●
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7	Continuing security	●
8	Deferral of Guarantor's Rights	●
9	Reinstatement	●
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BETWEEN:

- (1) **[NAME OF PARENT BODY ORGANISATION'S [ULTIMATE] PARENT COMPANY]**
(company number [●]) whose registered office is at [●] (the "**Guarantor**"); and
- (2) **NUCLEAR DECOMMISSIONING AUTHORITY**, a non-departmental public body whose registered office is at Herdus House, Westlakes Science and Technology Park, Moor Row, Cumbria, CA24 3HU (the "**Authority**"),

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

WHEREAS:

- (A) the Authority has entered an agreement dated with the same date as this Guarantee described as a Parent Body Agreement (the "**PBA**") with Magnox Limited and Research Sites Restoration Limited (together the "**Contractor**") and Cavendish Fluor Partnership Limited (a company incorporated in England and Wales with registered number 08980374) (the "**Parent Body Organisation**") pursuant to which inter alia the Parent Body Organisation gives certain guarantees and indemnities in favour of the Authority including in respect of the Contractor's financial liabilities and, in certain circumstances, Nominated Staff (as defined in the PBA);
- (B) the Guarantor (being a parent company of the Parent Body Organisation) has agreed to guarantee the due and punctual payment and discharge of sums and perform all obligations and discharge all liabilities due from the Parent Body Organisation under the PBA subject to and in accordance with this Parent Company Guarantee.

IT IS AGREED AS FOLLOWS:

1 DEFINITIONS, CONSTRUCTION AND INTERPRETATION

- 1.1 Terms defined in the PBA shall, unless otherwise defined in this Guarantee or unless a contrary intention appears, bear the same meanings when used in this Guarantee and the definitions given in the recitals to this Guarantee and in the Guarantee itself apply to the whole of this Guarantee.
- 1.2 Unless a contrary intention appears, any reference in this Guarantee to:
 - 1.2.1 the "**Authority**", the "**Parent Body Organisation**" and the "**Guarantor**" are to be construed so as to include their successors, permitted assignees and permitted transferees and any reference to a public sector organisation shall be deemed to include a reference to any successor to such public sector

organisation or entity which has taken over the functions or responsibilities of such public sector organisation;

- 1.2.1A **"Commencement Date"** means the Commencement Date as defined in the Parent Body Agreement;
- 1.2.2 **"Index"** means the index published monthly by the Office for National Statistics in Table CPI under the title "Consumer Prices Index (all items)", or failing such publication, or in the event of a fundamental change to the nature of the Index, such other index or adjustments to the Index as the Parties to this Parent Company Guarantee may, each acting reasonably, agree from time to time (in each case with the intention of putting the Parties to this Parent Company Guarantee 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);
- 1.2.3 **"Limit of Liability"** means the Aggregate Liability Cap as defined in the Parent Body Agreement;
- 1.2.4 **"Parent Company"** means any counterparty to any Parent Company Guarantee with the Authority;
- 1.2.5 **"Parent Company Guarantee"** means any agreement under which any person agrees to guarantee to the Authority certain of the obligations of the Parent Body Organisation under the PBA and includes without limitation this Guarantee and any similar guarantees entered into by PBO Affiliates with the Authority;
- 1.2.5A **"Quarterly Period"** means each consecutive three-Month period ending three Months, six Months and nine Months after the commencement of each Financial Year of the Guarantor;
- 1.2.5B **"Semi-Annual Period"** means the six-Month period ending six Months after the commencement of each Financial Year of the Guarantor;
- 1.2.6 any legislative provision shall be deemed to include any subordinate legislation made under the relevant statutory provision and is a reference to that legislative provision as from time to time amended, consolidated, modified, re-enacted or replaced;
- 1.2.7 any gender includes all genders;
- 1.2.8 the singular includes the plural (and vice versa);

- 1.2.9 persons includes bodies corporate, unincorporated associations and partnerships (whether or not any of them have a separate legal personality);
 - 1.2.10 a Clause shall be a reference to a clause of this Guarantee;
 - 1.2.11 "includes" or "including" shall mean "includes without limitation" or "including without limitation";
 - 1.2.12 "**otherwise**" and words following "**other**" shall not be limited by any foregoing words where a wider construction is possible;
 - 1.2.13 this Guarantee includes this Guarantee as amended or supplemented in accordance with its terms; and
 - 1.2.14 any agreement or document is to that agreement or document as amended, varied, supplemented, substituted, novated or assigned from time to time in accordance with the terms of such agreement or document.
- 1.3 The list of contents and clause headings in this Guarantee are included for convenience only and do not affect interpretation of this Guarantee.
 - 1.4 The Parties to this Guarantee intend it to take effect as a deed.

2 GUARANTEE AND INDEMNITY

- 2.1 Subject to Clause 11 (*Limit of Liability*), the Guarantor irrevocably and unconditionally:
 - 2.1.1 guarantees to the Authority, as a continuing guarantee the due and punctual payment and discharge by the Parent Body Organisation of all sums, liabilities, awards, losses, damages, costs, charges and expenses that may be or become due, owing or payable to the Authority under the PBA in accordance with its terms or by reason of any breach thereof on the part of the Parent Body Organisation (including legal fees, taxes and any other costs, on a full indemnity basis, incurred by the Authority in connection with the Authority validly and justifiably seeking to enforce any of the above under the PBA to the extent that the Authority is entitled to recover such amounts), (the "**Guaranteed Obligations**"), and the Guarantor undertakes with the Authority that:
 - 2.1.1.1 if and whenever the Parent Body Organisation fails to pay any amount (the "**Recoverable Amount**") when due under the PBA; and
 - 2.1.1.2 such Recoverable Amount has been outstanding and not paid within ten (10) Working Days following the date of the Demand by

the Authority under the PBA or, if later, within ten (10) Working Days of resolution of a dispute directly relating to such Demand pursuant to the Dispute Resolution Procedure (if the determination arising from the Dispute Resolution Procedure is that such amount or, as applicable, any other amount, is payable)

the Guarantor shall on request by the Authority pay that amount as if it were the principal obligor under the PBA; and

2.1.2 agrees with the Authority, as a separate, independent, primary and additional obligation (and without prejudice to Clause 2.1.1 (*Guarantee and Indemnity*) above and Clause 16 (*Indemnity*)), to indemnify and keep indemnified the Authority on an after tax basis in respect of all losses, damages, costs, claims, liabilities, demands and expenses arising:

2.1.2.1 from the Parent Body Organisation failing to pay, perform and/or discharge and/or being otherwise in default of any of the Guaranteed Obligations; or

2.1.2.2 as a result of any of the Guaranteed Obligations being or becoming void, voidable, unenforceable or ineffective as against the Parent Body Organisation for any reason whatsoever whether or not known to the Parent Body Organisation or any other person

provided that (for the purposes of both Clause 2.1.1 (*Guarantee and Indemnity*) and Clause 2.1.2 (*Guarantee and Indemnity*) above) such losses, damages, costs, claims, liabilities, demands and expenses, including any costs of enforcement, would otherwise have been recoverable by the Authority from the Parent Body Organisation under the PBA.

2.2 The Parties acknowledge and agree that the obligations of the Parent Body Organisation to pay the Guaranteed Obligations under the PBA are conditional upon the occurrence of the Commencement Date and that this Guarantee shall not take effect until such date.

3 PRINCIPAL OBLIGOR

Without prejudice to the Authority's rights against the Parent Body Organisation as principal obligor but subject to Clause 11 (*Limit of Liability*), the Guarantor shall be deemed the principal obligor in respect of its obligations under this Guarantee and not merely a surety and accordingly the Guarantor shall not be discharged nor shall its liability under this Guarantee be affected by any act or thing or means whatsoever by which its said liability would have been discharged or affected if it had not been the principal obligor.

4 WAIVER OF DEFENCES

- 4.1 This Guarantee shall be binding upon the Guarantor and its successors in title and shall inure for the benefit of the Authority and its successors in title, assignees and transferees, as permitted in accordance with the terms of this Guarantee.
- 4.2 This Guarantee shall remain binding on the Guarantor notwithstanding any change in the constitution of the Authority, its absorption in, or amalgamation with, or the acquisition of all or part of their or its undertaking or assets by, any other person, body or organisation, or any reconstruction or reorganisation of any kind, to the intent that this Guarantee shall remain valid and effective in all respects in favour of any permitted assignee, transferee or other successor in title of the Authority in accordance with the terms of this Guarantee, in the same manner as if such permitted assignee, transferee or other successor in title had been named in this Guarantee instead of, or in addition to, the Authority.
- 4.3 Subject to Clause 11 (*Limit of Liability*), the obligations of the Guarantor under this Guarantee will not be reduced, discharged, impaired or otherwise affected by (and the intention of the Guarantor is that its obligations shall continue in full force and effect notwithstanding) any act, omission, matter or thing which, but for this Clause 4.3 (*Waiver of Defences*), would reduce, release or prejudice any of its obligations under this Guarantee (without limitation and whether or not known to it or the Authority) including:
- 4.3.1 any termination, alteration, amendment, variation, omission, extension or supplement (however fundamental) of or to the PBA or of or to the SLC Agreement or any variation in the obligations undertaken under or pursuant to the PBA or the SLC Agreement (including, without limitation, the nature, extent, timing and method of performance of the PBA or the SLC Agreement) or novation of the PBA (in whole or in part) except for any such alteration, amendment, variation, omission, extension or supplement (however fundamental) of or to the PBA or the SLC Agreement or any variation in the obligations undertaken under or pursuant to the PBA or the SLC Agreement (including, without limitation, the nature, extent, timing and method of performance of the PBA or the SLC Agreement) that occurs after the Transfer Date;
- 4.3.2 the granting by the Authority of any time, indulgence, concession, consent or waiver granted to, or any concession or arrangement made with, the Parent Body Organisation or any other person (including the Contractor) other than the Guarantor (whether expressly or by conduct);

- 4.3.3 any legal limitation on the capacity of, incapacity or lack of power, authority or legal personality of or any dissolution, merger, amalgamation, reconstitution, reorganisation or change in the members, name, status or constitution of the Parent Body Organisation, the Authority or any other person;
- 4.3.4 the granting of any other bond, security or guarantee now or hereafter held by the Authority for all or any part of the Guaranteed Obligations;
- 4.3.5 the enforcement, delay or failure in enforcement, release or waiver of any such bond, security or guarantee referred to in Clause 4 (*Waiver of Defences*) above or any amendment, addition, omission or extension to or variation thereto;
- 4.3.6 any undischarged claim or attempted enforcement of payment from the Parent Body Organisation or the Contractor or any other person;
- 4.3.7 any act or omission which would not have discharged or affected the liability of the Guarantor had it been a principal debtor instead of a guarantor;
- 4.3.8 any delay or forbearance by the Authority in exercising its rights or remedies under this Guarantee, or the enforcement or absence of enforcement of this Guarantee;
- 4.3.9 the invalidity or unenforceability of any Guaranteed Obligation(s) for any reason, or any defect in any provision of the PBA or the SLC Agreement or any other security given in relation to the Guaranteed Obligations;
- 4.3.10 save for any express written exoneration, discharge, reduction or extinguishment by the Authority of the Guarantor's liability under this Guarantee, anything that the Authority may do, or omit or neglect to do which, but for this provision, might exonerate, discharge, reduce or extinguish the liability of the Guarantor under this Guarantee; and
- 4.3.11 the insolvency, liquidation, winding-up or administration of (or the appointment of an administrator or receiver of) or similar proceedings or compromise or arrangement with creditors of the Parent Body Organisation or any other person or the amalgamation, reconstruction, reorganisation, change in status, function, control or ownership of the Parent Body Organisation.

5 REPRESENTATIONS AND WARRANTIES

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

- 5.1 it is duly formed and validly existing under the laws of its jurisdiction of formation;

- 5.2 it has the power to enter into, perform and deliver, and has taken all necessary corporate action to authorise the entry into, performance and delivery of, this Guarantee;
- 5.3 this Guarantee constitutes, subject to any general principles of law limiting its obligations, its legal, binding, valid and enforceable obligations;
- 5.4 the entry into and performance by it of, and the transactions contemplated by, this Guarantee do not and will not conflict with:
 - 5.4.1 any law or regulation or judicial or official order applicable to it as at the date of this Guarantee; or
 - 5.4.2 its constitutional documents; or
 - 5.4.3 any agreement or instrument which is binding upon it or any of its assets or result in the creation of (or a requirement for the creation of) any security or encumbrance of any kind over its assets

in circumstances where there is any material impact on the validity of the obligations of the Guarantor under this Guarantee;

- 5.5 to the best knowledge and belief of the Guarantor there is no litigation, arbitration or administrative proceedings, in each case current or pending, of or before any court, arbitral body or agency of any country threatened against the Guarantor that, if adversely determined, will detract materially from the obligations of the Guarantor under this Guarantee;
- 5.6 the execution by it of this Guarantee constitutes, and the exercise by it of its rights and performance of its obligations under this Guarantee will constitute, private and commercial acts performed for private and commercial purposes and it will not be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in its jurisdiction of incorporation in relation to this Guarantee;
- 5.7 without prejudice to the generality of Clause 5.2 (*Representations and Warranties*) above, its:
 - 5.7.1 irrevocable submission under this Guarantee to the exclusive jurisdiction of the courts of England and Wales;
 - 5.7.2 agreement that this Guarantee is governed by English law; and
 - 5.7.3 agreement not to claim any immunity to which it or its assets may be entitled, are legal, valid and binding under the laws of its jurisdiction of incorporation and any judgment obtained in England and Wales will be recognised and

subject to any general principles of law, be enforceable by the courts of its jurisdiction of incorporation; and

- 5.8 the Guarantor agrees to be bound by this Guarantee notwithstanding that any other person intended to execute or to be bound by any other guarantee, security, collateral instrument or assurance under or pursuant to the PBA may not do so or may not be effectively bound and notwithstanding that such other guarantee, security, collateral instrument or assurance may be determined or be or become invalid or unenforceable against any other person, whether or not the deficiency is known to the Authority.

6 FINANCIAL INFORMATION AND FALL IN CREDIT RATING AND OTHER DETERIORATION IN FINANCIAL STANDING

- 6.1 The Guarantor shall:

6.1.1 provide on the Commencement Date a CEO Compliance Certificate based upon its unaudited consolidated financial statements for the last Quarterly Period ending prior to the Commencement Date;

6.1.1A provide within twenty five (25) Working Days of the end of the first and the third Quarterly Periods of each Financial Year a CEO Compliance Certificate based upon its unaudited consolidated financial statements for the relevant Quarterly Period;

6.1.2 provide within twenty five (25) Working Days of the end of each Semi-Annual Period of each Financial Year (a "**Semi-Annual Test Date**") either:

6.1.2.1 (a) a CFO Compliance Certificate based upon its unaudited consolidated financial statements for such Semi-Annual Period;

(b) an Auditor's Confirmation Letter; and

(c) a Semi-Annual Financial Test Certification; or

6.1.2.2 (a) a written confirmation addressed to and capable of being relied upon by the Authority, in form and substance reasonably acceptable to the Authority, from an appropriately authorised independent third party such as an auditor, solicitor or bank (such confirmation shall not be deemed acceptable to the Authority if it is subject to a liability cap of less than £5,000,000), which confirms that the Semi-Annual Financial Test is satisfied as at the Semi-Annual Test Date (the "**Third Party Semi-Annual Financial Test Confirmation Letter**") ; and

- (b) a CFO Compliance Certificate based upon its unaudited consolidated financial statements for such Semi-Annual Period; and
- 6.1.3 provide within sixty (60) Working Days of the end of each Financial Year of the Guarantor in relation to the audited consolidated financial statements of the Guarantor:
 - 6.1.3.1 a CFO Compliance Certificate;
 - 6.1.3.2 an Auditor's Confirmation Letter; and
 - 6.1.3.3 an Annual Financial Test Certification.
- 6.2 If the Guarantor:
 - 6.2.1 fails to provide any of the documents referred to in Clause 6.1 above within the time periods specified therein;
 - 6.2.2 fails to satisfy either the Annual Financial Test or the Semi-Annual Financial Test;
 - 6.2.3 is unable to provide or procure the compliance of the requisite certifications required by any CEO Compliance Certificate, any CFO Compliance Certificate, Auditor's Confirmation Letter or Third Party Semi-Annual Financial Test Confirmation Letter;
 - 6.2.4 becomes aware of a material adverse circumstance which acting reasonably, it believes would cause it to either:
 - 6.2.4.1 fail to satisfy either the Annual Financial Test or the Semi-Annual Financial Test on the following test date; or
 - 6.2.4.2 fail to be able to provide the requisite certifications required in any CEO Compliance Certificate or CFO Compliance Certificate;

(and in the case of 6.2.2, 6.2.3 or 6.2.4 there is no reasonable prospect of being able to satisfy the requirements of Clause 6.1 in relation to the next two succeeding three monthly periods, subject to the Parent Body Organisation having provided Alternative Credit Support in accordance with the requirements of the PBA, the Authority may terminate the PBA for PBO Default pursuant to Clause 19.2.7 of the PBA and the provisions of Clause 19.5 of the PBA shall apply.
- 6.3 The Guarantor shall, as soon as practicable, notify the Authority of any Material Adverse Change or any event described under Clause 6.2.4 above together with a written explanation for such event, change or occurrence.

7 CONTINUING GUARANTEE

- 7.1 This Guarantee is a continuing guarantee which shall remain in full force and effect regardless of any intermediate discharge, performance or payment of any of the Guaranteed Obligations (in whole or in part) until the complete performance, observance and compliance, by the Parent Body Organisation of and with all the terms and conditions of the PBA.
- 7.2 This Guarantee is in addition to, without prejudice to and is not to merge with any other security, right of action, bond, other guarantee or indemnity or other right or remedy which the Authority may at any time hold in respect of the Guaranteed Obligations.
- 7.3 Subject to Clause 11 (*Limit of Liability*), no single exercise of any right, power or privilege conferred by this Guarantee shall preclude any other or future exercise thereof or the exercise of any other right, power or privilege, nor shall any failure or delay by the Authority in exercising any right, power or privilege under this Guarantee or the PBA operate as a waiver thereof.
- 7.4 Subject to Clause 11 (*Limit of Liability*), the Authority is entitled to make any number of demands under this Guarantee.

8 DEFERRAL OF GUARANTOR'S RIGHTS

- 8.1 Until the Authority (acting reasonably) is satisfied that the Guaranteed Obligations have been irrevocably and unconditionally discharged in full, the Guarantor will not exercise any rights which it may have by reason of performance by it of its obligations under this Guarantee:
- 8.1.1 to be indemnified by the Parent Body Organisation or to make or enforce any claim or right against the Parent Body Organisation;
 - 8.1.2 to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Authority against the Parent Body Organisation under the PBA or of any other guarantee or security taken pursuant to, or in connection with, the PBA by the Authority;
 - 8.1.3 to prove or claim in competition with the Authority in the insolvency or administration of the Parent Body Organisation or otherwise have or exercise any rights of subrogation or as surety in competition with the Authority; or
 - 8.1.4 to call on the Authority to sue or take proceedings against the Parent Body Organisation or raise a defence, set-off or counterclaim of the Parent Body Organisation against the Authority to the extent that the raising of any such

defence, set-off or counterclaim would be inconsistent with any decision or finding made pursuant to the Dispute Resolution Procedure under the PBA.

- 8.2 The Guarantor warrants that it has not undertaken or received, and undertakes that until all the Guaranteed Obligations or other amounts due under this Guarantee have been performed, paid or discharged in full, it will not take or receive, the benefit of any security or encumbrance of any kind from the Parent Body Organisation or any other person in respect of its obligations under this Guarantee other than pursuant to any arrangements between the shareholders of the Parent Body Organisation and the Parent Companies of such shareholders as set out in Schedule 3 (*Consortium Arrangements*) to the PBA.
- 8.3 The Guarantor will hold on trust for the Authority any monies or other assets received or recovered by the Guarantor and any security taken from the Parent Body Organisation or any other person in breach of this Clause 8 (*Deferral of Guarantor's Rights*) as security for the Guarantor's liability under this Guarantee and upon request by the Authority the Guarantor will immediately deposit such security with the Authority (or as it may direct) or pay or transfer such monies or assets to the Authority for application in or towards the discharge of the Guaranteed Obligations.
- 8.4 Any money received in connection with this Guarantee (whether before or after any insolvency of the Parent Body Organisation or the Guarantor) may be placed to the credit of a suspense account with a view to preserving the rights of the Authority to prove for the whole of its/their claims against the Parent Body Organisation or any other person liable or may be applied in or towards satisfaction of such of the Guaranteed Obligations as the Authority may from time to time conclusively determine in its absolute discretion.

9 REINSTATEMENT

- 9.1 Subject to Clause 11 (*Limit of Liability*), if any payment by the Parent Body Organisation or Guarantor or any discharge given by the Authority (whether in respect of Guaranteed Obligations or the obligations of the Guarantor under this Guarantee) is avoided or reduced as a result of insolvency or any similar event:
- 9.1.1 the liability of the Guarantor shall continue as if the avoidance or reduction had not occurred; and
- 9.1.2 the Authority shall be entitled to recover the payment from the Guarantor, as if the avoidance or reduction had not occurred.

10 ENFORCEMENT

Subject to Clause 17 (*Prior Demands Against Parent Body Organisation and Contractor*) of this Guarantee, this Guarantee may be enforced without taking any proceedings against or making demand upon or enforcing or exhausting any right or remedy against the Parent Body Organisation or the Contractor or any other person, or taking any action to enforce any other security, bond or guarantee held by the Authority or making or filing any claim in a bankruptcy, liquidation, administration or insolvency of the Parent Body Organisation or any person. This Guarantee is in addition to and not in substitution for any present and future guarantee, lien or other security to be held by the Authority. Subject to Clause 11 (*Limit of Liability*), the Authority's rights hereunder are in addition to and not exclusive of those provided by law (in accordance with Clause 23 (*Rights Cumulative with those at Law*), in the PBA or in any other document, instrument or agreement executed in connection with the PBA.

11 LIMIT OF LIABILITY

11.1 Subject to Clause 11.5 (*Limit of Liability*) below, but regardless of anything to the contrary in the rest of this Guarantee, the liability of the Guarantor arising under or in connection with this Guarantee and whether arising in contract (including under any indemnity or guarantee), tort (including negligence or misrepresentation), strict liability or otherwise howsoever will when taken together with the liability of each other Parent Company under each of the other Parent Company Guarantees (in aggregate and not per Parent Company Guarantee or per claim arising) be limited to the Limit of Liability.

11.2 [Not used]

11.3 Subject to Clause 8.1.3 (*Deferral of Guarantor's Rights*), in respect of its obligations under Clauses 2 (*Guarantee and Indemnity*), 3 (*Principal Obligor*) and 16 (*Indemnity*), the Guarantor shall be entitled to the benefit of any defence, limitation period, set-off, exclusion or limitation of liability that the Parent Body Organisation would have been entitled to raise against the Authority in respect of the obligation or liability that is guaranteed under Clause 2 (*Guarantee and Indemnity*) or in respect of the original obligation or liability of the Parent Body Organisation in respect of which the Guarantor agrees to become primary obligor under Clause 3 (*Principal Obligor*).

11.4 Subject to Clause 11 (*Limit of Liability*) below, the Guarantor shall not be liable to the Authority for:

11.4.1 any indirect special or consequential loss or damage; or

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

arising out of or in connection with this Guarantee.

- 11.5 Nothing in this Guarantee shall operate to exclude or limit the liability of any party for the fraud (including fraudulent misrepresentation) of that party or where and to the extent that it is otherwise not lawful for that party to exclude or limit the liability concerned.

12 DISCHARGE

Subject to Clause 11 (*Limit of Liability*), notwithstanding any composition, release, arrangement or waiver effected by the Authority with the Parent Body Organisation, the Guarantor's liability under this Guarantee shall be discharged only by performance, payment and/or discharge in full of the Guaranteed Obligations.

13 RETENTION OF THIS GUARANTEE

The Authority shall be entitled to retain the original or a copy of this Guarantee after as well as before the payment or discharge of all of the Guaranteed Obligations (the "**Guarantee Expiry Date**"). This Guarantee shall expire on the Guarantee Expiry Date. The Authority shall, upon request from the Guarantor, confirm whether or not the Guaranteed Obligations have been paid or discharged in full (and accordingly whether or not this Guarantee has expired). Provision of such confirmation to the Guarantor shall not be unduly withheld or delayed by the Authority.

14 WITHHOLDINGS AND DEDUCTIONS

Subject to Clause 11 (*Limit of Liability*) as above, all payments to be made by the Guarantor under this Guarantee shall be made without any set-off, counterclaim or equity and (subject to the following sentence) free from, clear of and without deduction for any taxes, duties, levies, imposts or charges whatsoever, present or future. If the Guarantor is compelled by the law of any applicable jurisdiction (or by an order of any regulatory authority in such jurisdiction) to withhold or deduct any sums in respect of taxes, duties, levies, imposts or charges from any amount payable to the Authority under this Guarantee or, if any such withholding or deduction is made in respect of any recovery under this Guarantee, the Guarantor shall pay such additional amount as shall ensure that the net amount received by the Authority shall equal the full amount due to it under the provisions of this Guarantee (had no such withholding or deduction been made).

15 INTEREST

- 15.1 The Guarantor hereby agrees to pay to the Authority, in respect of any amount requested of the Guarantor and due and payable by it in accordance with this Guarantee, compound interest on such amount at a rate of three per cent (3%) above

the bank rate of the Bank of England, provided that the Guarantor's obligation to pay interest (whether as part of the Guaranteed Obligations or otherwise) shall not exceed an amount calculated at such rate by reason of inclusion of interest provisions within both the Parent Body Agreement and this Guarantee.

- 15.2 Such interest shall accrue on a daily basis from the date of demand by the Authority until actual payment by the Guarantor (both before and after any further demand or judgment or the liquidation of the Guarantor or the Parent Body Organisation).

16 INDEMNITY

Subject to Clause 11 (*Limit of Liability*) as above, as a separate, independent and additional obligation (and without prejudice to Clause 2 (*Guarantee and Indemnity*) as before) the Guarantor unconditionally and irrevocably agrees (for the benefit of the Authority) to indemnify and keep indemnified the Authority on an after tax basis in respect of all losses, damages, costs, claims, liabilities, demands and expenses which may be suffered or properly and reasonably incurred by the Authority and arise from any default or breach by the Guarantor of its obligations under this Guarantee, provided always that nothing in this Clause 16 (*Indemnity*) shall give rise to any greater or further liability or liability for any longer period than the Guarantor has under the other clauses of this Guarantee.

17 PRIOR DEMANDS AGAINST PARENT BODY ORGANISATION AND CONTRACTOR

Notwithstanding any other provision contained in this Guarantee, the Authority does not intend that it should and shall not be able to claim against the Guarantor pursuant to this Guarantee in respect of any liability or obligation of the Contractor or any liability or obligation of the Parent Body Organisation in respect thereof pursuant to the PBO Guarantee (regardless of whether the obligations of the Guarantor are expressed as primary obligations) without first having claimed payment from the Contractor and the Parent Body Organisation. Prior to making any claim under the PBO Guarantee the Authority must have issued a demand for payment to the Contractor requiring settlement within ten (10) Working Days, and the Contractor must have failed to pay. The Authority must then issue a demand for payment to the Parent Body Organisation requiring settlement of the sum within ten (10) Working Days and the Parent Body Organisation must then also fail to pay before the Authority can claim under this Guarantee.

18 ASSIGNMENT/NOVATION

- 18.1 The Authority may at any time assign, transfer or novate without the consent of the Guarantor, the benefit of and/or its rights and/or obligations under this Guarantee (whether or not accrued), to any person to whom the benefit of the PBA is assigned,

transferred or, as applicable, to whom the PBA is novated in accordance with and subject to the terms thereof and the Guarantor shall at the Authority's reasonable cost execute such documents and do such other things as the Authority may reasonably require in order to facilitate and perfect such assignment, transfer or novation.

18.2 The Guarantor may not assign, novate or transfer any of its rights or obligations under this Guarantee without the prior written consent of the Authority which shall not be unreasonably withheld, conditioned or delayed.

18.3 Except as otherwise described in this Clause 18 (*Assignment/Novation*), no Party may transfer any of its rights and obligations under this Guarantee without the prior written consent of the other Parties.

19 DISPUTE RESOLUTION

All disputes under this Guarantee will be resolved in accordance with the Dispute Resolution Procedure.

20 SEVERANCE

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

21 NO WAIVER

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

22 ENTIRE AGREEMENT

All Parties confirm that this Guarantee and any other documents referred to in this Guarantee represent the entire understanding, and constitute the whole agreement, in relation to its subject matter and supersedes any previous agreement between the Parties with respect thereto.

23 RIGHTS CUMULATIVE WITH THOSE AT LAW

23.1 Rights Cumulative

Subject to Clause 11 (*Limit of Liability*), the powers, rights and remedies conferred on the Parties herein shall be in addition and without prejudice to all other powers, rights and remedies available to the Parties by law.

23.2 Equitable Remedies

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

24 LANGUAGE

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

25 CURRENCY AND EXCHANGE RATE

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

26 CONFIDENTIALITY

The Parties hereby agree that the terms of Clause 14 (*Confidentiality*) of the PBA shall apply as appropriate to this Guarantee as if set out in this Guarantee in full save that:

26.1 references to "Parent Body Organisation" shall be replaced by "Guarantor" and references to "Agreement" shall be replaced by "Guarantee"; and

26.2 references to the "Contractor" and/or its "Subcontractors" shall be disregarded.

27 VARIATION

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

28 FURTHER ASSURANCE

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

29 NON-CREATION OF CHARGE

No provision of this Guarantee is intended to create or shall create a charge or other registrable security.

30 COUNTERPARTS

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

31 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT

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

32 NOTICES

- 32.1 Any notice to be given under this Guarantee is to be delivered personally (which includes delivery by courier) or sent by pre-paid recorded or special delivery post to the Party concerned at its address set out below or to such other address as may be notified by such Party for the purposes of this clause:

If to the Authority to:

Addressee: [●]

Address: [●]

Facsimile: [●]

Telephone: [●]

If to the Guarantor to:

Addressee: [●]

Address: [●]

Facsimile: [●]

Telephone: [●]

32.2 Subject to Clause 32.3 (*Notices*), any notice given pursuant to this Guarantee will be deemed to have been served as follows:

32.2.1 if delivered personally, at the time of delivery, and

32.2.2 if sent by recorded or special delivery post, on the third (3rd) Calendar Day after being delivered into the custody of the postal authorities or if posted from a place outside the United Kingdom, on the seventh (7th) Calendar Day after being delivered into the custody of the postal authorities.

32.3 A Notice received or deemed to be received in accordance with Clause 32.2 (*Notices*) 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.

33 GOVERNING LAW AND JURISDICTION

33.1 This Guarantee shall be governed by the laws of England and Wales and, subject to the Dispute Resolution Procedure, the Parties submit to the jurisdiction of the courts of England and Wales. Save in relation to matters of enforcement, and subject to the Dispute Resolution Procedure, such jurisdiction shall be exclusive.

33.2 Any dispute or difference arising out of or in connection with this Guarantee, including but not limited to, any question regarding its existence, interpretation, validity, construction or termination shall, if it cannot be resolved between the Guarantor and the Authority by agreement, be resolved in accordance with the Dispute Resolution Procedure.

33.3 Without prejudice to any other mode of service allowed under any relevant law, the Guarantor irrevocably appoints [●] whose registered office is at [●], United Kingdom as its agent for service of process in relation to any arbitral proceedings or Legal Proceedings before the English courts in connection with this Guarantee and agrees that failure by a process agent to notify the Guarantor of the process will not invalidate the Legal Proceedings concerned.

IN WITNESS of which the Parties have executed and delivered this agreement as a deed on the date first above written.

Executed as a deed by affixing the common)
seal of the **NUCLEAR DECOMMISSIONING**)
AUTHORITY in the presence of:)

.....
Director

.....
Director

Executed as a deed by [**INSERT NAME**)
OF GUARANTOR] acting by)
a director in the presence of:)

.....
Director

.....
Witness

.....
.....

.....
Address

.....
Occupation

**Schedule 1 to the Parent Company Guarantee
Form of CEO Compliance Certificate**

[On Parent Company Guarantor Letterhead]

Nuclear Decommissioning Authority
Herdus House
Westlakes Science and Technology Park
Moor Row
Cumbria
CA24 3HU
United Kingdom

Parent Company Guarantee dated [●] between [name of Guarantor] and the Nuclear Decommissioning Authority ("PCG")

I am the chief executive officer of *[insert name, company number and address of Guarantor]* (the "**Guarantor**"). This letter is a CEO Compliance Certificate for the purpose of the PCG and is in support of the Guarantor's use of the financial test to demonstrate financial assurance, as required by the United Kingdom's Nuclear Decommissioning Authority ("**NDA**").

I hereby certify that the Guarantor:

- (i) remains a going concern that is able to meet the financial requirements of its PCG;
- (ii) has not suffered any adverse material changes to its financial or trading position since the last quarter that could affect its ability to meet its obligations under its PCG; and
- (iii) reasonably believes that it would be able to satisfy the Financial Net Worth Test (as defined in the PCG) if it were carried out as at the date of this letter.

I hereby certify that the content of this letter is true and correct to the best of my knowledge.

[Signature]
[Name]
Chief Executive Officer
[Date]

**Schedule 2 to the Parent Company Guarantee
Form of CFO Compliance Certificate**

[On Parent Company Guarantor letterhead]

Nuclear Decommissioning Authority
Herdus House
Westlakes Science and Technology Park
Moor Row
Cumbria
CA24 3HU
United Kingdom

Parent Company Guarantee dated [●] between [name of Guarantor] and the Nuclear Decommissioning Authority ("PCG")

I am the chief financial officer of [insert name, company number and address of Guarantor] (the "**Guarantor**"). This letter is a CFO Compliance Certificate for the purposes of the PCG and is in support of the Guarantor's use of the financial test to demonstrate financial assurance, as required by the United Kingdom's Nuclear Decommissioning Authority ("**NDA**").

The Guarantor has completed [an Annual Financial Test for the Financial Year ended [insert date]]⁽¹⁾ [a Semi-Annual Financial Test for the Semi-Annual Period ended [insert date]]⁽²⁾ (as defined in the PCG). The figures used in the financial test are derived from the Guarantor's [independently audited, year-end financial statements of the latest completed fiscal year ended [insert date]]⁽¹⁾ [management accounts for the quarter ended [insert date]]⁽²⁾. [A copy of the Guarantor's most recent [audited]⁽¹⁾ financial statements is enclosed [together with an independent verification of the figures used in the financial test.]⁽³⁾

[A copy of the Annual Financial Test Certification (as defined in the PCG) is attached to this letter]⁽¹⁾ [A copy of the Semi-Annual Financial Test Certification (as defined in the PCG) is attached to this letter.]⁽²⁾⁽³⁾

[I certify that the Guarantor:

- (i) remains a going concern that is able to meet the financial requirements of its PCG; and
- (ii) has not suffered any adverse material changes to its financial or trading position since [●]⁽⁴⁾ that could affect its ability to meet its obligations under its PCG]⁽¹⁾

I hereby certify that the content of this letter is true and correct to the best of my knowledge.

[Signature]

[Name]

Chief Financial Officer

[Date]

Notes:

- (1) Include if provided in respect of the annual test pursuant to clause 6.1.3 of the PCG
- (2) Include if provided in respect of the semi-annual test pursuant to clause 6.1.2 of the PCG
- (3) This sentence may be deleted if CFO Compliance Certificate being provided pursuant to clause 6.1.2.2(b) of the PCG
- (4) Insert date of audited accounts

**Schedule 3 to the Parent Company Guarantee
Form of Auditor's Confirmation Letter**

[To be included in the Parent Company Guarantee from Babcock International Group PLC]

Part A – Form of Auditor's Confirmation Letter for the Semi-Annual Financial Test Certification
(Clause 6.1.2.1 of the Parent Company Guarantee)

Proposed form of Report on the Semi-Annual Financial Test Certificate

The Directors
Babcock International Group PLC
33 Wigmore Street
London
W1U 1QX

Attn: Franco Martinelli

The Directors
Nuclear Decommissioning Authority
Herdus House
Westlakes Science and Technology Park
Moor Row
Cumbria
CA24 3HU

[XX]

Dear Sirs

Report of factual findings in connection with a Semi-Annual Financial Test Certificate dated [●] provided pursuant to Schedule 4 to the Parent Company Guarantee dated [●] between Babcock International Group PLC and the Nuclear Decommissioning Authority ("Semi-Annual Financial Test Certificate")

This report is produced in accordance with the terms of our agreement dated [XX].

The directors of Babcock International Group PLC ("the company") have prepared the Semi-Annual Financial Test Certificate and remain solely responsible for it and for the creation and maintenance of all accounting and other records supporting its contents. The company's directors are also responsible for identifying and ensuring that the company complies with the terms of Parent Company Guarantee.

We have performed the procedures agreed with you and listed below on the Semi-Annual Financial Test Certificate. Our work was performed in accordance with the International Standard on Related Services (ISRS) 4400 'Engagements to perform agreed-upon procedures regarding financial information.' The procedures were performed solely to assist the company's directors in fulfilling their obligations to provide financial information relating to the company to the Nuclear Decommissioning Authority under the Parent Company Guarantee and to assist the Nuclear Decommissioning Authority in exercising any rights relating to the provision of such information under the Parent Company Guarantee. We performed the following procedures:

Procedures	Findings
Agreed the amounts included in the Semi-Annual Financial Test Certificate for cash and cash equivalents and net worth to the amounts contained in the company's unaudited management accounts for the period ended 30 September [XX].	[Performed with no exceptions noted.]

Procedures	Findings
Recalculated and checked whether: <ul style="list-style-type: none"> - Cash and cash equivalents is at least two times the annual liability cap within the Parent Company Guarantee as stated in the Semi-Annual Financial Test Certificate. 	[Performed with no exceptions noted.]

Our procedures, as stated in our agreement, did not constitute an examination made in accordance with generally accepted auditing standards, the objective of which would be the expression of assurance on the contents of the Semi-Annual Financial Test Certificate. We do not express such assurance. Had we performed additional procedures or had we performed an audit or review of the Semi-Annual Financial Test Certificate in accordance with generally accepted auditing standards, other matters might have come to our attention that we would have reported to you. This report relates only to the Semi-Annual Financial Test Certificate and does not extend to any financial statements of the company taken as a whole.

Our obligations in respect of this report are entirely separate from, and our responsibility and liability is in no way changed by, any other role we may have (or may have had) as auditors of the company or otherwise. Nothing in this report, nor anything said or done in the course of or in connection with the services, will extend any duty of care we may have in our capacity as auditors of any financial statements of the company.

This report is solely for your use in connection with the purpose specified above and as set out in our agreement. No part of this report is to be copied or distributed to any other party except as permitted under the terms of our agreement. We do not accept any liability or responsibility to any third party.

Yours faithfully,

PricewaterhouseCoopers LLP
Chartered Accountants
London
[XX]

Part B – Form of Auditor's Confirmation Letter for the Annual Financial Test Certification (Clause 6.1.3 of the Parent Company Guarantee)

Proposed form of Report on the Annual Financial Test Certificate

The Directors
Babcock International Group PLC
33 Wigmore Street
London
W1U 1QX

Attn: Franco Martinelli

The Directors
Nuclear Decommissioning Authority
Herdus House
Westlakes Science and Technology Park
Moor Row
Cumbria
CA24 3HU

[XX]

Dear Sirs

Report of factual findings in connection with the Annual Financial Test Certificate dated [●] provided pursuant to Schedule 5 to the Parent Company Guarantee dated [●] between Babcock International Group PLC and the Nuclear Decommissioning Authority (“Annual Financial Test Certificate”)

This report is produced in accordance with the terms of our agreement dated [XX].

The directors of Babcock International Group PLC (“the company”) have prepared the Annual Financial Test Certificate and remain solely responsible for it and for the creation and maintenance of all accounting and other records supporting its contents. The company's directors are also responsible for identifying and ensuring that the company complies with the terms of Parent Company Guarantee.

We have performed the procedures agreed with you and listed below on the Annual Financial Test Certificate. Our work was performed in accordance with the International Standard on Related Services (ISRS) 4400 'Engagements to perform agreed-upon procedures regarding financial information.' The procedures were performed solely to assist the company's directors in fulfilling their obligations to provide financial information relating to the company to the Nuclear Decommissioning Authority under the Parent Company Guarantee and to assist the Nuclear Decommissioning Authority in exercising any rights relating to the provision of such information under the Parent Company Guarantee. We performed the following procedures:

Procedures	Findings
Agreed the amounts included in the Annual Financial Test Certificate for profit after tax attributable to the equity holders, cash and cash equivalents, net cash flow from operating activities, net cash flow from operating activity after taxes paid and net worth to the amounts contained in the company's statutory financial statements for the year ended 31 March [XX].	[Performed with no exceptions noted.]
Procedures	Findings
Recalculated and checked whether: - Profit after tax to the equity holders is at	[Performed with no exceptions noted.]

Procedures	Findings
<p>least two times the annual liability cap with the Parent Company Guarantee as stated in the Annual Financial Test Certificate.</p> <ul style="list-style-type: none"> - Cash and cash equivalents is at least two times the annual liability cap within the Parent Company Guarantee as stated in the Annual Financial Test Certificate. - Net cash flow from operating activities after taxes paid is at least two times the annual liability cap within the Parent Company Guarantee as stated in the Annual Financial Test Certificate. 	

Our procedures, as stated in our agreement, did not constitute an examination made in accordance with generally accepted auditing standards, the objective of which would be the expression of assurance on the contents of the Annual Financial Test Certificate. We do not express such assurance. Had we performed additional procedures or had we performed an audit or review of the Annual Financial Test Certificate in accordance with generally accepted auditing standards, other matters might have come to our attention that we would have reported to you. This report relates only to the Annual Financial Test Certificate and does not extend to any financial statements of the company taken as a whole.

Our obligations in respect of this report are entirely separate from, and our responsibility and liability is in no way changed by, any other role we may have (or may have had) as auditors of the company or otherwise. Nothing in this report, nor anything said or done in the course of or in connection with the services, will extend any duty of care we may have in our capacity as auditors of any financial statements of the company.

This report is solely for your use in connection with the purpose specified above and as set out in our agreement. No part of this report is to be copied or distributed to any other party except as permitted under the terms of our agreement. We do not accept any liability or responsibility to any third party.

Yours faithfully,

PricewaterhouseCoopers LLP
Chartered Accountants
London
[XX]

[To be included in the Parent Company Guarantee from Fluor Corporation]

Part A – Form of Auditor's Confirmation Letter for the Semi-Annual Financial Test Certification
(Clause 6.1.2.1 of the Parent Company Guarantee)

[On Auditor's Letterhead]

Report of Independent Accountants on Applying Agreed-Upon Procedures in connection with a Semi-Annual Financial Test Certification dated [●] (the "Semi-Annual Financial Test Certification") provided pursuant to Schedule 4 to the Parent Company Guarantee dated [●] between Fluor Corporation and the United Kingdom's Nuclear Decommissioning Authority (the "PCG")

To the Management of Fluor Corporation and
United Kingdom's Nuclear Decommissioning Authority:

We have performed the procedures enumerated below, which were agreed to by management of Fluor Corporation (the "Company") and the United Kingdom's Nuclear Decommissioning Authority (the "NDA"), solely to assist the Company's management and the NDA in evaluating financial information included in the Semi-Annual Financial Test Certification presented in the accompanying Schedule 4 to the PCG.

We refer to the accompanying Schedule Reconciling Amounts Contained in Chief Financial Officer's Compliance Certificate with Amounts in Financial Statements, dated [●] (the "Schedule") and the accompanying Schedule 4 to the PCG – Form of Semi-Annual Financial Test Certification ("Schedule 4"), prepared by you in connection with the PCG. The Schedule and Schedule 4 are referred to herein as the "Schedules." The Company's management is responsible for preparing the Schedules and determining compliance with the financial tests required by the PCG. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. It is the Company's understanding that these procedures are those required by the NDA. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

We have performed the following procedures related to the Schedule:

- We compared the amounts for Cash and Cash Equivalents and Net Worth (aka Net Assets or Shareholders Equity) in the column "Per Financial Statements" per the Schedule, with corresponding amounts contained in the Company's unaudited condensed consolidated balance sheet as of [●] for Cash and Cash Equivalents and Total equity, respectively, and found such amounts to be in agreement.
- We compared the amounts for Cash and Cash Equivalents and Net Worth (aka Net Assets or Shareholders Equity) in the column "Per CFO's Compliance Certificate" per the Schedule, with corresponding amounts contained in Schedule 4, and found such amounts to be in agreement.
- We compared the amounts in the column "Per Financial Statements" per the Schedule with corresponding amounts contained in the column "Per CFO's Compliance Certificate" per the Schedule and found such amounts to be in agreement.

We have performed the following procedures related to Schedule 4:

- We compared the amount included on line 2 to an amount calculated as the product of the amount in line 1b times a factor of 2 (the “minimum cash coverage amount”) and observed that the amount on line 2 was greater than the minimum cash coverage amount.

We were not engaged to and did not conduct an examination, the objective of which would be the expression of an opinion on the financial information included in the Schedules. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of management of the Company and the NDA and is not intended to be and should not be used by anyone other than these specified parties.

[Date of report]

Schedule Reconciling Amounts Contained in Chief Financial Officer's Compliance Certificate with Amounts in Financial Statements

[insert name of Parent Company Guarantor]

Period ended dd/mmm/yyyy

Per Financial Statements	Reconciling Items	Per CFO's Compliance Certificate
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Part B – Form of Auditor's Confirmation Letter for the Annual Financial Test Certification (Clause 6.1.3 of the Parent Company Guarantee)

Report of Independent Accountants on Applying Agreed-Upon Procedures in connection with an Annual Financial Test Certification dated [●] (the "Annual Financial Test Certification") provided pursuant to Schedule 5 to the Parent Company Guarantee dated [●] between Fluor Corporation and the United Kingdom's Nuclear Decommissioning Authority (the "PCG")

To the Management of Fluor Corporation and
United Kingdom's Nuclear Decommissioning Authority:

We have performed the procedures enumerated below, which were agreed to by management of Fluor Corporation (the "Company") and the United Kingdom's Nuclear Decommissioning Authority (the "NDA"), solely to assist the Company's management and the NDA in evaluating financial information included in the Annual Financial Test Certification presented in the accompanying Schedule 5 to the PCG.

We refer to the accompanying Schedule Reconciling Amounts Contained in Chief Financial Officer's Compliance Certificate with Amounts in Financial Statements, dated [●] (the "Schedule") and the accompanying Schedule 5 to the PCG – Form of Annual Financial Test Certification ("Schedule 5"), prepared by you in connection with the PCG. The Schedule and Schedule 5 are referred to herein as the "Schedules." The Company's management is responsible for preparing the Schedules and determining compliance with the financial tests required by the PCG. This agreed-upon procedures engagement was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. The sufficiency of these procedures is solely the responsibility of those parties specified in this report. It is the Company's understanding that these procedures are those required by the NDA. Consequently, we make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

We have performed the following procedures related to the Schedule:

- We compared the amounts for Profit after tax (or Net Income) attributable to the equity holders of the Guarantor, Cash and Cash Equivalents, Net Cash Flow From Operating Activities, Taxes Paid (or Reimbursed), and Net Worth (aka Net Assets or Shareholders' Equity) in the column "Per Financial Statements" per the Schedule, with corresponding amounts contained in the Company's audited consolidated financial statements as of or for the year ended [●] for Net Earnings Attributable to Fluor Corporation, Cash and Cash Equivalents, Net Cash Flow From Operating Activities, Taxes Paid (or Reimbursed), and Total Equity, respectively, and found such amounts to be in agreement.
- We compared the amounts for Profit after tax (or Net Income) attributable to the equity holders of the Guarantor, Cash and Cash Equivalents, Net Cash Flow From Operating Activities, Taxes Paid (or Reimbursed), and Net Worth (aka Net Assets or Shareholders' Equity) in the column "Per CFO's Compliance Certificate" per the Schedule, with corresponding amounts contained in Schedule 5, and found such amounts to be in agreement.
- We compared the amounts in the column "Per Financial Statements" per the Schedule with corresponding amounts contained in the column "Per CFO's Compliance Certificate" per the Schedule and found such amounts to be in agreement.

We have performed the following procedures related to Schedule 5:

- We recomputed Net cash flow from operating activities after taxes paid (item #6 of the Annual Financial Test Certification) as Net cash flow from operating activities (item #4 of the Annual Financial Test Certification) less taxes paid (or reimbursed) (item #5 of the Annual Financial Test Certification), and found such recomputed amount to be in agreement.
- We compared the amount included on line 2 to an amount calculated as the product of the amount in line 1b times a factor of 2 (the “minimum profit coverage amount”) and observed that the amount on line 2 was greater than the minimum profit coverage amount.
- We compared the amount included on line 3 to an amount calculated as the product of the amount in line 1b times a factor of 2 (the “minimum cash coverage amount”) and observed that the amount on line 3 was greater than the minimum cash coverage amount.
- We compared the amount included on line 6 to an amount calculated as the product of the amount in line 1b times a factor of 2 (the “minimum cash flow coverage amount”) and observed that the amount on line 6 was greater than the minimum cash flow coverage amount.

We were not engaged to and did not conduct an examination, the objective of which would be the expression of an opinion on the financial information included in the Schedules. Accordingly, we do not express such an opinion. Had we performed additional procedures, other matters might have come to our attention that would have been reported to you.

This report is intended solely for the information and use of management of the Company and the NDA and is not intended to be and should not be used by anyone other than these specified parties.

[Date of report]

**Schedule Reconciling Amounts Contained in Chief Financial Officer's Compliance
Certificate with Amounts in Financial Statements**

[insert name of Parent Company Guarantor]

Period ended dd/mmm/yyyy

Per Financial Statements	Reconciling Items	Per CFO's Compliance Certificate
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**Schedule 4 to the Parent Company Guarantee
Form of Semi-Annual Financial Test Certification**

Parent Company Guarantee dated [●] between [name of Guarantor] and the Nuclear Decommissioning Authority ("PCG")

This is a Semi-Annual Financial Test Certification given as at the Semi-Annual Test Date on [●] in respect of [name, company number and address of Guarantor] (the "**Guarantor**").

All figures and tests to be in thousands of United Kingdom pounds ⁽¹⁾

1.			£(000s)
	a.	Total aggregate amount covered by the PCG	_____
	b.	Annual liability cap within the PCG	_____
		Local Currency ⁽²⁾	£(000s) ⁽¹⁾
2.	Cash and cash equivalents ⁽³⁾	_____	_____
3.	Net worth (aka Net assets or Shareholders' equity)	_____	_____

Guarantor must meet the following test:

		Yes	No
4.	Is line 2 at least 2 times line 1b?	_____	_____

Signed

.....
Chief Financial Officer

Notes:

- (1) For companies that do not report in UK pounds, the amounts should be converted from local currency by applying the applicable 'Closing Mid' foreign exchange rate published by the Financial Times at the end of business for the closing day of the relevant annual accounting period (<http://markets.ft.com/research/Markets/Currencies>) .
- (2) Denotes figures derived from financial statements.
- (3) "Cash equivalents" shall be interpreted in accordance with the recognised accounting standards adopted by the Guarantor for the preparation of financial statements for the production of its statutory accounts.

**Schedule 5 to the Parent Company Guarantee
Form of Annual Financial Test Certification**

Parent Company Guarantee dated [●] between [name of Guarantor] the "Guarantor" and the Nuclear Decommissioning Authority ("PCG")

All figures and tests to be in thousands of United Kingdom pounds⁽¹⁾. This is an Annual Financial Test Certification given in relation to financial year end [insert date] of [name, company number and address of Guarantor] (the "**Guarantor**").

1.		£(000s)
a.	Total aggregate amount covered by the PCG	_____
b.	Annual liability cap within the PCG	_____
	Local Currency ⁽²⁾	£(000s) ⁽¹⁾
2.	Profit after tax (or Net income) ⁽³⁾ attributable to the equity holders of the Guarantor	_____
3.	Cash and cash equivalents ⁽⁴⁾	_____
4.	Net cash flow from operating activities	_____
5.	Taxes paid (or reimbursed) (if not included in 4. Net cash flow from operating activities)	_____
6.	Net cash flow from operating activities after taxes paid (line 4 minus line 5)	_____
7.	Net worth (aka Net assets or Shareholders' equity)	_____

Guarantor must meet two of the following three tests:

	Yes	No
8.	Is line 2 at least 2 times line 1b?	_____
9.	Is line 3 at least 2 times line 1b?	_____
10.	Is line 6 at least 2 times line 1b?	_____

Signed

.....
Chief Financial Officer

Notes:

- (1) For companies that do not report in UK pounds, the amounts should be converted from local currency by applying the applicable 'Closing Mid' foreign exchange rate published by the Financial Times at the end of business for the closing day of the relevant annual accounting period (<http://markets.ft.com/research/Markets/Currencies>).
- (2) Denotes figures derived from audited financial statements.
- (3) For the purposes of this calculation, exceptional items, amortisation and discontinued operations should not be excluded.
- (4) "Cash equivalents" shall be interpreted in accordance with the recognised accounting standards adopted by the Guarantor for the preparation of financial statements for the production of its statutory accounts.

Schedule 5

PBO Minimum Performance Standards

This Schedule defines the minimum performance standards that the Parent Body Organisation is required to maintain during the Term in relation to the elements listed below (being the "**PBO Minimum Performance Standards**").

1 PBO MINIMUM PERFORMANCE STANDARDS

Subject to Paragraph 2 (*Termination and Remediation*) below, it shall be a PBO Default where at any time during the Term the PBO materially fails to comply with the socio-economic requirements described at Clause 8 (*PBO Socio-Economic Commitments*) and Schedule 9 (*PBO Socio-Economic Commitments*) of this Agreement.

2 TERMINATION AND REMEDIATION

For the avoidance of doubt:

- 2.1 where a failure to comply with the PBO Minimum Performance Standards is a direct result of a Force Majeure Event or an Authority Default, such failure shall not constitute a PBO Default;
- 2.2 the Parent Body Organisation shall be entitled to remedy a failure to comply with the PBO Minimum Performance Standards in accordance with Clause 19.5.3 (*Remediable Breach*); and
- 2.3 the Authority shall not be entitled to terminate the Parent Body Agreement for the Parent Body Organisation's failure to comply with the PBO Minimum Performance Standards unless such failure has not been remedied in accordance with Clause 19.5.3 (*Remediable Breach*).

Schedule 6

PBA Change Control Procedure

1 INTERPRETATION

The following terms shall have the meanings given below solely for the purposes of this PBA Change Control Procedure:

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

"Relevant Agreement" means the agreement to which a Proposed PBA Change relates (being this Agreement, the Nuclear Indemnity, a Parent Company Guarantee or the Alternative Credit Support).

PRINCIPLES

- 1.1 The Parties shall conduct discussions relating to any Proposed PBA Changes in good faith.
- 1.2 Until such time as a formal variation to this Agreement, the Nuclear Indemnity, a Parent Company Guarantee or the Alternative Credit Support (referred to in this Schedule 6 as a **"Contract Change Note"** or **"CCN"**) has been signed by the Parties in accordance with Paragraph 2.5 (*Procedure*) below, the Parties shall continue to fulfil all of their obligations under the Relevant Agreement.
- 1.3 Each Party shall bear its own costs in connection with any work undertaken in relation to any Proposed PBA Change.
- 1.4 Any discussions, negotiations or other communications which may take place between the Parties in connection with any Proposed PBA Change, including but not limited to the submission of any written communications, prior to the signing by the Parties of the relevant CCN, shall be without prejudice to the rights of any Party.

2 PROCEDURE

- 2.1 Any Party may request any amendment to this Agreement, the Nuclear Indemnity, a Parent Company Guarantee or the Alternative Credit Support pursuant to the provisions of this Schedule. In such an event the Parent Body Organisation and/or the Contractor (as applicable) shall submit to the Authority, or the Authority shall submit to the Parent Body Organisation a brief written paper (the **"Proposed Change Paper"**) addressing, as a minimum, the following points:

- 2.1.1 the title of the Proposed PBA Change;

- 2.1.1A the Relevant Agreement;
 - 2.1.2 the originator and date of the proposal for the Proposed PBA Change;
 - 2.1.3 the reason for the Proposed PBA Change;
 - 2.1.4 full details of the Proposed PBA Change;
 - 2.1.5 the effect, if any, of the Proposed PBA Change on the Contractor and the SLC Agreement, including details of any consequential Category 0 Change, Category I Change, Category II Change or Category III Change (as such terms are defined in the SLC Agreement); and
 - 2.1.6 details of the likely impact, if any, of the Proposed PBA Change on other aspects of this Agreement, the Nuclear Indemnity, any Parent Company Guarantee and/or any Alternative Credit Support.
- 2.2 Within fourteen (14) Calendar Days of the submission of a Proposed Change Paper (or such other period as may be agreed between the Parties, each acting reasonably and having regard to any relevant timescales contained within the SLCA Change Control Procedure where any Change under the SLC Agreement is required as a result of any Proposed PBA Change) the receiving Party shall respond to the Proposed Change Paper in writing and, if appropriate, the Parties (and/or representatives of the Parties) shall meet to discuss the Proposed Change Paper, having regard to the provisions of Paragraph 2.3.2 (*Procedure*) below (provided that such discussion shall, as far as possible, be undertaken at the same time as (and the Parties shall, in such discussion, have due regard to) any discussion and/or consideration of any Proposed Change under the SLC Agreement that is required as a result of any Proposed PBA Change).
- 2.3 Discussion between the Parties following the submission of a Proposed Change Paper shall result in either:
- 2.3.1 agreement between the Parties on the change(s) to be made to the Relevant Agreement (including agreement on the date upon which the change(s) are to take effect), such agreement to be expressed in the form of proposed revisions to the text (and/or diagrams, designs etc. as necessary) of the relevant parts of the Relevant Agreement; or
 - 2.3.2 no further action being taken on that Proposed Change Paper (provided that this shall not be an option where (and to the extent that):
 - 2.3.2.1 the Proposed PBA Change is required to address any of the events listed in Paragraph 6.14 of Schedule 2 to the SLC Agreement, provided that where such Paragraph refers to the definition of a

Change in the SLC Agreement the definition shall be deemed to include any PBA Change; or

2.3.2.1 the Authority or the Contractor would otherwise have the right under the SLC Agreement to require such Proposed PBA Change to be approved and implemented if it were a Proposed Change under the SLC Agreement).

2.4 A copy of any proposed revisions to the Relevant Agreement agreed between the Parties in accordance with Paragraph 2.3.1 (*Procedure*) above, accompanied by a completed pro forma (as reproduced at Paragraph 3 (*CCN Pro-forma*) below), shall constitute a CCN. Each CCN shall be uniquely identified by a sequential number.

2.5 A CCN signed by all the Parties shall constitute an amendment to the Relevant Agreement pursuant to Clause 24.9 (*Variation*).

2.6 A CCN shall constitute an amendment to the Relevant Agreement only upon signature by:

2.6.1 the Authority's authorised signatory;

2.6.2 if the Parent Body Organisation is a Party, the Parent Body Organisation's authorised signatory);

2.6.3 if the Magnox Contractor and/or the RSRL Contractor are Parties, the Managing Directors of those Parties (or such persons' duly authorised signatories);

2.6.4 if a Parent Company Guarantor is a Party, the [Managing Director] of that Parent Company Guarantor (or such person's duly authorised signatory);

2.6.5 if a provider of Alternative Credit Support is a Party, that provider's authorised signatory.

and shall not be binding until each signatory specified in this Paragraph has so authorised the relevant CCN.

3 **CCN PRO-FORMA**

The format of the pro forma referred to in Paragraph 2.4 (*Procedure*) above shall be as follows:

Contract Change Note

Sequential Number:

Title:

Number of pages attached:

WHEREAS the Authority[, the Magnox Contractor, the RSRL Contractor] and the Parent Body Organisation:

A entered into a [Parent Body Agreement / Nuclear Indemnity / Parent Company Guarantee / Letter of Credit] (the "**Original Agreement**") dated 20●; and

B wish to amend the Original Agreement

IT IS AGREED as follows

1 With effect from [date], the Original Agreement (as the same may from time to time have been amended prior to the date of this Contract Change Note) shall be amended as set out below:

[Drafting Note: Full details of any amendments to the Original Agreement should be inserted here.]

2 Save as herein amended all other terms and conditions of the Original Agreement shall remain in full force and effect.

Signed for and on behalf of the Nuclear Decommissioning Authority (the Authority)

By

Name

Title

Date

Signed for and on behalf of Cavendish Fluor Partnership Limited (the Parent Body Organisation)

By

Name

Title

Date

[Signed for and on behalf of Magnox Limited (the Magnox Contractor)

By

Name

Title

Date

Signed for and on behalf of Research Sites Restoration Limited (the RSRL Contractor)

By

Name

Title

Date]

Schedule 7

Claims Handling Agreement

_____ 201[●]

NUCLEAR DECOMMISSIONING AUTHORITY

and

[INDEMNIFIED PARTY]

CLAIMS HANDLING AGREEMENT

THIS AGREEMENT is made on

20[●]

BETWEEN:

- (1) **NUCLEAR DECOMMISSIONING AUTHORITY** a non-departmental public body whose registered office is at Herdus House, Westlakes Science and Technology Park, Moor Row, Cumbria, CA24 3HU (the "**Authority**"); and
- (2) [*Name and details of Party wishing to be indemnified*] ([name]),

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

WHEREAS:

- (A) the Authority has entered a Parent Body Agreement with the PBO and the Magnox Contractor and the RSRL Contractor (the "**Contractor**");
- (B) under the terms of the Nuclear Indemnity, the Authority has agreed to indemnify [name] (the "**Indemnified Party**") in respect of certain costs, losses, liabilities, claims and expenses;
- (C) [name] agrees to comply with the terms of this Agreement in respect of all claims made by or on its behalf pursuant to the Nuclear Indemnity.

IT IS AGREED AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

"**Contractor**" has the meaning given in Recital A;

"**Commencement Date**" has the meaning given in the Parent Body Agreement;

"**Indemnified Party**" has the meaning given in Recital B;

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

"**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;

"**Nuclear Incident**" has the meaning given to such term in the Nuclear Indemnity;

"Nuclear Indemnity" means the indemnity granted by the Authority in favour of the PBO, the Contractor and the Indemnified Parties as defined therein in the form attached at Schedule 8 (*Nuclear Indemnity*) of the Parent Body Agreement;

"Parent Body Agreement" means the agreement of that name entered into between the Authority, the Contractor and the Parent Body organisation and commencing on the 1 September 2014;

"PBO" or "Parent Body Organisation" means Cavendish Fluor Partnership Limited, a company incorporated in England and Wales with registered number 08980374 whose registered office is at 33 Wigmore Street, London, W1U 1QX;

"Third Party Claims" has the meaning given to such term in Clause 3 (*Third Party Claims*) in this Agreement;

"Value for Money" means as defined in the Nuclear Indemnity.

1.2 Interpretation

- 1.2.1 headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;
- 1.2.2 all references to Clauses and Schedules are references to clauses of and any schedules to this Agreement;
- 1.2.3 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;
- 1.2.4 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);
- 1.2.5 words importing the singular include the plural and vice versa;
- 1.2.6 words importing a particular gender include all genders;
- 1.2.7 "person" includes any individual, partnership, firm, trust, body corporate, government department, corporation sole, governmental body, authority, agency or unincorporated body of persons or association;
- 1.2.8 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;

1.2.9 references to "Party" and "Parties" means a Party or the Parties to this Agreement as applicable;

1.2.10 all monetary amounts are expressed in pounds sterling;

1.2.11 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;

1.2.12 a reference to a balance sheet or profit and loss account includes a reference to any note forming part of or attached to it;

1.2.13 references to the word "includes" or "including" are to be construed without limitation;

1.2.14 references to a document being "in the agreed form" means a copy of such document initialled for the purposes of identification by the Parties as of the date hereof;

1.2.15 any reference in this Agreement to a Party providing its consent or approval shall be deemed to be a reference to prior written consent or approval;

1.2.16 a reference to the "Sites" shall include any part of the Sites; and

1.2.17 all references to a time of day are references to UK time.

2 TERM

2.1 This Agreement shall take effect on the Commencement Date and shall remain in full force and effect for as long as the Nuclear Indemnity remains in force in accordance with the provisions contained within.

3 THIRD PARTY CLAIMS

- 3.1 As soon as reasonably practicable after the Indemnified Party becomes aware of a claim by a Third Party (or any matter likely to give rise to any claims by Third Parties) pursuant to which the Authority may become liable under the Nuclear Indemnity in respect of the Indemnified Party ("**Third Party Claim**"), the Indemnified Party shall notify the Authority and the PBO.
- 3.2 Each Indemnified Party will provide to the Authority and the PBO such information concerning the claim or potential claim as either the Authority or the PBO may reasonably request, within the time frame reasonably requested by the Authority and the PBO. So far as possible, such information shall be provided in such a manner as to maintain any applicable legal privilege in relation to such information.
- 3.3 The Parties will consult each other about which of them may, potentially, have liability in relation to the claim or potential claim and, subject to Clause 6 below (*Authority's Handling*), will seek to agree which Party shall handle the claim or potential claim.

4 MITIGATION OF LOSSES

- 4.1 The Indemnified Party shall use all its reasonable endeavours to mitigate the losses indemnified under the Nuclear Indemnity. If directed by the Authority and at the Authority's cost pursuant to this Clause 4 (*Mitigation of Losses*), the Indemnified Party shall pursue legal remedies (if applicable) against insurers and any relevant Third Parties against whom the Indemnified Party has any right of recovery (including any such rights which may arise under the Atomic Energy Damages Act (also known as the Price-Anderson Act, a federal law of the United States) and any other legislation in all relevant jurisdictions) in relation to the Nuclear Incident. The Indemnified Party shall account to the Authority for the proceeds received pursuant to any such legal remedy up to and in reimbursement of sums paid out by the Authority in relation to the Nuclear Incident under the Nuclear Indemnity. To the extent that the Indemnified Party does not comply with its obligations under this Clause 4 (*Mitigation of Losses*), the Indemnified Party shall not be entitled to the benefit of the Nuclear Indemnity in respect of the amount of any losses that should properly have been avoided by mitigation or recovered from any Third Party.

5 AVAILABILITY OF NUCLEAR INSURANCE

- 5.1 If the Authority, acting reasonably, considers that insurance is available which will cover some or all of the potential losses under this Indemnity, and that such insurance provides Value for Money, the Indemnified Party shall co-operate fully with the Authority's reasonable instructions in relation to the procuring of such insurance, to be

procured at the Authority's expense, and will comply with the terms of all such policies as are notified to it.

6 AUTHORITY'S HANDLING

6.1 If a Third Party Claim is made against any or all of the Indemnified Party, the Authority and the PBO, in respect of which the Authority reasonably believes that the Authority will have liability under the Nuclear Indemnity for the entire financial effect of that Third Party Claim:

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

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

6.1.1.2 instruct such solicitors or other professional advisers (including for the avoidance of doubt expert witnesses and counsel) as the Authority may nominate to act on behalf of the Indemnified Party as applicable, but in accordance with the instructions of the Authority,

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

6.1.2 the Authority shall use reasonable endeavours to keep the Indemnified Party notified of the progress of any Legal Proceedings of which it has conduct in accordance with this Clause 6 (*Authority's Handling*) and, subject to any overriding public policy considerations, and any urgent timing requirements, shall take account of all reasonable requests of the PBO or relevant Indemnified Party in relation to any matter which may involve loss of reputation or impact on the business of the PBO or relevant Indemnified Party.

6.2 The Indemnified Party shall, at the Authority's cost, comply with all of the instructions of the Authority in relation to such claim or potential claim and with the requirements set out in any insurance policies benefiting the Authority in relation to the Nuclear Indemnity of which it is notified by the Authority or the PBO.

7 INDEMNIFIED PARTY RIGHTS TO DEFEND LEGAL PROCEEDINGS

7.1 Where the Indemnified Party has made representations to the Authority pursuant to Clause 6.1.2 (*Authority's Handling*) and the Authority chooses not to defend a Third

Party Claim which the Indemnified Party wishes to defend for reputational reasons or because it may impact on the Indemnified Party's business, the Authority, in its sole discretion (which shall not be capable of challenge by the Indemnified Party), may agree that the Indemnified Party may have control of the Legal Proceedings at its sole risk and the provisions of this Clause 7 (*Indemnified Party Rights to Defend Legal Proceedings*) shall apply.

7.2 Where the Authority has agreed in accordance with Clause 7.1 (*Indemnified Party Rights to Defend Legal Proceedings*) that the Indemnified Party shall have control of the Legal Proceedings.

7.2.1 the Indemnified Party shall use reasonable endeavours to keep the Authority and the Contractor fully informed of the progress of any Legal Proceedings of which it has conduct and shall consult the Authority in relation to any material step in the Legal Proceedings and shall take account of all reasonable requirements of the Authority in relation to such step;

7.2.2 the Indemnified Party shall not:

7.2.2.1 make any admission, settlement or compromise of the Third Party Claim the subject of the Legal Proceedings;

7.2.2.2 agree to any matter in the conduct of Legal Proceedings which may affect the amount of the liability in connection with such Third Party Claim; or

7.2.2.3 make any representation or statement in relation to such Third Party Claim,

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

7.2.3 where the Indemnified Party takes over the conduct of any Legal Proceedings pursuant to this Clause 7 (*Indemnified Party Rights to Defend Legal Proceedings*), the Parent Body Organisation shall indemnify and keep the Contractor and the Authority indemnified in respect of all reasonable claims and all costs arising directly out of its conduct of the Legal Proceedings; and

7.2.4 where the Indemnified Party takes over the conduct of any Legal Proceedings pursuant to this Clause 7 (*Indemnified Party Rights to Defend Legal*

Proceedings), the Authority shall give or cause to be given all such assistance as the Indemnified Party may reasonably require in resisting any such Third Party Claim and conducting any Legal Proceedings.

8 CHANGE IN CIRCUMSTANCES

If the Authority, acting reasonably, believes that the circumstances relating to the Third Party Claim have changed or are not what the Authority initially believed the relevant circumstances to be, the Authority shall review the Third Party Claim in the light of the changed circumstances and shall determine, acting reasonably, whether the Authority should continue to handle such Third Party Claim as appropriate under Clause 6 (*Authority's Handling*).

9 CONFIDENTIALITY

The confidentiality provisions set out in Clause 13 (*Confidentiality*) of the Parent Body Agreement relating to the PBO shall apply mutatis mutandis to the Indemnified Party in relation to this Agreement, and the confidentiality provisions set out in Clause 13 (*Confidentiality*) of the Parent Body Agreement relating to the Authority shall apply mutatis mutandis to the Authority in relation to this Agreement.

10 ASSIGNMENT

10.1 Assignment by the Indemnified Party

The Indemnified Party 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.

10.2 Assignment by Authority

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

11 ENTIRE AGREEMENT

11.1 The Authority and the Indemnified Party confirm that this Agreement, together with the Nuclear Indemnity represents the entire understanding, and constitutes the whole agreement between them, in relation to its subject matter and supersedes any previous

agreement between each of them with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at Legislation or by custom.

- 11.2 Each Party confirms that in entering into this Agreement it has not relied on any representation, warranty, assurance, covenant, indemnity (other than the Nuclear Indemnity), undertaking or commitment which is not expressly set out in this Agreement.

12 SEVERABILITY

- 12.1 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.
- 12.2 If the circumstances referred to in Clause 12.1 (*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.

13 FURTHER ASSURANCE

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

14 WAIVER

- 14.1 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.
- 14.2 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 (with the exception of the indemnity set out in the Nuclear Indemnity, which shall continue in full force and effect) 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 leading to such fault, negligence, tort, strict liability, breach of Agreement, or otherwise was fraudulent and/or reckless and/or constitutes Wilful Default.

15 VARIATION

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

16 NOTICES

16.1 A notice, approval, consent, electronic mail (in the case of Clause 16.4 (*Notices*) below only) or other communication ("**Notice**") in connection with this Agreement and the documents referred to in it must be in written form in the English language and must be delivered by hand, by first class prepaid post (or airmail if posted to or from a place outside the United Kingdom) or by facsimile transmission to the relevant address or facsimile number specified in Clause 16.3 (*Notices*) below or, for the purposes of Clause 16.4 (*Notices*) below only, by electronic email to an address for the time being notified for that purpose to the Party giving notice.

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

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

Authority

Addressee: [•]

Address: [•]

Facsimile: [•]

Telephone: [•]

Email: [•]

Copied to: [•]

Indemnified Party

Address: [•]

Facsimile: [•]

Email: [•]

Attention: [•]

Copied to: [•]

Any change to the address, facsimile number or to the addressee must be notified by the relevant Party to the other Party as soon as reasonably practicable by notice given in accordance with this Clause 16 (*Notices*).

- 16.4 If an electronic mail address has been provided pursuant to Clause 16.1 (*Notices*) above, the following Notices may be sent by electronic mail:

16.4.1 electronic transmittal of a scanned image of an original executed Notice; and

16.4.2 day-to-day communication in connection with this Agreement and the documents referred to in it.

- 16.5 In the absence of evidence of earlier receipt, any Notice shall take effect from the time that it is deemed to be received in accordance with Clause 16.6 (*Notices*) below.

- 16.6 Subject to Clause 16.7 (*Notices*) below, a Notice is deemed to be received:

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

16.6.2 where delivered by posted letter, on the third (3rd) Calendar Day after posting or, if posted to or from a place outside the United Kingdom, on the seventh (7th) Calendar Day after posting;

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

16.6.4 where sent by electronic mail (where applicable), on the second (2nd) Calendar Day after such electronic mail was sent. The place of receipt of electronic mail shall be deemed to be the postal address of the addressee given in, or amended in accordance with, Clause 16.3 (*Notices*) above.

- 16.7 A Notice received or deemed to be received in accordance with Clause 16.6 (*Notices*) 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.

16.8 Each Party undertakes to notify the other Party by notice served in accordance with this Clause if the address specified herein is no longer an appropriate address for the service of Notices.

16.9 Notwithstanding Clauses 16.1 (*Notices*) and 16.3 (*Notices*) above, if the Authority determines, in its absolute discretion, that any Notice is to be protectively marked and should be delivered in a secure manner, it shall inform the Indemnified Party and shall instruct the Indemnified Party as to whom to deliver such Notice and how such Notice should be delivered.

17 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.

18 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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

19 GOVERNING LAW AND JURISDICTION

19.1 This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

19.2 The Parties irrevocably agree that the courts of England and Wales shall have jurisdiction to settle any dispute or claim that arises out of or in connection with this deed or its subject matter or formation (including non-contractual disputes or claims). Save in relation to matters of enforcement, such jurisdiction shall be exclusive.

IN WITNESS of which the Parties have executed and delivered this agreement as a deed on the date first above written.

Executed as a deed by affixing the common)
seal of the **NUCLEAR DECOMMISSIONING**)
AUTHORITY in the presence of:)

.....
Director

.....
Director

Executed as a deed by [**INSERT NAME**)
OF INDEMNIFIED PARTY] acting by)
a director in the presence of:)

.....
Director

.....
Witness

.....
.....

.....
Address

.....
Occupation

Schedule 8

Nuclear Indemnity

NUCLEAR INDEMNITY

NUCLEAR DECOMMISSIONING AUTHORITY	(1)
and	
CAVENDISH FLUOR PARTNERSHIP LIMITED	(2)
and	
MAGNOX LIMITED	(3)
and	
RESEARCH SITES RESTORATION LIMITED	(4)

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THIS INDEMNITY is made as a deed on

2014

BETWEEN:

- (1) **NUCLEAR DECOMMISSIONING AUTHORITY** a non-departmental public body whose head office is at Herdus House, Westlakes Science and Technology Park, Moor Row, Cumbria, CA24 3HU (the "**Authority**");
- (2) **CAVENDISH FLUOR PARTNERSHIP LIMITED** a company incorporated in England and Wales with registered number 08980374 whose registered office is at 33 Wigmore Street, London, W1U 1QX (the "**Parent Body Organisation**" or "**PBO**");
- (3) **MAGNOX LIMITED** a company incorporated under the laws of England and Wales with registered number 02264251 whose registered office is at Berkeley Centre, Berkeley, Gloucestershire, GL13 9PB (the "**Magnox Contractor**", or together with the RSRL Contractor, the "**Contractor**"); and
- (4) **RESEARCH SITES RESTORATION LIMITED**, a company incorporated under the laws of England and Wales with registered number 05915837 whose registered office is at Building 392.10/Room 1.05, Harwell Oxford, Didcot, Oxfordshire, OX11 0DF (the "**RSRL Contractor**", or together with the Magnox Contractor, the "**Contractor**"),

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

WHEREAS:

- (A) the operation of a nuclear site entails certain risks of harm to Third Parties by reason of a Nuclear Incident (as defined below);
- (B) the Act (as defined below), which enacted in the United Kingdom the provisions of the Paris/Brussels Conventions (as defined below), provides that where certain kinds of harm occur by reason of a Nuclear Incident on or relating to a nuclear site, the operator of that site shall be liable for such harm without proof of fault;
- (C) certain classes of liability, such as economic loss arising without physical damage, liability to reinstate the environment following nuclear contamination and economic loss arising as a result of harm to an economic interest in the environment arising from a Nuclear Incident, whilst recoverable under the Paris/Brussels Conventions, are not presently covered by the provisions of the Act;
- (D) further, the Act and the Paris/Brussels Conventions do not apply outside (respectively) the United Kingdom and the territories of the Contracting Parties (as defined in the Paris/Brussels Conventions);

- (E) the Parties recognise that, at some point after the Commencement Date, the Act is due to be amended in order to incorporate amendments to the Paris/Brussels Conventions. Therefore, on or before the entering into force of such amendments to the Act, it is agreed by the Parties that the New NIA Indemnity in the form set out in the Annex to this Indemnity shall be entered into by the Parties in its place (subject to the form of the New NIA Indemnity having received Parliamentary approval);
- (F) the Authority has entered into a Parent Body Agreement with the Parent Body Organisation and the Contractor;
- (G) the Authority has entered into a SLC Agreement with the Contractor;
- (H) the Authority has agreed to indemnify the Parent Body Organisation and certain others, including the Contractor, against liabilities to Third Parties which are not covered by the Act on the terms set out herein.

IT IS AGREED AS FOLLOWS:

1 DEFINITIONS

- 1.1 In this Indemnity "**Excepted Matter**", "**Licensee**", "**Nuclear Matter**", "**Relevant Carriage**", "**Occurrence**", "**Relevant Site**" and "**Relevant Territory**" shall each have the meaning given to them in the Act and the following words shall have the meanings assigned to them:

"**Act**" means the Nuclear Installations Act 1965;

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

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

- 1.1.6 a company in which the Contractor and/or the Parent Body Organisation, either jointly or separately, has less than a thirty per cent (30%) economic interest, but where the economic interest is of such a nature as to create the perception of a conflict of interest; or
- 1.1.7 a company owned or controlled, directly or indirectly, to the extent of thirty per cent (30%) or more of the outstanding equities, securities or assets by the Parent Body Organisation or any of the companies described in 1.1.1, 1.1.2, 1.1.3 or 1.1.4 above;

"Aggregate Liability Cap" has the meaning given to it in the Parent Body Agreement;

"Amending Protocols" means the Protocol of 12 February 2004 to amend the Paris Convention and the Protocol of 12 February 2004 to amend the Brussels Supplementary Convention;

"Annual Liability Cap" has the meaning given to it in the Parent Body Agreement;

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

"Berkeley Site" has the meaning given to such term in the SLC Agreement;

"Bradwell Site" has the meaning given to such term in the SLC Agreement;

"Brussels Supplementary Convention" means the Convention of 31 January 1963 supplementary to the Paris Convention, as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982;

"Chapelcross Site" has the meaning given to such term in the SLC Agreement;

"Claims Handling Agreement" means an agreement in the form described in Clause 10.1 (*Claims Handling and Dispute Resolution*) of this Indemnity;

"Client Specification" means the Authority's requirements as set out in Schedule 1 (*Client Specification*) of the SLC Agreement;

"Client Specification Completion State" has the meaning given to it in the SLC Agreement;

"Commencement Date" means 1 September 2014;

"Continuing Nominated Staff" means, in the event of expiry or termination of the Parent Body Agreement for whatever reason, the Nominated Staff that the Authority (acting reasonably) requires to remain seconded (whether on a full time or other basis) to the Contractor following expiry or termination of the Parent Body Agreement;

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

- 1.1.1 the first Contract Year of the SLC Agreement which shall commence on the Commencement Date and end on 31 March first occurring thereafter; and
- 1.1.2 the last Contract Year of the SLC Agreement which shall commence on 1 April and end at the expiry of the SLC Agreement (or the Parent Body Agreement (as applicable));

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

"Dungeness Site" has the meaning given to such term in the SLC Agreement;

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

"Fee" means the aggregate of the PBI Fee, the Target Fee (as adjusted in accordance with the terms of the SLC Agreement) and any further category of fee that may be agreed between the parties to the SLC Agreement in accordance with the SLC Agreement;

"Harwell Site" has the meaning given to such term in the SLC Agreement;

"Hinkley Site" has the meaning given to such term in the SLC Agreement;

"Hunterson A Site" has the meaning given to such term in the SLC Agreement;

"Indemnified Parties" means:

- 1.1.1 the PBO;
- 1.1.2 the PBO Shareholders;
- 1.1.3 the Parent Companies;
- 1.1.4 any other Affiliate which has at any time either:
 - 1.1.4.1 provided Nominated Staff for the purposes of Clause 7 (*Provision of Staff to the Contractor*) of the Parent Body Agreement; or

- 1.1.4.2 provided additional support for the purposes of Clause 4.7 (*Provision of Call-Off Support to the Authority*) and Schedule 20 (*Call-Off Support*) of the SLC Agreement; or
- 1.1.4.3 was otherwise allegedly and/or actually involved in or connected to any claim in respect of such Nominated Staff or additional support and such Nominated Staff or additional support allegedly and/or actually contributed to or was otherwise involved in any cause of the relevant Nuclear Incident; and
- 1.1.5 any intermediate companies between:
 - 1.1.5.1 any such Affiliate referred to in 1.1.4 above and a Parent Company; and
 - 1.1.5.2 the PBO Shareholders referred to in 1.1.2 and the Parent Companies; and
- 1.1.6 the Contractor;

"Indemnity" means the indemnity given in this Indemnity;

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

"Indexed" means that on each Indexation Adjustment Date an amount referred to in this Indemnity shall be increased by the application of the indexation factor set out in Clause 2 (*Interpretation*);

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

"Magnox Nominated Staff" means the individuals listed in Part 1 (*Magnox*) of Schedule 7 (*Employment and Pensions*) of the SLC Agreement, as amended from time to time;

"Magnox Sites" means the Sixth Site and all of the Chapelcross Site, the Hunterston A Site, the Oldbury Site, the Trawsfynydd Site, the Wylfa Site, the Berkeley Site, the Bradwell Site, the Dungeness Site, the Hinkley Site and the Sizewell Site;

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

"New NIA Indemnity" shall have the meaning given in Clause 5.3;

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

"Nuclear Incident" means (subject to Paragraph 5 (*Duration of Indemnity*) below):

1.1.1 any occurrence, whether prior to, on or after the Commencement Date or Relevant Event, on or in connection with a Site involving Nuclear Matter which is not Excepted Matter;

1.1.2 any occurrence, whether prior to, on or after the Commencement Date or Relevant Event, elsewhere than on a Site involving Nuclear Matter which is not Excepted Matter and which at the time of the occurrence or the Relevant Event (as the case may be):

1.1.2.1 is in the course of carriage from or to the Magnox Contractor or RSRL Contractor, as the case may be, as the Licensee for a Site;
or

1.1.2.2 is in the course of carriage to a Site with the agreement of the Magnox Contractor or RSRL Contractor, as the case may be, from a place outside the Relevant Territories; and

1.1.2.3 in either case, is not on any other Relevant Site in the United Kingdom;

1.1.3 any occurrence, whether prior to, on or after the Commencement Date or Relevant Event, elsewhere than on a Site involving Nuclear Matter which is not Excepted Matter and which:

1.1.3.1 having been on such Site at any time; or

1.1.3.2 having been in the course of carriage to or from the Magnox Contractor or RSRL Contractor, as the case may be, as the Licensee for such Site,

1.1.3.3 has not subsequently been on any Relevant Site or in the course of any Relevant Carriage,

in each case arising out of or resulting from or connected with the radioactive properties, or a combination of those and any toxic, explosive or other hazardous properties, of Nuclear Matter; or

1.1.4 any emission of ionising radiations, whether prior to, on or after the Commencement Date or Relevant Event:

1.1.4.1 from anything caused or suffered by the Magnox Contractor or RSRL Contractor, as the case may be, as the Licensee to be on a Site which is not Nuclear Matter; or

1.1.4.2 from any waste discharged (in whatever form) on or from a Site;

"Nuclear Indemnity Threshold" means two million pounds sterling (£2,000,000) (Indexed) as adjusted pursuant to Clause 8.1 (*Nuclear Indemnity Threshold and Indemnified Party Default*) below;

"Nuclear Liabilities" means any claim by a Third Party (including a Subcontractor) or the Authority, regardless of the jurisdiction in which any such claim arises or is brought, for all or any of the following:

1.1.1 loss of life or personal injury;

1.1.2 damage to, or destruction of, property;

1.1.3 economic loss arising from the loss or damage referred to in Paragraph 1.1.1 or 1.1.2 of this definition to the extent not included in those Paragraphs,

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

1.1.1 the costs of any measures of reinstatement of impaired environment unless such impairment is insignificant if such measures have been taken or are to be taken, and to the extent not included in Paragraph 1.1.2 of this definition;

1.1.2 loss of income deriving from a direct economic interest in any use or enjoyment of the environment, incurred as a result of a significant impairment of that environment, and to the extent not included in Paragraph 1.1.2 of this definition; and

1.1.3 the cost of preventive measures, and further loss or damage caused by such measures,

incurred by the PBO or Indemnified Party or the Contractor arising as a result of a Nuclear Incident but excluding:

1.1.1 loss of opportunity, loss of revenue, loss of profit or any other consequential loss of the Parent Body Organisation and/or the Indemnified Parties and/or the Contractor; and

1.1.2 any diminution in the value of any shareholding held by the Parent Body Organisation and/or any Indemnified Party and/or the Contractor;

"Oldbury Site" has the meaning given to such term in the SLC Agreement;

"Parent Body Agreement" means the agreement of that name entered into between the Authority, the Magnox Contractor, the RSRL Contractor and the PBO on the date of this Indemnity;

"Parent Companies" means:

1.1.1 Babcock International Group plc, a company incorporated in England and Wales with registered number 2342138 whose registered office is at 33 Wigmore Street, London, W1U 1QX; and

1.1.2 Fluor Corporation, a company incorporated in the United States of America with Federal Employer Identification Number 330927079 whose registered office is at 6700 Las Colinas Boulevard, Irving, Texas, 75039,

(and **"Parent Company"** shall mean any one of such Parent Companies);

"Paris Convention" means the Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982;

"Paris/Brussels Conventions" means the Paris Convention and the Brussels Supplementary Convention;

"PBI Fee" means the performance-based incentive fee payable in accordance with Part 4A (*Calculation of PBI Fee*) and Part 4C (*Payment of PBI Fee and Target Fee*) of Schedule 6 (*Finance*) of the SLC Agreement;

"PBO Shareholders" means the shareholders of the PBO;

"RSRL Nominated Staff" means the individuals listed in Part 2 (*RSRL*) of Schedule 7 (*Employment and Pensions*) of the SLC Agreement, as amended from time to time;

"Relevant Event" means any act, omission, default or other matter, either prior to the Commencement Date or during the Term, which causes or is connected with (whether in whole or in part), or is cited in any claim for Nuclear Liabilities as so causing or being connected with, any occurrence involving Nuclear Matter or emission of ionising radiation (including, for the purposes of this definition, any period during which any Continuing Nominated Staff are provided to the Contractor by the Parent Body Organisation);

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

"**Site**" (singular) means either any one of the Magnox Sites or any one of the RSRL Sites;

"**Sites**" (plural) means both the Magnox Sites and the RSRL Sites;

"**Sixth Site**" has the meaning given to such term in the SLC Agreement;

"**Sizewell Site**" has the meaning given to such term in the SLC Agreement;

"**SLC Agreement**" means the agreement of that name of even date herewith between the Authority, the Magnox Contractor and the RSRL Contractor relating to the restoration of the Sites;

"**Target Fee**" means the fee payable in respect of the successful achievement of Target Fee Payment Milestones in accordance with Part 4B (*Calculation of Target Fee*) and Part 4C (*Payment of PBI Fee and Target Fee*) of Schedule 6 (*Finance*) of the SLC Agreement;

"**Target Fee Payment Milestones**" means the payment milestones set out in Paragraph 2 (*Target Fee Payment Milestones*) of Part 4B (*Calculation of Target Fee*) of Schedule 6 (*Finance*) of the SLC Agreement, and more fully described in the Client Specification;

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

"**Third Party**" means:

1.1.1 any person other than the Parties and (subject to Paragraph 1.1.2 below) Affiliates; and

1.1.2 any Affiliate to the extent that such Affiliate is acting in its capacity as a Subcontractor or Sub-Subcontractor (in each case as defined in the SLC Agreement);

"**Trawsfynydd Site**" has the meaning given to such term in the SLC Agreement;

"**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:

1.1.1 the objectives of any applicable Authority Policies and Procedures;

1.1.2 the Authority's statutory obligations to the extent relevant to the Sites; and

1.1.3 the terms and conditions of the SLC Agreement,

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

"Wilful Misconduct" means, in respect of an act or omission, that the person so acting knows that such act or omission may cause harm to any person or property as a result of a Nuclear Incident, and such person:

1.1.4 intends to cause harm to any person or property as a result of a Nuclear Incident; or

1.1.5 has a reckless disregard for the harm to any person or property that may be caused as a result of a Nuclear Incident;

"Winfrith Site" has the meaning given to such term in the SLC Agreement; and

"Wylfa Site" has the meaning given to such term in the SLC Agreement.

2 INTERPRETATION

2.1 In this Indemnity:

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

2.1.2 save to the extent that the express provisions of this Indemnity require otherwise, all references to Clauses, Paragraphs or Annex are references to clauses, paragraphs and the annex of this Indemnity;

2.1.3 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;

2.1.4 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);

2.1.5 words importing the singular include the plural and vice versa with the exception of the definitions **"Site"** and **"Sites"** which shall be interpreted in accordance with the separate definitions given above for such terms;

2.1.6 words importing a particular gender include all genders;

- 2.1.7 "person" includes any individual, partnership, firm, trust, body corporate, government department, corporation sole, governmental body, authority, agency or unincorporated body of persons or association;
- 2.1.8 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;
- 2.1.9 references to "Party" and "Parties" means a Party or the Parties to this Indemnity as applicable;
- 2.1.10 all monetary amounts are expressed in pounds sterling;
- 2.1.11 references 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;
- 2.1.12 references to the word "includes" or "including" are to be construed without limitation;
- 2.1.13 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;
- 2.1.14 any reference to a Party providing its consent or approval shall be deemed to be a reference to prior written consent or approval;
- 2.1.15 a reference to a "Site" shall include any part of that Site; and
- 2.1.16 all references to a time of day are references to UK time.

- 2.2 Save where otherwise stated, for the purposes of this Indemnity, references to the SLC Agreement and any terms defined in it shall be treated as reference to the SLC Agreement and such defined term in the form applicable at the relevant time during the Term, and in the case of any liability arising after the Term, in the form applicable immediately prior to the Transfer Date.

3 WARRANTIES

- 3.1 Without prejudice to any warranties or conditions either express or implied by any applicable legislation:
- 3.1.1 the Parent Body Organisation warrants and undertakes that as at the Commencement Date it is duly incorporated and validly exists under the laws of England and Wales; and
- 3.1.2 each Party warrants and undertakes to the others that as at the Commencement Date it has the legal right and the requisite power and authority to enter into and perform its obligations under this Indemnity and any other related documents which, when executed, will constitute valid and binding obligations on it in accordance with its terms, and it has taken all necessary action to authorise the execution and the performance of its obligations under this Indemnity and any other related documents.
- 3.2 Without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, each of the Parties confirms to the others that 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 this Indemnity are those contained or referred to in this Indemnity 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 Indemnity) or otherwise howsoever.

4 INDEMNITY

- 4.1 The provisions of this Clause 4 (*Indemnity*) apply to all Indemnified Parties.
- 4.2 Except to the extent arising under and governed by the Act or prohibited by law, and subject always to the provisions of this Indemnity, the Authority hereby indemnifies the Parent Body Organisation and each Indemnified Party against all liabilities, losses, costs and expenses incurred by any such party arising in respect of Nuclear Liabilities, including the reasonable legal costs of defending a claim brought by a Third Party in respect thereof or an allegation thereof (such costs to be paid on account as incurred) and any legal costs awarded in favour of any such Third Party.

- 4.3 Notwithstanding any other provision of this Indemnity, this Indemnity set out in this Clause 4 shall, (subject to compliance by the Parent Body Organisation with any express obligation upon it contained in this Indemnity and which is relevant to the particular claim and, where relevant, compliance by the relevant Indemnified Party with its Claims Handling Agreement) be enforceable:
- 4.3.1 by the Parent Body Organisation on behalf of itself and on behalf of any of the Indemnified Parties; and
- 4.3.2 following expiry or termination (for whatever reason) of the Parent Body Agreement, by any Indemnified Party pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 4.4 In the event of enforcement by the Parent Body Organisation on behalf of an Indemnified Party, the Authority waives any defence to such enforcement on the basis that the relevant liabilities, losses, costs and expenses were incurred by such Indemnified Party rather than the Parent Body Organisation.
- 4.5 The Authority waives any claim it may have against the Parent Body Organisation and/or any Indemnified Party in respect of any Nuclear Liability.

5 DURATION OF INDEMNITY AND CHANGES TO THE ACT

- 5.1 This Indemnity shall come into force on the Commencement Date and remain in force until the date thirty (30) years after the last day of the Term. For the purposes of this provision the Term includes any period during which any Continuing Nominated Staff are provided by the Parent Body Organisation.
- 5.2 The Parties acknowledge that after the Commencement Date, the Act will be amended to give effect to the Amending Protocols.
- 5.3 Subject to Clause 5.3A (*Duration of Indemnity and Changes to the Act*), on or before the date on which the amendments to the Act to implement the Amending Protocols enter into effect, the Parties shall enter into an indemnity in the form set out in the Annex to this Indemnity (the “**New NIA Indemnity**”) to take effect on the date on which the amendments to the Act to implement the Amending Protocols enter into effect. The New NIA Indemnity shall take effect in accordance with its own terms.
- 5.3A The Parties shall have no obligations under Clause 5.3 (*Duration of Indemnity and Changes to the Act*) unless and until the form of the New NIA Indemnity has been approved by Parliament.
- 5.4 This Indemnity and the New NIA Indemnity may exist in parallel subject to Clause 5.1 (*Duration of Indemnity and Changes to the Act*).

- 5.5 On or after the commencement date of the New NIA Indemnity, only liabilities, losses, costs and expenses incurred by the Parent Body Organisation or an Indemnified Party arising in respect of Nuclear Incidents occurring, or which began, prior to the commencement date of the New NIA Indemnity shall be governed by the terms of this Indemnity.
- 5.6 For the avoidance of doubt, any liabilities, losses, costs and expenses incurred by the Parent Body Organisation or an Indemnified Party arising in respect of Nuclear Liabilities occurring on or after the date of commencement of the New NIA Indemnity shall not be governed by the terms of this Indemnity but by the terms of the New NIA Indemnity entered into by the Parties in accordance with Clause 5.3 (*Duration of Indemnity and Changes to the Act*) above.

6 CLAIMS THRESHOLD

- 6.1 Subject to Clause 8 (*Nuclear Indemnity Threshold and Indemnified Party Default*), the Authority shall only be liable to the Parent Body Organisation or an Indemnified Party or the Contractor in respect of a claim made under this Indemnity arising out of or relating to a specific Nuclear Incident to the extent that such claim, when aggregated with all other claims under this Indemnity arising out of or relating to that specific Nuclear Incident, exceeds the Nuclear Indemnity Threshold.

7 MITIGATION OF LOSSES

- 7.1 The Parent Body Organisation shall, and shall procure that each relevant Indemnified Party shall, use all its reasonable endeavours to mitigate the losses indemnified under this Indemnity. If directed by the Authority and at the Authority's cost pursuant to this Clause 7 (*Mitigation of Losses*), the Parent Body Organisation and relevant Indemnified Parties shall pursue legal remedies (if applicable) against insurers and any relevant Third Parties against whom the Parent Body Organisation or relevant Indemnified Party has any right of recovery (including any such rights which may arise under the Atomic Energy Damages Act (also known as the Price-Anderson Act, a federal law of the United States) and any other legislation in all relevant jurisdictions) in relation to the Nuclear Incident. The Parent Body Organisation and relevant Indemnified Parties shall account to the Authority for the proceeds received pursuant to any such legal remedy up to and in reimbursement of sums paid out by the Authority in relation to the Nuclear Incident under this Indemnity. To the extent that the Parent Body Organisation or relevant Indemnified Party does not comply with its obligations under this Clause 7 (*Mitigation of Losses*), the Parent Body Organisation or relevant Indemnified Party shall not be entitled to the benefit of this Indemnity in respect of the amount of any losses that should properly have been avoided by mitigation or recovered from any Third Party.

- 7.2 Save in the case of the Contractor, (where any costs incurred in undertaking mitigation or pursuing legal remedies are recoverable in accordance with the provisions of the SLC Agreement) the Authority shall indemnify the Parent Body Organisation and each relevant Indemnified Party for any costs incurred in undertaking mitigation or pursuing legal remedies as referred to in this Clause 7 (*Mitigation of Losses*). To the extent the Authority does not indemnify the Parent Body Organisation or relevant Indemnified Party for costs of mitigation or pursuing legal remedies the Parent Body Organisation and relevant Indemnified Parties shall not be obliged to comply with the provisions of this Clause 7 (*Mitigation of Losses*).

8 NUCLEAR INDEMNITY THRESHOLD AND INDEMNIFIED PARTY DEFAULT

- 8.1 Subject to Clause 8.1 (*Nuclear Indemnity Threshold and Indemnified Party Default*), to the extent that the aggregate of:

- 8.1.1 any and all liabilities of either the Contractor or the Parent Body Organisation falling within the Annual Liability Cap in any Contract Year; and
- 8.1.2 any and all liabilities of the Indemnified Parties incurred in respect of the Nuclear Indemnity Threshold in that Contract Year

exceeds the Annual Liability Cap for the relevant Contract Year or the Aggregate Liability Cap, the Nuclear Indemnity Threshold shall for any specific Nuclear Incident for which claims are made in that Contract Year be reduced by deduction of an amount equal to the amount of any such excess, provided that (i) the amount of such reduction shall not exceed the amount of the Nuclear Indemnity Threshold; and (ii) to the extent that any such reduction to a Nuclear Indemnity Threshold is made for a specific Nuclear Incident in any Contract Year, that portion of the excess may not again be used to reduce the Nuclear Indemnity Threshold in any subsequent Contract Year in which any Nuclear Liabilities arise from that specific Nuclear Incident.

- 8.2 In relation to any claim brought under Clause 4 (*Indemnity*) of this Indemnity where the Nuclear Incident has arisen as a result of any act or omission of the Parent Body Organisation or any Indemnified Party, or any employee, secondee (including the Nominated Staff) or agent thereof that constitutes fraud or Wilful Misconduct then the Nuclear Indemnity Threshold shall be increased from

s.43(2)

s.43(2)

to:

- 8.2.1 s.43(2) where such act or omission occurs prior to the earlier of:

- 8.2.1.1 acceptance by the Authority of the Consolidation Report pursuant to the SLC Agreement; and

8.2.1.2 twelve (12) Months after the Commencement Date; or

8.2.2 [REDACTED] s.43 (Indexed) where such act or omission occurs at any time thereafter,

provided always that the total of any and all increases in the Nuclear Indemnity Threshold under this Clause arising out of or relating to a specific Nuclear Incident shall not exceed [REDACTED] s.43 (Indexed).

9 DOUBLE RECOVERY

9.1 The Parent Body Organisation and/or any Indemnified Party shall not be entitled to recover or otherwise obtain compensation or restitution under this Indemnity to the extent that it has received compensation or obtained restitution from any other source or as a result of the pursuance of other legal remedies in accordance with Clause 7 (*Mitigation of Losses*) above or otherwise, including under the provisions of the Act in respect of the same loss or damage, provided that the foregoing provisions of this Clause 9 (*Double Recovery*) apply to the Contractor only to the extent that the Authority irrevocably waives any obligation of the Contractor under the SLC Agreement to pay or otherwise account to the Authority for the amount of any such compensation or restitution.

10 CLAIMS HANDLING AND DISPUTE RESOLUTION

- 10.1 The PBO shall procure that prior to pursuit of any claim pursuant to this Indemnity, the relevant Indemnified Party will execute and tender to the Authority for execution and completion a Claims Handling Agreement substantially in the form set out in Schedule 7 (*Claims Handling Agreement*) of the Parent Body Agreement.
- 10.2 The Parent Body Organisation shall comply with the claims handling provisions set out in Clause 12 (*Claims Handling*) of the Parent Body Agreement in respect of all claims made by the Parent Body Organisation under this Indemnity.
- 10.3 The Authority shall comply with the claims handling provisions set out in Clause 12 (*Claims Handling*) of the Parent Body Agreement in respect of all claims under this Indemnity.
- 10.4 Subject to Clause 10.5 (*Claims Handling and Dispute Resolution*) below, any dispute or difference arising out of or in connection with this Indemnity, including, but not limited to, any question regarding its existence, interpretation, validity, construction or termination, shall be resolved in accordance with the Dispute Resolution Procedure.
- 10.5 Notwithstanding Clause 10.4 (*Claims Handling and Dispute Resolution*) above, the Parent Body Organisation shall procure that each relevant Indemnified Party shall seek

to resolve any dispute or difference arising out of or in connection with this Indemnity, including, but not limited to, any question regarding its existence, interpretation, validity, construction or termination, in accordance with the dispute resolution provisions set out in the relevant Claims Handling Agreement.

- 10.6 For the purposes of this Clause 10 (*Claims Handling and Dispute Resolution*), a relevant Indemnified Party is any Indemnified Party other than the Contractor.

11 ASSIGNMENT/NOVATION

- 11.1 The PBO and 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 Indemnity or any part of it and shall not delegate in any manner whatsoever its performance under this Indemnity.

- 11.2 The rights and obligations of the Authority under this Indemnity 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) having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Indemnity being:

11.2.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975; or

11.2.2 any other public body whose obligations under this Indemnity are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor and PBO) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under this Indemnity.

12 CONTINUING OBLIGATIONS

- 12.1 This Indemnity and all rights, remedies and obligations under this Indemnity shall continue in full force and effect notwithstanding termination or expiry of the Parent Body Agreement and/or the SLC Agreement, whether due to any act omission or default of any Party or for any other reason whatsoever.

13 NOTICES

- 13.1 Any notice or other communication required to be given to a Party under or in connection with this Indemnity 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) to the address specified in Clause 26 (Notices) of the Parent Body Agreement or as otherwise notified in writing.

- 13.2 All notices must be marked for the attention of the addressee.
- 13.3 Each Party undertakes to notify the other Parties by notice served in accordance with this Clause if the address specified herein is no longer an appropriate address for the service of notices.
- 13.4 This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this Clause, "writing" shall not include e-mail.

14 AVAILABILITY OF NUCLEAR INSURANCE

- 14.1 Subject to Clause 14.2 below, if the Authority, acting reasonably, considers that insurance is available which will cover some or all of the potential losses under this Indemnity, and that such insurance provides Value for Money, the Parent Body Organisation and the Contractor shall and shall procure that each other Indemnified Party will co-operate fully with the Authority's reasonable instructions in relation to the procuring of such insurance, to be procured at the Authority's expense, and will comply with the terms of all such policies as are notified to it.
- 14.2 Neither the Contractor nor the Parent Body Organisation shall be required to comply with its obligations set out in Clause 14.1 above to the extent that such compliance would:
 - 14.2.1 put it in breach of its obligations under the Parent Body Agreement or the SLC Agreement (as the case may be) and the Authority has not waived such obligations; or
 - 14.2.2 cause the Contractor or the Parent Body Organisation to incur material costs and expenses or undertake any actions which are additional to those required to be incurred or undertaken by them in delivery of their respective obligations to the Authority under the SLC Agreement and/or the Parent Body Agreement (as the case may be) unless:
 - 14.2.2.1 the Authority has agreed to pay such additional costs and expenses; and
 - 14.2.2.2 in the case of any obligation which would result in an increase or decrease in a Target Cost of the type described in paragraphs 6.2(b)(ii)(A) or (B) of Schedule 2 of the SLC Agreement, which the Parties hereby agree shall be a Category 0 Change and the

procedure set out in paragraph 6.8 of Schedule 2 of the SLC Agreement has been implemented in respect of such obligations.

- 14.3 The Parent Body Organisation shall procure that the Indemnified Parties are notified of all such insurance policies and that they comply with their terms.

15 NUCLEAR INSTALLATIONS ACT 1965

- 15.1 It is acknowledged that the Act and the Paris/Brussels Conventions apply in respect of loss covered by the Act that falls and is claimed within the jurisdictional application of that legislation and the Paris/Brussels Conventions and that any Third Party claimants are subject, where jurisdictionally applicable as aforesaid, to the provisions of that legislation and the Paris/Brussels Conventions which have the effect of channelling liability to the Magnox Contractor or the RSRL Contractor (as the case may be).

- 15.2 This Indemnity shall not apply to any claim for compensation made under the provisions of the Act and nothing in this Indemnity, the SLC Agreement, the Parent Body Agreement or the Property Leases:

15.2.1 is intended to provide a right of recourse by the Contractor against any Affiliate for the costs of meeting any claim for compensation under the provisions of the Act or the Paris/Brussels Conventions and the Contractor waives any such right of recourse it may have against any such Affiliate; or

15.2.2 is intended to be an agreement, for the purposes of section 12(3A)(a) of the Act, by any person to incur liability in respect of damage caused in breach of a duty imposed by section 7, 8, 9 or 10 of the Act.

16 COUNTERPARTS

- 16.1 This Indemnity may be executed in any number of counterparts, and by each Party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument.

17 VARIATION

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

18 GOVERNING LAW AND JURISDICTION

- 18.1 This Indemnity and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

- 18.2 Subject to the Dispute Resolution Procedure, the Parties irrevocably agree that the courts of England and Wales shall have jurisdiction to settle any dispute or claim that arises out of or in connection with this Indemnity or its subject matter or formation (including non-contractual disputes or claims). Save in relation to matters of enforcement, and subject to the Dispute Resolution Procedure, such jurisdiction shall be exclusive.

19 GENERAL

19.1 Entire Agreement

Without prejudice to the rights and obligations of the Parties under each of the Parent Body Agreement and SLC Agreement, the Parties confirm that this Indemnity 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.

19.2 Waiver

19.2.1 A failure or delay by any Party at any time to enforce any provision of this Indemnity or to require performance by any other Party of any provision of this Indemnity or the giving of anything whatsoever shall not be construed as a waiver of such provision and shall not affect the validity of this Indemnity 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 or Indemnified Parties under this Indemnity.

19.2.2 The waivers, disclaimers, releases, limitations and apportionments of liability, exclusive remedy provisions, and indemnity and hold harmless obligations expressed in this Indemnity shall apply even in the event of the fault, negligence, tort, strict liability, breach of contract, Wilful Misconduct, recklessness, fraud or otherwise, of the Party or Indemnified 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.

19.3 Severability

19.3.1 If any condition, clause or provision of this Indemnity 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 Indemnity which shall remain in full force and effect.

19.3.2 If the circumstances referred to in Clause 19.3.1 (*Severability*) 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.

IN WITNESS of which the Parties have executed and delivered this agreement as a deed on the date first above written.

Executed as a deed by affixing the common)
seal of the **NUCLEAR DECOMMISSIONING**)
AUTHORITY in the presence of:)

.....
Director

.....
Director

Executed as a deed by **CAVENDISH FLUOR**)
PARTNERSHIP LIMITED acting by)
a director in the presence of:)

.....
Director

.....
Witness

.....
.....

.....
Address

.....
Occupation

Executed as a deed by)
as attorney for **MAGNOX LIMITED** under a)
power of attorney dated 18 July 2014)
in the presence of:)

.....
as attorney for **MAGNOX LIMITED**

.....
Witness

.....
.....
.....

Address

.....
Occupation

Executed as a deed by **RESEARCH SITES**)
RESTORATION LIMITED acting by a)
director in the presence of:)

.....
Director

.....
Witness

.....
.....
.....

Address

.....
Occupation

Annex

New NIA Indemnity

NUCLEAR INDEMNITY

NUCLEAR DECOMMISSIONING AUTHORITY (1)

and

CAVENDISH FLUOR PARTNERSHIP LIMITED (2)

and

MAGNOX LIMITED (3)

and

RESEARCH SITES RESTORATION LIMITED (4)

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THIS INDEMNITY is made as a deed on

201[●]

BETWEEN:

- (1) **NUCLEAR DECOMMISSIONING AUTHORITY** a non-departmental public body whose head office is at Herdus House, Westlakes Science and Technology Park, Moor Row, Cumbria, CA24 3HU (the "**Authority**");
- (2) **CAVENDISH FLUOR PARTNERSHIP LIMITED** a company incorporated in England and Wales with registered number 08980374 whose registered office is at 33 Wigmore Street, London, W1U 1QX (the "**Parent Body Organisation**" or "**PBO**");
- (3) **MAGNOX LIMITED** a company incorporated under the laws of England and Wales with registered number 02264251 whose registered office is at Berkeley Centre, Berkeley, Gloucestershire, GL13 9PB (the "**Magnox Contractor**", or together with the RSRL Contractor, the "**Contractor**"); and
- (4) **RESEARCH SITES RESTORATION LIMITED**, a company incorporated under the laws of England and Wales with registered number 05915837 whose registered office is at Building 392.10/Room 1.05, Harwell Oxford, Didcot, Oxfordshire, OX11 0DF (the "**RSRL Contractor**", or together with the Magnox Contractor, the "**Contractor**"),

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

WHEREAS:

- (A) the operation of a nuclear site entails certain risks of harm to Third Parties by reason of a Nuclear Incident (as defined below);
- (B) the Act (as defined below), which enacted in the United Kingdom the provisions of the Paris/Brussels Conventions (as defined below), provides that where certain kinds of harm occur by reason of a Nuclear Incident on or relating to a nuclear site, the operator of that site shall be liable for such harm without proof of fault;
- (C) whilst amendments to the Act have now been passed by Parliament and are to have effect (in order to incorporate amendments to the Paris/Brussels Conventions) to cover a much wider scope of damage to Third Parties arising from a Nuclear Incident and wider geographical scope applying to claims arising from damage incurred outside of UK jurisdiction where certain conditions are fulfilled (e.g., the claimant country has nuclear liability legislation affording equivalent reciprocal benefits), amongst other amendments, there may be claims arising from a Nuclear Incident which are not recoverable under the Act;
- (D) the Authority has entered into a Parent Body Agreement with the Parent Body Organisation and the Contractor;

- (E) the Authority has entered into a SLC Agreement with the Contractor;
- (F) the Authority has agreed to indemnify the Parent Body Organisation and certain others, including the Contractor, against liabilities to Third Parties which are not covered by the Act on the terms set out herein.

IT IS AGREED AS FOLLOWS:

1 DEFINITIONS

- 1.1 In this Indemnity "**Excepted Matter**", "**Licensee**", "**Nuclear Matter**", "**Preventive Measures**", "**Relevant Carriage**", "**Occurrence**", "**Relevant Site**" and "**Relevant Territory**" and "**Significant Impairment of the Environment**" shall each have the meaning given to them in the Act and the following words shall have the meanings assigned to them:

"**Act**" means the Nuclear Installations Act 1965;

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

- 1.1.1 a shareholder in the Parent Body Organisation ("**PBO Shareholder**") or any holding company or subsidiary of any PBO Shareholder ("holding company" and "subsidiary" having the same meanings as in section 1159 of the Companies Act 2006), together "**Related Companies**";
- 1.1.2 a subsidiary or holding company of a Related Company;
- 1.1.3 a company which has shareholdings or any other form of economic interest, either directly or indirectly, of more than thirty per cent (30%) in the Parent Body Organisation or any Related Company;
- 1.1.4 a wholly owned subsidiary of the Contractor or Parent Body Organisation;
- 1.1.5 a company in which the Contractor and/or the Parent Body Organisation, either jointly or separately, has shareholdings or any other form of economic interest totalling more than thirty per cent (30%) of the issued shares;
- 1.1.6 a company in which the Contractor and/or the Parent Body Organisation, either jointly or separately, has less than a thirty per cent (30%) economic interest, but where the economic interest is of such a nature as to create the perception of a conflict of interest; or
- 1.1.7 a company owned or controlled, directly or indirectly, to the extent of thirty per cent (30%) or more of the outstanding equities, securities or assets by the

Parent Body Organisation or any of the companies described in 1.1.1, 1.1.2, 1.1.3 or 1.1.4 above;

"Aggregate Liability Cap" has the meaning given to it in the Parent Body Agreement;

"Annual Liability Cap" has the meaning given to it in the Parent Body Agreement;

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

"Berkeley Site" has the meaning given to such term in the SLC Agreement;

"Bradwell Site" has the meaning given to such term in the SLC Agreement;

"Brussels Supplementary Convention" means the Convention of 31 January 1963 supplementary to the Paris Convention, as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982 and by the Protocol of 4 February 2004;

"Chapelcross Site" has the meaning given to such term in the SLC Agreement;

"Claims Handling Agreement" means an agreement in the form described in Clause 10.1 (*Claims Handling and Dispute Resolution*) of this Indemnity;

"Client Specification" means the Authority's requirements as set out in Schedule 1 (*Client Specification*) of the SLC Agreement;

"Client Specification Completion State" has the meaning given to it in the SLC Agreement;

"Commencement Date" means [●];

"Continuing Nominated Staff" means, in the event of expiry or termination of the Parent Body Agreement for whatever reason, the Nominated Staff that the Authority (acting reasonably) requires to remain seconded (whether on a full time or other basis) to the Contractor following expiry or termination of the Parent Body Agreement;

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

1.1.1 the first Contract Year of the SLC Agreement which shall commence on the Commencement Date and end on 31 March first occurring thereafter; and

1.1.2 the last Contract Year of the SLC Agreement which shall commence on 1 April and end at the expiry of the SLC Agreement (or the Parent Body Agreement (as applicable));

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

"Dungeness Site" has the meaning given to such term in the SLC Agreement;

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

"Fee" means the aggregate of the PBI Fee, the Target Fee (as adjusted in accordance with the terms of the SLC Agreement) and any further category of fee that may be agreed between the parties to the SLC Agreement in accordance with the SLC Agreement;

"Harwell Site" has the meaning given to such term in the SLC Agreement;

"Hinkley Site" has the meaning given to such term in the SLC Agreement;

"Hunterson A Site" has the meaning given to such term in the SLC Agreement;

"Indemnified Parties" means:

- 1.1.1 the PBO;
- 1.1.2 the PBO Shareholders;
- 1.1.3 the Parent Companies;
- 1.1.4 any other Affiliate which has at any time either:
 - 1.1.4.1 provided Nominated Staff for the purposes of Clause 7 (*Provision of Staff to the Contractor*) of the Parent Body Agreement; or
 - 1.1.4.2 provided additional support for the purposes of Clause 4.7 (*Provision of Call-Off Support to the Authority*) and Schedule 20 (*Call-Off Support*) of the SLC Agreement; or
 - 1.1.4.3 was otherwise allegedly and/or actually involved in or connected to any claim in respect of such Nominated Staff or additional support and such Nominated Staff or additional support allegedly and/or actually contributed to or was otherwise involved in any cause of the relevant Nuclear Incident; and
- 1.1.5 any intermediate companies between:

1.1.5.1 any such Affiliate referred to in 1.1.4 above and a Parent Company;
and

1.1.5.2 the PBO Shareholders referred to in 1.1.2 and the Parent
Companies; and

1.1.6 the Contractor;

"Indemnity" means the indemnity given in this Indemnity;

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

"Indexed" means that on each Indexation Adjustment Date an amount referred to in this Indemnity shall be increased by the application of the indexation factor set out in Clause 2 (*Interpretation*);

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

"Magnox Nominated Staff" means the individuals listed in Part 1 (*Magnox*) of Schedule 7 (*Employment and Pensions*) of the SLC Agreement, as amended from time to time;

"Magnox Sites" means the Sixth Site and all of the Chapelcross Site, the Hunterston A Site, the Oldbury Site, the Trawsfynydd Site, the Wylfa Site, the Berkeley Site, the Bradwell Site, the Dungeness Site, the Hinkley Site and the Sizewell Site;

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

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

"Nuclear Incident" means:

1.1.1 any occurrence on or after the Commencement Date or Relevant Event, on or in connection with a Site involving Nuclear Matter which is not Excepted Matter; or

1.1.2 any occurrence on or after the Commencement Date or Relevant Event, elsewhere than on a Site involving Nuclear Matter which is not Excepted

Matter and which at the time of the occurrence or the Relevant Event (as the case may be) satisfies the following:

- 1.1.2.1 the Nuclear Matter is in the course of carriage to a Site with the agreement of the Magnox Contractor or the RSRL Contractor, as the case may be, as Licensee of such Site from a place in a country or territory outside the Relevant Territories following the loading of the Nuclear Matter on to the means of transport intended to be used for its carriage; or
- 1.1.2.2 the Nuclear Matter is in the course of carriage from a Site to a place in a country or territory outside the Relevant Territories up until the Nuclear Matter has been unloaded from the means of transport used for its carriage to that country or territory; or
- 1.1.2.3 the Magnox Contractor or the RSRL Contractor, as the case may be, as Licensee of a Site has taken charge of the Nuclear Matter from a person authorised to operate a nuclear reactor comprised in a means of transport, and, the Nuclear Matter is in the course of carriage to such Site;

and, in respect of each condition contained in sub-paragraphs 1.1.2.1, 1.1.2.2 and 1.1.2.3 above, the Nuclear Matter is not on another Relevant Site in the United Kingdom, or

- 1.1.2.4 the Nuclear Matter is in the course of carriage from a Site to a person authorised to operate a nuclear reactor comprised in a means of transport and in which the Nuclear Matter is intended to be used up until that authorised person takes charge of the Nuclear Matter;

and the Nuclear Matter is not on another Relevant Site in the United Kingdom, or

- 1.1.2.5 the Nuclear Matter:
 - 1.1.2.5.1 is in the course of carriage on behalf of the Magnox Contractor or the RSRL Contractor, as the case may be, as Licensee of a Site otherwise than as described in any of the sub-paragraphs 1.1.2.1, 1.1.2.2, 1.1.2.3 or 1.1.2.4 above and the Magnox Contractor or the RSRL Contractor as Licensee of such Site, as the case may be, has a direct economic interest in the Nuclear Matter; or

1.1.2.5.2 was in the course of carriage on behalf of the Magnox Contractor or the RSRL Contractor as Licensee of a Site, as the case may be, and, since ceasing to be in the course of such carriage it is not on any other Relevant Site or has not been in any of the circumstances as contained in sub-paragraph 1.1.4 below;

1.1.2.5.3 the Nuclear Matter has ceased to satisfy a condition as contained in sub-paragraph 1.1.2.1, 1.1.2.2, 1.1.2.3 or 1.1.2.4 above in relation to the Magnox Contractor or the RSRL Contractor, as the case may be, as Licensee of a Site before the carriage described in that sub-paragraph 1.1.2.1, 1.1.2.2, 1.1.2.3 or 1.1.2.4 has come to an end; and since ceasing to satisfy that condition, it is not on any other Relevant Site or has not been in any of the circumstances contained in sub-paragraph 1.1.4 below; or

1.1.2.5.4 was on a Site and, since ceasing to be on that Site, is not on any other Relevant Site or has not been in such circumstances as contained in sub-paragraph 1.1.4 below,

in each case arising out of or resulting from or connected with the radioactive properties, or a combination of those and any toxic, explosive or other hazardous properties, of Nuclear Matter; or

1.1.3 any emission of ionising radiations, whether prior to, on or after the Commencement Date or Relevant Event:

1.1.3.1 from anything caused or suffered by the Contractor to be on a Site which is not Nuclear Matter; or

1.1.3.2 from any waste discharged (in whatever form) on or from a Site.

1.1.4 The circumstances referred to in sub-paragraph 1.1.2 above are that:

1.1.4.1 the Nuclear Matter:

1.1.4.1.1 is in the course of carriage to a Relevant Site other than a Site with the agreement of the operator of

such Relevant Site from a place or country outside the Relevant Territories; or

1.1.4.1.2 is in the course of carriage from a Relevant Site other than a Site to a place in a country or territory outside the Relevant Territories; or

1.1.4.1.3 is in the course of carriage on behalf of a person authorised to operate a nuclear reactor comprised in a means of transport and in which the Nuclear Matter is intended to be used or was used or was intended to be used; or

1.1.4.1.4 is in the course of Relevant Carriage on behalf of a person other than the Magnox Contractor or the RSRL Contractor, and otherwise than as described in sub-paragraphs 1.1.4.1.1, 1.1.4.1.2 or 1.1.4.1.3 above and is a matter in which that other person has a direct economic interest, or

1.1.4.2 the Nuclear Matter:

1.1.4.2.1 is within the territorial limits of a country or territory that is not a Relevant Territory; and

1.1.4.2.2 is not in the course of such carriage as described in any of the sub-paragraphs 1.1.2.1, 1.1.2.2, 1.1.2.3 or 1.1.2.4 or in the course of Relevant Carriage from one Relevant Site to another.

For the purposes of interpreting the terms used within this definition "Nuclear Incident", subsections 7A(12) and (13) of the Act shall also apply.

"Nuclear Indemnity Threshold" means

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(Indexed) as adjusted pursuant to Clause 8.1 (*Nuclear Indemnity Threshold and Indemnified Party Default*) below;

"Nuclear Liabilities" means any claim by a Third Party (including a Subcontractor) or the Authority, regardless of the jurisdiction in which any such claim arises or is brought, for all or any of the following:

1.1.1 loss of life or personal injury;

1.1.2 damage to, or destruction of, property;

- 1.1.3 economic loss arising from the loss or damage referred to in Paragraph 1.1.1 or 1.1.2 of this definition to the extent not included in those Paragraphs;

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

- 1.1.1 the costs of any measures of reinstatement of impaired environment unless such impairment is insignificant if such measures have been taken or are to be taken, and to the extent not included in Paragraph 1.1.2 of this definition;
- 1.1.2 loss of income deriving from a direct economic interest in any use or enjoyment of the environment, incurred as a result of a Significant Impairment of the Environment, and to the extent not included in Paragraph 1.1.2 of this definition; and
- 1.1.3 the cost of Preventive Measures, and further loss or damage caused by such measures,

incurred by the PBO or Indemnified Party or the Contractor arising as a result of a Nuclear Incident but excluding:

- 1.1.1 loss of opportunity, loss of revenue, loss of profit or any other consequential loss of the Parent Body Organisation and/or the Indemnified Parties and/or the Contractor; and
- 1.1.2 any diminution in the value of any shareholding held by the Parent Body Organisation and/or any Indemnified Party and/or the Contractor;

"Oldbury Site" has the meaning given to such term in the SLC Agreement;

"Parent Body Agreement" means the agreement of that name entered into between the Authority, the Magnox Contractor, the RSRL Contractor and the PBO and commencing on the 1 September 2014;

"Parent Companies" means:

- 1.1.3 Babcock International Group plc, a company incorporated in England and Wales with registered number 2342138 whose registered office is at 33 Wigmore Street, London, W1U 1QX; and
- 1.1.4 Fluor Corporation, a company incorporated in the United States of America with Federal Employer Identification Number 330927079 whose registered office is at 6700 Las Colinas Boulevard, Irving, Texas, 75039,

(and **"Parent Company"** shall mean any one of such Parent Companies);

"Paris Convention" means the Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960 as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982 and by the Protocol of 4 February 2004;

"Paris/Brussels Conventions" means the Paris Convention and the Brussels Supplementary Convention;

"PBI Fee" means the performance-based incentive fee payable in accordance with Part 4A (*Calculation of PBI Fee*) and Part 4C (*Payment of PBI Fee and Target Fee*) of Schedule 6 (*Finance*) of the SLC Agreement;

"PBO Shareholders" means the shareholders of the PBO;

"RSRL Nominated Staff" means the individuals listed in Part 2 (*RSRL*) of Schedule 7 (*Employment and Pensions*) of the SLC Agreement, as amended from time to time;

"Relevant Event" means any act, omission, default or other matter during the Term which causes or is connected with (whether in whole or in part), or is cited in any claim for Nuclear Liabilities as so causing or being connected with, any occurrence involving Nuclear Matter or emission of ionising radiation (including, for the purposes of this definition, any period during which any Continuing Nominated Staff are provided to the Contractor by the Parent Body Organisation);

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

"Site" (singular) means either any one of the Magnox Sites or any one of the RSRL Sites;

"Sites" (plural) means both the Magnox Sites and the RSRL Sites;

"Sixth Site" has the meaning given to such term in the SLC Agreement;

"Sizewell Site" has the meaning given to such term in the SLC Agreement;

"SLC Agreement" means the agreement of that name entered into between the Authority, the Magnox Contractor and the RSRL Contractor and commencing on the 1 September 2014 relating to the restoration of the Sites;

"Target Fee" means the fee payable in respect of the successful achievement of Target Fee Payment Milestones in accordance with Part 4B (*Calculation of Target Fee*) and Part 4C (*Payment of PBI Fee and Target Fee*) of Schedule 6 (*Finance*) of the SLC Agreement;

"Target Fee Payment Milestones" means the payment milestones set out in Paragraph 2 (*Target Fee Payment Milestones*) of Part 4B (*Calculation of Target Fee*) of

Schedule 6 (*Finance*) of the SLC Agreement, and more fully described in the Client Specification;

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

"Third Party" means:

- 1.1.1 any person other than the Parties and (subject to Paragraph 1.1.2 below) Affiliates; and
- 1.1.2 any Affiliate to the extent that such Affiliate is acting in its capacity as a Subcontractor or Sub-Subcontractor (in each case as defined in the SLC Agreement);

"Trawsfynydd Site" has the meaning given to such term in the SLC Agreement;

"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:

- 1.1.1 the objectives of any applicable Authority Policies and Procedures;
- 1.1.2 the Authority's statutory obligations to the extent relevant to the Sites; and
- 1.1.3 the terms and conditions of the SLC Agreement,

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

"Wilful Misconduct" means, in respect of an act or omission, that the person so acting knows that such act or omission may cause harm to any person or property as a result of a Nuclear Incident, and such person:

- 1.1.1 intends to cause harm to any person or property as a result of a Nuclear Incident; or
- 1.1.2 has a reckless disregard for the harm to any person or property that may be caused as a result of a Nuclear Incident;

"Winfrith Site" has the meaning given to such term in the SLC Agreement; and

"Wylfa Site" has the meaning given to such term in the SLC Agreement.

2 INTERPRETATION

2.1 In this Indemnity:

- 2.1.1 headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Indemnity;
- 2.1.2 save to the extent that the express provisions of this Indemnity require otherwise, all references to Clauses, Paragraphs or Annex are references to clauses, paragraphs and the annex of this Indemnity;
- 2.1.3 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;
- 2.1.4 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);
- 2.1.5 words importing the singular include the plural and vice versa with the exception of the definitions "**Site**" and "**Sites**" which shall be interpreted in accordance with the separate definitions given above for such terms;
- 2.1.6 words importing a particular gender include all genders;
- 2.1.7 "person" includes any individual, partnership, firm, trust, body corporate, government department, corporation sole, governmental body, authority, agency or unincorporated body of persons or association;
- 2.1.8 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;
- 2.1.9 references to "Party" and "Parties" means a Party or the Parties to this Indemnity as applicable;
- 2.1.10 all monetary amounts are expressed in pounds sterling;
- 2.1.11 references 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;

2.1.12 references to the word "includes" or "including" are to be construed without limitation;

2.1.13 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;

2.1.14 any reference to a Party providing its consent or approval shall be deemed to be a reference to prior written consent or approval;

2.1.15 a reference to a "Site" shall include any part of that Site; and

2.1.16 all references to a time of day are references to UK time.

2.2 Save where otherwise stated, for the purposes of this Indemnity, references to the SLC Agreement and any terms defined in it shall be treated as reference to the SLC Agreement and such defined term in the form applicable at the relevant time during the Term, and in the case of any liability arising after the Term, in the form applicable immediately prior to the Transfer Date.

3 WARRANTIES

3.1 Without prejudice to any warranties or conditions either express or implied by any applicable legislation:

3.1.1 the Parent Body Organisation warrants and undertakes that as at the Commencement Date it is duly incorporated and validly exists under the laws of England and Wales; and

3.1.2 each Party warrants and undertakes to the others that as at the Commencement Date it has the legal right and the requisite power and authority to enter into and perform its obligations under this Indemnity and any other related documents which, when executed, will constitute valid and

binding obligations on it in accordance with its terms, and it has taken all necessary action to authorise the execution and the performance of its obligations under this Indemnity and any other related documents.

- 3.2 Without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, each of the Parties confirms to the others that 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 this Indemnity are those contained or referred to in this Indemnity 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 Indemnity) or otherwise howsoever.

4 INDEMNITY

- 4.1 The provisions of this Clause 4 (*Indemnity*) apply to all Indemnified Parties.
- 4.2 Except to the extent arising under and governed by the Act or prohibited by law, and subject always to the provisions of this Indemnity, the Authority hereby indemnifies the Parent Body Organisation and each Indemnified Party against all liabilities, losses, costs and expenses incurred by any such party arising in respect of Nuclear Liabilities, including the reasonable legal costs of defending a claim brought by a Third Party in respect thereof or an allegation thereof (such costs to be paid on account as incurred) and any legal costs awarded in favour of any such Third Party.
- 4.3 Notwithstanding any other provision of this Indemnity, this Indemnity set out in this Clause 4 shall, (subject to compliance by the Parent Body Organisation with any express obligation upon it contained in this Indemnity and which is relevant to the particular claim and, where relevant, compliance by the relevant Indemnified Party with its Claims Handling Agreement) be enforceable:
- 4.3.1 by the Parent Body Organisation on behalf of itself and on behalf of any of the Indemnified Parties; and
- 4.3.2 following expiry or termination (for whatever reason) of the Parent Body Agreement, by any Indemnified Party pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 4.4 In the event of enforcement by the Parent Body Organisation on behalf of an Indemnified Party, the Authority waives any defence to such enforcement on the basis that the relevant liabilities, losses, costs and expenses were incurred by such Indemnified Party rather than the Parent Body Organisation.

- 4.5 The Authority waives any claim it may have against the Parent Body Organisation and/or any Indemnified Party in respect of any Nuclear Liability.

5 DURATION OF INDEMNITY

- 5.1 This Indemnity shall come into force on the Commencement Date and remain in force until the date thirty (30) years after the last day of the Term. For the purposes of this provision the Term includes any period during which any Continuing Nominated Staff are provided by the Parent Body Organisation.

6 CLAIMS THRESHOLD

- 6.1 Subject to Clause 8 (*Nuclear Indemnity Threshold and Indemnified Party Default*), the Authority shall only be liable to the Parent Body Organisation or an Indemnified Party or the Contractor in respect of a claim made under this Indemnity arising out of or relating to a specific Nuclear Incident to the extent that such claim, when aggregated with all other claims under this Indemnity arising out of or relating to that specific Nuclear Incident, exceeds the Nuclear Indemnity Threshold.

7 MITIGATION OF LOSSES

- 7.1 The Parent Body Organisation shall, and shall procure that each relevant Indemnified Party shall, use all its reasonable endeavours to mitigate the losses indemnified under this Indemnity. If directed by the Authority and at the Authority's cost pursuant to this Clause 7 (*Mitigation of Losses*), the Parent Body Organisation and relevant Indemnified Parties shall pursue legal remedies (if applicable) against insurers and any relevant Third Parties against whom the Parent Body Organisation or relevant Indemnified Party has any right of recovery (including any such rights which may arise under the Atomic Energy Damages Act (also known as the Price-Anderson Act, a federal law of the United States) and any other legislation in all relevant jurisdictions) in relation to the Nuclear Incident. The Parent Body Organisation and relevant Indemnified Parties shall account to the Authority for the proceeds received pursuant to any such legal remedy up to and in reimbursement of sums paid out by the Authority in relation to the Nuclear Incident under this Indemnity. To the extent that the Parent Body Organisation or relevant Indemnified Party does not comply with its obligations under this Clause 7 (*Mitigation of Losses*), the Parent Body Organisation or relevant Indemnified Party shall not be entitled to the benefit of this Indemnity in respect of the amount of any losses that should properly have been avoided by mitigation or recovered from any Third Party.
- 7.2 Save in the case of the Contractor, (where any costs incurred in undertaking mitigation or pursuing legal remedies are recoverable in accordance with the provisions of the SLC Agreement) the Authority shall indemnify the Parent Body Organisation and each relevant Indemnified Party for any costs incurred in undertaking mitigation or pursuing

legal remedies as referred to in this Clause 7 (*Mitigation of Losses*). To the extent the Authority does not indemnify the Parent Body Organisation or relevant Indemnified Party for costs of mitigation or pursuing legal remedies the Parent Body Organisation and relevant Indemnified Parties shall not be obliged to comply with the provisions of this Clause 7 (*Mitigation of Losses*).

8 NUCLEAR INDEMNITY THRESHOLD AND INDEMNIFIED PARTY DEFAULT

8.1 Subject to Clause 8.1 (*Nuclear Indemnity Threshold and Indemnified Party Default*), to the extent that the aggregate of:

8.1.1 any and all liabilities of either the Contractor or the Parent Body Organisation falling within the Annual Liability Cap in any Contract Year; and

8.1.2 any and all liabilities of the Indemnified Parties incurred in respect of the Nuclear Indemnity Threshold in that Contract Year,

exceeds the Annual Liability Cap for the relevant Contract Year or the Aggregate Liability Cap, the Nuclear Indemnity Threshold shall for any specific Nuclear Incident for which claims are made in that Contract Year be reduced by deduction of an amount equal to the amount of any such excess, provided that (i) the amount of such reduction shall not exceed the amount of the Nuclear Indemnity Threshold; and (ii) to the extent that any such reduction to a Nuclear Indemnity Threshold is made for a specific Nuclear Incident in any Contract Year, that portion of the excess may not again be used to reduce the Nuclear Indemnity Threshold in any subsequent Contract Year in which any Nuclear Liabilities arise from that specific Nuclear Incident.

8.2 In relation to any claim brought under Clause 4 (*Indemnity*) of this Indemnity where the Nuclear Incident has arisen as a result of any act or omission of the Parent Body Organisation or any Indemnified Party, or any employee, secondee (including the Nominated Staff) or agent thereof that constitutes fraud or Wilful Misconduct, then the Nuclear Indemnity Threshold shall be increased from

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8.2.1 where such act or omission occurs prior to the earlier of:

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8.2.1.1 acceptance by the Authority of the Consolidation Report pursuant to the SLC Agreement; and

8.2.1.2 twelve (12) Months after the Commencement Date; or

8.2.2 (Indexed) where such act or omission occurs at any time thereafter,

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provided always that the total of any and all increases in the Nuclear Indemnity Threshold under this Clause arising out of or relating to a specific Nuclear Incident shall not exceed s.43 (Indexed).

9 DOUBLE RECOVERY

- 9.1 The Parent Body Organisation and/or any Indemnified Party shall not be entitled to recover or otherwise obtain compensation or restitution under this Indemnity to the extent that it has received compensation or obtained restitution from any other source or as a result of the pursuance of other legal remedies in accordance with Clause 7 (*Mitigation of Losses*) above or otherwise, including under the provisions of the Act in respect of the same loss or damage, provided that the foregoing provisions of this Clause 9 (*Double Recovery*) apply to the Contractor only to the extent that the Authority irrevocably waives any obligation of the Contractor under the SLC Agreement to pay or otherwise account to the Authority for the amount of any such compensation or restitution.

10 CLAIMS HANDLING AND DISPUTE RESOLUTION

- 10.1 The PBO shall procure that, prior to pursuit of any claim pursuant to this Indemnity, the relevant Indemnified Party will execute and tender to the Authority for execution and completion a Claims Handling Agreement substantially in the form set out in Schedule 7 (*Claims Handling Agreement*) of the Parent Body Agreement.
- 10.2 The Parent Body Organisation shall comply with the claims handling provisions set out in Clause 12 (*Claims Handling*) of the Parent Body Agreement in respect of all claims made by the Parent Body Organisation under this Indemnity.
- 10.3 The Authority shall comply with the claims handling provisions set out in Clause 12 (*Claims Handling*) of the Parent Body Agreement in respect of all claims under this Indemnity.
- 10.4 Subject to Clause 10.5 (*Claims Handling and Dispute Resolution*) below, any dispute or difference arising out of or in connection with this Indemnity, including, but not limited to, any question regarding its existence, interpretation, validity, construction or termination, shall be resolved in accordance with the Dispute Resolution Procedure.
- 10.5 Notwithstanding Clause 10.4 (*Claims Handling and Dispute Resolution*) above, the Parent Body Organisation shall procure that each relevant Indemnified Party shall seek to resolve any dispute or difference arising out of or in connection with this Indemnity, including, but not limited to, any question regarding its existence, interpretation, validity, construction or termination, in accordance with the dispute resolution provisions set out in the relevant Claims Handling Agreement.

- 10.6 For the purposes of this Clause 10 (*Claims Handling and Dispute Resolution*), a relevant Indemnified Party is any Indemnified Party other than the Contractor.

11 ASSIGNMENT/NOVATION

- 11.1 The PBO and 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 Indemnity or any part of it and shall not delegate in any manner whatsoever its performance under this Indemnity.
- 11.2 The rights and obligations of the Authority under this Indemnity 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) having the legal capacity, power and authority to become a party to and to perform the obligations of the Authority under this Indemnity being:
- 11.2.1 a Minister of the Crown pursuant to an Order under the Ministers of the Crown Act 1975; or
- 11.2.2 any other public body whose obligations under this Indemnity are unconditionally and irrevocably guaranteed (in a form reasonably acceptable to the Contractor and PBO) by the Authority or a Minister of the Crown having the legal capacity, power and authority to perform the obligations under this Indemnity.

12 CONTINUING OBLIGATIONS

- 12.1 This Indemnity and all rights, remedies and obligations under this Indemnity shall continue in full force and effect notwithstanding termination or expiry of the Parent Body Agreement and/or the SLC Agreement, whether due to any act omission or default of any Party or for any other reason whatsoever.

13 NOTICES

- 13.1 Any notice or other communication required to be given to a Party under or in connection with this Indemnity 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) to the address specified in Clause 26 (Notices) of the Parent Body Agreement or as otherwise notified in writing.
- 13.2 All notices must be marked for the attention of the addressee.

- 13.3 Each Party undertakes to notify the other Parties by notice served in accordance with this Clause if the address specified herein is no longer an appropriate address for the service of notices.
- 13.4 This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this Clause, "writing" shall not include e-mail.

14 AVAILABILITY OF NUCLEAR INSURANCE

- 14.1 Subject to Clause 14.2 below, if the Authority, acting reasonably, considers that insurance is available which will cover some or all of the potential losses under this Indemnity, and that such insurance provides Value for Money, the Parent Body Organisation and the Contractor shall and shall procure that each other Indemnified Party will co-operate fully with the Authority's reasonable instructions in relation to the procuring of such insurance, to be procured at the Authority's expense, and will comply with the terms of all such policies as are notified to it.
- 14.2 Neither the Contractor nor the Parent Body Organisation shall be required to comply with its obligations set out in Clause 14.1 above to the extent that such compliance would:
- 14.2.1 put it in breach of its obligations under the Parent Body Agreement or the SLC Agreement (as the case may be) and the Authority has not waived such obligations; or
 - 14.2.2 cause the Contractor or the Parent Body Organisation to incur material costs and expenses or undertake any actions which are additional to those required to be incurred or undertaken by them in delivery of their respective obligations to the Authority under the SLC Agreement and/or the Parent Body Agreement (as the case may be) unless:
 - 14.2.2.1 the Authority has agreed to pay such additional costs and expenses; and
 - 14.2.2.2 in the case of any obligation which would result in an increase or decrease in a Target Cost of the type described in paragraphs 6.2(b)(ii)(A) or (B) of Schedule 2 of the SLC Agreement, which the Parties hereby agree shall be a Category 0 Change and the procedure set out in paragraph 6.8 of Schedule 2 of the SLC Agreement has been implemented in respect of such obligations.
- 14.3 The Parent Body Organisation shall procure that the Indemnified Parties are notified of all such insurance policies and that they comply with their terms.

15 NUCLEAR INSTALLATIONS ACT 1965

- 15.1 It is acknowledged that the Act and the Paris/Brussels Conventions apply in respect of loss covered by the Act that falls and is claimed within the jurisdictional application of that legislation and the Paris/Brussels Conventions and that any Third Party claimants are subject, where jurisdictionally applicable as aforesaid, to the provisions of that legislation and the Paris/Brussels Conventions which have the effect of channelling liability to the Magnox Contractor or the RSRL Contractor (as the case may be).
- 15.2 This Indemnity shall not apply to any claim for compensation made under the provisions of the Act and nothing in this Indemnity, the SLC Agreement, the Parent Body Agreement or the Property Leases:
- 15.2.1 is intended to provide a right of recourse by the Contractor against any Affiliate for the costs of meeting any claim for compensation under the provisions of the Act or the Paris/Brussels Conventions and the Contractor waives any such right of recourse it may have against any such Affiliate; or
- 15.2.2 is intended to be an agreement, for the purposes of section 12(3A)(a) of the Act, by any person to incur liability in respect of damage caused in breach of a duty imposed by section 7, 7B, 8, 9 or 10 of the Act.

16 COUNTERPARTS

- 16.1 This Indemnity may be executed in any number of counterparts, and by each Party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument.

17 VARIATION

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

18 GOVERNING LAW AND JURISDICTION

- 18.1 This Indemnity and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
- 18.2 Subject to the Dispute Resolution Procedure, the Parties irrevocably agree that the courts of England and Wales shall have jurisdiction to settle any dispute or claim that arises out of or in connection with this Indemnity or its subject matter or formation (including non-contractual disputes or claims). Save in relation to matters of

enforcement, and subject to the Dispute Resolution Procedure, such jurisdiction shall be exclusive.

19 GENERAL

19.1 Entire Agreement

Without prejudice to the rights and obligations of the Parties under each of the Parent Body Agreement and SLC Agreement, the Parties confirm that this Indemnity 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.

19.2 Waiver

19.2.1 A failure or delay by any Party at any time to enforce any provision of this Indemnity or to require performance by any other Party of any provision of this Indemnity or the giving of anything whatsoever shall not be construed as a waiver of such provision and shall not affect the validity of this Indemnity 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 or Indemnified Parties under this Indemnity.

19.2.2 The waivers, disclaimers, releases, limitations and apportionments of liability, exclusive remedy provisions, and indemnity and hold harmless obligations expressed in this Indemnity shall apply even in the event of the fault, negligence, tort, strict liability, breach of contract, Wilful Misconduct, recklessness, fraud or otherwise, of the Party or Indemnified 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.

19.3 Severability

19.3.1 If any condition, clause or provision of this Indemnity 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 Indemnity which shall remain in full force and effect.

19.3.2 If the circumstances referred to in Clause 19.3.1 (*Severability*) 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.

IN WITNESS of which the Parties have executed and delivered this agreement as a deed on the date first above written.

Executed as a deed by affixing the common)
seal of the **NUCLEAR DECOMMISSIONING**)
AUTHORITY in the presence of:)

.....
Director

.....
Director

Executed as a deed by **CAVENDISH FLUOR**)
PARTNERSHIP LIMITED acting by)
a director in the presence of:)

.....
Director

.....
Witness

.....
.....

.....
Address

.....
Occupation

Executed as a deed by **MAGNOX LIMITED**)
acting by a director in the presence of:)

.....
Director

.....
Witness

.....
.....
.....

Address
.....
Occupation

Executed as a deed by **RESEARCH SITES**)
RESTORATION LIMITED acting by a)
director in the presence of:)

.....
Director

.....
Witness

.....
.....
.....

Address
.....
Occupation

Schedule 9

PBO Socio-Economic Commitments

- 1 The Parent Body Organisation shall use best endeavours to procure that the Contractor complies with the socio-economic requirements described at Clause 9 (*Socio Economic Development*) of the SLC Agreement.
- 2 The Parent Body Organisation shall have regard to and seek to implement the provisions relating to socio-economic commitments contained within the Client Specification.
- 3 If the Contractor fails to meet the Minimum Performance Standards set out at Paragraph 2.1.6 (*Socio Economic Requirements*) of Schedule 15 (*Minimum Performance Standards*) of the SLC Agreement, the Parent Body Organisation shall provide such assistance and support as the Contractor may reasonably require to remediate such failure in accordance with the terms of the SLC Agreement.
- 4 In accordance with Schedule 13 (*Reporting*) of the SLC Agreement, the Parent Body Organisation shall provide an annual Report to the Authority in respect of the PBO Minimum Performance Standards.