

Date: 2008

The Nuclear Decommissioning Authority (1)

Sellafield Limited (2)

Deed of Variation

relating to the site management and operations
contracts in respect of the Sellafield SLC at
Sellafield, Capenhurst and Windscale

THIS DEED is made on this day of 2008

BETWEEN:

- (1) **THE NUCLEAR DECOMMISSIONING AUTHORITY** a non departmental public body whose head office is at Herdus House, Westlakes Science and Technology Park, Moor Row, Cumbria, CA24 3HU (the “**Authority**”); and
- (2) **SELLAFIELD LIMITED** a company incorporated in England and Wales with registered number 1002607 whose registered office is at 1100 Daresbury Park, Daresbury, Warrington, Cheshire, WA4 4GB (the “**Contractor**”),

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

WHEREAS:

- (A) On 1 April 2005 the Parties entered into a site management and operations contract in respect of Sellafield and Calder Hall (Contract reference NDA-T1-35-05) which was subsequently amended by a Deed of Amendment dated 1 April 2008 (the “**Sellafield Site M&O Contract**”);
- (B) The Parties also entered into a site management and operations contract in respect of Capenhurst (Contract reference NDA-T1-32-05) which was subsequently amended by a Deed of Amendment dated 1 April 2008 (the “**Capenhurst Site M&O Contract**”);

together the “**Existing Site M&O Contracts**”.
- (C) The Authority and the Contractor have agreed to amend the provisions of the Existing Site M&O Contracts as set out below.

NOW THIS DEED WITNESSES as follows:

1. The new site management and operations contract set out in the Appendix to this Deed (the “**New M&O Contract**”) shall replace the Existing Site M&O Contracts in their entirety and all the provisions of the Existing Site M&O Contracts shall cease to have any effect as from the date set out above.
2. This Deed constitutes a variation for the purposes of Clause 28.7 of the Sellafield Site M&O Contract and Clause 28.7 of the Capenhurst Site M&O Contract.
3. Not used.

4. This Deed shall be governed by the laws of England and Wales and the Parties submit to the jurisdiction of the courts of England and Wales. Save in relation to matters of enforcement, such jurisdiction shall be exclusive.

AS WITNESS whereof this Deed has been executed on the day and year first above written

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

was affixed in the presence of:

.....

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

Witness.....

Address.....

.....

Occupation.....

Appendix

New Site Management and Operations Contract

Date: 2008

The Nuclear Decommissioning Authority (1)

Sellafield Limited (2)

Site Management and Operations Contract

in respect of the Sellafield SLC at Sellafield,
Capenhurst and Windscale

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THIS CONTRACT is made on this day of 2008

BETWEEN:

- (1) **THE NUCLEAR DECOMMISSIONING AUTHORITY**, a Non Departmental Public Body whose head office is at Herdus House, West Lakes Science and Technology Park, Moor Row, Cumbria, (the “**Authority**”); and
 - (2) **SELLAFIELD LIMITED**, a company incorporated under the laws of England and Wales with registered number 1002607, whose registered office is at 1100 Daresbury Park, Daresbury, Warrington, Cheshire WA24 4GB (the “**Contractor**”),
- each one a “**Party**” and together the “**Parties**”.

WHEREAS:

- (A) The Authority, the Contractor and the Parent Body Organisation (as defined below) have entered into the Parent Body Agreement (as defined below).
- (B) As of the Commencement Date (as defined below), the Parent Body Organisation holds all of the issued share capital in the Contractor.
- (C) The Contractor and all relevant individuals hold the relevant licences, authorisations, registrations, permits and consents required by Law (as defined below) or Regulatory Requirements (as defined below).
- (D) The Contractor, with the consent of the Parent Body Organisation, has executed a deed of variation to amend this Contract with effect from the Commencement Date (as defined below).

1. GENERAL

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

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

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

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

“Accounting Standards” means UK GAAP for so long as the Authority accounts under UK GAAP and thereafter the accounting standards adopted by the Authority;

“Actual Cost of Work Performed” the aggregate of all Costs which:

- (a) were incurred in the relevant Contract Year (including appropriate accruals for such Costs as determined in accordance with Financial Reporting Standard 18, paragraphs 26 and 27); and
- (b) relate to activities which were undertaken in the relevant Contract Year.

For the avoidance of doubt for the purposes of sub paragraph (a) to the extent that any costs are accrued in respect of a particular period, then they shall not be counted as incurred in a later period;

- “Advance Agreement”** means any agreement between the Authority and the Contractor entered into in accordance with Paragraph 3 (Advance Agreements) of Part 2 (Allowable and Disallowable Costs) of Schedule 6 (Finance Schedule);
- “Affected Party”** has the meaning given in Clause 1.9.1 (Performance of Obligations);
- “Affiliate”** means:
- (i) the Parent Body Organisation;
 - (ii) shareholders in the Parent Body Organisation (“**PBO Shareholders**”) or in any holding company or subsidiary of any PBO Shareholder (“holding company” and “subsidiary” having the same meanings as in section 1159 of the Companies Act 2006), together “**Related Companies**”;
 - (iii) any subsidiary or holding company of a Related Company;
 - (iv) any company which has shareholdings or any other form of economic interest, either directly or indirectly, of more than thirty (30) % in the Parent Body Organisation;
 - (v) wholly owned subsidiaries of the Contractor or Parent Body Organisation;
 - (vi) a company in which the Contractor and/or the Parent Body Organisation, either jointly or separately, has shareholdings or any other form of economic interest totalling more than thirty (30) % of the issued shares;
 - (vii) a company with which the Contractor and/or the Parent Body Organisation, either jointly or separately, has a Partnering Arrangement in force;

- (viii) a company in which the Contractor and/or the Parent Body Organisation, either jointly or separately, has less than a thirty (30) % economic interest, but where the economic interest is of such a nature as to create the perception of a conflict of interest; or
- (ix) a company owned or controlled, directly or indirectly, to the extent of thirty (30) % or more of the outstanding equities, securities or assets by any of the companies described in (ii), (iii), (iv) or (v) above,

but excluding the Republic of France;

“Agreed Cash Flow Requirement”	has the meaning given in Paragraph 2.1(c) (Invoicing and Payment Process) of Part 3 (Payment of Allowable Costs) of Schedule 6 (Finance Schedule);
“Agreed Payment Profile”	has the meaning given to it in Paragraph 2.1(b) (Invoicing and Payment Process) of Part 3 (Payment of Allowable Costs) of Schedule 6 (Finance Schedule);
“Allowable Cost”	has the meaning given in Paragraph 2 (Allowable Costs) of Part 2 (Allowable and Disallowable Costs) of Schedule 6 (Finance Schedule) and “Allowable” and “Allowability” shall be construed accordingly;
“Amendment”	has the meaning given in Clause 3.6.1.2 (New Business and Amendments to Customer Contracts);
“Annual Balance Sheet”	has the meaning given to it in Schedule 6 (Finance) Part 3 (Payment of Allowable Costs) Paragraph 9.1;
“Annual Procurement Plan”	has the meaning given in Paragraph 3.1 (Procurement Plan) of Part 1 (Subcontract /Procurement Requirements – CT-15) of Schedule 5 (Subcontracting/Procurement Schedule);
“Annual Reconciliation Report”	has the meaning given to it in Schedule 6 (Finance) Part 3 (Payment of Allowable Costs) Paragraph 9.1;

“Annual Site Funding Limits” or “ASFLs”	means the aggregate of the Capenhurst ASFL, the Sellafield ASFL and the Windscale ASFL, and reference to an "Annual Site Finding Limit" shall mean all or any of them, as the context requires;
“Applicable Schemes”	means the UKAEA Combined Pension Scheme including the Additional Voluntary Contribution Scheme and the Shift Pay Pension Savings Plan, the BNFL Group Pension Scheme, the Magnox Group of the Electricity Supply Pension Scheme, the CNPP and any other pension scheme set up and/or maintained by the Authority pursuant to Section 8 and Schedule 8 of the Energy Act;
“Approved Working Capital Allowance”	means the budget for the Contract Year for the net Costs which the Parties anticipate are likely to arise (after allowing for Authority Entitled Interest) under the Approved Working Capital Facility as such budget is agreed in accordance with Paragraph 2 (Invoicing and Payment Process) of Part 3 (Payment of Allowable Costs) of Schedule 6 (Finance Schedule);
“Approved Working Capital Facilities”	means all loan facilities entered into by the Contractor which: <ul style="list-style-type: none"> (i) have been negotiated pursuant to a funding competition approved by the Authority and are on terms that represent the best value for money of the proposals made by the proposed lenders pursuant to such competition or which have otherwise been approved by the Authority; (ii) have been provided by an Affiliate and are on terms that represent the best value for money and which have been approved by the Authority; (iii) have been negotiated with lenders with whom the Parent Body Organisation had arrangements with prior to its entering into the Parent Body Agreement, and in relation to which the

Authority has given its prior written consent; or

(iv) are on terms not materially worse than the latest Benchmark established in accordance with Clause 6.3A (Benchmarking);

“Asset Purchase”	means the purchase of supplies, goods, materials, equipment and/or utilities (including gas, electricity, water, sewerage, heat, cable and telecommunications) and excluding the creation, design, development or building by any Subcontractor of any supplies, goods, materials, equipment and/or utilities, and " Asset Purchases " shall be construed accordingly;
“Asset Register”	means the asset register to be maintained by the Contractor in accordance with Clause 7.5 (Maintenance of Site and Authority Assets) to record all the Authority Assets on the Site;
“Associated Allocable Cost”	means overhead Costs (also known as burden) associated with Tasks, such Costs to be allocated to activities on a cause and effect or resource consumption basis depending on which is most appropriate and reasonable for the relevant Cost concerned;
“Assumptions”	means the Contractor’s assumptions listed in Schedule 15 (List of Assumptions);
“Audit Close-Out Meeting”	means a meeting following receipt by the Contractor of the Authority’s audit findings to discuss those findings generally together with any areas identified in the findings as requiring Corrective Action;
“Authority”	means the Nuclear Decommissioning Authority;
“Authority Agents”	has the meaning given in Clause 4.5.1 (Inspection and Audit);
“Authority Assets”	means all the assets (whether fixed or movable) on or off the Site which are owned by the Authority (whether leased to the Contractor or the Authority or otherwise) and any New Assets acquired by the Contractor on

behalf of the Authority in performing the LTP pursuant to Clause 7.7 (New Assets) but excluding any Subcontracts and Customer Contracts;

- “Authority Direction”** means a direction given by the Authority to the Contractor in accordance with its powers under section 18 of the Energy Act;
- “Authority Entitled Interest”** any credit interest which may accrue on credit balances in the Contractor’s Payments Account and/or any foreign exchange or other accounts of the Contractor which are used for similar purposes to the Contractor’s Payments Account;
- “Authority Field of Use”** means use in carrying out the Authority's functions, duties and powers as prescribed in the Energy Act within the United Kingdom;
- “Authority Information Asset Register”** has the meaning given in Clause 4.3 (Information Asset Register);
- “Authority Insurances”** means the insurance policies specified in Schedule 10 (Insurance Schedule) and any further insurances that the Contractor is required by Law to maintain;
- “Authority IP”** means IP owned by or licensed to the Authority which relates to the activities to be undertaken by the Contractor or the Authority under the terms of this Contract and includes:
- (i) Parent IP licensed to the Authority under the provisions of Clause 8.3 (IP Contributed by Parent Body Organisation); and
 - (ii) Third Party IP licensed to the Authority under the provisions of Clause 8.7 (Third Party IP);
- “Authority IT Systems”** means all communications and information technology systems which are used by the Authority from time to time including all hardware, networks, Software and data comprised therein;

“Authority Knowledge Management Policy”	means the policy attached as Schedule 17 (Knowledge Management Policy);
“Authority Owned IP”	has the meaning given in Clause 8.5.1.1 (Infringement of IP owned by the Authority);
“Authority Policies and Procedures”	means policies and procedures published on the Authority's website and identified as Authority Policies and Procedures;
“Authority Records”	has the meaning given in Clause 4.2.1 (Ownership of Records);
“Authority's Termination Notice”	has the meaning given to it in Clause 12.6.1 (Authority's Termination Notice);
“Background IP”	has the meaning given to it in Clause 8.4.11 (Licence of Background IP from Subcontractor to Authority);
“Base Fee”	has the meaning given in Part 4 (Base Fee) of Schedule 6 (Finance Schedule);
“Baseline Cost”	means the Cost which the LTP ascribes to a Task;
“BCWS”	means the budgeted Cost of work scheduled, contained in the LTP;
“Benchmark”	has the meaning given in Clause 6.3A (Benchmarking);
“Benchmark Assessment”	has the meaning given in Clause 6.3A (Benchmarking);
“BNF Company”	means British Nuclear Fuels plc (Co. no. 5027024) and every company or other entity which has been a subsidiary of British Nuclear Fuels plc (Co. no. 5027024), within the meaning set out in section 1159 of the Companies Act 2006 and, for the purposes of Clause 6.4 (Historical Costs) only, means the Authority and Direct Rail Services Ltd. (Co. no. 3020822);

“BNF OCMA”	means the overarching cost management agreement between (1) the Authority (2) the Contractor and (3) certain BNF Companies dated 1 April 2005;
“BNF Records Agreement”	means the records agreement between (1) the Authority and (2) the Contractor dated 1 April 2005;
“Budgeted Cost of Work Performed”	has the meaning given in Paragraph 3 (Budgeted Cost of Work Performed) of Part 6 (Efficiency Fee) of Schedule 6 (Finance Schedule)
“Calendar Day”	means a period of twenty-four (24) hours ending at twelve (12) midnight;
“Capenhurst”	means the Licensed Nuclear Site Area known as Capenhurst;
“Capenhurst ASFL”	means the annual overall funding limit for Capenhurst as specified in respect of the first Contract Year in Part 10 (Initial Financial Limits) of Schedule 6 (Finance Schedule) and as determined in accordance with Clause 6.2 (Determination of Funding Limits and Compliance with Funding Limits) in respect of subsequent Contract Years and as the same may be adjusted (if at all) pursuant to Paragraph 3 (Change Control) of Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure);
“Capital Budget”	means, in relation to each Annual Site Funding Limit, that proportion of the Annual Site Funding Limit which the Contractor is permitted to spend on Capital Costs, as set out in Part 10 (Initial Financial Limits) of Schedule 6 (Finance Schedule) for the first Contract Year and subsequently as determined in accordance with Clause 6.2 (Determination of Funding Limits and Compliance with Funding Limits) and adjusted (if at all) pursuant to Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure);

“Capital Costs”

means expenditure that results in the recognition of an Authority funded asset, as determined in accordance with the Accounting Standards and by the application of the Authority's accounting policies from time to time as notified to the Contractor, and in respect of any individual item or connected group of items, such as an information technology system, “Capital Costs” will include items of expenditure:

- (a) which are greater than the capitalisation threshold for the relevant expenditure category (including those costs that are directly attributable to bringing the asset into working condition for its intended use); and
- (b) from which economic benefit will be derived for a period of greater than one (1) year, either immediately or when the asset is brought into use for the benefit of the Authority;

“Capital Income”

means any item of revenue received or receivable from a Customer that relates to the funding of an item in respect of a Capital Cost;

“Category I Change”

has the meaning given to it in PCP-05;

“Category II Change”

has the meaning given to it in PCP-05;

“Category III Change”

has the meaning given to it in PCP-05;

“Category I Revenue”

means all monies received and receivable by the Contractor including:

- (i) from the Ministry of Defence;
- (ii) from Customers or Third Parties in consideration of the provision by the Contractor of any goods, services, works or products arising from or ancillary to the provision of services in accordance with this Contract;

- (iii) interest (save for interest earned on the Contractors Fee Account which shall be for the account of the Contractor in accordance with Clause 6.10.1 (Contractor's Fee Account)), dividends from any subsidiaries of the Contractor and other finance receipts;
- (iv) in respect of proceeds from insurance claims or recoveries from Third Parties (other than the Authority) in respect of liabilities of the Contractor which are Allowable Costs;
- (v) from the sale of Authority Assets save for scrap;
- (vi) from UKAEA relating to refunds in respect of early retirement pensions paid to the Employees or Nominated Staff under the terms of the UKAEA Combined Pension Scheme;
- (vii) in respect of hedging activities carried out pursuant to the Currency Hedging Strategy; and
- (viii) other amounts received or receivable by the Contractor other than in respect of the Contract Price and which do not fall within the limbs (i) to (iv) of the definition of Category II Revenue,

excluding any monies that fall within the definition of Category II Revenue;

“Category II Revenue”

means all monies received and receivable by the Contractor:

- (i) from another SLC or UKAEA;
- (ii) from the Parent Body Organisation or any Affiliate;
- (iii) in consideration for minor income generating activities not listed at items (ii) to (v) inclusive of the definition of Category I Revenue

(including any local authority grants, apprentice training, secondment fees, restaurant receipts, bus receipts and credit interest which accrues on the Contractor's Receipts Account or any Foreign Exchange Accounts); and

- (iv) from the sale of those Authority Assets which constitute scrap,

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

“Category A Force Majeure Event” means a Force Majeure Event which affects the Contractor's ability to perform the Mandatory Services;

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

“Change” means a Change Proposal which is approved (or deemed to be approved) pursuant to the provisions contained in Paragraph 3 (Change Control) of Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure);

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

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

“Change Proposal” means a proposal to change the LTP or anything to do with the delivery of the LTP, including the scope, timing and costing of any Task, any of the Funding Limits and any aspect of the Fee;

“CNPP”	means the Combined Nuclear Pension Plan set up by the Authority pursuant to Section 8 and Schedule 8 of the Energy Act;
“Commencement Date”	means 24 November 2008;
“Commercial Operations Tasks”	means those Tasks in the LTP which generate Category I Revenue and/or Category II Revenue;
“Comptroller and Auditor General”	means the Comptroller and Auditor General of the UK National Audit Office;
“Consent”	means all approvals, consents, licences, authorisations, permissions, certificates and statutory agreements required from any competent authority and all consents and agreements from and with Third Parties such consents to include authorisation from the FSA;
“Constabulary”	means the Civil Nuclear Constabulary;
“Construction Industry Scheme Regulations” or “CISR”	means the Income Tax (Construction Industry Scheme) Regulations 2005 (as amended);
“Continuing Nominated Staff”	not used;
“Contract Price”	has the meaning given in Paragraph 1 (Total Remuneration) of Part 1 (General) of Schedule 6 (Finance Schedule);
“Contract Year”	means a period of twelve (12) Months starting on 1 April and ending on 31 March first occurring thereafter, except for: <ul style="list-style-type: none"> (i) the first Contract Year of this Contract which shall commence on the Commencement Date and end on 31 March first occurring thereafter; and (ii) the last Contract Year of this Contract which

shall commence on 1 April and end at the expiry of this Contract (or the Parent Body Agreement (as applicable));

“Contractor”	means Sellafield Limited (Co. No. 1002607);
“Contractor Default”	means any of the events of default set out in Clause 12.2 (Contractor Default);
“Contractor Historical Costs”	means Costs arising in relation to the period prior to (and excluding) the Commencement Date which are properly attributable to the Contractor, and any Cost which has been or is transferred to the Contractor by a Transfer Scheme;
“Contractor Information Asset Register”	has the meaning given in Clause 4.3 (Information Asset Register);
“Contractor Knowledge Management Policy”	means a policy to be adopted by the Contractor in accordance with Clause 1.27.1 (Knowledge Management);
“Contractor Records”	has the meaning given in Clause 4.2.1 (Ownership of Records);
“Contractor VAT”	means VAT payments payable by the Contractor to the Taxation Authorities as a result of it complying with its obligations under this Contract;
“Contractor's Fee Account”	means the bank account nominated as such by the Contractor;
“Contractor's Payments Account”	means the bank account of the Contractor which the Contractor nominates to the Authority into which drawings made under the Approved Working Capital Facilities are paid and which is separate from the Contractor's Receipts Account;
“Contractor's Receipts Account”	means the bank account of the Contractor which the Contractor nominates as such to the Authority;

- “Contracts Manager”** means the individual appointed by the Authority to be contracts manager in relation to the Site as notified to the Contractor from time to time;
- “Control”** means:
- (a) the power (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise) to appoint and/or remove all or such of the members of the board of directors or other governing body of a person as are able to cast a majority of the votes capable of being cast by the members of that board or body on all, or substantially all, matters, or otherwise to control or have the power to control the policies and affairs of that person (and for the purposes of determining whether the power to appoint or remove directors exists the provisions of section 1159 of the Companies Act 2006 shall apply); and/or
 - (b) the holding and/or possession of the beneficial interest in and/or the ability to exercise the voting rights applicable to shares or other securities in any person (whether directly or by means of holding such interests in one or more other persons) which confer in aggregate on the holders thereof thirty per cent (30%) or more of the total voting rights exercisable at general meetings of that person on all, or substantially all, matters;
- “COP 10”** means the Code of Practice 10 Submission comprising the letter of 1 March 2005 sent to HMRC by Herbert Smith and subsequent correspondence;
- “Corrective Action”** means action which the Contractor needs to take in response to the Authority’s audit findings;
- “Cost”** means a sum of money which the Contractor is legally

	obliged to pay other than to the Authority;
“Cost Reimbursement”	means the reimbursement of Allowable Costs;
“Critical Site IT Systems”	means the Site IT Systems described in Part 1 (Critical IT Systems) of Schedule 9 (Information Technology Schedule);
“Currency Hedging Contract”	means a contract to hedge foreign currency risk;
“Currency Hedging Strategy”	means the strategy for hedging currency which on the Commencement Date is in use by the Contractor as the same may be amended with the agreement of the Authority from time to time;
“Current Budget”	means, in respect of each Annual Site Funding Limit, that proportion of the Annual Site Funding Limit which is allocated to Costs which are not Capital Costs and which is set out in Part 10 (Initial Financial Limits) of Schedule 6 (Finance Schedule) for the first Contract Year and subsequently as determined in accordance with Clause 6.2 (Determination of Funding Limits and Compliance with Funding Limits) and adjusted (if at all) pursuant to Paragraph 3 (Change Control) of Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure);
“Current Costs”	means all Costs incurred by the Contractor other than Capital Costs;
“Customer”	means any party or former or prospective party to a Customer Contract;
“Customer Contract Log”	has the meaning given in Clause 3.7 (Customer Contract Log);
“Customer Contract”	means any contract of a value equal to or more than £10,000 (ten thousand pounds sterling) transferred to the Contractor pursuant to the Energy Act or entered into by the Contractor for the provision of the Commercial Operations Tasks to Third Parties;

“Customer Contract Schedule”	means the customer contract schedule as Part 1 (Customer Contracts – CT-16) of Schedule 3 (Commercial Schedule);
“Customer Group”	means any group or trade organisation of parties or former or prospective parties to Customer Contracts;
“Customer Ringfenced Accounts”	means any customer ringfenced accounts established by the Contractor with the approval of the Authority;
“Data”	means facilities, information, books of account, Authority Records, Contractor Records or other documentation (including any stored in electronic form);
“Deed of Participation”	means the Deed of Participation for the Combined Nuclear Pension Plan attached as Part 4 (Deed of Participation) of Schedule 4 (Secundee and Pensions Schedule);
“Defective Performance”	has the meaning given to it in Clause 2.12.1 (Defective Performance);
“Defective Performance Notice”	has the meaning given to it in Clause 2.12.2 (Defective Performance);
“Delegation of Authority”	means the written authorisation issued from time to time by the Authority and copied to the Contractor in respect of certain of the Authority's staff members or the written authorisation issued from time to time by the Contractor and copied to the Authority in respect of certain of the Contractor's staff members in accordance with Clause 1.5.2 (Delegation of Authority);
“Deleterious”	means, of a material, that (whether alone or in combination or annexure with other materials) it: <ul style="list-style-type: none"> (i) poses a threat to health and safety or to the Environment; or (ii) poses a threat to the structural stability or

performance or the physical integrity of any thing (or any part of a thing) in which it is used or included; or

- (iii) which would or could reduce the normal life expectancy of any thing (or part of a thing) in which it is used or included;

“Deleterious Materials” means any materials (whether natural or artificial and whether in solid or liquid form or in the form of a gas or vapour) which at the time of use are generally accepted or are reasonably suspected of:

- (i) being Deleterious in themselves;
- (ii) becoming Deleterious when used in a particular situation or in combination with other materials;
- (iii) becoming Deleterious with the passage of time;
- (iv) becoming Deleterious without a level of maintenance which is higher than that which would normally be expected in a structure of the type under construction; or
- (v) being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed;

“Delivered Parent IP” has the meaning given in Clause 8.3.1.1 (Licence to Authority and Contractor);

“Demand” not used;

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

“Detailed Activity Brief” means “Task Specification Notice” which has the meaning given in Paragraph 1.2.1 of Part B (Project Validation and Financial Sanction of Tasks) of Part 2 (Project Validation - CT-14) of Schedule 2 (Programme

	Management and Change Procedure);
“Detailed Project Plans”	means all the documentation produced by the Contractor underlying the LTP and setting out how Tasks will be undertaken and to what standard;
“Determination Date”	has the meaning given to it in Schedule 6 (Finance) Part 6 (Efficiency Fee) Paragraph 4A.1;
“Developed IP”	has the meaning given in Clause 8.4 (Authority's Rights to IP developed by or on behalf of the Contractor and/or Subcontractors);
“Disallowable Cost”	has the meaning given in Paragraph 4 (Disallowable Costs) of Part 2 (Allowable and Disallowable Costs) of Schedule 6 (Finance Schedule) and “Disallowable” shall be construed accordingly;
“Dispute Resolution Procedure”	means the dispute resolution procedure set out in Schedule 12 (Dispute Resolution Procedure);
“DPA”	means the Data Protection Act 1998;
“Due Fee”	has the meaning given to it in Paragraph 5.8 (Final determination of Fee) of Part 9 (Payment of Fee) of Schedule 6 (Finance Schedule);
“EA”	means the Environment Agency;
“Efficiency Fee”	has the meaning given to it in Paragraph 2 (Earning Efficiency Fee) of Part 6 (Efficiency Fee) of Schedule 6 (Finance Schedule);
“e-Government Metadata Standard (e-GUS)”	means the e-GUS Standard Version 3.0 of 29 April 2004 as updated from time to time;
“EIR”	means the Environmental Information Regulations 2004 (as amended);
“Emergency Action”	means an action taken by the Contractor pursuant to the Contractor's genuine belief that risk to life, limb or the

Environment requires immediate action. It includes assistance to the Authority or to another SLC in respect of an emergency on another nuclear site or in response to an urgent request from a Third Party to assist in a radiological incident not on a nuclear site. Emergency Action includes urgent requests for assistance from the National Radiological Protection Board and urgent assistance required in accordance with the RADS SAFE Emergency Plan;

“Employee Schedule” means the schedule affixed as Schedule 4 (Seconded and Pensions Schedule);

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

“EMU” means European Economic and Monetary Union;

“Energy Act” means the Energy Act 2004;

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

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

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

“EU Procurement Rules” means Council Directives 89/665/EEC, 92/13/EEC, 92/50/EEC, 93/37/EEC, 93/36/EEC, 93/38/EEC,

98/4/EC, European Parliament and Council Directives 97/52/EC, 98/4/EC, 2004/17/EC and 2004/18/EC and any other EU measures adopted from time to time in relation to procurement, together with the United Kingdom implementing measures and all applicable Treaty principles;

"Exceptional Item" has the meaning given to it in Paragraph 4.2 (Exceptional Items) of Part 3 (Payment of Allowable Costs) of Schedule 6 (Finance Schedule);

"Exceptional Item Information" has the meaning given to it in Paragraph 4.4 (Exceptional Items) of Part 3 (Payment of Allowable Costs) of Schedule 6 (Finance Schedule);

"Exceptional Item Threshold" has the meaning given to it in Paragraph 4.1 (Exceptional Items) of Part 3 (Payment of Allowable Costs) of Schedule 6 (Finance Schedule);

"Exceptional Pension Costs" means any Pension Costs to the extent that they exceed the contributions which are required to be paid as at the date of this Contract under the schedule of contributions (prepared under section 58 of the Pensions Act 1995 or section 227 of the Pensions Act 2004, as appropriate) of the pension scheme in force at the date of this Contract or, where Pension Costs relate to a pension scheme which has not been established or does not have such a schedule of contributions in place as at the date of this Contract, to the extent that they exceed the contributions which are required to be paid as at the date of this Contract under the schedule of contributions (prepared under section 58 of the Pensions Act 1995 or section 227 of the Pensions Act 2004, as appropriate) of the Combined Pension Scheme;

"Existing Agreements" means all agreements that are legally binding on the Contractor and were entered into prior to the Commencement Date;

"Existing Claims" not used;

"Extravagant Outlays" means, in relation to any Cost (which would otherwise

be an Allowable Cost) which, in the Authority's reasonable opinion, is materially in excess of any value obtained in relation to the LTP, that part of the Cost which is in excess of the value that the Contractor ought reasonably to have expected to have obtained;

“Failure to Protect the Supply Chain”

means conduct on the part of the Contractor which, in the reasonable opinion of the Authority, is intended, or which might reasonably be expected, to result in any of: (i) suppliers or potential suppliers being unaware of, or not being invited to respond to, opportunities to supply goods or services to the Contractor; (ii) suppliers withdrawing from opportunities to supply goods or services to the Contractor; (iii) agreement of the terms of contracts for the supply of goods or services to the Contractor becoming unreasonably delayed; or (iv) flowdown terms set out in Part 1 (Subcontract/Procurement Requirements – CT-15) of Schedule 5 (Subcontracting/ Procurement Schedule) being misinterpreted or bids from suppliers to supply goods or services to the Contractor becoming uncompetitive with the result in any of the foregoing circumstances being that such goods or services are supplied by Affiliates;

“Fall Due”

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

“Fee”

means in respect of any Contract Year the aggregate of the Base Fee, the PBI Fee, the Efficiency Fee and the Shareline Fee and any further category of Fee that may be agreed between the Parties pursuant to Clause 2.10 (Alternative Pricing Models) in each case in respect of the relevant Contract Year;

“Final Reconciliation”

has the meaning given to it in Schedule 6 (Finance) Part 3 (Payment of Allowable Costs) Paragraph 11.1;

“Fee Reconciliation Report”

has the meaning set out in Paragraph 5.2 (Final determination of Fee) of Part 9 (Payment of Fee) of Schedule 6 (Finance Schedule);

“Final Performance Warning Notice”	has the meaning given in Clause 12.4.2 (Termination for Failure to Remedy);
“FOIA”	means the Freedom of Information Act 2000 as amended;
“Force Majeure Event”	means any act, event or occurrence affecting any Party's performance of its obligations under this Contract, the cause of which is not of such Party's making nor within that Party's reasonable control (in the case of the Contractor, having acted in accordance with Good Industry Practice), and which is not attributable to any act not in accordance with Good Industry Practice nor any failure to take preventative action in accordance with Good Industry Practice (but for these purposes where the Party is the Contractor any act or omission of the Contractor prior to the Commencement Date shall not be treated as such an act or failure to take preventative action);
“Foreign Exchange Accounts”	means any bank accounts held in currencies other than sterling used for the purposes of the Currency Hedging Contracts or otherwise;
“FSA”	means the Financial Services Authority;
“Funding Limit”	means each Annual Site Funding Limit, each Current Budget and each Capital Budget;
“Good Industry Practice”	means the exercise of the degree of skill, care, diligence, prudence and foresight which would reasonably (taking into account all the factors relating to the Site) and ordinarily be expected from a skilled and experienced contractor engaged (in any European Union jurisdiction where there is experience of nuclear operations and/or decommissioning activities which have at least equivalent standards to those of the United Kingdom and any other standards generally adopted in the United Kingdom) in activities of a similar scope and complexity to those that are the subject of this Contract and under the same or similar circumstances, where

such contractor is seeking to comply with contractual, legal and regulatory obligations which are analogous to those obligations which are incumbent on the Contractor;

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

“Gross Breach” means any act or omission (or series of acts or omissions together) falling far below Good Industry Practice which has or could have (directly or indirectly) a material adverse impact on the accomplishment of any part of the LTP (or any activity necessarily ancillary thereto) or on the provision of the Mandatory Services provided always that such act or omission (or series of acts or omissions together) shall only constitute Gross Breach if the way the Contractor’s activities are planned, organised or managed (including any failure or omission to plan, manage or organise) by anyone engaged by the Contractor at Team Leader level (or its equivalent) or above is a substantial element in the act or omission (or series of acts or omissions together);

“HGCRA” means the Housing Grants, Construction and Regeneration Act 1996;

“HMRC” HM Revenue & Customs and any successor to such organisation;

“HM Treasury's Government Reporting Requirements” means the requirements specified in the Government Financial Reporting Manual (FReM);

“HR Internal Procedure” means the Contractor's Internal Procedures referred to in Clause 2.8.1 (Contractor’s Internal Procedures);

“HSE” means the Health and Safety Executive;

“HSSE Obligations” means the obligations on the Contractor to manage the Site so as to minimise any material risk to health, safety, security and the environment;

“Immunity Matters”	has the meaning given to it in Clause 11.5 (Immunity Matters);
“Impartiality Undertaking”	means an undertaking in the form set out in Part 5 (Pro Forma Impartiality Undertaking) of Schedule 4 (Secundee and Pensions Schedule);
“Increased Liability”	not used;
“Information”	has the meaning given in Clause 10.3 (Disclosure by the Authority);
“Information Asset Register”	means a register holding metadata to the e-GMS standard about the information holdings for the Contractor as defined by and agreed with the Authority;
“Inherited Conditions”	<p>means the existence, on or prior to the Commencement Date, and whether or not such matter continues to subsist after the Commencement Date, of any of the following:</p> <ul style="list-style-type: none"> (i) the presence of Deleterious Materials in, on, under or emanating from or which have emanated from the Site; (ii) the presence in the Environment of Deleterious Materials outside the Site to the extent arising from operations and activities at the Site; (iii) the presence in the Environment of Deleterious Materials to the extent arising out of the operations, events and activities of the Contractor; (iv) acts or omissions of the Contractor, its officers, directors, employees, Subcontractors and Sub-Subcontractors, in breach of Law, statutory duty or applicable Regulatory Requirements, or in breach of contract or giving rise to liability under Law (save that, to the extent that a failure by any of the Nominated Staff is a substantial

element in such act or omission, such act or omission shall never constitute an Immunity Matter);

- (v) Non-Compliance With Operating Procedures (save that, to the extent that a failure by any of the Nominated Staff is a substantial element in the failure to comply with Operating Procedures, such non-compliance shall never constitute an Immunity Matter);
- (vi) the form and content of Operating Procedures;
- (vii) Site Conditions; and
- (viii) the suitability and functionality of any Site IT System; and
- (ix) the terms of any Subcontract or any Sub-Subcontract or any IT Contract concluded prior to the Commencement Date (to the extent only that the Contractor cannot by reasonable endeavours procure the amendment of such terms);

“Initial Activity Brief”	means “Initial Task Specification Notice” which has the meaning given in Paragraph 1.1 (Initial Task Specification Notice) of Part B (Project Validation and Financial Sanction of Tasks) of Part 2 (Project Validation - CT-14) of Schedule 2 (Programme Management and Change Procedure);
“Initial Efficiency Fee Period”	has the meaning given to it in Paragraph 3.2(a) (Budgeted Cost of Work Performed) of Part 6 (Efficiency Fee) of Schedule 6 (Finance Schedule);
“Initial Period”	has the meaning given to it in the Parent Body Agreement;
“INS”	means International Nuclear Services Limited (Co. No.1144352);

“INS OCMA”	means the INS Transfer Overarching Costs Management Agreement between (1) the Authority (2) the Contractor and (3) INS dated 1 April 2008;
“INS Records Agreement”	mean the INS Transfer Records Agreement between (1) the Authority (2) the Contractor and (3) INS dated 1 April 2008;
“Insurance Proceeds”	amounts received by way of payment of benefits due under a policy of insurance but excluding any amount which is received in respect of the costs of the Authority of pursuing such claim or in respect of any delay in the settlement of such claim;
“Insolvency Event”	means the occurrence of any of the following: <ul style="list-style-type: none"> (i) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed; (ii) commencing negotiations with all or any class of creditors with a view to rescheduling any debts, or making a proposal for or entering into any compromise or arrangement with creditors (other than for the purposes of a solvent reconstruction or amalgamation); (iii) the presentation of a petition for winding up; (iv) the passing of a resolution for winding up (other than for the purposes of a solvent reconstruction or amalgamation); (v) the court making an order for winding up (other than for the purposes of a solvent reconstruction or amalgamation); (vi) the appointment of, or a person with a right to appoint becoming entitled to appoint, a receiver or manager or administrative receiver;

- (vii) being unable to pay debts as they fall due or being deemed unable to pay debts within the meaning of section 123 of the Insolvency Act 1986; and
- (viii) any event occurs, or proceeding is taken, in any jurisdiction which has an effect equivalent or similar to any of the events mentioned above,

unless, in the case of the events set out in Paragraphs (i), (iii) and (vi) above, the proceedings to which they relate are frivolous or vexatious and are dismissed, stayed or discharged within twenty-one (21) Calendar Days of their commencement;

“Instructions Notice”	has the meaning given in Clause 3.6.3.3 (Authority's right to instruct);
“Insurance Deductible”	the portion of an insured loss to be borne by the insured before he or she is entitled to recovery from the insurer;
“Insurance Schedule”	means the Insurance Schedule attached as Schedule 10 (Insurance Schedule);
“Insured Liability”	means any liability of the Contractor which is insured under the Authority Insurances from time to time excluding Vitiating Insurance Liabilities;
“Inter-SLC Service Contracts”	means the inter-SLC services contracts entered into in accordance with Clause 2.9 (Inter-SLC Service Contracts);
“Internal Procedures”	means all internal company documentation of the Contractor (regardless of the manner in which it is held, stored or collated) which: <ul style="list-style-type: none"> (i) in the reasonable opinion of the Authority, constitutes a mandatory internal guideline, standard, procedure or policy; (ii) in the reasonable opinion of the Authority,

relates directly or indirectly to the Contractor's structure, operation and management; and

- (iii) relates materially and directly to the duties imposed on the Contractor in accordance with Clause 2.1 (Nature of the Contractor's Obligations) and/or the manner in which the Contractor chooses to fulfil its contractual, legal and regulatory obligations therein,

and includes HR Internal Procedures and “**Internal Procedure**” shall be construed accordingly;

“IP”

means intellectual property including all inventions (whether patentable or not), design rights, database rights, copyright, semiconductor topography rights, unregistered trade and service marks, logos, get-up and trade names and, in each case, the goodwill attaching to them, all patents, utility models, registered designs, registered copyrights, registered trade and service marks, domain names and any applications for registration and rights to grant of any of the foregoing, confidential information, know-how, and any rights or forms of protection of a similar nature and having equivalent or similar effect to any of them which subsist anywhere in the world;

“IT Contract”

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

“IT System”

means any communications and/or information technology system including: (i) all hardware, including servers, desktop and laptop PCs and other terminal equipment, printers, scanners and other peripherals: (ii) networks and network equipment: (iii) Software; and (iv) data comprised or used therein;

“Key Personnel”

means the individuals, whether Nominated Staff or Employees, identified by the Authority and named as key personnel in accordance with Clause 5.2 (Key Personnel) and listed in Part 2 (Key Personnel) of

	Schedule 4 (Seconded and Pensions Schedule) as amended from time to time;
“Knowledge Management Policy”	means the policy set out in Schedule 17 (Knowledge Management Policy);
“Law”	means any Act of Parliament or subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, any enforceable community right within the meaning of section 2 of the European Communities Act 1972, any other applicable law, common law proclamation, bye-law, directive, decision, regulation, rule, notice or court ruling binding on the Parties directly or through precedent, international convention or Treaty ratified by the United Kingdom, all applicable laws, regulations, directives, orders, decisions or other rules having the force of law in the jurisdiction (including in relation to international waters) where the Contractor's obligations under this Contract are carried out and any United Kingdom government policy expressly binding on the Parties either particularly or as part of a class;
“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;
“Level 3 Activity Task”	has the meaning given in the LTP;
“Liability Cap”	has the meaning given in Clause 11.6.1 (Liability Cap);
“Liability for Taxation”	means a liability of the Contractor to make a payment of or in respect of any Taxation or of an amount representing, equal to, equivalent to, or deemed to be, Taxation;
“LC 35”	means standard condition 35 of the Nuclear Site Licence;
“Licence Fee”	has the meaning given to it in Clause 8.1.1 (Licence of Authority IP to Contractor);

“Licensed Nuclear Site Area”	means the part (or parts) of the Site that is from time to time subject to a Nuclear Site Licence (which at the date of this Contract comprises the land shown coloured red on the plan attached at Schedule 7 (Property Schedule) including all water supplies, pipelines, conduits and drainage systems and other rights and easements appurtenant thereto;
“Lifetime Plan” or “LTP”	means in respect of each of Sellafield, Capenhurst and Windscale, the relevant Lifetime Plan as referenced in Part 1 (Reference Estimating Basis and LTP as at the Commencement Date) of Schedule 1 (LTP and Contractor’s Initial Commitments) and as subsequently prepared and submitted by the Contractor in accordance with Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure), which sets out the Tasks to be undertaken in terms of scope, schedule and Cost;
“Long Term Force Majeure”	has the meaning given in Clause 1.9.6 (Force Majeure);
“LTP Review Report”	has the meaning given to it in Clause 6.13.1 (Review of LTP);
“Make-or-Buy Plan”	means the Contractor's plan setting out the extent to which it proposes to subcontract Tasks it currently performs;
“Mandatory Services”	means: <ul style="list-style-type: none"> (i) undertaking Emergency Action in accordance with this Contract; (ii) any other works and/or services which a contractor performing its duties under this Contract in accordance with Good Industry Practice would have to perform in order to: <ul style="list-style-type: none"> (A) comply with any applicable Law;

- (B) comply with any applicable Regulatory Requirements;
- (C) comply with the Security Requirements; or
- (D) comply with Internal Procedures relating to safety;
- (E) comply with HSSE Obligations;

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

- (aa) LTP and Contractor's Initial Commitments;
- (bb) Detailed Project Plans;
- (cc) Lifetime Plan; or
- (dd) Permitted Activities,

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

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

“Monthly Progress Report” means the monthly progress reports to be provided by the Contractor in accordance with Clause 4.1.2 (Required Reports);

“Monthly Reconciliation Report” has the meaning set out in Paragraph 8.1 (Monthly Reporting) of Part 3 (Payment of Allowable Costs) of Schedule 6 (Finance Schedule)

“Multi Year Payment Milestones” has the meaning given to it in Schedule 6 (Finance) Part 7 (Payment Milestones) Paragraph 3.2(b);

“NII”	means the Nuclear Installations Inspectorate;
“National Insurance Contributions”	means contributions and sums payable to HMRC under the PAYE system in respect of emoluments and benefits paid or payable by the Contractor, taking into account all deductions and retentions which should be made in accordance with the applicable law;
“Negotiation Brief”	has the meaning given in Paragraph 3.4.2 of Part 1 (Customer Contracts) of Schedule 3 (Commercial Schedule);
“New Assets”	means any assets, whether new or second-hand, acquired by the Contractor in accordance with Clause 7.7 (New Assets) on or after the Commencement Date, excluding any Subcontracts and Customer Contracts;
“New Customer Contract”	has the meaning given in Clause 3.6.1.1 (New Business and Amendments to Customer Contracts);
“New Task”	means “New Work Activity” as that phrase is used in Paragraph 1.1 of Part A (Overarching Validation Procedure) and Paragraph 1.1.2 of Part B (Project Validation and Financial Sanction of Tasks) of Part 2 (Project Validation - CT-14) of Schedule 2 (Programme Management and Change Procedure);
“NISR”	means the Nuclear Industries Security Regulations 2003 (SI 2003/403), as amended, modified or re-enacted from time to time;
“Nominated Staff”	means the individuals listed in Part 1 (Nominated Staff) of Schedule 4 (Seconded and Pensions Schedule);
“Non-Compliance With Operating Procedures”	means a failure by the Contractor to comply with Operating Procedures;
“Non Contractor Historical Costs”	means Costs arising in relation to the period prior to (and excluding) the Commencement Date which are properly attributable to anyone other than the Contractor, and any financial liability which has been or

	is transferred from the Contractor by way of a Transfer Scheme;
“Notice”	has the meaning given in Clause 1.12.1 (Notices);
“Nuclear Decommissioning Authority” or “NDA”	has the same meaning as “Authority”;
“Nuclear Site Licence”	means a nuclear site licence granted to the Contractor pursuant to Section 1 of the Nuclear Installations Act 1965 (as amended);
“Objection Notice”	has the meaning given in Paragraph 5.2 (NDA’s Instructions) of Part 1 (Customer Contracts) of Schedule 3 (Commercial Schedule);
“OCNS”	means the Office for Civil Nuclear Security or any body having responsibility for civil nuclear security in the United Kingdom which substantially replaces the same from time to time;
“Open Book System”	has the meaning given in Clause 4.2.5 (Contractor Records);
“Operating Procedures”	means all documented procedures, processes or prescribed practices in use at the Site from time to time (including without limitation operating procedures and maintenance procedures) which apply to the performance by: <ul style="list-style-type: none"> (a) the Contractor of its obligations under this Contract; (b) any Subcontractor of its obligations under a Subcontract; and (c) any Sub-Subcontractor of its obligations under a Sub-Subcontract;
“OPG Receipts Account”	means the account which the Authority nominates to the Contractor as such;

“Outline Proposal”	has the meaning given in Paragraph 1.2 (Consultation) of Part 1 (Customer Contracts) of Schedule 3 (Commercial Schedule);
“Overarching Costs Management Agreements” or “OCMAs”	means the BNF OCMA, the INS OCMA and the UKAEA OCMA;
“Overpayment Notice”	has the meaning given to it in Clause 6.8.3 (Category I and Category II Revenue);
“Parent Body Agreement”	means the agreement of that name entered into between the Authority, the Contractor and the Parent Body Organisation on the date of this Contract;
“Parent Body Organisation” or “PBO”	means Nuclear Management Partners Limited (Co. no.05894268);
“Parent IP”	has the meaning given in Clause 8.3.1 (Licence to Authority and Contractor);
“Partnering Arrangement”	means any agreement, other than one which in the Authority’s reasonable opinion is entered into in the ordinary course of the Contractor’s business, under which any person would, in the reasonable opinion of the Authority, acquire significant influence over either the Contractor's or the Parent Body Organisation's performance of its obligations under this Contract and/or the Parent Body Agreement;
“Payment Milestones”	means in respect of each Contract Year those indicators of performance and milestones which are determined under Part 7 (Payment Milestones) of Schedule 6 (Finance Schedule) and which are to be used as milestones by reference to which PBI Fee and a proportion of the Efficiency Fee are to be paid;
"Pension Costs"	means any pension contributions for which the Contractor (or any subsidiary of the Contractor) is liable including, for the avoidance of doubt pensions deficit

	contributions;
“Performance Agreement Form” or “PAF”	has the meaning given to it in Paragraph 4.1 (Performance Agreement Form) of Part 7 (Payment Milestones) of Schedule 6 (Finance Schedule);
“Performance Based Incentives” or “PBIs”	means in respect of each Contract Year those indicators of performance and milestones as such are more fully described in Part 5 (Performance Based Incentives Fee) of Schedule 6 (Finance Schedule);
"Performance Based Incentive Fee" or "PBI Fee"	means the amounts payable under Part 5 (Performance Based Incentives Fee) of Schedule 6 (Finance Schedule) as a result of the Contractor achieving certain milestones determined in accordance with Part 7 (Payment Milestones) of Schedule 6 (Finance Schedule);
“Performance Warning Notice”	has the meaning given in Clause 12.4 (Termination for Failure to Remedy)
“Permitted Activities”	means those activities listed in Part 3 (Permitted Activities) of Schedule 3 (Commercial Schedule) as may be amended from time to time on the instruction or with the agreement of the Authority in accordance with Clause 3.6.4 (Permitted Activities);
“Permitted Activities Request”	has the meaning given to it in Paragraph 6.1 of Part 1 (Customer Contracts – CT-16) of Schedule 3 (Commercial Schedule);
"Persistent Breach"	means repeated or similar breaches by the Contractor of the same, or a similar, Operating Procedure (whether or not such Operating Procedure was designed by the Contractor after the Commencement Date) which has or could have (directly or indirectly) a material adverse impact on the accomplishment of any part of the LTP (or any activity necessarily ancillary thereto) or on the provision of the Mandatory Services;
“Pre-Commencement Relief”	any Relief which arises as a consequence of or by reference to any Tax Event occurring, or in respect of a

period commencing, before the Commencement Date;

“Programme Controls Manager”

means the individual appointed by the Authority to be programme controls manager in relation to the Site as notified to the Contractor from time to time;

“Programme Control Procedures” or “PCPs”

has the meaning given to it in Paragraph 1 (Overview) of Part 1 (Authority Policies and Procedures) of Schedule 2 (Programme Management and Change Control);

“Prohibited Acts”

means:

- (i) offering, giving or agreeing to give to any employee of the Authority any gift or consideration of any kind as an inducement or reward:
 - (a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Authority; or
 - (b) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Authority;
- (ii) entering into this Contract or any other contract with the Authority in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless, before the relevant contract is entered into, particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Authority;
- (iii) committing any offence:
 - (a) under the Prevention of Corruption Acts

1889 - 1916;

- (b) under any applicable Law creating offences in respect of fraudulent acts; or
- (c) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Authority; or
- (iv) defrauding or attempting to defraud or conspiring to defraud the Authority;

“Project”

means a unique set of co-ordinated activities by the Contractor intended to meet certain of the Contractor's business objectives, which has precise starting and finishing points and is undertaken by one or more persons to meet specific business objectives within defined time, Cost and performance parameters set out in the Contractor's relevant business case. A Project must, as a minimum, comprise:

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

“Property Lease”

means the leases of part or parts of the Site subject to the terms of this Contract entered into on the same date as this Contract and **“Property Lease”** means any of them;

“Proposal”

has the meaning given to it in Paragraph 1.9.3 of Part 1

(Customer Contracts – CT-16) of Schedule 3 (Commercial Schedule);

“Proposed Working Capital Facility”

means a loan facility into which the Contractor proposes to enter or into which the Authority proposes that the Contractor should enter;

“PSWBS”

means in respect of each of Sellafield, Windscale and Capenhurst, the Programme Summary Work Breakdown Structure within the relevant Lifetime Plan which is the structure defined and used by the Authority to subdivide the relevant Lifetime Plan to individual levels where Tasks can be planned, controlled, executed and performance-measured in accordance with the requirements of this Contract;

“Rebaselined LTP”

has the meaning given to it in Clause 6.13.4 (Review of LTP);

“Records”

means the records specified in Clause 4.2.1 (Ownership of Records);

“Records Agreement”

means any agreement concerning the compilation, maintenance, indexing and provision of access to such records in connection with the business of the Contractor from time to time;

“Redundancy”

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

“Regulator Meetings”

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

“Regulators”

means the HSE, the EA, the SEPA, the OCNS, the Scottish Executive, the FSA, the Pensions Regulator, the Pension Protection Fund, others specific to the Contractor's obligations under this Contract and as applicable in the relevant jurisdiction (including in relation to international waters) where the Contractor's obligations under this Contract are carried out and **“Regulator”** shall mean each or any one of them;

“Regulatory Requirements”	means any legally enforceable requirement of any Regulator;
“Relief”	means: <ul style="list-style-type: none"> (a) any relief, loss, allowance, exemption, set-off or credit in respect of Tax; (b) any deduction or other relief available in relation to Tax or in the computation of income, profits or gains for the purposes of Taxation; and (c) any right to the repayment of Tax, including any repayment supplement and interest;
“Remaining Efficiency Fee Payment”	has the meaning given to it in Paragraph 5.8(a) (Final determination of Fee) of Part 9 (Payment of Efficiency Fee) of Schedule 6 (Finance Schedule);
“Remediation Programme”	has the meaning given in Clause 12.6.3.1.2 (Remediable Breach);
“Reports”	means the reports required by Clause 4.1.2 (Required Reports);
“Required Parent IP”	has the meaning given in Clause 8.3.1.2 (Licence to Authority and Contractor);
“Requirement/Output Specification”	not used;
“Reserved Parent IP”	has the meaning given in Clause 8.3.4A (Licence to Authority and Contractor);
“RPIX”	means the “Retail Prices Index excluding mortgage interest rates (RPIX)” as published by the UK Office of National Statistics or in the absence of such index, such index as the Parties may agree (or in default of agreement as the Dispute Resolution Procedure may determine) produces as nearly as possible the same

result as that index would have produced (after adjusting, if necessary, for any differences in the reference dates used in compiling that index and the replacement index);

- “Scheme Documents”** has the meaning given in the Deed of Participation;
- “Scheme Trustee”** means the trustee for the time being of the CNPP;
- “Second Efficiency Fee Period”** has the meaning given to it in Paragraph 3.2(b) (Budgeted Cost of Work Performed) of Part 6 (Efficiency Fee) of Schedule 6 (Finance Schedule);
- “Seconding Employer”** means a company (or other business entity) which provides Nominated Staff to the Contractor by means of a Secondment Agreement;
- “Secondment Agreement”** means an agreement entered into or to be entered into by the Parent Body Organisation, a member of Nominated Staff, the Authority, the Contractor and the Seconding Employer, in the form attached at Part 3 (Pro Forma Secondment Agreement) of Schedule 4 (Secundee and Pensions Schedule);
- “Second Period”** has the meaning given to it in the Parent Body Agreement;
- “Secretary of State”** means the Secretary of State for Business Enterprise and Regulatory Reform or such other person as shall for the time being possess the powers now conferred on the Secretary of State for the Department for Business Enterprise and Regulatory Reform;
- “Security Interest”** means any mortgage, assignment, charge, lien, hypothecation, pledge, encumbrance, trust arrangement or any other security interest or arrangement for the purpose of providing to any person security or a priority in right of payment except for any lien arising by operation of law;
- “Security Plan”** means the security plan approved for the Site in accordance with NISR;

“Security Requirements”	means all security requirements relating to the Site including those required by the Security Plan and all other security requirements to which a competent manager of a nuclear site would reasonably be expected to adhere;
“Sellafield”	means the Site excluding: (i) Windscale; and (ii) Capenhurst;
“Sellafield ASFL”	means the annual overall funding limit for the management and operation of Sellafield as specified in respect of the first Contract Year in Part 10 (Initial Financial Limits) of Schedule 6 (Finance Schedule) and as determined in accordance with Clause 6.2 (Determination of Funding Limits and Compliance with Funding Limits) in respect of subsequent Contract Years and as the same may be adjusted (if at all) pursuant to Paragraph 3 (Change Control) of Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure);
“SEPA”	means the Scottish Environment Protection Agency;
“Series of Subcontracts”	means more than one contract for the procurement of the same or substantially similar goods or services between the Contractor and the same supplier or subcontractor;
“Shared Services Project”	not used;
“Shareholder”	means the holder of shares of any class of the Contractor from time to time;
“Shareline Fee”	has the meaning assigned to it in Clause 2.6.2.5 (Deletion of scope/programme acceleration);
“Side Letter”	means the letter of that name entered into between the Authority and the Contractor on the date of this Contract;

“Site”	means the areas shown edged red on the plans attached at Schedule 7 (Property Schedule);
“Site Conditions”	means the state and condition of the buildings, plant and equipment and other infrastructure at the Site;
“Site IT Systems”	means IT Systems on the Site or used by or on behalf of the Contractor in respect of the Site;
“Site Management and Operations Contract”	means a contract between the Authority and an SLC to manage and operate a site;
“Site Manager”	means the person appointed from time to time by the Contractor pursuant to the terms of Clause 7.5.5 (Maintenance of Site and Authority Assets);
“Site Meetings”	means all meetings held or to be held by the Contractor on the Site (or, in respect of the Commercial Operations Tasks at any other locations which the Contractor uses in its performance of the Commercial Operations Tasks) with or without Third Parties present (and excluding Regulator Meetings if applicable) which are agreed by the Parties prior to each Contract Year;
“Site Maintenance Register”	means the Site Maintenance Register to be maintained by the Contractor in accordance with Clause 7.5.2 (Maintenance of Site and Authority Assets);
“SLC”	means a contractor to whom the HSE has granted a Nuclear Site Licence;
“Socio-Economic Development Plan”	means the document to be provided pursuant to Clause 2.5 (Socio-Economic Development);
“Software”	means all computer software, together with any related supporting documentation and materials necessary to enable a user to make full use of the functionality of, or to administer effectively, such software;
“Source Code”	means, in respect of any Software, the entirety of such Software in an eye-readable form in which such

Software can be interpreted by a programmer of reasonable skill and in such form that it can be compiled or interpreted into equivalent object code, together with all technical information and documentation reasonably necessary for the use, reproduction, modification and enhancement of such Software;

“Specification”

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

“State Aid Decision”

means the State Aid decision attached at Schedule 14 (European State Aid);

“Strategic Interest”

means technologies, processes and systems:

- (a) involving or relating to:
 - (i) fissile materials in strategically significant quantities including any special fissile material within the meaning of Article 197 of the Euratom Treaty but excluding wastes containing trace quantities of fissile material;
 - (ii) reprocessing including any technology, processes or systems and/or IP relating thereto that could enhance or prejudice the operation of the Thermal Oxide Reprocessing Plant;
 - (iii) nuclear fuel including any technology, process or system and/or IP relating thereto that could enhance or prejudice the production of nuclear fuel but

excluding trace quantities of spent fuel in fuel element debris or other wastes contaminated with fuel residues;

(iv) nuclear reactors for power generation including any technology, process or system and/or the IP therein that could enhance or prejudice the operation of the Authority's operating nuclear reactors;

(v) transportation, storage or disposal of nuclear materials and associated containment and packaging including any technology, process or systems and/or any IP therein that could enhance or prejudice the Authority's statutory duties, powers and functions associated with the transportation of nuclear fuel, spent fuel, nuclear waste or waste contaminated with radioactive material; or

(b) arising from any contract or agreement the purpose of which is to undertake research for the SLC or the Authority (including contracts and agreements with universities or research companies);

“Subcontracting Instructions Notice”

has the meaning given in Paragraph 3.16.3 (NDA's Right to Instruct) of Part 1 (Subcontract/Procurement Requirements – CT-15) of Schedule 5 (Subcontracting/Procurement Schedule);

“Subcontract”

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

“Subcontractor”

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

“Subcontractor Procurement Schedule”	means the subcontract procurement schedule attached as Schedule 5 (Subcontracting/ Procurement Schedule);
“Sub-Subcontract”	means any agreement entered into by any Subcontractor with any Sub-Subcontractor or by any Sub-Subcontractor with any other Sub-Subcontractor relating to the performance of the Contractor’s obligations under this Contract;
“Sub-Subcontractor”	means any contractor not being the Contractor or a Subcontractor entering into any Sub-Subcontract at any level in the supply chain in connection with the services to be provided by the Contractor under this Contract;
“Tasks”	means the services, operations, Projects and activities undertaken by the Contractor in the discharge of its obligations under this Contract;
“Taxation” or “Tax”	means all forms of tax, duty, rate, levy, charge or other imposition or withholding whenever and by whatever authority imposed and whether of the United Kingdom or elsewhere, including (without limitation) any tax on gross or net income profit or gains (including income tax required to be deducted or withheld from or accounted for in respect of any payment), corporation tax, advance corporation tax, capital gains tax, capital transfer tax, inheritance tax, wealth taxes, development land tax, petroleum revenue tax, value added tax, customs duties, excise duties, turnover taxes, lottery duty, air passenger duty, insurance premium tax, rates (including the uniform business rate), stamp duty, capital duty, stamp duty reserve tax, stamp duty land tax, PAYE, national insurance and other similar contributions, duties, rates, levies, charges, imposts or withholdings corresponding to, similar to, in the nature of, replaced by or replacing any of them together with any interest, penalty or fine in connection with any taxation, and regardless of whether any such taxes, duties, rates, levies, charges, imposts, withholdings, interest, penalties or fines are chargeable directly or primarily against or attributable directly or primarily to

the Contractor, a subsidiary or any other person and of whether any amount in respect of any of them is recoverable from any other person;

“Taxation Authority”	means any local municipal, governmental, state, federal or other fiscal, customs or excise authority, body or official anywhere in the world with responsibility for, and competent to impose, collect or administer, any form of taxation;
“Taxes Act”	means the Income and Corporation Taxes Act 1988;
“Tax Event”	includes any event, action, transaction, act or omission of whatever nature, and any combination of two or more such occurrences the first and principal of which has taken place before the Commencement Date and any reference to a Tax Event occurring on or before a certain date shall include Tax Events which for the purposes of any Tax are deemed, treated or regarded as occurring on or before that date;
“Tenancy Document”	means any lease, licence or other document (other than this Contract) that subsists from time to time that permits the lawful occupation by any person of the whole or any part of the Licensed Nuclear Site Area;
“Term”	has the meaning given to it in the Parent Body Agreement;
“Termination for Convenience”	has the meaning given in Clause 12.8 (Termination for Convenience);
“Third Efficiency Fee Period”	has the meaning given to it in Paragraph 3.2(c) (Budgeted Cost of Work Performed) of Part 6 (Efficiency Fee) of Schedule 6 (Finance Schedule);
“Third Party”	means any person other than the Parties, the Parent Body Organisation and Affiliates;
“Third Party Claim”	not used;
“Third Party IP”	has the meaning given in Clause 8.7 (Third Party IP);

“Third Period”	has the meaning given to it in the Parent Body Agreement;
“Transfer Scheme”	means any nuclear transfer scheme made under section 38 of the Energy Act;
“Transfer Scheme Losses”	means Costs paid or payable by the Contractor to Third Parties in respect of compensation under Paragraph 11 of Schedule 5 of the Energy Act;
“Transition Agreement”	means the transition agreement entered into between (1) the Parent Body Organisation and (2) the Authority;
“Transitional Balances”	has the meaning given to it in Schedule 6 (Finance) Part 3 (Payment of Allowable Costs) Paragraph 7.1;
“Transitional Balance Information”	has the meaning given to it in Schedule 6 (Finance) Part 3 (Payment of Allowable Costs) Paragraph 7.1;
“Treaty”	means the Treaty establishing the European Communities, as amended by the Treaty on European Union;
“True Cost Variance”	has the meaning given in Paragraph 4 (True Cost Variance) of Part 6 (Efficiency Fee) of Schedule 6 (Finance Schedule);
“UKAEA”	means the United Kingdom Atomic Energy Authority;
“UKAEA Limited”	means UKAEA Limited (Company Registration Number 05597709) whose registered office is at The Manor Court, Chilton, Didcot, Oxfordshire OX11 0RN;
“UKAEA OCMA”	means the UKAEA Restructuring Overarching Costs Management Agreement between (1) the Authority (2) UKAEA (3) UKAEA Limited (4) the Contractor (5) Dounreay Site Restoration Limited and (6) British Nuclear Group Limited dated 1 April 2008;
“UKAEA Records Agreement”	means the UKAEA Restructuring Records Agreement between (1) the Authority (2) UKAEA (3) UKAEA

Limited (4) the Contractor and (5) Dounreay Site Restoration Limited dated 1 April 2008;

“UK GAAP” means United Kingdom Generally Accepted Accounting Principles;

“Utility Customer Contract” means a contract:

(i) to which the Authority is a party which on 31 March 2008 was a Customer Contract and was transferred from the Contractor to the Authority pursuant to a Transfer Scheme dated 1 April 2008, whether or not the same is subject to any vesting under relevant foreign law after 1 April 2008; or

(ii) which is agreed between the Parties from time to time pursuant to the Contractor's Internal Procedure relating to Utility Customer Contracts as being a Utility Customer Contract for the purposes of this Contract;

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

“VATA” means Value Added Tax Act 1994;

“VAT Agreement” means the Agreement dated 1 April 2005 between HM Customs & Excise (now HMRC) and the Authority;

“Vitiating Insurance Liability” means any Cost or liability of the Contractor which is or ought to be insured under the Authority Insurances from time to time but in respect of which the Authority or the Contractor (as applicable) is either:

(i) unable to recover under the relevant insurance as a result of any act or omission of the Contractor or its Subcontractors or Sub-Subcontractors which renders the Authority Insurance void, voidable, unenforceable, suspended or impaired in whole or in part; or

- (ii) required to repay to the insurer under the relevant Authority Insurance as a result of any act or omission of the Contractor or its Subcontractors or Sub-Subcontractors;

“Windscale” means the Licensed Nuclear Site Area known as Windscale;

“Windscale ASFL” means the annual overall funding limit for the management and operation of Windscale as specified in respect of the first Contract Year in Part 10 (Initial Financial Limits) of Schedule 6 (Finance Schedule) and as determined in accordance with Clause 6.2 (Determination of Funding Limits and Compliance with Funding Limits) in respect of subsequent Contract Years and as the same may be adjusted (if at all) pursuant to Paragraph 3 (Change Control) of Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure);

“Work Activities” has the same meaning as Tasks and “Work Activity” shall be construed accordingly;

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

“Working Day” means Monday to Friday except any day which is generally recognised as a public holiday in England.

1.2 Interpretation

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

- 1.2.1 in the event of any conflict between the Clauses contained in this Contract and the Schedules, the Clauses shall take precedence over the Schedules. In the event of any conflict between the Clauses and Schedules and the Authority Policies and Procedures, the Clauses and Schedules take precedence over the Authority Policies and Procedures. If there is any further conflict, this Contract shall first be read and construed as a whole and any conflict then remaining shall be dealt with under Clause 13 (Disputes);
- 1.2.2 headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Contract;
- 1.2.3 all references to Clauses and Schedules are references to clauses of and the schedules to this Contract and all references to Paragraphs and Parts are references to parts and paragraphs contained in the Schedules;
- 1.2.4 the Schedules (including any appendices to such Schedules) are an integral part of this Contract and reference to this Contract includes reference to the Schedules;
- 1.2.5 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;
- 1.2.6 all references to any statute or statutory provision shall include references to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute or statutory provision;
- 1.2.7 words importing the singular include the plural and vice versa;
- 1.2.8 words importing a particular gender include all genders;
- 1.2.9 “**person**” includes any individual, partnership, firm, trust, body corporate, government department, corporation sole, governmental body, authority, agency or unincorporated body of persons or association;
- 1.2.10 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;
- 1.2.11 references to “**Party**” and “**Parties**” means a Party or the Parties to this Contract as

applicable;

- 1.2.12 all monetary amounts are expressed in pounds sterling;
- 1.2.13 a reference to a balance sheet or profit and loss account includes a reference to any note forming part of or attached to it;
- 1.2.14 references to the word “**includes**” or “**including**” are to be construed without limitation;
- 1.2.15 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;
- 1.2.16 any reference in this Contract to a Party providing its consent or approval shall be deemed to be a reference to prior written consent or approval;
- 1.2.17 a reference to the “**Site**” shall include any part of the Site; and
- 1.2.18 all references to a time of day are references to UK time.

1.3 Commencement and Duration

This Contract shall commence on the Commencement Date and shall remain in full force and effect unless and until terminated on the date on which termination is effective in accordance with Clause 1.9 (Force Majeure), 1.15.2.6 (Corrupt Gifts) or Clause 12 (Termination).

1.4 State Aid

The Contractor acknowledges that the Authority is bound by the State Aid Decision and the Contractor shall co-operate with the Authority and provide such information and assistance as the Authority may require in order for the Authority to fulfil its obligations to the European Commission pursuant to the State Aid Decision.

1.5 Representatives and Authority to Act

1.5.1 Co-operation

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

1.5.2 Delegation of Authority

- 1.5.2.1 Each of the Authority and the Contractor shall provide to the other written Delegations of Authority setting out the decisions which individual members of their respective staffs have authority to take.
- 1.5.2.2 Each of the Authority and the Contractor is entitled to rely on a written Delegation of Authority of the other Party as evidence that an individual was empowered to make a decision on behalf of the Authority or the Contractor, as applicable.

1.5.3 Authority to Act

- 1.5.3.1 Individual members of the Authority's team shall have such authority to act on behalf of the Authority for the purposes of this Contract as is specified in the relevant Delegation of Authority in respect of that team member issued by the Authority and copied to the Contractor.
- 1.5.3.2 Individual members of the Contractor's team shall have such authority to act on behalf of the Contractor for the purposes of this Contract as is specified in the relevant Delegation of Authority in respect of that team member issued by the Contractor and copied to the Authority.

1.5.4 Extent of Authority

Unless specifically set out in a written Delegation of Authority, no member of the Authority's or the Contractor's team shall have the authority to:

- 1.5.4.1 agree any variation or amendment to this Contract; or
- 1.5.4.2 agree to any material waiver by the Authority or the Contractor (as the case may be) of any term of this Contract.

1.6 Liaison with Regulators

1.6.1 Communications with Regulators

Save where a Regulatory Requirement expressly prohibits the Contractor from doing so, the Contractor shall promptly copy to the Authority all material correspondence or other communications received from and sent to a Regulator in relation to the Site and the Contractor's activities under this Contract.

1.6.2 Regulator Meetings

- 1.6.2.1 The Contractor shall use all reasonable endeavours to give the Authority prompt notice of all Regulator Meetings.
- 1.6.2.2 Save in relation to the meetings, or parts thereof, where a Regulatory Requirement prevents the Authority from doing so, the Authority may attend Regulator Meetings. The attendance of the Authority at Regulator Meetings shall at all times be at the discretion of the relevant Regulator(s).
- 1.6.2.3 Whether or not the Authority attends Regulator Meetings, the Contractor shall keep the Authority apprised of the Contractor's approach in discussions or negotiations with the Regulator within the constraints of the timetable set by the relevant Regulator. Where the Authority does not attend any Regulator Meeting, the Contractor shall keep the Authority informed on a timely basis of the outcome of the meeting.

1.6.3 Notification of Breach

If the Contractor becomes aware of any circumstances that will or may lead or have led to a breach of one or more Regulatory Requirements, the Contractor shall, as soon as reasonably practicable, notify the Authority of such circumstances in such form and with such detail as requested by the Authority. This obligation is independent of the Contractor's overriding obligation to notify the relevant Regulator of such circumstances pursuant to relevant Regulatory Requirements.

1.7 Site Meetings

- 1.7.1 The Authority shall be entitled to attend and participate in Site Meetings.
- 1.7.2 The Contractor shall:
 - 1.7.2.1 maintain a timetable of all Site Meetings;
 - 1.7.2.2 give the Authority reasonable notice of all proposed Site Meetings in order to enable the Authority to attend; and
 - 1.7.2.3 at the Authority's request, provide the Authority with the minutes of and any action plans and other related documents resulting from any Site Meeting.

1.8 Other Meetings

The Contractor shall notify the Authority of any proposed meetings with Customers or Customer Groups or relevant stakeholders and shall give reasonable notice of the date, timing and location of such meetings so that the Authority may also attend such meetings if the Authority so wishes. Where Existing Agreements and/or Customer Contracts contain provisions which prohibit the Authority's attendance at such meetings, the Contractor shall use its reasonable endeavours to procure the agreement of the Customer and/or counterparty to the Authority's attendance at such meetings, and, until such agreement is obtained, the Authority will have due regard to the provisions of the Existing Agreements and/or Customer Contracts in deciding whether to attend such meetings.

1.9 Force Majeure

1.9.1 Performance of Obligations

Subject to Clause 1.9.2 (Notification and Mitigation), if a Party (the “**Affected Party**”) is materially hindered, prevented or delayed from performing any of its obligations under this Contract by reason of a Force Majeure Event, such obligations shall be suspended (to the extent affected) for a period at least equal to the duration of the Force Majeure Event except that the Contractor shall not be excused from the due and punctual performance of any of its obligations under this Contract by reason of any circumstances to the extent that the impact of such circumstances on the Contractor's ability so to perform its obligations could have been reasonably avoided or mitigated by the maintenance after the Commencement Date of business continuity and disaster recovery plans in accordance with Clause 9.4 (Maintenance and Support and Business Continuity) and the implementation of such plans.

1.9.2 Notification and Mitigation

The Affected Party shall, as soon as it becomes aware of a Force Majeure Event, notify the other Party in writing of:

- 1.9.2.1 the nature of the Force Majeure Event relied on;
- 1.9.2.2 the estimated effect of the Force Majeure Event on the Affected Party's ability to perform its obligations under this Contract; and
- 1.9.2.3 the period for which it is estimated the Force Majeure Event will continue.

- 1.9.3 Without prejudice to Clause 1.9.7 (Instigation of Change Proposal), the Affected Party shall:
- 1.9.3.1 use all reasonable endeavours to mitigate the effects of the Force Majeure Event on the performance of its obligations under this Contract;
 - 1.9.3.2 where the Affected Party is the Contractor, inform and consult the Authority's Contracts Manager as soon as is practicable as to the actions undertaken or proposed in order to mitigate the effects of the Force Majeure Event and take the Authority's Contracts Manager's reasonable views and advice into account;
 - 1.9.3.3 where the Affected Party is the Contractor, provide written reports as often as the Authority reasonably requires in the circumstances of the Contractor's progress in mitigating the effects of the Force Majeure Event and indicating the costs of such mitigation and when it is estimated that performance of the affected obligation will resume;
 - 1.9.3.4 where the Affected Party is the Authority, provide updates to the Contractor as often as is reasonably possible in the circumstances of the Authority's progress in mitigating the effects of the Force Majeure Event and indicating when it is estimated that performance of the affected obligation will resume;
 - 1.9.3.5 so far as reasonably practicable provide any information relating to the Force Majeure Event and its effects as the other Party may reasonably request; and
 - 1.9.3.6 (without prejudice to any applicable Law and/or Regulatory Requirement) make any alternative arrangements for resuming the performance of its obligations as may be practicable without incurring material additional expense.
- 1.9.4 As soon as the Force Majeure Event has ended, the Affected Party shall notify the other Party in writing that the Force Majeure Event has ended, and it shall resume the full performance of its obligations under this Contract. When any Change Proposal instigated under Clause 1.9.7 (Instigation of a Change Proposal) has been approved (without prejudice to any applicable Law and/or Regulatory Requirement) the Affected Party's full performance of its obligations under this Contract will continue in accordance with the approved Change.
- 1.9.5 Save to the extent stipulated in this Clause 1.9 (Force Majeure), neither Party shall be

released from any of its obligations under this Contract as a result of a Force Majeure Event.

1.9.6 In relation to a Force Majeure Event affecting the Contractor, if the performance by the Contractor of substantially all of its obligations under this Contract or the operation of the Thermal Oxide Reprocessing Plant or Sellafield Mox Plant is materially prevented, hindered or delayed by reason of a Force Majeure Event for a period of more than ninety (90) consecutive Calendar Days (“**Long Term Force Majeure**”), the Authority may terminate this Contract with immediate effect by notice to the Contractor or the Parent Body Organisation on or at any time after the expiry of such ninety (90) Calendar Day period.

1.9.7 Instigation of Change Proposal

1.9.7.1 In the case of a Force Majeure Event the Contractor shall be entitled to submit a Change Proposal to the Authority. Such a Change Proposal shall:

1.9.7.1.1 be prepared by the Contractor in accordance with the provisions of Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure); and

1.9.7.1.2 have as its objective the mitigation of the effects of the Force Majeure Event and the resolution of any issues arising in relation thereto.

1.9.7.2 If the Contractor submits a Change Proposal in accordance with Clause 1.9.7.1 (Instigation of Change Proposal), the Authority shall either:

1.9.7.2.1 accept such submission (provided that it does not breach any applicable Law and/or Regulatory Requirements); or

1.9.7.2.2 instruct (acting reasonably) the Contractor to adopt an alternative Change Proposal (in which case the Contractor shall comply with such instruction).

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

1.9.7.3 Any submissions prepared and submitted by the Contractor in accordance with Clause 1.9.7.1 (Instigation of Change Proposal) shall be submitted:

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

1.9.7.3.2 before any Change specified in the submission is implemented.

1.9.7.4 The implementation of a Change Proposal determined in accordance with Clause 1.9.7 (Instigation of Change Proposal) shall not make a Cost an Allowable Cost where it would otherwise be a Disallowable Cost pursuant to Paragraph 4 (Disallowable Costs) of Part 2 (Allowable and Disallowable Costs) of Schedule 6 (Finance Schedule).

1.9.8 Category A Force Majeure Events

In the case of a Category A Force Majeure Event, the following provisions shall apply in addition to or, where appropriate, in substitution for, the provisions of Clauses 1.9.1 (Performance of Obligations) to 1.9.7 (Instigation of Change Proposal) (inclusive) as such apply to those Force Majeure Events which are not Category A Force Majeure Events:

1.9.8.1 the Contractor shall use its best endeavours to mitigate the consequences of the Category A Force Majeure Event; and

1.9.8.2 the Authority shall, for as long as the Category A Force Majeure Event subsists, be entitled to terminate this Contract immediately on notice to the Contractor.

1.10 Warranties

1.10.1 Authority Warranties

Without prejudice to any warranties or conditions either express or implied by any applicable Law, the Authority warrants and undertakes that as at the Commencement Date:

1.10.1.1 it has the requisite power and authority to enter into and exercise its rights and perform its obligations under this Contract which, when executed, will constitute valid and binding obligations on it in accordance with its terms; and

1.10.1.2 has taken all necessary action to authorise the execution and the performance of its obligations under this Contract.

1.10.2 Contractor's Warranties

Without prejudice to any warranties or conditions either express or implied by any applicable Law, the Contractor warrants and undertakes that as at the Commencement Date:

1.10.2.1 it has the requisite power and authority to enter into and exercise its rights and perform its obligations under this Contract which, when executed, will constitute valid and binding obligations on it in accordance with its terms; and

1.10.2.2 has taken all necessary action to authorise the execution and the performance of its obligations under this Contract.

1.11 Severability

1.11.1 If any condition, clause or provision of this Contract 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 Contract which shall remain in full force and effect.

1.11.2 If any provision of this Contract is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.

1.11.3 In the circumstances referred to in Clause 1.11.2 (Severability) the Parties shall try to substitute for any invalid or enforceable provision, a provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

1.12 Notices

1.12.1 A notice, approval, consent, electronic mail (in the case of Clause 1.12.3 (Notices) below only) or other communication (“**Notice**”) in connection with this Contract and the documents referred to in it must be in written form in the English language and must be delivered by hand, by first class prepaid post (or airmail if posted to or from a place outside the United Kingdom) or by facsimile transmission, marked clearly with the words “Contract Communication” to the relevant individual (who may be identified by title rather than a personal name) at the address or facsimile number specified in Clause 1.12.2 (Notices) below or, for the purposes of Clause 1.12.3 (Notices) below only, by electronic mail to an address for the time being notified for

that purpose to the Party giving notice.

1.12.2 All Notices must be marked for the attention of the addressee.

The relevant details of the Authority and the Contractor at the date of this Contract are:

Authority:

Addressee: The NDA Sellafield Site Programme Director
Address: Nuclear Decommissioning Authority
B433 Near Seascale
Cumbria, CA20 1PG

Facsimile: [Redacted]

Email: [Redacted]

Contractor:

Addressee: [Redacted]
Address: Sellafield, Seascale, Cumbria, CA20 1PG

Facsimile: [Redacted]

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 1.12 (Notices). The Parties' respective addresses and facsimile numbers must be within the United Kingdom.

1.12.3 If an electronic mail address has been provided pursuant to Clause 1.12.1 (Notices), the following Notices may be sent by electronic mail:

- 1.12.3.1 electronic transmission of a scanned image of an original executed Notice;
- 1.12.3.2 day-to-day communication in connection with this Contract and the documents referred to in it; and
- 1.12.3.3 any Authority approval/consent, provided that the Contracts Manager has signed the approval/consent and a scanned copy of the signed approval/consent is attached to the electronic mail.

1.12.4 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 1.12.5 (Notices) below.

1.12.5 Subject to Clause 1.12.6 (Notices), a Notice is deemed to be received:

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

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

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

1.12.5.4 where sent by electronic mail (where applicable), on the second Calendar Day after such electronic mail was sent. The place of receipt of electronic mail shall be deemed to be the postal address of the addressee given in, or amended in accordance with, Clause 1.12.2 (Notices) above.

1.12.6 A Notice received or deemed to be received in accordance with Clause 1.12.5 (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.

1.12.7 Notwithstanding Clauses 1.12.1 (Notices) and 1.12.2 (Notices), 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 Contractor of this and shall also provide the Contractor with details of the name of the person to whom such Notice should be delivered and the method by which such Notice should be delivered.

1.13 Waiver

A failure or delay by either Party at any time to enforce any provision of this Contract or to require performance by the other Party of any provision of this Contract shall not be construed as a waiver of such provision and shall not affect the validity of this Contract 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.

1.14 Entire Agreement

1.14.1 Each of the Parties confirms that this Contract together with the Side Letter, the Parent Body Agreement, the Records Agreement, the Transition Agreement, the Overarching Cost Management Agreements 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 allowed by Law) any warranty, condition or other undertaking implied at Law or by custom.

1.14.2 The Contractor confirms that:

1.14.2.1 in entering into this Contract it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out in this Contract, the Parent Body Agreement, the Transition Agreement or the documents referred to in them; and

1.14.2.2 in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the only rights or remedies in relation to any breach, representation, warranty, assurance, covenant, indemnity, guarantee undertaking or commitment given or action taken omission or default arising under or in connection with, or termination of this Contract, the Parent Body Agreement or the Transition Agreement or the documents referred to in them are those contained or referred to in this Contract, the Parent Body Agreement or the Transition Agreement or such documents, and for the avoidance of doubt and without limitation, the Contractor 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 Contract) or otherwise howsoever.

1.14.3 The Authority confirms that:

1.14.3.1 in entering into this Contract it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out in this Contract, the Parent Body Agreement or the Transition Agreement or the documents referred to in them; and

1.14.3.2 in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the only rights or remedies in relation to any breach, representation, warranty, assurance, covenant,

indemnity, guarantee, undertaking or commitment given or action taken, omission or default arising under or in connection with, or termination of this Contract or the Parent Body Agreement or the Transition Agreement or the documents referred to in them are those contained or referred to in this Contract, the Parent Body Agreement or the Transition Agreement or such documents, and for the avoidance of doubt and without limitation, the Authority has no other right or remedy, whether by way of a claim for contribution or otherwise, in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in, this Contract) or otherwise howsoever.

1.14.4 The waivers, disclaimers, releases, limitations and apportionments of liability, exclusive remedy provisions, and indemnity and hold harmless obligations expressed in this Contract 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 or any other person who is provided to the Contractor in accordance with Clause 16B (Provision of Support to the SLC) of the Parent Body Agreement) leading to such fault, negligence, tort, strict liability, breach of contract, or otherwise was fraudulent.

1.14.5 Without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, the Authority shall not bring any claim against any person (including the Nominated Staff or any other person who is provided to the Contractor in accordance with Clause 16B (Provision of Support to the SLC) of the Parent Body Agreement) other than the Contractor in respect of any losses, liabilities, costs, claims or expenses incurred or arising out of or in connection with this Contract (together "**Losses**") where and to the extent that the Authority:

1.14.5.1 is entitled to seek recovery of such Losses from the Contractor; or

1.14.5.2 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 Contract or arising as a result of the acts or omissions of the Authority; or

1.14.5.3 would have been so entitled but for any insolvency or lack of capacity of or any other similar matter in respect of the Contractor.

This restriction shall not operate to limit or exclude any liability that the Contractor may have for the acts or omissions of any such individuals.

1.14.6 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 Contract are provided for the benefit of that Party and each of that Party's directors, officers, employees and agents (which in the case of the Contractor shall include the Nominated Staff or any other person who is provided to the Contractor in accordance with Clause 16B (Provision of Support to the SLC) of the Parent Body Agreement). For the avoidance of doubt any limit on the liability of a Party shall be treated as a limit on that Party's and its directors', officers', employees' and agents' liability when taken together in aggregate (and not per person).

1.15 Corrupt Gifts

1.15.1 Contractor Warranty and Undertaking

The Contractor warrants that in entering into this Contract it has not committed any Prohibited Act and it undertakes not to do any of the Prohibited Acts.

1.15.2 Remedies

1.15.2.1 If the Contractor or any Subcontractor or Sub-Subcontractor (or anyone employed by or acting on behalf of any of them) or any of its or their Affiliates or agents or shareholders commit any Prohibited Act, the Authority shall be entitled to act in accordance with Clauses 1.15.2.2 (Remedies) to 1.15.2.4 (Remedies) below.

1.15.2.2 If the Prohibited Act is committed by an Employee or any member of Nominated Staff, the Authority may give notice to the Contractor requiring the Contractor within thirty (30) Calendar Days of receipt of such notice to procure the performance of the Tasks in which that Employee was engaged by another person.

1.15.2.3 If the Prohibited Act is committed by a Subcontractor or Sub-Subcontractor or by an employee of either of them not acting independently, the Authority may give notice to the Contractor requiring the Contractor within thirty (30) Calendar Days of receipt of such notice to terminate the relevant Subcontract or Sub-Subcontract or require the

Subcontractor to terminate the relevant Sub-Subcontract and procure the performance of the Tasks in which that Subcontract and Sub-Subcontractor was engaged by another person.

- 1.15.2.4 If the Prohibited Act is committed by an employee of a Subcontractor or Sub-Subcontractor acting independently of them, the Authority may give notice to the Contractor requiring the Contractor within thirty (30) Calendar Days of receipt of such notice to procure that the Subcontractor or Sub-Subcontractor (as the case may be) procures the performance of the Tasks in which that employee was engaged by another person.
- 1.15.2.5 If the Prohibited Act is committed by a person not falling within Clauses 1.15.2.2 (Remedies) to 1.15.2.4 (Remedies) above, the Authority may give notice to the Contractor requiring the Contractor within thirty (30) Calendar Days of receipt of such notice to procure the termination of such person's involvement in the Tasks and (if necessary) procure the performance of the Tasks in which that person was engaged by another person.
- 1.15.2.6 If the Prohibited Act is committed by the Contractor, Parent Body Organisation or any Affiliate acting as a company the Authority shall be entitled to terminate this Contract or the Parent Body Agreement either immediately or on such notice as the Authority deems reasonable or otherwise to require such remedial action as it may consider reasonable.
- 1.15.2.7 Any notice under this Clause 1.15 (Corrupt Gifts) shall specify:
 - 1.15.2.7.1 the nature of the Prohibited Act; and
 - 1.15.2.7.2 the identity of the person whom the Authority believes has committed the Prohibited Act.

In this Clause 1.15 (Corrupt Gifts), “acting independently” shall mean where a person does not act under the authority of or with the knowledge of a director or other management of a Subcontractor or Sub-Subcontractor and “not acting independently” shall be construed accordingly.

1.16 Variation

- 1.16.1 Any Change Proposal and Change shall be made in accordance with the provisions of Paragraph 3 (Change Control) of Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure).

1.16.2 Subject to and without prejudice to the Authority's rights under Clause 1.16.1 (Variation) above, and except where expressly provided otherwise in this Contract, this Contract (or any document referred to in it) may only be varied with the written agreement of the Parties. The terms of such written agreement shall be established in accordance with the provisions of Schedule 6 (Change Control Procedures) of the Parent Body Agreement and such provisions shall apply to this Contract as if set out herein save that:

1.16.2.1 references to the Parent Body Organisation and/or the SLC shall be to the Contractor;

1.16.2.2 references to this Contract and/or the Site M&O Contract shall be to this Contract; and

1.16.2.3 the CCN pro-forma shall refer to this Contract.

1.16.3 If the Authority decides to change any of the Authority Policies and Procedures, the Contractor will be entitled to submit a Change Proposal.

1.17 Assignment

Subject to Clause 2.7 (Subcontracting/Procurement), the Contractor shall not without the Authority's prior written consent, assign (whether absolutely or by way of security and whether in whole or in part), transfer, mortgage, charge or otherwise dispose in any manner whatsoever of the benefit of this Contract or any part of it and shall not delegate in any manner whatsoever its performance under this Contract.

1.18 Contracts (Rights of Third Parties) Act 1999

No term of this Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to this Contract other than the Parent Body Organisation.

1.19 Examination

Without limitation to Clause 1.14.3 (Entire Agreement) above, no enquiry or examination or lack of enquiry or examination by the Authority into any matter nor any comment, rejection or approval expressed by such person in regard thereto, either with or without modifications, (nor any absence of the same) shall in any respect relieve or absolve the Contractor from any obligation or liability under or in connection with this Contract.

1.20 Inspections

Notwithstanding any inspection by the Authority under this Contract, the Parent Body Agreement or any documents referred to in them, or the failure of the Authority to make any inspection under this Contract, the Parent Body Agreement or any documents referred to in them, the Contractor's responsibility under this Contract shall not be relieved or absolved or otherwise modified.

1.21 Contractor's Documents

The Contractor shall be solely responsible for any discrepancies, errors or omissions in any documents that it prepares or has prepared in accordance with this Contract and for any failure of such documents to comply with this Contract, notwithstanding that any such documents have been seen or acknowledged or approved or not objected to or commented on (or not commented on) by the Authority.

1.22 Approvals

If the Contractor fails to notify the Authority (including without limitation the Authority's Contract Manager) or to seek the Authority's approval where it is obliged to do so under this Contract, the Authority shall be entitled, without prejudice to the other rights and remedies available to it under this Contract, to reduce the Fee in accordance with Part 8 (Abatement of Fee) of Schedule 6 (Finance Schedule).

1.23 Counterparts

This Contract 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.

1.24 Governing Law

1.24.1 This Contract shall be governed by the laws of England and Wales and the Parties submit to the jurisdiction of the courts of England and Wales. Save in relation to matters of enforcement, such jurisdiction shall be exclusive.

1.24.2 Any dispute or difference arising out of or in connection with this Contract, including, but not limited to, any question regarding its existence, interpretation, validity, construction or termination shall be resolved in accordance with Clause 13 (Disputes).

1.25 Claims Handling

The provisions of Clause 8 (Claims Handling) of the Parent Body Agreement shall apply to this Contract with the wording of that Clause 8 (Claims Handling) amended as necessary to make contractual sense and to ensure that the contractual effect of this Clause 1.25 (Claims Handling) is the same as the contractual effect of that Clause 8 (Claims Handling).

1.26 LC35

In the Authority's view, LC35 does not impose any financial obligations on the Contractor or the Parent Body Organisation.

Where no contract is in place between a contractor and/or its parent body organisation and the Authority in respect of a site which has been designated to the Authority, the Authority has financial responsibility for that site.

Where a contract is in place between a contractor and/or its parent body organisation and the Authority, then the financial obligations imposed on the contractor and/or its parent body organisation are as set out in that contract.

Notwithstanding the rest of this Clause 1.26 (LC35), if the Contractor demonstrates to the satisfaction of the Authority (acting reasonably) that the Contractor or the Parent Body Organisation or an Affiliate has incurred expense in complying with Licence Condition 35 and such expense was necessary and reasonable in amount, such expense shall be reimbursed to the Contractor, the Parent Body Organisation or such Affiliate as the Contractor shall nominate, provided always that the Contractor, Parent Body Organisation or Affiliate has consulted the Authority before incurring such expense and has adopted any reasonable suggestion for mitigating it.

1.27 Knowledge Management

1.27.1 The Contractor shall adopt a Contractor Knowledge Management Policy that is consistent with Schedule 17 (Knowledge Management Policy) and, at the Authority's written request, participate in the Authority's knowledge management initiatives.

1.27.2 The Contractor acknowledges and agrees that adoption and compliance with the Contractor Knowledge Management Policy will facilitate:

1.27.2.1 the identification and analysis of available and required knowledge, and the subsequent planning and control of actions to develop knowledge assets so as to fulfil the Authority's and the Contractor's organisational

objectives; and

1.27.2.2 a systematic and organised attempt to use knowledge within the Contractor's organisation to transform its ability to store and use knowledge to improve performance.

1.28 Records Agreement

The Contractor shall comply with the Records Agreement(s) and will co-operate with the Authority in relation to any review or enhancement of such agreements proposed by the Authority, including (without limitation) any review relating to easier access to and exchange of information, standards of record keeping, maintenance of records and contributions to the Information Asset Register.

1.29 Set off

The Authority may at any time set off any liability of the Contractor to the Authority against any liability of the Authority to the Contractor provided that the amount of any liability is not disputed for any reason.

1.30 Assumptions

If at any time the Contractor believes any Assumption is materially inaccurate it shall notify the Authority as soon as reasonably practicable and the Parties shall endeavour to agree the extent of the inaccuracy. If any of the Assumptions are found to be materially inaccurate the Contractor shall be entitled to bring a Change Proposal in accordance with Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure) or to propose a variation in accordance with Clause 1.16 (Variation) of this Contract.

1.31 Default Interest

If either Party fails to pay any amount due and payable by it in accordance with this Contract, such Party shall pay to the Party to whom the same was due, compound interest on such overdue amount, from the due date until the date of actual payment at a rate of [Redacted] per cent above the base rate of Lloyds TSB Bank plc.

2. CONTRACTOR'S OBLIGATIONS

2.1 Nature of Contractor's Obligations

2.1.1 Notwithstanding any other provision of this Contract (but subject to the provisions concerning Category A Force Majeure Events), the Contractor shall perform the Mandatory Services.

2.1.2 The Contractor shall meet Contractor Historical Costs in accordance with Clause 6.4 (Historical Costs).

2.1.3 The Contractor shall, subject to Clause 2.1.1 (Nature of Contractor's Obligations) and 2.1.2 (Nature of Contractor's Obligations) and to any Authority Directions or the exercise of any right expressly reserved to the Authority in this Contract, use its reasonable endeavours to:

2.1.3.1 comply with and meet the requirements of any Tasks;

2.1.3.2 comply with Clause 2.2 (Standard of Performance);

2.1.3.3 comply with the Customer Contracts in accordance with their terms;

2.1.3.4 carry out the LTP;

2.1.3.5 obtain the relevant approvals under Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure);

2.1.3.6 at the request of the Authority (where such request would not place the Contractor in breach of the terms of any Subcontract entered into in accordance with this Contract), share information in possession of the Contractor in relation to processes, knowledge, experience and know how and participate in initiatives made by the Authority in relation to such sharing and shall co-operate with the Authority or its nominee to facilitate such sharing; and

2.1.3.7 maintain its membership of the Compensation Scheme for Radiation-Linked Diseases ("CSRLD") and provide administrative facilities in relation to the CSRLD the same as or similar to those provided at the Commencement Date. The Contractor will reimburse costs reasonably incurred by either the Parent Body Organisation or a Seconding Employer in complying with such parties' respective obligations under Secondment

Agreements to take all reasonable steps to provide a Seconded who is a member of the Nominated Staff with access to the CSRLD. For the avoidance of doubt, costs reimbursed by the Contractor in accordance with the foregoing shall be Costs as defined in this contract and treated accordingly.

2.2 Standard of Performance

The Contractor shall perform its obligations under this Contract:

- 2.2.1 in a safe, secure, efficient and cost effective manner;
- 2.2.2 in accordance with Good Industry Practice;
- 2.2.3 in a transparent and co-operative manner with both the Authority and the Regulators and, to the extent relevant to its obligations under this Contract, with INS;
- 2.2.4 ensuring that all aspects of any works, services or undertakings comply with the requirements of this Contract including the specific requirements of any Tasks;
- 2.2.5 in a manner that is consistent with the Authority discharging its functions and statutory duties and that would reasonably be expected not to lower the reputation of the Authority in the eyes of any Third Party insofar as the same may be reasonably ascertained, provided that no action taken by the Contractor pursuant to Clause 13 (Disputes) shall amount to a breach of this Clause 2.2.5 (Standard of Performance);
- 2.2.6 in a manner which enables the Authority to fulfil its statutory functions and duties and the Contractor to fulfil its obligations under its Nuclear Site Licences; and
- 2.2.7 in respect of the Commercial Operations Tasks, in a professional manner acting with reasonable competence, with integrity, impartiality, objectivity and confidentiality, avoiding conflicts of interest (and for the avoidance of doubt, notifying the Authority promptly of any potential for conflict of interest which arises).

2.3 No Activities Outside Current Contract Year of LTP

- 2.3.1 In any Contract Year, the Contractor shall not undertake any activities which are not (in the reasonable opinion of the Authority) included in the relevant Contract Year of the LTP or otherwise necessary to the compliant performance of this Contract in the relevant Contract Year (except in relation to meeting Contractor Historical Costs or Non Contractor Historical Costs), unless:

- 2.3.1.1 the Contractor is permitted to do so pursuant to the Authority's approval of a Change Proposal in accordance with Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure);
 - 2.3.1.2 the Contractor is directed to do so pursuant to a direction issued by the Authority in accordance with Clause 3.1 (Authority Directions);
 - 2.3.1.3 the Contractor is permitted to do so by its Permitted Activities or a consent given by the Authority under Clause 3.6 (Authority Rights in respect of Customer Contracts) or is instructed to do so by the Authority pursuant to Clause 3.6 (Authority Rights in respect of Customer Contracts);
 - 2.3.1.4 the Contractor is obliged to do so or has the right to do so under a Records Agreement;
 - 2.3.1.5 the Authority otherwise agrees in writing and in such terms as the Authority determines provided that the aggregate of the Annual Site Funding Limits is not exceeded; or
 - 2.3.1.6 such works, operations, services or other activities constitute an Emergency Action in accordance with Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure).
- 2.3.2 For the avoidance of doubt:
- 2.3.2.1 the Contractor's compliance with or entry into Customer Contracts and/or Subcontracts which are structured with multi-year incentives or obligations shall not, in itself, constitute a breach of Clause 2.3 (No activities outside current Contract Year of LTP);
 - 2.3.2.2 the Contractor exceeding the budget set out in the LTP for the corresponding activity in the current Contract Year shall not, in itself, constitute a breach of Clause 2.3.1 (No activities outside current Contract Year of LTP) (this does not derogate from the Contractor's obligation to comply with Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure) where applicable);
 - 2.3.2.3 Category III Changes (which do not require the prior approval of the Authority) shall not constitute a breach of Clause 2.3.1 (No activities outside current Contract Year of LTP); and

2.3.2.4 the Contractor may carry out any works, operations, services or other activities which constitute an Emergency Action.

2.3.3 Cost and Risk of activities outside LTP

Activities undertaken by the Contractor which are not set out in the current Contract Year of the LTP and are not otherwise permitted in accordance with Clause 2.3 (No activities outside current Contract Year of LTP) above, are undertaken entirely at the risk of the Contractor as to:

2.3.3.1 the Costs incurred, which shall be Disallowable Costs in accordance with Part 2 (Allowable and Disallowable Costs) of Schedule 6 (Finance Schedule); and

2.3.3.2 any Costs which arise directly as a result of such activities being undertaken, which will also be Disallowable Costs in accordance with Part 2 (Allowable and Disallowable) of Schedule 6 (Finance Schedule),

except that where there is a valid claim against an insurer in respect of insurance, the premium costs of which have been met by the Authority, the Authority agrees that it will make a claim and that if proceeds are recovered which reimburse the relevant Costs, the Authority will set off those proceeds against any Disallowable Costs incurred by the Contractor in respect only of the breach of Clause 2.3.1 (No activities outside current Contract Year of LTP) and against any other claim it may make against the Contractor under Clause 11 (Indemnity, Liability and Insurance) of this Contract in respect of the Contractor's breach of Clause 2.3.1 (No activities outside current Contract Year of LTP). If the Authority so requires, the Contractor will co-operate fully in the provision of information and/or process the insurance claim on its behalf and the Costs of so doing will be Allowable.

2.4 Quality Management System

2.4.1 The Contractor shall procure that all material aspects of its performance of this Contract are the subject of proper quality management systems and in accordance with Good Industry Practice.

2.4.2 The Contractor's quality management systems shall be accredited to ISO9001 standard or its internationally accepted equivalent. The Contractor shall maintain and ensure continued compliance with those quality management systems at all times during the Contract.

2.4.3 The Contractor shall monitor, review and update its quality management systems from time to time as necessary to comply with Good Industry Practice and to ensure continued accreditation.

2.4.4 The Contractor shall submit any changes it considers necessary to its quality management systems to the Authority for approval if such a change will affect (or is likely to affect) or will lead (or is likely to lead) to the loss of the Contractor's accreditation. The Authority may only withhold its consent to such a change if, in its reasonable opinion, the proposed change does not comply with:

2.4.4.1 internationally accepted quality management systems at the time of the request; or

2.4.4.2 specific obligations in relation to quality management systems placed on the Authority under a Utility Customer Contract as notified to the Contractor by the Authority, provided always that the Authority shall not be entitled to withhold such consent for this reason where the relevant obligations in the Utility Customer Contract are materially changed from those applying as at 1 April 2008 unless such change has been agreed by the Parties.

2.4.5 When responding to any Contractor request for the Authority's approval of changes to the Contractor's quality management systems, the Authority shall:

2.4.5.1 respond in writing and without unreasonable delay; and

2.4.5.2 provide reasons for any determination that the Contractor's proposed changes to its quality management systems are unsuitable.

2.4.6 For the avoidance of doubt, where Customer Contracts place specific obligations on the Contractor in relation to its quality management systems the Authority shall have due regard to such obligations in reaching its determination.

2.5 Socio-Economic Development

2.5.1 The Contractor shall be required to give encouragement and support to activities which benefit the social and/or economic life of communities living near the Site or that produce Environmental benefits for such communities and the Authority undertakes that it shall allocate a sum from the BCWS in each Contract Year which shall be used by the Contractor for such purposes.

2.5.2 No later than forty-five (45) Calendar Days after the Commencement Date and, thereafter, annually and concurrently with the LTP submission (in accordance with Paragraph 2 (The LTP and the Contractor's Responsibilities) of Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure)) the Contractor shall submit to the Authority a Socio-Economic Development Plan which shall, to the reasonable satisfaction of the Authority, provide details of:

2.5.2.1 the events, activities or functions which the Contractor intends to fund pursuant to its obligations under Clause 2.5.1 (Socio-Economic Development) above;

2.5.2.2 the Costs of these intended events, activities or functions;

2.5.2.3 the reasons for the selection of these events by the Contractor;

2.5.2.4 the ways in which it is expected that social, economic or Environmental benefits will be conferred on the relevant communities as a result; and

2.5.2.5 the ways in which the Contractor will analyse and report the outcome of such events to the Authority, such reports to be submitted at least annually and to form the basis of improvement for the forthcoming year.

Until such time as the Contractor's first Socio-Economic Development Plan is submitted to and approved by the Authority after the Commencement Date, the Contractor shall follow any spend profile that it has in place on the Commencement Date and, in any event, shall act prudently in respect of any Costs it incurs in respect of such Socio-Economic Development Plan prior to obtaining the Authority's approval to its proposal.

2.5.3 Within thirty (30) Calendar Days of submission by the Contractor, the Authority shall review the Contractor's Socio-Economic Development Plan for that Contract Year and may require changes to be made. In so doing, the Authority shall:

2.5.3.1 respond in writing and without unreasonable delay;

2.5.3.2 provide reasons for any determination that the Contractor's proposed events, activities or functions are unsuitable; and

2.5.3.3 not wilfully impede the Contractor from being able to comply with any schedule set out in such Socio-Economic Development Plan.

2.5.4 Once approved, the Contractor will be required to comply with the terms of its Socio-Economic Development Plan as changed (if at all) in accordance with Clause 2.5.3 (Socio-Economic Development) and use the funding allocated to this in the LTP for the events, activities or functions as specified therein.

2.6 Setting the LTP and Change Control

2.6.1 The Contractor shall prepare the LTP in accordance with Paragraph 2 (The LTP and the Contractor's Responsibilities) of Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure).

2.6.2 Deletion of scope/programme acceleration:

2.6.2.1 If the Contractor wishes either to delete scope from the LTP or to bring a particular part of the LTP forward, the Contractor shall approach the Authority and discuss the business case supporting the proposal before submitting a Change Proposal.

2.6.2.2 Any business case (and subsequent Change Proposal) should include the following information:

2.6.2.2.1 the nature of the scope deletion or programme acceleration;

2.6.2.2.2 the related cost reduction which the Authority will benefit from;

2.6.2.2.3 the cost of the work which must be done so that scope can be deleted or the programme can be accelerated;

2.6.2.2.4 the impact, whether positive or negative, which the scope deletion or programme acceleration will have on the Site's risk profile (including, for example, loss of Site infrastructure); and

2.6.2.2.5 appropriate metrics, estimating norms and bases so that the project outcome can be evaluated.

2.6.2.3 The Authority will evaluate the business case (and, without prejudice to Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure), the subsequent Change Proposal) using an approach based on the Contractor's Initiative Cost Benefit Model. This will generate a "Net Benefit Estimate" for the proposal.

2.6.2.4 The Authority will not agree to a business case which would be likely to:

2.6.2.4.1 mean that the Authority would have to spend more money at the Site than it has available for the Site in any Contract Year;

2.6.2.4.2 compromise the Contractor's ability to perform the Mandatory Services;

2.6.2.4.3 compromise the Contractor's ability to comply with its HSSE Obligations;

2.6.2.4.4 prevent the Contractor from meeting its obligation (set out in Part 2 (Allowable and Disallowable Cost) of Schedule 6 (Finance Schedule)) to manage Costs within the Current Budgets and the ASFLs; and/or

2.6.2.4.5 impede the effectuation of the LTP.

2.6.2.5 Where the Parties agree that the rewards under this Contract naturally consequent upon scope deletion or programme acceleration (including earlier opportunities to earn Efficiency Fee and contribution to meeting minimum performance standards) do not adequately recognise wider consequent efficiencies in later years, then the Authority will consider (and be disposed to agree) paying a shareline against those savings, calculated at a rate of [Redacted] % against realised efficiencies for the duration of the Initial Period, Second Period or Third Period (depending on when the scope deletion or programme acceleration was executed) (the "**Shareline Fee**").

2.7 Subcontracting/Procurement

2.7.1 The Contractor shall:

2.7.1.1 (save to the extent otherwise agreed in writing with the Authority) comply with the provisions of Part 1 (Subcontract/Procurement Requirements – CT-15) of Schedule 5 (Subcontracting/Procurement Schedule) (as applicable); and

2.7.1.2 ensure that the requirements to comply with Good Industry Practice and cost transparency are incorporated into any Subcontract or Sub-Subcontract,

- 2.7.2 The Contractor shall be responsible for the work executed or services performed under any Subcontract or Sub-Subcontract as if such work were executed or services were delivered by the Contractor itself.
- 2.7.3 The provisions of Clauses 2.7.1 (Subcontract/Procurement) and 2.7.2 (Subcontract/Procurement) are subject to the provisions of Clause 11.5 (Immunity Matters) insofar as Clause 11.5 (Immunity Matters) relates to Subcontracts or Sub-Subcontracts.
- 2.7.4 Subject to Clause 2.7.5 (Subcontract/Procurement) below, the Contractor shall use its reasonable endeavours to procure that any Sub-Subcontracts which are entered into on or after the Commencement Date contain provisions obliging Sub-Subcontractors to enter into deeds of collateral warranty in favour of the Contractor in relation to the works performed or services provided under Sub-Subcontracts. Deeds of collateral warranty which are procured by the Contractor in accordance with this Clause shall contain the following provisions:
- 2.7.4.1 an obligation on the Sub-Subcontractor to maintain professional indemnity insurance at a level no less than the maximum fee which could be paid under the Sub-Subcontract for a period starting with the commencement date of the Sub-Subcontract and ending twelve (12) years after completion of the works performed or services provided under the Sub-Subcontract;
- 2.7.4.2 warranties from the Sub-Subcontractor in favour of the Contractor that the Sub-Subcontractor will:
- 2.7.4.2.1 exercise the level of reasonable skill, care and diligence which would be expected of a Sub-Subcontractor holding itself out as competent in performing the works or providing the services in relation to schemes of similar nature, scope and size to the services and/or works which are the subject matter of the Sub-Subcontract; and
- 2.7.4.2.2 comply in all material respects with the terms of the Sub-Subcontract,
- provided that the Sub-Subcontractor shall owe no greater duty or liability to the Contractor than it would have owed to the Sub-Subcontract counterparty under the terms of the Sub-Subcontract; and
- 2.7.4.3 Contractor “step in rights”, such that the Sub-Subcontractor shall not be permitted to terminate the Sub-Subcontract as a result of a breach of

contract by the Sub-Subcontract counter-party without first giving the Contractor the option to step in and adopt the counter-party's rights and undertake to perform the counter-party's obligations under the Sub-Subcontract.

2.7.5 The Contractor shall be relieved of some or all of its obligations under Clause 2.7.4 (Subcontract/Procurement) above if either:

2.7.5.1 it is able to obtain suitable alternative contractual protection; or

2.7.5.2 it reasonably believes that, taking into account:

2.7.5.2.1 the nature and value of the Sub-Subcontract;

2.7.5.2.2 the importance of the Sub-Subcontract in terms of delivering the LTP; and

2.7.5.2.3 the commercial consequences of obtaining a deed of collateral warranty from the Sub-Subcontractor,

it would not represent the best value for money to require the Sub-Subcontractor to enter into a deed of collateral warranty in favour of the Contractor containing some or all of the provisions specified in Clause 2.7.4 (Subcontract/Procurement) above.

2.8 Contractor's Internal Procedures

2.8.1 The Contractor shall ensure that it has in place all such Internal Procedures as may be necessary to satisfy its legal obligations and to ensure that it is able to operate safely, securely and efficiently. The Contractor shall also ensure that it has in place Internal Procedures that comply with NDA Procedures as listed in Part 1 (Authority Policies and Procedures) of Schedule 2 (Programme Management and Change Procedure).

2.8.2 The Contractor shall:

2.8.2.1 upon the Authority's request, supply a detailed list of all existing and applicable Internal Procedures together with copies of any such Internal Procedures as may be required by the Authority;

2.8.2.2 immediately notify the Authority of any change to an Internal Procedure which materially impacts the Cost of or risks to the LTP; and

- 2.8.2.3 regularly provide to the Authority a log reporting all significant changes to all Internal Procedures.
- 2.8.3 When requested by the Authority to do so, the Contractor shall provide to the Authority the basis and rationale for the creation or modification of any such Internal Procedures and how this reflects Good Industry Practice.
- 2.8.4 The Contractor shall within the time specified by the Authority prepare and submit for the Authority's approval any further Internal Procedures and modifications to existing Internal Procedures reasonably identified as being required by the Authority.
- 2.8.5 If the Contractor:
 - 2.8.5.1 fails to comply with the Authority's request to introduce a new Internal Procedure within the time specified in Clause 2.8.4 (Contractor's Internal Procedures); and/or
 - 2.8.5.2 fails to establish or comply with an Internal Procedure such that the Authority reasonably considers that such non-compliance materially hinders the Contractor's ability to perform its obligations in accordance with this Contract or that it is otherwise unable to comply with the provisions of Clause 2.8.1 (Contractor's Internal Procedures), and when requested by the Authority does not to the reasonable satisfaction of the Authority substantiate the reason for this action or inaction,
 - 2.8.5.3 then the Authority shall be entitled to reduce the Fee in accordance with Part 8 (Abatement of Fee) of Schedule 6 (Finance Schedule).
- 2.8.6 The Contractor shall not without the Authority's prior written consent change its Internal Procedure in respect of the provision of facilities and information, the granting of access, nomination of relevant Employees and/or Nominated Staff, agreement of new business, general support (including business development support) and sales and operation planning interfaces in connection with the Utility Customer Contracts or potential similar new business.
- 2.8.7 Prior to making any change relating to the Internal Procedure in respect of the performance of the Tasks (other than the matters specified in Clause 2.8.6 (Contractor's Internal Procedures)) in connection with Utility Customer Contracts the Contractor shall consult the Authority and take its views fully into account.

2.9 Inter-SLC Service Contracts

2.9.1 Subject to compliance with EU Procurement Rules and Clause 2.9.2 (Inter-SLC Service Contracts) the Contractor shall be free to enter into contracts with other SLCs (“**Inter-SLC Service Contracts**”) for the provision or purchase of services.

2.9.2 The Contractor shall only enter into an Inter-SLC Service Contract if it contains:

2.9.2.1 a clause binding on both parties requiring them to submit all and any disputes to the Authority for resolution by whatever means the Authority (acting reasonably taking into account its position as funding provider and its statutory duties) shall stipulate, and if no other stipulation is made, by submission to the Dispute Resolution Procedure; and

2.9.2.2 a clause providing that the Authority is entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of the contract which it reasonably considers necessary or desirable in the fulfilment of its statutory duties or the protection of its financial interests.

2.10 Alternative Pricing Models

2.10.1 The Parties recognise the possibility that the Fee model obtaining at the Commencement Date may not accord with the Parties’ intentions throughout the full potential lifetime of this Contract. In particular, it is possible that if the Contractor is successful in effecting efficiencies in the early years of the contract, it may be appropriate to consider different forms of incentivisation. If appropriate, the Parties will discuss in good faith changes to the Fee model calculated to provide assurance for the Authority that its requirements will continue to be met and to adequately incentivise the Contractor.

2.11 Health and Safety

2.11.1 In this Clause 2.11 (Health and Safety) “**client**” and “**projects**” have the same meanings as in the CDM Regulations.

2.11.2 The Contractor hereby elects and the Authority consents to the Contractor being treated as the only client in relation to all projects to be carried out under this Contract for all the purposes of the CDM Regulations. The Contractor shall not and shall not seek to withdraw, terminate or in any manner derogate from its election that it will be treated as, and its acceptance of its responsibilities as, the only client for all the purposes of the CDM Regulations.

2.11.3 The Contractor shall observe, perform and discharge and shall procure the observance, performance and discharge of:

2.11.3.1 all the obligations, requirements and duties arising under the CDM Regulations in connection with all projects to be carried out under this Contract;

2.11.3.2 any code of practice for the time being approved by the Health and Safety Commission pursuant to the Health and Safety at Work etc. Act 1974 in connection with the CDM Regulations.

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

2.12 Defective Performance

2.12.1 For the purposes of this Clause 2.12 (Defective Performance), “**Defective Performance**” means, in relation to a Task, a material failure by the Contractor to complete and/or carry out the Task in accordance with this Contract but excluding:

2.12.1.1 any failure by the Contractor to carry out its obligations under this Contract as a direct result of a Force Majeure Event; and

2.12.1.2 any failure by the Contractor to carry out its obligations under this Contract as a result of any material acts or material omissions of the Authority or as a result of the Authority failing to perform its obligations under this Contract.

2.12.2 If the Contractor fails to complete and/or carry out a Task and such failure constitutes Defective Performance, the Authority shall give a written notice to the Contractor of the Task and the Defective Performance (“**Defective Performance Notice**”), giving reasonable details and requiring the Contractor to remedy the Defective Performance and the consequences of the Defective Performance in accordance with this Clause 2.12 (Defective Performance), although this Clause 2.12 (Defective Performance) shall not derogate from the Contractor’s obligation in accordance with Clause 3.5 (Failure of Performance) to notify the Authority if the Contractor is unable to carry out and/or complete a Task.

2.12.3 If the Authority serves a Defective Performance Notice on the Contractor, the Contractor may:

- 2.12.3.1 dispute the validity of the issue of the Defective Performance Notice and/or the existence of all or part of the Defective Performance in question and/or the reasonableness and proportionality of the Authority's proposals for remedying the Defective Performance, in accordance with the Dispute Resolution Procedure;
 - 2.12.3.2 accept the validity of the issue of the Defective Performance Notice and the existence of all or part of the Defective Performance and remedy such part of the Defective Performance as is not in dispute in accordance with the provisions of Clause 2.12.4 (Defective Performance) or Clause 2.12.5 (Defective Performance) (as applicable); or
 - 2.12.3.3 not respond to the Defective Performance Notice within 15 (fifteen) Working Days, in which case the Contractor shall be deemed to have accepted the validity of the issue of the Defective Performance Notice, and the Authority's proposals for remedying the Defective Performance.
- 2.12.4 If:
- 2.12.4.1 a Defective Performance Notice requires the Contractor to re-perform, either partially or substantially, any works or services and it is accepted by the Contractor in accordance with either Clause 2.12.3.2 (Defective Performance) or Clause 2.12.3.3 (Defective Performance); or
 - 2.12.4.2 where the Dispute Resolution Procedure is utilised pursuant to Clause 2.12.3.1 (Defective Performance) and the outcome is that the Defective Performance Notice or such part as was challenged was valid and/or that the Defective Performance or such part as was challenged existed,
- then the Contractor shall re-perform such works and services by a date to be agreed by the Contractor and the Authority (each acting reasonably).
- 2.12.5 Where the Dispute Resolution Procedure is utilised in accordance with Clause 2.12.3.1 (Defective Performance) and the outcome is that only part of the remedial work required pursuant to the Defective Performance Notice is required as a result of Defective Performance, then the outcome of the Dispute Resolution Procedure shall be taken into account in determining whether the Contractor has satisfied the requirement of any Payment Milestone relevant to any PBI Fee or Efficiency Fee.
- 2.12.6 Without prejudice to the Authority's right to terminate this Contract pursuant to Clause 12 (Termination) and the provisions of Part 2 (Allowable and Disallowable

Costs) of Schedule 6 (Finance Schedule), the Parties agree that the provisions of this Clause 2.12 (Defective Performance) and the Fee abatement mechanism in Schedule 6 (Finance Schedule) shall be the Contractor's sole additional liability and the Authority's sole additional remedy for Defective Performance.

2.13 Inability to carry out a Task

If at any time the Contractor believes it will not be able to carry out and/or complete all or any part of a Task, it shall notify the Authority as soon as reasonably practicable and provide details of the act, event or circumstances which prohibit such completion and any impact such act, event or circumstances will have on the Contractor's performance of its other obligations under this Contract.

3. RIGHTS AND OBLIGATIONS OF AUTHORITY

3.1 Authority Directions

3.1.1 Nothing in this Clause 3.1 (Authority Directions) shall, or is intended to:

3.1.1.1 bind the Authority as to the particular manner in which any statutory power is exercised in the future; and/or

3.1.1.2 otherwise act as a fetter on the future discretion of the Authority in exercising its rights or acting in accordance with its obligations under public law.

3.1.2 Without prejudice to Clause 3.1 (Authority Directions) above, the Contractor shall be relieved from the duty to comply with any Authority Direction issued pursuant to section 18 of the Energy Act and shall have no liability resulting from any such Authority Direction unless:

3.1.2.1 a Contractor Default has occurred; or

3.1.2.2 the Authority has issued a termination notice in accordance with Clause 12.8 (Termination for Convenience); or

3.1.2.3 at any time the Authority believes, in its sole opinion, that in view of the national interest, the requirements of national security, the occurrence of a state of war or other emergency (whether or not involving hostilities), the occurrence or possible occurrence of a major accident, crisis or national disaster, it is necessary or desirable for the Authority to exercise its powers under section 18 of the Energy Act; and/or

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

3.1.3 For the avoidance of doubt, in the event of the occurrence of any one or more of the circumstances specified in Clauses 3.1.2.1 (Authority Directions) to 3.1.2.4 (Authority Directions) above, notwithstanding any other provision of this Contract, the Authority shall notify the Contractor that such circumstances exist, and:

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

Act);

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

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

3.1.4 Anything done by the Contractor in response to any Authority Direction issued pursuant to Section 18 of the Energy Act shall be deemed to be a Task and (save to the extent the provisions of this Contract are inconsistent with such Authority Direction) the provisions of this Contract shall apply notwithstanding the Contractor's statutory obligation to comply with such direction pursuant to the Energy Act.

3.2 Compliance with Law and Regulatory Requirements

The Authority shall comply with all applicable Law and Regulatory Requirements in relation to the performance of its obligations and the exercise of its rights under this Contract, and/or otherwise connected with its use, occupation, control or management of the Site.

3.3 Not wilfully impede performance of the Tasks

3.3.1 Without prejudice to Clause 3.1 (Authority Directions), and its rights under this Contract, the Authority shall:

3.3.1.1 co-operate with the Contractor to facilitate the performance of its obligations under this Contract; and

3.3.1.2 not wilfully or recklessly impede the Contractor in performing its obligations under this Contract.

3.3.2 To the extent that the Authority has not complied with its obligations pursuant to Clause 3.3.1 (Not wilfully impede performance of the Tasks) above in any material respect:

3.3.2.1 the Contractor shall not have any liability to the Authority under this

Contract, save that such failure to comply shall not relieve the Contractor of its obligations under Clause 2.1.1 (Nature of Contractor's Obligations); and

- 3.3.2.2 the Contractor shall be entitled to submit a Change Proposal in accordance with Paragraph 3 (Change Control) of Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure).

3.4 Authority Responses

- 3.4.1 Unless otherwise expressly specified in this Contract or agreed between the Parties, where the Authority is required to respond in writing to the Contractor on any matter, the Authority shall use reasonable endeavours to do so within thirty (30) Calendar Days of receipt of such a request.
- 3.4.2 Where the Authority does not respond within the relevant period, and there is an impact on the cost or schedule of the Tasks as a result of such Authority delay, the Contractor shall be entitled to bring a Change Proposal in accordance with Clause 2.6.1 (Setting the LTP and Change Control) to address such impact.

3.5 Failure of performance

If at any time, either Party becomes aware of:

- 3.5.1 a failure by the other Party to perform any obligations to which it is subject pursuant to this Contract; and/or
- 3.5.2 a defect of any nature in the performance and provision of any Tasks by the Contractor and any Subcontractor, or Sub-Subcontractor,

which in either case, in the reasonable opinion of that Party, has an adverse effect on the proper performance of this Contract, it shall immediately notify the other Party and shall provide sufficient detail in such notice to allow the other Party to remedy its performance or rebut such alleged mis-performance or failure to perform.

In particular, but without limiting the foregoing, each Party shall immediately notify the other Party of any failure of performance or defect of which it becomes aware which may give rise to any liability to the other Party.

3.6 Authority rights in respect of Customer Contracts

3.6.1 New Business and Amendments to Customer Contracts

3.6.1.1 Subject to the Authority's rights under Clause 3.6.3 (Authority's right to instruct), the Contractor shall not enter into a new Customer Contract (a “**New Customer Contract**”) nor amend any existing Customer Contract (or suggest any amendment to the counterparty other than on a without prejudice basis) unless the Authority has given its prior written consent pursuant to Paragraph 3.7 (Evaluation of the Proposal) of Part 1 (Customer Contracts – CT-16) of Schedule 3 (Commercial Schedule).

3.6.1.2 In seeking the Authority's prior written consent to a New Customer Contract or an amendment (an “**Amendment**”) to an existing Customer Contract, the Contractor shall consult with the Authority in accordance with Paragraph 1 (Consultation) of Part 1 (Customer Contracts – CT-16) of Schedule 3 (Commercial Schedule) and the procedure set out in Paragraphs 1 (Consultation) to 3 (Evaluation of the Proposal) of Part 1 (Customer Contracts – CT-16) of Schedule 3 (Commercial Schedule) shall apply (as applicable).

3.6.2 Authority's right to be consulted in respect of Customer Contracts

Except to the extent of the Permitted Activities, the Contractor shall consult the Authority in respect of the exercise of any discretion under the Customer Contracts including:

3.6.2.1 whether or not to exercise any rights under the relevant Customer Contract (including any rights to terminate);

3.6.2.2 whether or not to waive (or choose not to enforce) any obligations of the counterparty under the relevant Customer Contract in whole or in part or to seek or accept a waiver from the counterparty of the Contractor's obligations under the relevant Customer Contract;

3.6.2.3 choosing between any options that arise concerning the manner in which the Contractor could perform the relevant Customer Contract;

3.6.2.4 when the Contractor is uncertain about what it is required to do under the relevant Customer Contract; and

3.6.2.5 how to mitigate any problems that arise under or in connection with any

Customer Contract,

and the procedure set out in Paragraph 1 (Consultation) of Part 1 (Customer Contracts – CT-16) of Schedule 3 (Commercial Schedule) shall apply.

3.6.3 Authority's right to instruct

3.6.3.1 Notwithstanding the Permitted Activities under Clause 3.6.4 (Permitted Activities), the Authority shall be entitled to instruct the Contractor to exercise or not exercise its rights, or perform or not perform its obligations, or otherwise act, in a specified manner in relation to any of the Customer Contracts including requiring the Contractor to:

3.6.3.1.1 seek to amend any Customer Contract either through the Customer Contract's variation or change control mechanism or through the agreement of the parties to the Customer Contract;

3.6.3.1.2 resist an amendment proposed by a counterparty to the relevant Customer Contract;

3.6.3.1.3 enter or not enter into a New Customer Contract in accordance with timescales, with counterparties and on terms specified by the Authority;

3.6.3.1.4 enforce or not enforce the counterparty's obligations under a Customer Contract;

3.6.3.1.5 terminate or not terminate a Customer Contract; and/or

3.6.3.1.6 waive or not waive any of the counterparty's obligations under a Customer Contract.

3.6.3.2 If the Authority wishes to issue instructions to the Contractor pursuant to Clause 3.6.3.1 (Authority's right to instruct) above, the Authority shall, where practicable, discuss the relevant issue with the Contractor and the Contractor shall assist the Authority in obtaining any information that the Authority may reasonably require. During such discussion, the Contractor shall (having regard to the preliminary nature of the Authority's wish to issue instructions) inform the Authority of any impact of which the Contractor is aware that the relevant issue may have upon the Authority, the Contractor, any Subcontract or Series of Subcontracts, the performance of or terms of this Contract or the Customer Contracts.

3.6.3.3 If the Authority wishes to issue instructions to the Contractor pursuant to Clause 3.6.3.1 (Authority's right to instruct) above, the Authority shall serve an instructions notice ("**Instructions Notice**") on the Contractor setting out the information listed at Paragraph 4.1 (Contents of NDA's Instructions Notice) of Part 1 (Customer Contracts – CT-16) of Schedule 3 (Commercial Schedule) and the Parties shall follow the procedure set out in Paragraphs 4 (Contents of NDA's Instructions Notice) and 5 (NDA's Instructions) of Part 1 (Customer Contracts – CT-16) of Schedule 3 (Commercial Schedule).

3.6.3.4 For the avoidance of doubt any Cost incurred by the Contractor in complying with this Clause 3.6.3 (Authority's right to instruct) shall be treated as an Allowable Cost in accordance with the terms of this Contract.

3.6.4 Permitted Activities

3.6.4.1 Subject to Clauses 3.6.3 (Authority's right to instruct) and 3.6.4.2 (Permitted Activities) to 3.6.4.4 (Permitted Activities) (inclusive), the Contractor shall be entitled to take such action in relation to new or existing Customer Contracts as is permitted by the Permitted Activities without seeking the consent of or consulting with the Authority under Part 1 (Customer Contracts – CT-16) of Schedule 3 (Commercial Schedule) provided that, unless the Authority agrees otherwise, the Contractor shall ensure that:

3.6.4.1.1 no New Customer Contract or no Amendment (as the case may be) contains any term which:

3.6.4.1.1.1 provides the counterparty to the Customer Contract with a right of consent or a right of termination if the Contractor is subject to a Change in Control;

3.6.4.1.1.2 directly or indirectly excludes or attempts to exclude any right of the Authority which arises under the Contracts (Rights of Third Parties) Act 1999 or in any other way seeks to prevent the Authority from enforcing the terms of the Customer Contract;

3.6.4.1.2 any New Customer Contract includes:

3.6.4.1.2.1 provisions allowing the disclosure to the

Authority by the Contractor of such Customer Contract and any information passing between the parties in relation to it and, where permitted under Clause 10 (Confidentiality, Security and Compliance with Law), disclosure by the Authority to Third Parties;

3.6.4.1.2.2 an acknowledgement by the counterparty to the Customer Contract of the Contractor's obligations to comply with, and the Authority's rights under, Clauses 4.1 (Reporting and Reviewing), 4.2 (Records), 4.5 (Inspection and Audit) and Clause 10 (Confidentiality, Security and Compliance with Law) and a waiver of any liability that may arise under the Customer Contract as a result of the Contractor complying with its obligations under such Clauses of this Contract;

3.6.4.1.2.3 an obligation on the counterparty to the Customer Contract to make its employees available for the purposes of the Authority's audit under Clause 4.5 (Inspection and Audit);

3.6.4.1.2.4 if the Customer Contract is governed by English law, an obligation on the counterparty to the Customer Contract to become a party to the Dispute Resolution Procedure and comply with the obligations contained therein;

3.6.4.1.2.5 an obligation on the counterparty to the Customer Contract to permit the Authority to attend meetings between the Contractor and the Customer and/or Customer Groups;

3.6.4.1.2.6 a Termination for Convenience provision enabling the Contractor to terminate at any time on giving reasonable notice to the counterparty to the Customer Contract. In the event of such Termination for Convenience, the Contractor shall only agree, subject to the Authority's approval, to pay the relevant counterparty's reasonable costs arising directly from the termination of the Customer Contract and shall not agree any payment in respect of loss of anticipated profits, loss of opportunity or the consequential losses

of affiliates of the counterparty; and

3.6.4.1.2.7 a provision ensuring that the Customer Contract is capable of being assigned to the Authority's nominee either without the consent of the counterparty to the Customer Contract or with the consent of the counterparty to the Customer Contract such consent not to be unreasonably withheld,

and that no Amendment contains a term which purports to directly or indirectly exclude or conflict with (as the case may be) any of Clauses 3.6.4.1.2.1 (Permitted Activities) to 3.6.4.1.2.7 (Permitted Activities) (inclusive).

3.6.4.1.3 where an existing Customer Contract contains any of the terms in Clause 3.6.4.1.1 (Permitted Activities) or excludes or attempts to exclude (as the case may be) any of the terms in Clause 3.6.4.1.2 (Permitted Activities), the Contractor has used reasonable endeavours to ensure that the Amendment alters the terms of the existing Customer Contract so that such existing Customer Contract does not include any of the terms in Clause 3.6.4.1.1 (Permitted Activities) and does not exclude or attempt to exclude (as the case may be) any of the terms in Clause 3.6.4.1.2 (Permitted Activities).

3.6.4.2 In exercising its Permitted Activities, the Contractor shall take into consideration any current strategy for Customer Contracts of the Authority as notified to the Contractor by the Authority from time to time.

3.6.4.3 Notwithstanding the Permitted Activities, the implementation of any Task or the addition of any New Task to the LTP which requires three million pounds (£3,000,000) or more of Costs over the lifetime of such Task or New Task (as applicable) and/or is novel and/or contentious and/or repercussive will be subject to the requirements of Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure).

3.6.4.4 The Authority shall be entitled acting reasonably at any time to amend, add or withdraw any Permitted Activity by serving a notice in writing on the Contractor setting out the relevant amendment, addition or withdrawal.

- 3.6.4.5 Subject to Clause 3.6.4.6 (Permitted Activities) below, the amendment, addition or withdrawal of any Permitted Activity shall be effective seven (7) Calendar Days after the receipt of the Authority's written notice and the Contractor shall as soon as practicable amend the Permitted Activities to reflect the amendment, addition or withdrawal set out in the Authority's written notice.
- 3.6.4.6 If the Contractor reasonably considers, given the nature of the Permitted Activity and the circumstances in which it is used, that it is inappropriate for the relevant Permitted Activity to be amended, added or withdrawn, the Authority (acting reasonably) shall consider any representations made to it by the Contractor (including in respect of altering the time period in which the amendment, addition or withdrawal of the relevant Permitted Activity becomes effective).
- 3.6.4.7 The Contractor shall be entitled to request any new Permitted Activities, the amendment of any existing Permitted Activities or the update of Permitted Activities to reflect the current LTP by following the procedure set out in Paragraph 6 (Amending Permitted Activities and New Permitted Activities) of Part 1 (Customer Contracts – CT-16) of Schedule 3 (Commercial Schedule).
- 3.6.4.8 If the Contractor is uncertain whether any of its activities in respect of the Customer Contracts (including any proposed exercise of a discretion under a Customer Contract, entry into a New Customer Contract or Amendment to an existing Customer Contract) falls within its Permitted Activities, it shall consult with the Authority to obtain confirmation of whether or not the proposed activity is a Permitted Activity or whether the Contractor is obliged to obtain the Authority's consent to carry out the activity.
- 3.6.4.9 For the avoidance of doubt, notwithstanding the Permitted Activities, the Contractor shall be obliged to comply with its obligations to seek Authority approval and/or consult the Authority in accordance with any provision of this Contract other than this Clause 3.6 (Authority Rights in Respect of Customer Contracts).

3.7 Customer Contract Log

Except to the extent that the Contractor is carrying out Permitted Activities pursuant to Clause 3.6.4 (Permitted Activities), the Contractor shall keep a record (a “**Customer Contract Log**”) which sets out the progress of:

- 3.7.1 any New Customer Contract;
- 3.7.2 any Amendment;
- 3.7.3 any exercise of the Contractor's discretion under a Customer Contract; and
- 3.7.4 any exercise of the Authority's right to instruct pursuant to Clause 3.6.3 (Authority's Right to Instruct),

from the initiation of the issue or matter until such issue or matter is executed, carried out, rejected, abandoned or resolved (as the case may be) in each case recording the date of any relevant issue or matter and the Contractor's, Authority's and/or counterparty's action, inaction or response as applicable.

4. PERFORMANCE MANAGEMENT, PERFORMANCE ASSURANCE AND RECORDS

4.1 Reporting and Reviewing

4.1.1 Reporting and Reviewing Programme

The Contractor shall:

4.1.1.1 implement systems and processes for a performance reporting and reviewing programme in a manner which the Authority (acting reasonably) considers satisfactory;

4.1.1.2 Not Used.

4.1.2 Required Reports

The Contractor shall:

4.1.2.1 submit to the Authority such reports as may be agreed between the Authority and the Contractor including but not limited to:

4.1.2.1.1 monthly progress reports in accordance with Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure);

4.1.2.1.2 monthly progress reports; and

4.1.2.1.3 such other reports as are required by Schedule 6 (Finance Schedule) or the other provisions of this Contract; and

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

4.1.3 Objections to Reports

4.1.3.1 If the Authority considers (acting reasonably) that any Report either has not been compiled in accordance with the requirements of this Contract or has been based on erroneous information, it may serve a notice to that effect on the Contractor within thirty (30) Calendar Days of receipt of the

Report, setting out its grounds of objection, and the Parties shall endeavour to agree any consequent amendments to the Report in light of the Authority's objections.

4.1.3.2 If any such objection has not been resolved by agreement between the Authority and the Contractor within sixty (60) Calendar Days after service of such notice, the matter shall be resolved in accordance with Clause 13 (Disputes).

4.1.3.3 If, following the submission of any Report, but prior to any objection being raised by the Authority pursuant to this Clause 4.1.3 (Objections to Reports), the Contractor considers that such Report contains a material error, the Contractor shall notify the Authority immediately of such error and shall reflect and clearly identify the required correction(s) in the relevant subsequent Report where applicable (for example the next Monthly report of the same type). If there will be no subsequent Report submitted to the Authority (for example because the original report was not of a type regularly required), the Contractor shall forthwith correct the relevant original Report and re-submit to the Authority.

4.1.4 Revisions to Reports

If:

4.1.4.1 the resolution (whether by agreement or determination in accordance with Clause 13 (Disputes) of any objection made pursuant to Clause 4.1.3 (Objections to Reports); or

4.1.4.2 the correction of any calculation pursuant to any provision of this Contract,

in either case requires corrections to be made to any Report submitted by the Contractor pursuant to Clause 4.1.2 (Required Reports), the Contractor shall reflect and clearly identify the required corrections in the relevant subsequent Report (for example the next Monthly report of the same type) where applicable. If there will be no subsequent Report submitted to the Authority (for example because the original report was not of a type regularly required), the Contractor shall correct the relevant original Report and re-submit to the Authority and the provisions of Clause 4.1.3 (Objections to Reports) and this Clause 4.1.4 (Revisions to Reports) shall apply in respect of the re-submitted Report.

4.1.5 Obligation to Report

4.1.5.1 Without prejudice to any other obligation on the Contractor under this Contract to report and notwithstanding the Contractor's right to carry out Permitted Activities, the Contractor shall, as often as reasonably necessary to keep the Authority properly and fully informed and on a regular basis, notify the Authority in as much detail as practicable of any matters of which the Contractor becomes aware, any issue which has affected or which may affect the Commercial Operations Tasks and/or the Customer Contracts and/or the performance by the Contractor of any Tasks relating to any of the Utility Customer Contracts and about which the Authority may reasonably be expected to wish to be informed, including (and without prejudice to the generality of this Clause 4.1.5 (Obligation to Report)):

- 4.1.5.1.1 any breach or impending breach by the Contractor (and/or its counterparty thereto) of any Customer Contract;
- 4.1.5.1.2 any impending event that will require the Authority's consent under Clause 3.6 (Authority Rights in respect of Customer Contracts);
- 4.1.5.1.3 any exercise of the Contractor's Permitted Activities;
- 4.1.5.1.4 any material change in the financial position of a counterparty to a Customer Contract;
- 4.1.5.1.5 any change or impending change in the business strategy of a counterparty to a Customer Contract;
- 4.1.5.1.6 any Change in Control of a counterparty to a Customer Contract particularly where such Change in Control will or is likely to adversely affect the counterparty's financial position or future performance under the Customer Contract(s) to which it is a party;
- 4.1.5.1.7 any change to the key management personnel with whom the Contractor liaises which might adversely affect the future business relationship with the counterparty to the Customer Contract;

- 4.1.5.1.8 any actual or threatened labour disputes affecting the counterparty to the Customer Contracts;
 - 4.1.5.1.9 any change in the policy of other public authorities including, in particular, public authorities outside the United Kingdom, which might adversely affect the performance of the Customer Contracts, the performance by the Contractor of any Tasks relating to any of the Utility Customer Contracts or the Contractor's relationships with counterparties to the Customer Contracts; and
 - 4.1.5.1.10 any issue which affects or may affect the supply chain relating to any Subcontract or Series of Subcontracts which relate(s) to the Customer Contracts and/or the performance by the Contractor of any Tasks relating to any of the Utility Customer Contracts.
- 4.1.5.2 The Contractor shall also forthwith report to the Authority any exercise of its right:
- 4.1.5.2.1 to challenge any threatened or actual revocation of a Nuclear Site Licence or any other regulatory permit or consent which is essential to the Contractor's ability to operate the Site or carry out the Commercial Operations Tasks and/or any Tasks relating to any of the Utility Customer Contracts in accordance with Law; or
 - 4.1.5.2.2 to apply for, or resist, or join into an injunction which the Contractor, acting reasonably, considers urgent and necessary to the Contractor's performance of its obligations to the Authority.

4.2 Records

4.2.1 Ownership of Records

- 4.2.1.1 Subject to Clause 4.2.1.2 (Ownership of Records), all records generated or acquired by the Contractor in the performance of this Contract shall immediately pass into the ownership of the Authority (the “**Authority Records**”).

4.2.1.2 Notwithstanding Clause 4.2.1.1 (Ownership of Records), ownership in all records generated or acquired by the Contractor in the performance of this Contract which the Contractor is required to own by Law or to meet Regulatory Requirements shall be retained by the Contractor (the “**Contractor Records**”).

4.2.1.3 If the Contractor is no longer required to own a Contractor Record to comply with Law or meet Regulatory Requirements, such Contractor Record shall immediately transfer into the ownership of the Authority and become an Authority Record.

4.2.1.4 Not used.

4.2.2 Indemnity for Fraudulent Records

The Contractor shall indemnify the Authority for all expenses liabilities, losses, demands, costs, damages and Legal Proceedings incurred or suffered by the Authority as a result of any of the Authority Records being completed, kept or maintained fraudulently by anyone engaged by the Contractor at Team Leader level or above, provided that this indemnity does not apply:

4.2.2.1 in relation to any Authority Record made prior to the Commencement Date; and

4.2.2.2 in relation to any Authority Record made within the period of [Redacted] months following the Commencement Date unless made by a member of Nominated Staff or any personnel provided to the Contractor under Clause 16B (Provision of Support to the SLC) and Schedule 7 (Provision of Support to the SLC) of the Parent Body Agreement.

4.2.3 Use of Authority Records

The Contractor shall be entitled to use the Authority Records in the performance of this Contract and to meet applicable Law and Regulatory Requirements.

4.2.4 Custody of Records

4.2.4.1 The Contractor shall retain physical control of all Authority Records until such time as physical control of Authority Records is transferred to the Authority or to the Authority's nominee in accordance with the Authority's instructions.

- 4.2.4.2 Except in the case of an emergency where the Authority shall be entitled to and the Contractor shall allow the Authority immediate access, provided the Authority has given the Contractor reasonable notice the Contractor shall allow the Authority access to the Authority Records at any time during business hours on a Working Day.
- 4.2.4.3 The Contractor shall use its reasonable endeavours to manage all Authority and Contractor Records in accordance with BS ISO 15489-1:2001 (or its equivalent).

4.2.5 Contractor Records

The Contractor shall make Contractor Records available to the Authority in accordance with open access, inspection and audit rights set out Clause 4.5 (Inspection and Audit) (“**Open Book System**”) in such condition, format and detail as is adequate for their intended purpose and as required by the Authority.

4.2.6 Books of Account and Other Information

4.2.6.1 Books of Account

The Contractor shall maintain, on a current and accurate basis, books of account relating to its activities under this Contract in accordance with:

- 4.2.6.1.1 the Accounting Standards, including all extant Statements of Standard Accounting Practice (SSAPs), Financial Reporting Standards (FRSs), Urgent Issues Task Force Abstracts and any relevant industry-specific authoritative guidance; or
- 4.2.6.1.2 international generally accepted accounting practice, comprising to the extent adopted by the European Commission, all extant International Financial Reporting Standards (IFRSs), International Accounting Standards (IASs), interpretations of the International Financial Reporting Interpretations Committee and its predecessor body, and other relevant industry-specific authoritative guidance; and
- 4.2.6.1.3 the Companies Act 1985 and Companies Act 2006; and
- 4.2.6.1.4 Schedule 6 (Finance Schedule); and
- 4.2.6.1.5 an Open Book System.

4.2.6.2 Further Information

In addition to information provided by the Contractor to the Authority pursuant to this Contract the Contractor shall provide to the Authority such further information as the Authority may at any time reasonably request on reasonable notice.

4.2.6.3 Financial Information

Without prejudice to the generality of Clause 4.2.6.2 (Further Information), the Contractor shall furnish to the Authority as soon as they become publicly available and, in any event, not later than ninety (90) Calendar Days after the close of its statutory accounting period a copy of the audited financial statements of the Contractor, prepared in accordance with the Accounting Standards for such period, including in each case a balance sheet prepared as at the end of such accounting period, a profit and loss account, cash flow statement in respect of such accounting period and a reconciliation of total Allowable Costs claimed within such accounting period.

4.2.6.4 Authority Accounts

The Contractor shall maintain, in accordance with the Authority's reasonable instructions from time to time including as to its then current accounting policies, on a current and accurate basis books of account recording the Authority's interest in the Authority Assets and the Site and any associated liabilities.

4.3 Information Asset Register

4.3.1 The Contractor shall create within [Redacted] Months of the Commencement Date and thereafter maintain an accurate information asset register (the “**Contractor Information Asset Register**”) in accordance with the Authority's strategy, as notified to the Contractor from time to time.

4.3.2 The Contractor shall promptly contribute all the metadata for all Authority Records to the Contractor Information Asset Register. The Contractor shall ensure that such metadata conforms to the e-Government Metadata Standards (e-GMS).

4.3.3 The Authority shall create and maintain an information asset register (the “**Authority Information Asset Register**”).

4.4 Transfer of Metadata

The Contractor shall contribute metadata from the Contractor Information Asset Register via electronic transfer to the Authority Information Asset Register at such intervals as are notified to the Contractor by the Authority, acting reasonably. The Contractor shall ensure that such metadata conforms to the e-Government Metadata Standards (e-GMS).

4.5 Inspection and Audit

4.5.1 Inspection and Audit

Subject to compliance with applicable Law and Regulatory Requirements and the Contractor's Internal Procedures relating to safety and Site security, the Authority, acting by itself or by its duly authorised representatives (including auditors, advisers, consultants, and agents on behalf of the Authority) (together "**Authority Agents**") shall have the right, whether required by the National Audit Office or otherwise, to enter at all times onto all parts of the Site and its facilities, installations, structures and outbuildings and, in respect of the Commercial Operations Tasks, any other areas and locations which the Contractor uses in its performance of such Commercial Operation Tasks.

The Contractor shall permit the representatives (including advisers, consultants and agents) of a counterparty to a Utility Customer Contract to have such access to each Site and its facilities, installations, structures and outbuildings and to relevant Employees and/or Nominated Staff as the Authority may request from time to time in connection with the performance by the Contractor of the Tasks relating to any of the Utility Customer Contracts (or similar new business), subject always to such representatives complying with the Contractor's Internal Procedures relating to safety and the Site's security.

4.5.1.1 Subject to Clause 4.5.2 (Inspection and Audit) below, the Authority and any Authority Agent, acting reasonably, and subject to compliance with all applicable Law and Regulatory Requirements and the Contractor's Internal Procedures, relating to safety and Site security, shall be entitled to carry out for the purpose of fulfilling the Authority's statutory functions and duties and contractual rights pursuant to this Contract:

4.5.1.1.1 any audit, inspection, review, periodic monitoring and spot checks of any of the Contractor's activities in connection with this Contract and any aspect of the Contractor's performance of this Contract as required by the Authority or where the same

shall have been requested by the National Audit Office or otherwise;

- 4.5.1.1.2 audits, inspections, reviews, periodic monitoring and spot checks of all information required to be kept by the Contractor;
- 4.5.1.1.3 audits of the Contractor's compliance with its Inter-SLC Service Contracts, Internal Procedures, quality management systems, procedures required by Regulatory Requirements and any Operating Procedures, policies or standards ancillary to, or used in connection or accordance with, the same;
- 4.5.1.1.4 inspections and tests to determine the quality of any of the Tasks performed or procured;
- 4.5.1.1.5 interviews with any employees, secondees or other personnel of the Contractor and, to the extent that the Contractor is able to procure it, with the counterparties to the Customer Contracts and any officers, employees or personnel of such counterparties; and
- 4.5.1.1.6 the copying and collation of any information held in electronic or paper form.

4.5.2 The Authority (acting by itself or by any Authority Agents) shall be entitled to carry out the matters referred to in Clause 4.5.1 (Inspection and Audit) above at any time or frequency, provided always that the Authority or Authority Agents as applicable shall:

- 4.5.2.1 act reasonably at all times; and
- 4.5.2.2 use all reasonable endeavours to minimise any disruption to the provision of the Tasks by the Contractor, a Subcontractor, or a Sub-Subcontractor as applicable.

For the purposes of Clause 4.5.1.1 (Inspection and Audit) above, the Contractor shall provide all reasonable co-operation including:

- (A) granting, or procuring the grant of timely access to any equipment (including all computer hardware and software and databases) used in the performance of this Contract, wherever situated. To the extent that such access is required to equipment which does not belong to the Contractor or access is

not within the Contractor's control, the Contractor shall (and shall only be obliged to) use all reasonable efforts to procure such access;

- (B) granting timely access to any data dictionary and the fields and records within it to enable data to be downloaded from any computer systems operated by the Contractor; and
- (C) ensuring that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration of information during the audit.

4.5.3 The Contractor agrees that the Comptroller and Auditor General shall, and for the purposes of Clause 4.5.1.1 above, the Authority and any Authority Agents shall have access to such of the Contractor's personnel as they reasonably consider necessary for the performance of their duties to the extent allowed under the DPA.

4.5.4 The Authority (acting by itself or by any Authority Agent) shall at any time be entitled to request and receive a reasonable number of copies of any Data on demand, whether for the purposes of this Contract or for any other reasonable purpose, including, but not limited to, inviting tenders as part of a competition for the right to manage and operate the Site and carry out the Commercial Operation Tasks or as part of a competition for appointment as a parent body organisation, to the extent allowed under the DPA.

4.5.5 The Authority Agents shall be suitably qualified Third Parties entitled to have the access rights and/or undertake any of the inspections or audits referred to in this Clause 4.5 (Inspection and Audit) on the Authority's behalf. Such Authority Agents shall report their findings directly to the Authority. The Contractor is entitled to object to the Authority use of any Authority Agent only on the grounds that such Authority Agent is a direct competitor of the Parent Body Organisation or Affiliates in the field of nuclear decommissioning and clean up or any other activities carried on at the Site under this Contract. If the Contractor so objects, it must notify the Authority in writing specifying the reasons for such objection and the Authority, acting reasonably, shall consider whether to use a different Authority Agent.

4.5.6 The Contractor shall:

- 4.5.6.1 fully co-operate in relation to the provisions of this Clause 4.5 (Inspection and Audit);

- 4.5.6.2 provide the Authority or any Authority Agent with all information reasonably required in connection with the exercise of the Authority's rights under this Clause 4.5 (Inspection and Audit); and
- 4.5.6.3 keep all records and other relevant documentation relating to the Contractor's quality management system and all information required to be held by the Contractor in good order and in such form as to be capable of audit (including by electronic means) by the Authority or by any Authority Agent and:
 - 4.5.6.3.1 make such records available for inspection by the Authority or any Authority Agent at all reasonable times; and
 - 4.5.6.3.2 at the Authority's or any Authority Agent's request, make available to the Authority or Authority Agent as applicable any software necessary to review such records.
- 4.5.7 The Authority shall:
 - 4.5.7.1 implement and maintain procedures for notifying all Authority Agents of the Contractor's Internal Procedures relating to safety and Site security;
 - 4.5.7.2 use reasonable endeavours to ensure that all Authority Agents comply with relevant rules and requirements;
 - 4.5.7.3 notify the Contractor that an Authority Agent acting on behalf of the Authority in accordance with this Clause 4.5 (Inspection and Audit) is duly authorised; and
 - 4.5.7.4 procure that the Authority Agent has, in the Authority's reasonable opinion, insurance that is adequate and suitable to accord with the rights of access, audit and inspection that the Authority may grant to such Authority Agent under this Clause 4.5 (Inspection and Audit).
- 4.5.8 Provision of Facilities
 - 4.5.8.1 Subject to compliance with Regulatory Requirements, during any inspection or audit of the Site (pursuant to this Clause 4.5 (Inspection and Audit), the Contractor shall (on request by the Authority or the Authority Agent) make available such suitable office accommodation on the Site (or, in respect of the Commercial Operations Tasks, at any other locations which the Contractor uses in its performance of such Commercial

Operations Tasks) and such other facilities as the Authority or Authority Agent may reasonably require for the purposes of exercising the Authority's rights of access, inspection and audit pursuant to this Clause 4.5 (Inspection and Audit).

4.5.8.2 All accommodation provided shall be adequately furnished, lit, heated and ventilated and shall include suitable access to cloakrooms and IT and communication facilities.

4.5.9 Co-operation with Regulators

The Contractor shall inform the Authority of any Regulators' audit and inspection dates as soon as reasonably practicable after the Contractor becomes aware of such dates and the Authority undertakes to the Contractor that it will co-operate with the Regulators in exercising its rights under this Contract and will use reasonable endeavours to synchronise the Authority's audits and inspections with those of the Regulators where reasonably practicable.

4.5.10 Examination by National Audit Office

For the purpose of:

4.5.10.1 the examination and certification of the accounts of the Authority; or

4.5.10.2 any examination pursuant to Section 6(1) of the National Audit Act 1983, or any re-enactment thereof, of the economy, efficiency and effectiveness with which the Authority has used its resources,

the Comptroller and Auditor General may examine such documents relating to expenditure and income as he may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor and the Contractor shall comply with any such request to produce such oral or written explanations as he considers necessary.

4.5.11 Audit Findings and Corrective Action

4.5.11.1 The Contractor shall be entitled to receive a copy of the Authority's audit findings once completed in relation to any audit carried out in accordance with this Clause 4.5 (Inspection and Audit), subject to any redaction reasonably requested by an Authority Agent.

- 4.5.11.2 Within thirty (30) Calendar Days of the Contractor's receipt of the audit findings, the Parties shall hold an Audit Close-Out Meeting.
 - 4.5.11.3 At the Audit Close-Out Meeting, and where applicable, the Contractor shall have the opportunity to demonstrate to the satisfaction of the Authority that some or all of the relevant audit findings are incorrect.
 - 4.5.11.4 If, at the Audit Close-Out Meeting, the Authority considers that certain corrective action is required, the Contractor shall within thirty (30) Calendar Days of the Audit Close-Out Meeting (or such other date as agreed between the Parties) either:
 - 4.5.11.4.1 carry out the Corrective Action; or
 - 4.5.11.4.2 propose to the Authority, and obtain the Authority's approval for, a plan for carrying out the Corrective Action.
- 4.5.12 Where the Contractor proposes a plan for the Corrective Action in accordance with Clause 4.5.11.4.2 (Audit Findings and Corrective Action) above, the Authority shall have thirty (30) Calendar Days to notify the Contractor whether it accepts such proposed plan for the Corrective Action (such acceptance not to be unreasonably withheld). Failure of the Authority to provide such notification within the above period shall constitute deemed acceptance by the Authority. Where the Authority accepts or is deemed to accept the Contractor's plan the Contractor shall upon such acceptance or deemed acceptance implement the plan for the Corrective Action. Where the Authority notifies the Contractor that it does not accept the plan for the Corrective Action, the Parties shall endeavour within the following thirty (30) Calendar Days to agree any necessary amendments to the plan for the Corrective Action. In the absence of agreement within such thirty (30) Calendar Day period, the question of whether or not the Authority's withholding of acceptance is reasonable may be referred by either Party to be resolved in accordance with Clause 13 (Disputes).
- 4.5.13 Books of Audit Findings
- The Contractor shall maintain books containing the findings of audits carried out pursuant to Clause 4.5 (Inspection and Audit) together with any relevant correction reports setting out the Corrective Action taken as a result of such audit findings in accordance with Clause 4.5.11 (Audit Findings and Corrective Action).

4.5.14 Good Practice

Without prejudice to Clause 8.4 (Authority's Rights to IP developed by or on behalf of the Contractor and/or Subcontractors) and subject to the obligations set out in Clause 10 (Confidentiality, Security and Compliance with Law), the Authority shall be entitled to use any best practice identified during any inspection or audit carried out pursuant to this Clause 4.5 (Inspection and Audit) and/or at any Audit Close-Out Meeting, including the right to promulgate such good practice across all nuclear sites designated under section 3 of the Energy Act provided that such use would not place the Contractor in breach of the terms of any Subcontract entered into in accordance with this Contract.

4.5.15 Records relating to Authority's Property

Without prejudice to the generality of this Clause 4.5 (Inspection and Audit), the Contractor shall provide the Authority, any Authority Agent, the Comptroller and the Auditor General (and any of its authorised representatives) with full access to, the right of inspection of, and extraction from all records whether manual or on computer that relate to the Authority's property (both real and personal) leased to or otherwise made available to the Contractor. All such records shall be retained by the Contractor for the period specified in Clause 4.5 (Retention of Records).

4.5.16 Contractor's Obligations Persist

The Contractor shall not be excused from performance of any aspect of its obligations under this Contract for any period of time during which the Authority and/or the Comptroller and Auditor General are exercising their respective rights in accordance with this Clause 4.5 (Inspection and Audit). If, as a result of any Authority or National Audit Office inspection or audit, the Contractor is prevented from performing its obligations under this Contract despite having used reasonable endeavours to so perform, the Contractor shall be entitled to bring a Change Proposal in accordance with Paragraph 3 (Change Control) of Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure) to seek to address the impact of such inspection or audit.

4.5.17 Confidentiality

The Parties' obligations under this Clause 4.5 (Inspection and Audit) shall be subject to the obligations set out in Clause 10 (Confidentiality, Security and Compliance with Law).

5. EMPLOYEES

5.1 Nominated Staff

- 5.1.1 The Contractor shall, in respect of each of the Nominated Staff, enter, and shall use its reasonable endeavours to ensure that any Seconding Employer and each person who is a named member of Nominated Staff enters, into a Secondment Agreement.
- 5.1.2 The Contractor shall not permit any of the Nominated Staff to be withdrawn from full time work at the Site without first obtaining the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed) as to the suitability and adequacy of a replacement who must have a level of skills and experience broadly comparable to that of the Nominated Staff being withdrawn, or if more appropriate depending on the relevant job position, have the necessary skills and experience required for that job position.
- 5.1.3 Where the withdrawal from full time work of Nominated Staff and/or appointment of a replacement for any Nominated Staff in accordance with this Clause 5.1 (Nominated Staff) requires the approval of the Regulators, the Contractor shall procure all such approvals as are necessary before making the withdrawal and/or replacement as applicable.
- 5.1.4 In the event that individual persons designated Nominated Staff are withdrawn and replaced in accordance with Clauses 5.1.1 (Nominated Staff) to 5.1.3 (Nominated Staff) above, then the Contractor shall enter, and shall procure that each Seconding Employer and each replacement shall enter into a secondment agreement in terms substantially the same as the Secondment Agreement.
- 5.1.5 Reference to “withdrawal” of Nominated Staff or to any such persons being “withdrawn” in the above provisions and in Clause 5.2.3 (Key Personnel) below shall not include withdrawal due to their retirement, long-term illness (or the long-term illness of a close family member, being a spouse, partner, child or other dependent) or voluntary resignation from the employment of the Parent Body Organisation or Seconding Employer.

5.2 Key Personnel

- 5.2.1 The Authority shall, provided that it acts reasonably, be entitled to identify and name individuals, whether Employees or Nominated Staff, as Key Personnel. The individuals so named by the Authority are listed in Part 2 (Key Personnel) of Schedule 4 (Secondment and Pensions Schedule). Such list may be amended from time to time by

the Authority whether to take account of the replacement of any individual as a member of Key Personnel or to add any person or to remove any person from such list.

5.2.2 Subject to Clause 5.2.3 (Key Personnel) and Clause 5.2.4 (Key Personnel), the Contractor shall not, and shall procure that the Parent Body Organisation shall not without prior written consent of the Authority (such consent not to be unreasonably withheld or delayed):

5.2.2.1 dismiss (either summarily or on notice) any Key Personnel;

5.2.2.2 suspend for more than five (5) Calendar Days any Key Personnel;

5.2.2.3 change the job description of any Key Personnel;

5.2.2.4 subject to Clause 5.8.4 (Terms and Conditions of Employment), alter any material term or condition of the contract or terms of employment of any Key Personnel;

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

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

5.2.2A Organisational Change

Subject to Regulatory Requirements, the Contractor shall not make any significant changes to the management structure of the Contractor without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed).

5.2.3 Where either the Contractor or the Parent Body Organisation intends to withdraw any member of Key Personnel or Nominated Staff from employment, it must:

5.2.3.1 obtain the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed) as to the suitability and adequacy of a replacement who must have a level of skills and experience comparable to that of the member of Nominated Staff or Key Personnel being withdrawn, or if more appropriate depending on the relevant job position, have the necessary skills and experience required for that job position; and

5.2.3.2 where such withdrawal and/or appointment of a replacement member of Nominated Staff or Key Personnel in accordance with this Clause 5.2.3

(Key Personnel) requires the approval of the Regulators, procure all such approvals as are necessary before making the withdrawal and/or replacement as applicable.

5.2.4 Nothing in Clause 5.1 (Nominated Staff) or this Clause 5.2 (Key Personnel) will prevent either the Contractor or the Parent Body Organisation from immediately dismissing or suspending from their duties any Key Personnel or Nominated Staff where, in the reasonable opinion of the Contractor or the Parent Body Organisation, such action is:

5.2.4.1 necessary to comply with any applicable Law or Regulatory Requirements;

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

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

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

5.3 Non-Contract Activities

5.3.1 The Contractor shall ensure and procure that the Employees and the Nominated Staff are engaged solely in the performance of the Tasks and the Contractor's other obligations under this Contract and/or the performance of the Contractor's obligations to the Authority in relation to other sites under the Energy Act or another Site Management and Operations Contract, save as may otherwise be expressly agreed in writing in advance with the Authority pursuant to Clause 16B (Provision of Support to the SLC) of the Parent Body Agreement and save also that this requirement shall not be contravened by appointment of the Nominated Staff to the board of the Parent Body Organisation provided such appointment does not materially detract from the Nominated Staff members' ability to perform his or her obligation in accordance with this Contract, the Parent Body Agreement and relevant Secondment Agreement.

5.3.2 If any Employee and/or any Nominated Staff perform the Contractor's obligations to the Authority in relation to other sites under the Energy Act or another Site Management and Operations Contract, the Contractor shall ensure that such Employee's or Nominated Staff's time (as the case may be) is apportioned and charged to the relevant Site or site.

5.4 Notice to Authority of Disputes

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

5.4.1.1 the Contractor and any of the Employees or Nominated Staff; and/or

5.4.1.2 the Contractor and any of the Contractor's Subcontractors engaged in connection with this Contract and/or their employees; and/or

5.4.1.3 the Contractor and any trade union or other body representing any such person in Clause 5.4.1.1 (Notice to Authority of Disputes) or 5.4.1.2 (Notice to Authority of Disputes) above,

where the consequence of such dispute may include:

- (A) liabilities, Costs or potential Costs in excess of £100,000 (one hundred thousand pounds);
- (B) delay to any element of the LTP; or
- (C) a significant adverse affect on regulatory, stakeholder or trade union relationships.

Such notification will be made as soon as reasonably practicable after the Contractor becomes aware of any such dispute and the Contractor shall provide such level of detail within its knowledge as the Authority reasonably requires.

5.4.2 The Contractor shall keep the Authority informed with updates and progress reports on any dispute notified pursuant to Clause 5.4.1 (Notice to Authority of Disputes) above together with any proposed settlements or developments which may affect the approved funding categories in the LTP and/or the LTP itself.

5.5 Maintenance of Skills

The Contractor acknowledges the responsibility of the Authority under section 9(2)(a) of the Energy Act in relation to the maintenance and development in the United Kingdom of a skilled workforce and shall comply with the provisions of Clause 2.7 (Subcontracting/Procurement). In particular, the Contractor shall:

5.5.1 when considering redundancies or any other programme involving a reduction of Employee or Nominated Staff numbers and/or when making make-or-buy decisions

- pursuant to its Make-or-Buy Plan, take into account the Authority's duty to maintain and develop in the United Kingdom a skilled workforce under section 9(2)(a) of the Energy Act;
- 5.5.2 consider and plan future skills requirements and predict possible skills shortages and needs and, in each case, train Employees and Nominated Staff and recruit and train additional employees accordingly; and
- 5.5.3 ensure that when it replaces any of the Employees pursuant to this Clause 5 (Employees), the replacement has a level of skills and experience which:
- 5.5.3.1 is at least broadly comparable to that of the Employee that he or she is replacing; or
 - 5.5.3.2 if more appropriate depending on the relevant job position, matches the necessary skills and experience required for that job position.

5.6 Authority Approval of Redundancy

- 5.6.1 Subject to Clause 5.1 (Nominated Staff) and 5.2 (Key Personnel), the Contractor shall obtain the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed) in advance of:
- 5.6.1.1 commencing and/or continuing a Redundancy programme or any other programme involving the reduction of Employee numbers such as a voluntary early release scheme whereby Employee numbers are reduced by more than [Redacted] in any thirty (30) Calendar Day period or by more than [Redacted] in any ninety (90) Calendar Day period; and/or
 - 5.6.1.2 suspending or terminating the employment of between [Redacted] and [Redacted] Employees within any period of one (1) Month or less or [Redacted] or more Employees within any period of three (3) Months or less.
- 5.6.2 Nothing in this Clause 5.6 (Authority Approval of Redundancy) shall prevent the Contractor from immediately dismissing or suspending from their duties or procuring such dismissal or suspension by the Parent Body Organisation any Employees or from procuring the immediate dismissal or suspension of Nominated Staff by the Parent Body Organisation where, in the reasonable opinion of the Contractor, such action is:
- 5.6.2.1 necessary to comply with any applicable Law or Regulatory Requirements;

- 5.6.2.2 required to safeguard the health and wellbeing of any employee on the Site;
- 5.6.2.3 justified on the grounds that any Employee has committed an act of gross misconduct; and/or
- 5.6.2.4 justified on the grounds that any Employee has failed an alcohol and/or drugs test.

5.7 Non-Discrimination, Equality and Human Rights

The Contractor shall comply with, and shall use its reasonable endeavours to ensure that Subcontractors and Sub-Subcontractors, the Parent Body Organisation and those of its Affiliates, agents, Employees and Nominated Staff who carry out activities on the Site shall comply with the:

- 5.7.1 Sex Discrimination Act 1975 and Sex Discrimination Act 1986;
- 5.7.2 Race Relations Act 1976;
- 5.7.3 Disability Discrimination Act 1995;
- 5.7.4 Human Rights Act 1998;
- 5.7.5 Equal Pay Act 1970;
- 5.7.6 Employment Rights Act 1996;
- 5.7.7 Employment Equality (Sexual Orientation) Regulations 2003;
- 5.7.8 Employment Equality (Religion or Belief) Regulations 2003;
- 5.7.9 Employment Equality (Age) Regulations 2006;
- 5.7.10 Equality Act 2006; and
- 5.7.11 any other legal or statutory requirement, modification or re-enactment relating to discrimination in employment, and shall procure that the Parent Body Organisation and those of its Affiliates and agents who carry on activities on the Site operate an appropriate equal opportunities policy.

5.8 Terms and Conditions of Employment

- 5.8.1 The Contractor shall keep and maintain adequate HR Internal Procedures and records to enable it to manage its Employees. Such HR Internal Procedures and records shall contain, amongst other things, all Employees' up to date terms and conditions of employment and details of remuneration including bonus schemes.
- 5.8.2 The Contractor shall obtain the prior written consent of the Authority (such consent not to be unreasonably withheld) before making any change to its HR Internal Procedures and record keeping systems where such change will cause a significant increase in the Costs or liabilities of operating the Site and/or performing its obligations under this Contract or where such change may affect the relationship with trade unions representing the Employees.
- 5.8.3 Without prejudice to the generality of Clause 5.8.2 (Terms and Conditions of Employment), the Contractor shall not, without the prior written consent of the Authority, increase the Costs reimbursed by the Authority in relation to Employees including:
- 5.8.3.1 increase or reclassify wages, salary, other elements of pay, benefits or emoluments as pensionable or non-pensionable;
 - 5.8.3.2 increase wages, salary, other elements of pay, benefits or emoluments; and
 - 5.8.3.3 agree or approve any severance or Redundancy augmentations to any wages, salary, and other elements of pay, benefits or emoluments.
- 5.8.4 Subject to compliance with relevant employment law, the Contractor shall make such additions to, omissions from, or other changes to the employment contracts of Employees from time to time required to be made by the Authority.

5.9 Trade Union Agreements

The Contractor shall disclose to the Authority the terms of all agreements entered into with trade unions or other bodies representing any of the Employees and shall keep the Authority fully informed of any changes to any such agreement or of any new agreements entered into which relate to any of the Employees. The Contractor shall consult the Authority before taking any steps: (i) which are likely to be contrary to the terms or spirit of any such agreement; or (ii) to terminate any such agreement.

5.10 Removal of Contractor or Subcontractor Employees from Site

If:

5.10.1 there is a Contractor Default (whether or not remedied to the satisfaction of the Authority in accordance with Clauses 12.6 (Termination or Remedy for Contractor Default) and 12.7 (Remediation Programme)) and the Authority:

5.10.1.1 has made all reasonable enquiries into the circumstances in which the Contractor Default occurred; and

5.10.1.2 believes, acting reasonably, that:

5.10.1.2.1 the Contractor Default may fairly be attributable in whole or in substantial part to any particular Employee or member of Nominated Staff; and that

5.10.1.2.2 if the relevant Employee were to continue in the employment of the Contractor or the member of Nominated Staff were to continue their secondment, it would adversely affect the Contractor's ability to fulfil its obligations to the Authority; or

5.10.2 the Authority reasonably believes that the presence on the Site of an Employee or Subcontractor's employee or a Nominated Staff represents a threat to health, safety, security or the Environment,

then the Authority shall be entitled to require that any such Employee, Subcontractor's employee or Nominated Staff as applicable be removed from the Site and if such a request is made the Contractor will ensure that any such Employee will be immediately removed from Site.

5.11 Not used

5.12 Pensions

5.12.1 Energy Act Requirements

The Contractor shall not do or omit to do anything that shall cause the Authority to be in breach of any of its duties and obligations under part 3 and/or part 4 of schedule 8 to the Energy Act. In the event of any breach of this undertaking, the Contractor shall do all things necessary, as directed by the Authority, to restore the rights and benefits of relevant Employees as referred to therein.

5.12.2 Participation in Combined Nuclear Pension Plan

The Contractor shall, on the date of execution of this Contract, enter into the Deed of Participation. If for any reason the Deed of Participation is not executed as aforesaid the Contractor shall be deemed to have entered into the Deed of Participation and shall be bound by and shall comply with the same as if the terms thereof were fully set out herein.

5.12.3 Participation in Other Applicable Schemes

The Contractor shall participate in such of the other Applicable Schemes as the Authority may at any time direct in respect of any such Employees who were Employees on the Commencement Date as the Authority may direct. In each case, the Contractor's obligations shall be subject to such consents as may be required under the governing documentation of the Applicable Schemes, which consents the Contractor and the Authority will each use their reasonable endeavours to procure.

5.12.4 The Contractor shall not participate in any other pension scheme in respect of the Employees or Nominated Staff without the consent of the Authority.

5.12.5 The Contractor shall not take or fail to take any action which would cause it to cease to participate in any Applicable Scheme without the consent of the Authority.

5.12.6 Authority Rights and Contractor Obligations in Respect of Applicable Schemes

The Contractor shall, in respect of all Applicable Schemes in which it participates pursuant to Clause 5.12.2 (Participation in Combined Nuclear Pension Plan) and/or Clause 5.12.3 (Participation in Other Applicable Schemes):

5.12.6.1 appoint the Authority as its nominee for the purposes of consultation on the investment strategy of the Applicable Schemes under section 35 of the Pensions Act 1995. The Contractor acknowledges that the Authority may take account of its own interests as well as those of the Contractor when discussing investment strategy with the trustees (or if there are no applicable trustees the administrator) or managers of the Applicable Schemes. In respect of any Applicable Scheme to which section 35 of the Pensions Act 1995 does not apply, any powers held by the Contractor under the Scheme to influence notional investment strategy shall be delegated to the Authority;

5.12.6.2 appoint the Authority as its nominee for the purposes of consultation on the member nominated trustee provisions of the Pensions Act 1995 and the

Pensions Act 2004;

- 5.12.6.3 not exercise or consent to the exercise of any powers or discretions in relation to the Applicable Schemes without the consent of the Authority and shall exercise any such powers or discretions and shall give such consents in such a way as the Authority may direct;
- 5.12.6.4 without limiting the obligations in Clauses 5.12.1 (Energy Act Requirements) and 5.12.2 (Participation in Combined Nuclear Pension Plan) in any way, the Contractor shall in relation to Applicable Schemes in which it participates under Clauses 5.12.1 (Energy Act Requirements) and/or 5.12.2 (Participation in Combined Nuclear Pension Plan):
 - 5.12.6.4.1 agree to the substitution of the Authority as Principal Employer of the Applicable Scheme if the Authority so requests and if such substitution is permitted under the governing documentation of the Applicable Scheme;
 - 5.12.6.4.2 set or agree employer contribution rates as directed by the Authority;
 - 5.12.6.4.3 comply with the Scheme Documents and, in respect of Applicable Schemes other than the CNPP, comply with the trust deeds or such other governing documents and rules of the relevant Applicable Schemes relevant to it as employer;
 - 5.12.6.4.4 pay all sums due to the Scheme Trustee or the trustees (or if there are no applicable trustees the administrator) of other Applicable Schemes as and when they fall due;
 - 5.12.6.4.5 comply with administration systems and risk management procedures as reasonably required by the Authority or the relevant Applicable Scheme; and
 - 5.12.6.4.6 comply with all obligations whenever arising to consult in respect of matters related to pensions and disclose all relevant information in advance of its issuance to the Authority and in connection therewith cooperate and liaise with the Authority as reasonably required by the Authority;
- 5.12.6.5 where it has power, amend the Applicable Schemes as directed by the Authority and not amend the Applicable Schemes otherwise;

- 5.12.6.5.1 not agree to the funding of any deficit or the treatment of any surplus without the consent of the Authority;
 - 5.12.6.5.2 not make any augmentations to benefits without consent of the Authority;
 - 5.12.6.5.3 not admit any other employer to the Applicable Scheme without the consent of the Authority;
 - 5.12.6.5.4 not terminate (or allow to terminate) the service of any Employees or Nominated Staff in circumstances where an enhanced benefit would be due under the Applicable Schemes without the consent of the Authority;
 - 5.12.6.5.5 not wind up the scheme or any part or section of it without the consent of the Authority;
 - 5.12.6.5.6 comply with its obligations as employer arising under the general law relating to pensions; and
- 5.12.6.6 except where and to the extent required by Law, not make, without the consent of the Authority, any announcements or issue any material, information or issue any publicity or advertising in any media or form whatsoever affecting or relating to pension arrangements such consent not to be unreasonably withheld or delayed.

5.12.7 The Authority and the Contractor confirm that, prior to the Commencement Date, they have completed all consultation necessary with all Employees relating to any change in their pension arrangements, including the retirement benefit scheme under which they accrue benefit on an ongoing basis, which occurs because of the transfer of the shares in the Contractor. The Contractor confirms for the benefit of the Authority that if it proposes any future such changes, without prejudice to any other rights of the Authority under this Clause 5.12 (Pensions), the Contractor will be responsible for any relevant Employee consultation.

6. FINANCE

6.1 Funding Limits

6.1.1 The Contractor must:

6.1.1.1 fulfil its obligation to perform the Tasks and its other obligations under this Contract; and

6.1.1.2 manage expenditure against the Annual Site Funding Limits, Current Budgets, Capital Budgets and individual levels within the PSWBS in accordance with Good Industry Practice,

such that (subject to any Change in accordance with Paragraph 3 (Change Control) of Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure)) its relevant Costs incurred within any Contract Year in respect of each of Sellafield, Windscale and Capenhurst do not exceed the relevant Annual Site Funding Limit, Current Budget, Capital Budget and individual levels within the PSWBS for the relevant Contract Year.

6.2 Determination of Funding Limits and Compliance with Funding Limits

6.2.1 Prior to each Contract Year, the Authority shall determine and notify the Contractor of the Annual Site Funding Limits, the Current Budgets and Capital Budgets for that Contract Year in accordance with Part 1 (Authority Policies and Procedures) of Schedule 2 (Programme Management and Change Procedure).

6.2.2 The Contractor shall notify the Authority as soon as reasonably practicable after the Contractor becomes aware that:

6.2.2.1 it has incurred Allowable Costs in any Contract Year which in aggregate exceed seventy five per cent (75%) of any Annual Site Funding Limit for that Contract Year; and/or

6.2.2.2 it has incurred Allowable Costs, relevant to any PSWBS category level in any Contract Year, which in aggregate exceed seventy five per cent (75%) of the relevant budget for that category level as set out in the LTP for the relevant Contract Year.

Any such notice shall include details of the relevant Allowable Costs incurred to the date of the notice and the Contractor's best estimate of the level of such Allowable Costs which are likely to be incurred during the remainder of the Contract Year.

6.3 Financial Restrictions

6.3.1 After the Commencement Date, the Contractor shall not without the prior written consent of the Authority:

6.3.1.1 dispose, let or otherwise part with the possession of the whole of or any part of the Site, business, undertaking or asset of the Contractor (including any asset subject to a finance or operating lease) nor purport to do any of the foregoing;

6.3.1.2 make any change to its accounting reference date;

6.3.1.3 make any change to the Accounting Policies and Procedures save as required by applicable Law, the Accounting Standards or any government reporting requirements including those specified in the Government Financial Reporting Manual (FRM) as maintained and issued by the UK government from time to time;

6.3.1.4 give any form of guarantee or security;

6.3.1.5 create or permit to subsist any Security Interest over any Authority Assets or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than as permitted by this Contract;

6.3.1.6 save for borrowings under an Approved Working Capital Facility, borrow (including intra-group) or make any payment under any intra-group borrowings;

6.3.1.7 create or acquire any subsidiary or dispose of any shareholding in a subsidiary or make or have any investment in any other entity, except for the deposit of cash in the Contractor's Fee Account, or the Contractor's Payment Account;

- 6.3.1.8 commence any litigation or arbitration other than:
- 6.3.1.8.1 for the purposes of satisfying Clause 7.6 (Necessary Consents), Clause 8 (Intellectual Property) or Clause 1.25 (Claims Handling);
 - 6.3.1.8.2 in accordance with the Dispute Resolution Procedure;
 - 6.3.1.8.3 in any attempt to commence judicial review proceedings against the Authority in connection with this Contract;
 - 6.3.1.8.4 to challenge any threatened or actual refusal to grant, non renewal or revocation of a Nuclear Site Licence or any other regulatory permit or consent which is essential to the Contractor's ability to operate any of Sellafield, Windscale or Capenhurst or carry out the Commercial Operations Tasks in accordance with Law; or
 - 6.3.1.8.5 to the extent that the Contractor, acting reasonably, considers such commencement is urgent and necessary to the Contractor's performance of its obligations to the Authority,
- and provided always that the Contractor shall notify the Authority as soon as reasonably practicable and in any event prior to any such litigation or arbitration being commenced against a Regulator(s);
- 6.3.1.9 incur any liability or financial indebtedness except pursuant to an Approved Working Capital Facility or as permitted by this Contract;
- 6.3.1.10 make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than the deposit of cash with a financial institution approved in writing by the Authority or Office of the Paymaster General as permitted by this Contract);
- 6.3.1.11 enter into any finance or operating leases;
- 6.3.1.12 notwithstanding the Permitted Activities, enter into any Customer Contract or Subcontract where a disproportionate element of liability, Cost or benefit is likely to crystallise after the expiry of:
- 6.3.1.12.1 any termination notice (which has been issued in accordance with Clause 12 (Termination) and Clause 1.12 (Notices)) to

terminate this Contract; and/or

6.3.1.12.2 the expiry or termination of the Parent Body Agreement;

6.3.1.13 save as set out in Clause 6.10.5 (Payments to Parent), make payment of any management or other charges to the Parent Body Organisation or to any of its Affiliates which:

6.3.1.13.1 are not provided for and made in accordance with Subcontracts specifically approved by the Authority pursuant to Clause 2.7 (Subcontracting/Procurement);

6.3.1.13.2 has not been agreed to under an Advance Agreement; or

6.3.1.13.3 is not made in accordance with the provisions of Clause 16B (Provision of Support to the SLC) and Schedule 7 (Provision of Support to the SLC) of the Parent Body Agreement;

6.3.1.14 undertake hedging activities (except in accordance with the Currency Hedging Strategy);

6.3.1.15 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 than would have been the case were it not for any direct or indirect benefit or advantage which accrues to the Parent Body Organisation, any Subcontractor or any of their respective Affiliates:

6.3.1.16 make any change to or waive any rights under any Approved Working Capital Facilities where such change or waiver is prejudicial to the interests of the Authority and/or outside the usual course of administering a Working Capital Facility; nor

6.3.1.17 open any bank, building society or similar account.

6.3.2 For the purposes of Clause 6.3.1 (Financial Restrictions), other than where the Authority has expressly withheld its consent in writing, the Contractor shall be deemed to have the prior written consent of the Authority to carry out any of the activities in Clauses 6.3.1.1 (Financial Restrictions) to 6.3.1.17 (Financial Restrictions) to the extent the relevant activity is expressly:

6.3.2.1 set out in the LTP for the then current Contract Year;

- 6.3.2.2 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 Contract, any Subcontract or Customer Contract which enables the Contractor to do any of the matters set out in this Clause 6.3 (Financial Restrictions) requires the approval of the Authority notwithstanding the Permitted Activities;
 - 6.3.2.3 contained in an Internal Procedure approved by the Authority in accordance with Clause 2.8.4 (Contractor's Internal Procedures);
 - 6.3.2.4 save in the case of Clause 6.3.1.11 (Financial Restrictions), a Permitted Activity or otherwise approved by the Authority following the Contractor's compliance with Clause 3.6.2 (Authority's right to be consulted in respect of Customer Contracts);
 - 6.3.2.5 in the case of Clause 6.3.1.1 (Financial Restrictions), permitted by Clause 7.1.1(B) (Right to Deal with Authority Assets);
 - 6.3.2.6 permitted pursuant to Schedule 6 (Finance Schedule); or
 - 6.3.2.7 required as a term of an Approved Working Capital Facility.
- 6.3.3 For the purposes of Clause 6.3.1.7 (Financial Restrictions), the Authority may not unreasonably withhold or delay its consent.

6.3A Benchmarking

6.3A.1 Subject to Clause 6.3A.2 (Benchmarking), the Authority shall have the right in each Contract Year to establish the best terms and conditions on which facilities (similar to any then Approved Working Capital Facility and/or any Proposed Working Capital Facilities) are being offered on the market, having particular regard to interest and charges (the "**Benchmark**").

6.3A.2 In assessing the Benchmark (the "**Benchmark Assessment**") the Authority shall:

- 6.3A.2.1 act reasonably;
- 6.3A.2.2 take into account any interest and charges which providers of identical or substantially similar working capital facilities are offering at or around that time to organisations of a similar size and nature to the Contractor and (in so far as practicable) would be prepared to offer to the Contractor; and

- 6.3A.2.3 take into account the size of the working capital facility and the purpose for which it will be used.
- 6.3A.3 The Authority shall notify the Contractor of the outcome of its Benchmark Assessment as soon as reasonably practicable after such Benchmark Assessment has been completed.
- 6.3A.4 The Authority may in its absolute discretion require the Contractor in each Contract Year to undertake the Benchmark Assessment on behalf of the Authority. If so requested, the Contractor shall:
- 6.3A.4.1 comply with the rules set out in Clause 6.3A.2 (Benchmarking) as if it were the Authority; and
- 6.3A.4.2 deliver the report of the Benchmark Assessment to the Authority as soon as reasonably practicable after such Benchmark Assessment has been completed.
- 6.3A.5 When either Party notifies the other Party of the outcome of a Benchmark Assessment (either pursuant to Clause 6.3A.3 (Benchmarking) or Clause 6.3A.4 (Benchmarking)), the Party receiving notice of the Benchmark Assessment has the right to contest the Benchmark Assessment provided that in doing so it complies with the Dispute Resolution Procedure.
- 6.3A.6 If:
- 6.3A.6.1 a Proposed Working Capital Facility is offered; and/or
- 6.3A.6.2 any then Approved Working Capital Facility is,
- on terms and conditions which (from the Authority's perspective, as the body obliged (subject to the provisions of Schedule 6 (Finance Schedule)) to reimburse the Costs of the Approved Working Capital Facilities) are neither equal to nor better than the Benchmark, then the Contractor shall:
- (A) (in the case of a Proposed Working Capital Facility) not enter into such Proposed Working Capital Facility without the Authority's prior written consent (such consent to be given or withheld within twenty-eight (28) Calendar Days of the date on which the outcome of the relevant Benchmark Assessment has been given to the Authority or, if later, the date on which the Authority is provided with full details of the terms of the relevant Proposed Working Capital Facility); and

- (B) (in the case of an Approved Working Capital Facility) procure that such facility is replaced as soon as reasonably practicable with a new Approved Working Capital Facility on terms which are at least as favourable to the Authority as the Benchmark.

6.4 Historical Costs

- 6.4.1 The Contractor shall determine whether any Cost, claim or liability which relates to the period prior to the Commencement Date and which has been satisfied by the Contractor after the Commencement Date falls within the definition of a Contractor Historical Cost or a Non Contractor Historical Cost. Where relevant, the Contractor shall apply the terms of the relevant Overarching Costs Management Agreement when deciding whether such a Cost, claim or liability is a Contractor Historical Cost or a Non Contractor Historical Cost.
- 6.4.2 The Contractor shall mitigate, to the extent reasonably possible, all Contractor Historical Costs and meet such Contractor Historical Costs subject, where relevant, to the provisions of Clause 1.25 (Claims Handling).
- 6.4.3 Where the Contractor has paid a Non Contractor Historical Cost to which an Overarching Cost Management Agreement relates, the Contractor shall use reasonable endeavours to reclaim such Non Contractor Historical Cost from the person to whom it is properly attributable in accordance with the terms of the relevant Overarching Costs Management Agreement. The Contractor shall pay any amounts reclaimed pursuant to this Clause 6.4.3 (Historical Costs) to the Authority as Category I Revenue.

6.5 Cashflow

6.5.1 Costs and Capital

6.5.1.1 Working Capital

- 6.5.1.1.1 The Contractor shall ensure that it maintains a working capital facility to enable it to meet its obligations under this Contract provided that the Authority makes payments under this Contract as and when such payments fall due.
- 6.5.1.1.2 The Contractor shall make payments, which are to be made out of the Contractor's Payments Account, to creditors as they Fall Due and in accordance with the Government Payment Obligations (save as otherwise agreed by the Authority in writing).

- 6.5.1.1.3 Unless the Authority approves otherwise in writing, the working capital facility required under Clause 6.5.1.1.1 (Working Capital) shall be provided by the Contractor entering into one or more Approved Working Capital Facilities.
- 6.5.1.1.4 All drawings under an Approved Working Capital Facility shall be transferred only into the Contractor's Payments Account. The Contractor shall only pay creditors (other than those to be satisfied out of the Customer Ringfenced Accounts) out of the Contractor's Payments Account including, without limitation, Working Capital Costs.
- 6.5.1.1.5 The provisions of Clause 6.5.1.1.2 (Working Capital) shall not apply to the extent that the relevant creditor is to be satisfied as an Exceptional Item which the Authority has failed to pay to the Contractor in accordance with Part 3 (Payment of Allowable Costs) of Schedule 6 (Finance Schedule).

6.5.2 Cashflow Forecasting

The Contractor shall regularly submit to the Authority a cashflow forecast in a form and at a frequency to be determined by the Authority, acting reasonably, and notified to the Contractor from time to time.

6.6 Customer Ringfenced Accounts

- 6.6.1 The Contractor is entitled to draw down funds from Customer Ringfenced Accounts in accordance with the legally binding provisions and/or documented understandings with the relevant customer(s) (where inconsistent with legally binding provisions, the legally binding provisions shall prevail) governing withdrawal from such Customer Ringfenced Accounts to meet such Costs as it is entitled to meet from Customer Ringfenced Accounts.
- 6.6.2 For the avoidance of doubt, funds in Customer Ringfenced Accounts shall not constitute Category I Revenue or Category II Revenue unless or until released from such Customer Ringfenced Accounts as revenue in accordance with the terms of this Contract governing the operation of such accounts.

6.7 Determination of Revenue Category

- 6.7.1 In each Contract Year during the setting of the LTP for the next Contract Year pursuant to Paragraph 3 (Change Control) of Part 3 (Setting the LTP and Change

Control) of Schedule 2 (Programme Management and Change Procedure), the Authority shall be entitled, acting reasonably and in consultation with the Contractor, to:

- 6.7.1.1 amend the definition of Category II Revenue so that revenue which would otherwise have fallen into the definition of Category I Revenue falls into the definition of Category II Revenue for all succeeding Contract Years; and/or
 - 6.7.1.2 amend categories of revenue within or delete categories of revenue from the definition of Category I Revenue and/or Category II Revenue for all succeeding Contract Years.
- 6.7.2 If, at any time in a Contract Year, the amount of Category II Revenue received by the Contractor exceeds the amount forecast by the Contractor in the LTP as receivable for that Contract Year, the Authority shall be entitled at any time thereafter in the current Contract Year, acting reasonably, to treat the excess revenue falling within the definition of Category II Revenue as revenue falling into the definition of Category I Revenue.
- 6.7.3 Prior to setting the Annual Site Funding Limits for the next Contract Year in accordance with Paragraph 2 (The LTP and the Contractor's Responsibilities) of Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Control), the Authority shall (acting reasonably and in consultation with the Contractor) be entitled at any time to add new categories of revenue to the definition of Category I Revenue and/or Category II Revenue to the extent that such categories of revenue are not already accounted for as Category I Revenue or Category II Revenue in the current Contract Year's LTP.
- 6.7.4 Monies received or receivable by the Contractor shall predominantly be treated as Category I Revenue. Any dispute as to whether monies received or receivable by the Contractor are to be treated as Category I Revenue or Category II Revenue shall be determined by the Authority acting reasonably.

6.8 Category I and II Revenue

- 6.8.1 Unless specifically instructed in writing by the Authority, the Contractor shall pay all Category I Revenue and Category II Revenue into the Contractor's Receipts Accounts on receipt of such revenue and shall transfer the entire balance of the Contractor's Receipts Account on a daily basis to the OPG Receipts Account.

- 6.8.2 The Contractor will hold the entire balance standing to the credit of the Contractor's Receipts Account in trust for the Authority from the moment of receipt of funds into the Contractor's Receipts Account until the day of receipt of the balance by the Authority.
- 6.8.3 If the Contractor becomes aware that an amount so transferred to the OPG Receipts Account was paid into the Contractor's Receipts Account in error and therefore should not have been so transferred, then the Contractor shall reclaim the amount paid in error by informing the Authority of the amount, the date of transfer and the reason for the error (an "**Overpayment Notice**"). The Contractor will use all reasonable endeavours to make such claim within 21 Calendar Days following the end of the Accounting Month in which a receipt has been transferred by the Contractor to the OPG Receipts Account under Clause 6.8.1 (Category I and II Revenue). In the event that, exercising such reasonable endeavours, the Contractor is unable to make such claim as aforesaid, the Contractor shall make such claim as soon as reasonably practicable after the expiry of 21 Calendar Days following the end of the Accounting Month in which a receipt has been transferred by the Contractor to the OPG Receipts Account under Clause 6.8.1 (Category I and II Revenue).
- 6.8.4 The Contractor will provide along with the Overpayment Notice or as soon as reasonably practicable following the Authority's receipt of an Overpayment Notice all relevant supporting documents and information (and in such a form) as the Authority may reasonably require in order to satisfy itself that the payment into the Contractor's Receipts Account was made in error. If the Parties cannot agree whether an amount was paid into the Contractor's Receipts Account in error or if there is any disagreement regarding the amount paid in error the matter shall be resolved in accordance with Clause 13 (Disputes).
- 6.8.5 If it shall be decided or determined that the Contractor transferred all or part of the amount referred to in the Overpayment Notice to the OPG Receipts Account in error, then as soon as reasonably practicable following such agreement or determination the Authority will repay the relevant amount to the Contractor's Receipts Account.

6.9 Invoicing and Payment

- 6.9.1 The Contractor shall be paid for the provision of the services under this Contract in accordance with the provisions of Schedule 6 (Finance Schedule).

6.10 Operation of Accounts

6.10.1 Contractor's Fee Account

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

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

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

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

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

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

6.10.2 Payments Account

6.10.2.1 The Contractor shall maintain the Payments Account as a designated account for the making of payments of Allowable Costs and the receipt of payments from the Authority in respect of Allowable Costs.

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

6.10.2.2.1 any such credit interest shall first be used to reduce the amount of the charges which arise under the Approved Working Capital Facility and which would otherwise be chargeable to the Authority as Allowable Costs; and

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

relevant annual reconciliation.

6.10.2.3 The Contractor shall have available a daily cashflow analysis of the Payments Account which justifies the Agreed Payment Profile adopted for the reimbursement of Allowable Costs. The Contractor shall supply the Authority with a copy of such daily cashflow analysis of the Payments Account on request by the Authority.

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

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

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

6.10.3 Contractor's Receipts Account

6.10.3.1 The Contractor shall maintain the Contractor's Receipts Account as a designated account for the receipt of payment from Customers and the passing over of such payments to the Authority under Clause 6.8 (Category I and II Revenue).

6.10.3.2 Any interest which accrues on credit balances in the Contractor's Receipts Account shall be payable by the Contractor to the Authority as Category II Revenue in accordance with Clause 6.8.1 (Category I and II Revenue).

6.10.3.3 Payments shall only be made from the Contractor's Receipts Account in accordance with Clause 6.8 (Category I and II Revenue).

6.10.4 Foreign Exchange Accounts

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

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

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

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

6.10.4.2.3 such transfer of funds is required to make payments to creditors as they Fall Due and in accordance with Government Payment Obligations (save as otherwise agreed by the Authority in writing).

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

6.10.4.4 Interest on credit balances in Foreign Exchange Accounts shall be payable by the Contractor to the Authority as Category II Revenue on a daily basis.

6.10.4A Other Accounts

Save with the approval of the Authority (not to be unreasonably withheld), the Contractor shall not have and/or operate any bank or similar accounts other than the Contractor's Fee Account, Payments Account, Contractor's Receipts Account and the Foreign Exchange Accounts.

6.10.5 Payments to Parent

6.10.5.1 Save as set out in the following provisions of this Clause 6.10.5 (Payments to Parent), the Contractor shall not without the prior written consent of the Authority make any payment to the Parent Body Organisation.

6.10.5.2 Notwithstanding Clause 6.3.1.13 (Financial Restrictions), the Contractor may make payments to the Parent Body Organisation where such payments are made by way of dividend and do not exceed the amount of the profits available for distribution (as defined in section 830 Companies Act 2006) of the Contractor earned by the Contractor during the period from and including the Commencement Date to the date of the payment of the relevant dividend.

6.10.5.3 For the purposes of calculating such distributable profits the Contractor will be required to apply the Accounting Policies and Procedures. To the extent that there is subsequently any change in the Accounting Policies and Procedures which shall result in a change in the economic effect of Clause 6.10.5.2 (Payments to Parent), then the Parties shall agree changes to such Clause to reflect the intention of the Parties. Any failure to agree such

changes shall be referred to the Dispute Resolution Procedure.

6.10.5.4 When calculating its profits available for distribution, the Contractor shall exclude income earned and expenditure incurred prior to the Commencement Date but which is, for whatever reason, only recognised in the accounts of the Contractor after the Commencement Date.

6.10.5.5 Following the Commencement Date, the Contractor shall prepare and supply to the Authority a written policy paper which shall:

6.10.5.5.1 clearly define the process for how profits available for distribution shall be determined;

6.10.5.5.2 set out the process which the Contractor will undertake to satisfy the Authority that any dividend which the Contractor pays is made in accordance with Clause 6.10.5.3 (Payments to Parent); and

6.10.5.5.3 state that the Contractor shall require the approval of the Authority before paying any dividends.

Once approved by the Authority such policy shall become the “**Dividend Payment Policy**”. Any dividend paid by the Contractor shall only be paid in accordance with the approved Dividend Payment Policy.

6.10.5.6 For the purposes of agreeing the financial position of the Contractor on the Commencement Date, the Contractor shall prepare a balance sheet of the Contractor as at the Commencement Date, and a profit and loss account of the Contractor for the period from 1 April 2008 up to but excluding the Commencement Date (together the “**Commencement Accounts**”). Such Commencement Accounts shall be prepared:

6.10.5.6.1 in accordance with the Accounting Policies And Procedures; and

6.10.5.6.2 subject thereto, on the basis that any discretions available to the management of the Contractor in the application of any specific policy or procedure, are exercised in the same way as in the previous statutory accounts of the Contractor.

- 6.10.5.7 The Commencement Accounts shall be prepared and agreed in accordance with the same procedures as are applicable to the “Transitional Balance Information” prepared under Paragraph 7 (Transitional Balances) of Part 3 (Payment of Allowable Costs) of Schedule 6 (Finance Schedule).
- 6.10.5.8 The balance sheets produced under Paragraphs 9 (Annual Reconciliation of Allowable Costs) and 11 (Final Reconciliation of Allowable Costs) of Part 3 (Payment of Allowable Costs) of Schedule 6 (Finance Schedule) will be used to agree the financial position of the Contractor at the end of each Contract Year, the termination or expiry of the Parent Body Agreement and on termination of this Contract. These shall be prepared on the same basis as the Commencement Accounts. If this shows that dividends have been paid in breach of Clause 6.10.5.2 (Payments to Parent), then the Parent Body Organisation will be required to procure repayment of the excess to the Authority or Contractor (as the Authority may direct).
- 6.10.5.9 The Contractor shall be entitled to make payment to the Parent Body Organisation in accordance with the Parent Body Agreement for the provision of support in accordance with Clause 16B (Provision of Support to the SLC) and Schedule 7 (Provision of Support to the SLC) of the Parent Body Agreement and in respect of Allowable Costs for the provision of Nominated Staff.
- 6.10.5.10 The Contractor shall be entitled to make payment to the Parent Body Organisation in respect of interests and capital repayments made in accordance with an Approved Working Capital Facility provided by the Parent Body Organisation.

6.11 Transparency and Auditing

- 6.11.1 At any time, the Authority may choose to exercise the rights set out in Clause 4.5 (Inspection and Audit) to audit the Contractor's determination of Costs as Allowable Costs or Disallowable Costs, the Contractor's claims for reimbursement of Allowable Costs, the reconciliation between payments made and accruals, the satisfaction of Payment Milestones and the Contractor's calculations of Fee.
- 6.11.2 The Contractor shall adopt a system of transparency and open book accounting which provides for all income, expenditure and other matters relating to the financial management and performance of the Contractor. The Contractor shall, at the request of the Authority, make such of its records available to the Authority as are necessary for the Authority to verify that such a system has been and is being adopted. The

Contractor shall ensure that its Subcontractors also comply with such transparency and reporting provisions by including a provision in the same terms, mutatis mutandis, as this Clause 6.11.2 (Transparency and Auditing) in its Subcontracts. The Authority shall have a right of access to the build up and calculations for each and every item of Cost that is used in the formulation of the prices and sums under this Contract. The Contractor shall procure that the Authority shall have the right to audit the Subcontractors and such Subcontractors' affiliates (to the extent that they have any involvement with the performance of the Contractor's obligations under this Contract) on the same basis.

6.12 Taxation

6.12.1 Tax - General

6.12.1.1 The Contractor shall take all reasonable actions to meet its Taxation compliance obligations, and in particular to assist in the reduction or elimination of any irrecoverable Taxation.

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

6.12.2 Corporation Tax

The Contractor:

6.12.2.1 agrees to prepare and submit to HMRC corporation tax computations on the basis of the principles agreed between HMRC and the Authority in the Code of Practice 10 Submission (the "COP 10");

6.12.2.2 undertakes not to seek agreement from HMRC to a treatment of any item in the corporation tax computations which is inconsistent with the COP 10, unless the Authority expressly consents in writing; and

6.12.2.3 shall produce a tax pack in respect of the accounting records maintained by the Contractor on behalf of the Authority in the form and to the frequency and timescales required by the Authority and respond to any queries on a timely basis such that the Authority is able to meet its taxation obligations.

6.12.3 VAT

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

particular:

- 6.12.3.1.1 shall maintain its registration for the purposes of the VATA;
 - 6.12.3.1.2 agrees properly to charge VAT and issue VAT invoices in respect of supplies made to Third Party customers;
 - 6.12.3.1.3 agrees properly to charge VAT and issue VAT invoices, in accordance with Schedule 6 (Finance Schedule), in respect of the reimbursement of Allowable Costs by the Authority;
 - 6.12.3.1.4 agrees properly to charge VAT and issue VAT invoices and credit notes as appropriate in respect of the Contract Price;
 - 6.12.3.1.5 agrees properly to prepare and submit VAT returns on a timely basis to HMRC and to seek recovery as far as possible of VAT incurred in respect of goods and services supplied to the Contractor;
 - 6.12.3.1.6 the Contractor shall be responsible for ensuring that it recovers all VAT and all foreign equivalents of VAT from the relevant Taxation Authority on all Costs on the relevant return form covering the period in which relevant invoices are issued to the Contractor by Third Parties regardless of when those invoices are posted to the Contractor's accounting system;
 - 6.12.3.1.7 agrees not to act inconsistently with the principles set out in this Contract; and
 - 6.12.3.1.8 agrees to apply to the relevant Taxation Authority within thirty (30) Calendar Days of the Commencement Date for an import VAT and duty deferment guarantee under the Simplified Import VAT Accounting regime and to liaise with the Authority to ensure that the application is processed as quickly as possible.
- 6.12.3.2 The Authority shall charge VAT in respect of the payments under the Property Leases and shall properly issue VAT invoices in respect thereof.
- 6.12.3.3 The Authority warrants that it has elected to waive exemption from VAT in accordance with the provisions of Paragraph 2 of Schedule 10 to VATA in respect of the Sites.

6.12.4 Withholding Taxes

- 6.12.4.1 Any payment made by the Authority or the Contractor under, or pursuant to the terms of, this Contract shall be made free and clear of all Taxation whatsoever save only for any deductions or withholdings required by applicable Law and any VAT payable in accordance with the terms of this Contract.
- 6.12.4.2 The Authority warrants that it is a company resident in the United Kingdom for the purposes of Part 15 of the Income Tax Act 2007.
- 6.12.4.3 The Contractor warrants that it is a company resident in the United Kingdom for the purposes of Part 15 of the Income Tax Act 2007.
- 6.12.4.4 Where the Contractor is or will be required to account under this Contract to the Authority in respect of any receipt from a Third Party, and such receipt is or may be subject to deductions or withholdings in respect of Taxation, the Contractor is required to take reasonable action necessary to obtain the payment without such deduction or withholding, or to recover all or part of the deduction or withholding.

6.12.5 Employee Taxes

The Contractor undertakes properly to make all National Insurance Contributions and sums payable to HMRC under the PAYE system in respect of emoluments and benefits paid or payable, and to make all deductions and retentions as should be made in accordance with the applicable Law.

6.12.6 Tax Returns

The Authority may, at the Authority's request, review tax returns and tax correspondence prior to their submission to the relevant Taxation Authority and the Contractor will take into account the Authority's reasonable comments provided that the timing of the provision of such comments takes into account any deadline for the relevant submission of which the Authority is aware and provided that the tax return or tax correspondence relates to a matter for which the Authority has financial responsibility.

6.12.7 Income Tax - Construction Industry Scheme Regulations

The Contractor shall comply with the obligations imposed on it by the CISR and the obligation of the Authority to make any payment under this Contract is subject to the

provisions of the CISR.

6.12.8 Tax Credits

6.12.8.1 The Contractor is obliged to take all actions reasonably necessary to obtain and maximise any research and development tax relief (including, for the avoidance of doubt, any payment from HMRC) that is or becomes available to it or a Subcontractor. In particular, the Contractor shall ensure that:

6.12.8.1.1 where research & development activity is undertaken by the Contractor which qualifies for research and development tax relief, the Contractor records in sufficient detail all costs and expenditure relevant to the relief so as to allow and maximise a valid claim to HMRC in relation to the full amount of the expenditure;

6.12.8.1.2 where research & development activity is carried out by a Subcontractor on behalf of the Contractor, or by a Sub-Subcontractor, the pricing of the relevant Subcontract and (where relevant) Sub-Subcontract reflects any research and development tax reliefs available to the Subcontractor and (where relevant) Sub-Subcontractor.

6.12.8.1.3 the Contractor makes a claim for the relief at the same time as or as soon as practicable after submitting its corporation tax return in respect of the period in which the relief may be claimed, and submits such return within the requisite timescale to avoid any interest or penalty.

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

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

6.12.8.2.1.1 calculate the anticipated benefits when it prepares estimates and revised estimates of corporation tax liability for the relevant year in order to determine the level of the payments which it is to make to HMRC

on account of corporation tax; and

6.12.8.2.1.2 notify the Authority of the level of such benefits each time that such estimates are made and also as and when the relevant return is submitted to HMRC;

6.12.8.2.2 notwithstanding the provisions of Schedule 6 (Finance Schedule) the amount of the Allowable Costs which are reimbursed by the Authority shall be reduced by [Redacted] % of the amount of the tax saved as a result of research and development tax relief, including a right to a payment of an associated tax credit, anticipated or shown in the Contractor's estimate of its corporation tax liability or within its submitted returns. This reduction shall be effected by the Contractor issuing to the Authority a credit note.

6.12.8.2.3 as and when the Contractor's research and development claim (including any right to a payment of an associated tax credit) is agreed by HMRC, the amount of the claim or right to payment shall be compared to the amount claimed in the relevant return. If the research and development tax relief (including any right to a payment of an associated tax credit) in the relevant estimate or return differs from that agreed by HMRC, then within 30 Calendar Days of the agreement with HMRC an adjustment shall be effected by way of credit or debit note or notes to ensure that the Authority has received or will receive [Redacted] % of:

6.12.8.2.3.1 the tax saved as a result of the use or set-off of the said relief (or which would have been saved but for any other claim made by or on behalf of the Contractor), or

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

Should the claim to HMRC be adjusted after this event, a further credit or debit note or notes will be issued to take the adjustment into account.

- 6.12.8.3 For the purposes of this Clause, tax shall not be treated as having been “saved”:
- 6.12.8.3.1 (to the extent that the research and development tax relief is not a right to a payment of a tax credit), until the last date upon which the Contractor or any person to whom the Contractor may surrender tax losses would have been obliged to make an actual payment of Tax (which it would otherwise have had to pay but for this tax relief or any other claim made by it or on its behalf) in order to avoid incurring any fine, penalty or interest in respect of unpaid Tax; and
 - 6.12.8.3.2 (to the extent that the research and development tax credit is a right to a payment of a tax credit), until the date on which the Contractor receives or would but for any other event have received cleared funds in respect of such repayment had a claim been made.
- 6.12.8.4 For the purposes of this Clause 6.12.8 (Tax Credits), the Contractor shall be deemed to use any available research and development relief in advance of all other tax reliefs (other than Pre-Commencement Reliefs) available to it. Further, to the extent that the Contractor surrenders tax losses to any person, the losses surrendered shall be deemed to include any unutilised research and development tax relief and shall be considered to be utilised at the time that the recipient is next obliged to make an actual payment of Tax (which it would otherwise have had to pay but for the surrender of the tax losses) in order to avoid incurring any fine, penalty or interest in respect of unpaid Tax.
- 6.12.8.5 Where the Authority receives any credit note under this Clause 6.12.8 (Tax Credits), the Authority shall be entitled to set the amount of the credit note off against any amount payable by the Authority to the Contractor under this Contract or to demand repayment of the amount the subject of the credit note within 30 days of the relevant demand.
- 6.12.8.6 Where the Contractor issues a debit note under this Clause 6.12 (Taxation), the Authority shall:
- 6.12.8.6.1 if its cash flow position reasonably allows, settle the note within thirty (30) Calendar Days of its receipt by the Authority;

6.12.8.6.2 if its cash flow position does not reasonably allow the Authority to make the payment under 6.12.8.6.1 (Tax Credits) above, settle the note as soon as reasonably practicable.

6.12.8.7 This Clause shall continue to apply for up to a period of [Redacted] years following the termination of this Contract but only to the extent that it relates to research and development tax relief which the Contractor claims or is entitled to claim in respect of expenditure incurred prior to the date of termination of this Contract.

6.12.9 Pre Commencement Reliefs

6.12.9.1 The Contractor is obliged to inform the Authority of any benefit anticipated or received by the Contractor in respect of a Pre Commencement Relief. Further, the Contractor shall:

6.12.9.1.1 calculate the anticipated benefit when it prepares estimates and revised estimates of corporation tax liability for the relevant year in order to determine the level of payments which it is to make to HMRC on account of corporation tax; and

6.12.9.1.2 notify the Authority of the level of such benefit each time such estimates are made and also as and when the relevant return is submitted to HMRC.

6.12.9.2 Notwithstanding the provisions of Schedule 6 (Finance Schedule) the amounts of Allowable Costs which are reimbursed by the Authority shall be reduced by one hundred per cent (100%) of the amount of Tax saved, as a result of Pre Commencement Reliefs utilised after the Commencement Date, anticipated or shown in the Contractor's estimate of its corporation tax liability or within its submitted returns. This reduction shall be effected by the Contractor issuing to the Authority a credit note.

6.12.9.3 As and when the Contractor's corporation tax return and claim for Pre Commencement Reliefs utilised is agreed by HMRC, the amount of the losses utilised shall be compared to the amount claimed in the relevant return. If the amount of Pre Commencement Reliefs utilised and the relevant estimate or return differs from that agreed by HMRC, then within thirty (30) Calendar Days of the agreement with HMRC an adjustment shall be effected by way of credit note or debit note or notes to ensure that the Authority has received or will receive one hundred per cent (100%) of the tax saved as a result of the use of Pre Commencement Reliefs. Should

the claim to HMRC be adjusted after this event, a further credit or debit note or notes will be issued to take the adjustment into account.

6.12.9.4 For the purposes of this clause Tax shall not be treated as having been “saved”:

6.12.9.4.1 until the last day upon which the Contractor or any person to whom the Contractor may surrender tax Pre Commencement Reliefs would have been obliged to make an actual payment of tax (which it would otherwise have had to pay but for the utilisation of these Pre Commencement Reliefs) in order to avoid incurring any fine, penalty or interest in respect of unpaid tax.

6.12.9.5 For the purposes of this Clause 6.12.9 (Pre Commencement Reliefs), the Contractor shall be deemed to use any available Pre Commencement Reliefs in advance of all other tax reliefs available to it. To the extent that the Contractor surrenders Reliefs to any person, the Reliefs surrendered shall be deemed to include any Pre Commencement Reliefs and shall be considered to be utilised at a time when the recipient is next obliged to make an actual payment of tax (which it would have otherwise had to pay but for the surrender of the Reliefs) in order to avoid incurring any fine, penalty or interest in respect of unpaid tax.

6.12.9.7 The provisions of Clauses 6.12.8.5 (Tax Credits), 6.12.8.6 (Tax Credits) and 6.12.8.7 (Tax Credits) shall apply mutatis mutandis to this Clause 6.12.9 (Tax Credits).

6.13 Review of LTP

6.13.1 Within the first [Redacted] Months of the Commencement Date an LTP review team led by the Contractor, consisting of the Contractor, the Parent Body Organisation, the Authority and supported by an independent Third Party (to be agreed between the Contractor, the Parent Body Organisation and the Authority), shall complete a review of each LTP. The purpose of the review will be to validate the appropriateness and sufficiency of the scope, estimates and durations contained in each LTP to adequately measure the efficiency of the Contractor in relation to its activities or intended activities as such are detailed in the relevant LTP. The LTP review team shall be instructed to produce a report (the “**LTP Review Report**”). The LTP validation exercise will remove errors in the LTPs. If, as a consequence of removing such errors, it becomes apparent that the Contractor has received Efficiency Fee which would not have been payable had the errors in question not been present, the Authority will not

seek to recover the overpaid Efficiency Fee. However, Efficiency Fee will be paid against the corrected LTP for the remainder of the Term.

- 6.13.2 The results of the LTP Review Report shall be considered by the Parties who will discuss in good faith and agree any necessary changes to the LTPs. If the Parties cannot reach agreement on any necessary changes within [Redacted] Months of receipt of the LTP Review Report by the Authority, any changes shall be determined in accordance with Clause 13 (Disputes). For the avoidance of doubt no such changes shall operate retrospectively in relation to any earlier calculation of Efficiency Fee.
- 6.13.3 Subject to Clause 6.13.2 (Review of LTP), the provisions of Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure) shall apply to any Change Proposal relating to an LTP.
- 6.13.4 At least six (6) Months before the end of the Initial Period the Contractor shall produce a re-baseline of each LTP (the “**Rebaselined LTPs**”) for the purposes of setting a revised LTP baseline to be used for the ensuing extension of the term of the Parent Body Agreement. In calculating the Rebaselined LTPs the Contractor shall use the highest (i.e. best performance) of the cost performance indicators and schedule performance indicators (as such are measured against the LTPs) for the average over (i) twelve (12) Months, (ii) twenty-four (24) Months and (iii) thirty-six (36) Months prior to the date of the re-baselining.
- 6.13.5 The Contractor shall submit the Rebaselined LTPs to the Authority as soon as reasonably practicable after they have been produced and in any event no later than four (4) Months before the end of the Initial Period. The Authority shall review the Rebaselined LTPs and the Parties will thereafter discuss in good faith and agree any necessary changes to them. If the Parties cannot reach agreement on the Rebaselined LTPs within one (1) Month of receipt of the Rebaselined LTPs by the Authority, any changes shall be determined in accordance with Clause 13 (Disputes).

7. ASSET MANAGEMENT

7.1 Right to deal with Authority Assets

7.1.1 From the Commencement Date until the expiry or earlier termination of this Contract, the Authority licences the Contractor:

7.1.1.1 to use the Authority Assets; and

7.1.1.2 to sell Authority Assets in accordance with the terms of the Customer Contracts;

to enable the Contractor to:

(A) perform the Tasks; and

(B) discharge its obligations pursuant to Nuclear Site Licences and all other relevant Regulatory Requirements,

but, save where authorised by or reasonably incidental to the performance of any obligation imposed by this Contract, the Contractor may not otherwise sell, dispose, let or otherwise part with the possession of Authority Assets without the prior written consent of the Authority.

7.1.2 The licence granted to the Contractor by Clause 7.1.1 (Right to deal with Authority Assets) above is personal to the Contractor and shall not be capable of being assigned or in any way otherwise dealt with or disposed of.

7.1.3 The Contractor shall not by virtue of the licence granted by Clause 7.1.1 (Right to deal with Authority Assets) above (or otherwise) claim to be or become entitled to any estate right or interest in or exclusive possession of the Authority Assets.

7.2 Objects of Antiquity or Value

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

7.3 Condition of Authority Assets

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

7.4 Use of Authority Assets

- 7.4.1 The Contractor shall not, without the prior written consent of the Authority, use the Authority Assets other than in fulfilment of its obligations under this Contract, applicable Law and/or Regulatory Requirements.
- 7.4.2 The Authority shall be entitled to require that:
- 7.4.2.1 any movable Authority Asset be redeployed for use on behalf of the Authority at any place outside the Site provided that such redeployment will not impede or prevent the Contractor from performing its obligations under this Contract; and/or
 - 7.4.2.2 the Contractor utilise any other movable asset deployed to the Site by the Authority in the Contractor's performance of its obligations under this Contract.
- 7.4.3 The care and maintenance of any Authority Asset redeployed pursuant to Clause 7.4.2.1 (Use of Authority Assets) above shall be the responsibility of the Authority until such time as the Authority Asset is returned to the Site. The care and maintenance of any other movable asset deployed to the relevant Site pursuant to Clause 7.4.2.2 (Use of Authority Assets) above shall be the responsibility of the Contractor until the Authority procures the removal of such movable asset from the Site.

7.5 Maintenance of Site and Authority Assets

- 7.5.1 Save to the extent that it is the responsibility of a Third Party pursuant to a Tenancy Document, the Contractor shall maintain the Site in accordance with the provisions of the LTP and shall maintain, service and repair the Authority Assets in accordance with the Contractor's Internal Procedure relating to asset management.
- 7.5.2 The Contractor shall maintain a current and accurate Site Maintenance Register and supply a copy of that register to the Authority upon request.
- 7.5.3 The Contractor shall create the Asset Register which shall be completed no later than [Redacted] months after the Commencement Date.
- 7.5.4 The Contractor shall maintain the Asset Register as current and accurate and shall allow the Authority to inspect the Asset Register at any time upon reasonable notice.
- 7.5.5 The Contractor shall appoint and keep appointed a suitability qualified person who

shall have been previously approved by the Authority (such approval not to be unreasonably withheld) to manage the Site.

7.5.6 The Site Manager shall (inter alia):

7.5.6.1 appoint a suitably experienced person as a deputy and shall forthwith following the deputy's appointment notify the Authority of the identity of such person; and

7.5.6.2 liaise regarding the management of the Site with the person(s) at the Authority notified by the Authority to the Contractor from time to time.

7.6 Necessary Consents

7.6.1 The Contractor shall be required to use best endeavours to procure and maintain Nuclear Site Licences and Environmental Agency licences, authorisations, permits or consents or any other licence or permit necessary to enable it to access, occupy and use the Site for the purpose of fulfilling its obligations under this Contract.

7.6.2 Save as provided in Clause 7.6.1 (Necessary Consents) above, the Contractor shall only be obliged to use reasonable endeavours to procure any Consent necessary for the purpose of fulfilling its obligations under this Contract.

7.6.3 The Authority will provide reasonable assistance to the Contractor in the procuring of any Consent.

7.7 New Assets

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

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

7.7.3 Any New Assets must be purchased in accordance with the requirements of Schedule 5 (Subcontracting/Procurement Schedule).

7.8 Customer Contracts

7.8.1 Without prejudice to Clause 3.6.3 (Authority's right to instruct) and Clause 7.1.3 (Right to deal with Authority Assets), if, at the Commencement Date, the terms of any

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

- 7.8.2 If a Customer Contract provides for the transfer of title in Authority Assets to the Customer, the Contractor shall request the Authority's prior written consent to such transfer of title in accordance with the terms of the Customer Contracts.

8. INTELLECTUAL PROPERTY

8.1 Licence of Authority IP to Contractor

8.1.1 In consideration of a fee of £1,000 (one thousand pounds sterling) per annum (the “**Licence Fee**”), the Authority hereby grants to the Contractor a non-transferable, non-exclusive, royalty-free licence to use the Authority IP during the term of this Contract for the purpose of fulfilling its obligations under this Contract. The Contractor shall have the right to sub-license to such Subcontractors as are approved by the Authority to use the Authority IP in the performance of their Subcontracts, but shall have no other rights to sub-license the Authority IP without the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed).

8.1.2 The Contractor acknowledges that nothing in this Contract shall constitute any representation or warranty by the Authority in respect of the Authority IP and, in particular, acknowledges that the Authority does not represent or warrant that any registered Authority IP is valid or that any application for registration or grant will proceed to registration or grant or will remain registered.

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

8.2 The Licence Fee

8.2.1 The Licence Fee is a VAT exclusive amount and is payable by the Contractor in advance by way of one payment on 1 April in each Contract Year (the first payment being due on the Commencement Date).

8.3 IP Contributed by Parent Body Organisation

Licence to Authority and Contractor

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

8.3.1.1 any such IP that is made available (whether at the Commencement Date or at any time during the term of this Contract) by the Parent Body Organisation to the Contractor for the purpose of fulfilling its obligations

under this Contract or is used by the Contractor for the purposes of fulfilling its obligations in relation to the Site under this Contract, but excluding the Required Parent IP (the “**Delivered Parent IP**”); and

- 8.3.1.2 any IP from which any Developed IP has been lawfully developed that is directly or indirectly required to enable the Authority or its licensees to use or exploit such Developed IP (the “**Required Parent IP**”),

shall be, and is hereby, in consideration of the Authority’s obligations under this Contract, licensed in perpetuity to the Authority (in its application as of the Commencement Date where applicable) for utilisation in the Authority Field of Use and, in the case of Required Parent IP, limited to the extent required to enable the Authority or its licensee to use or exploit the relevant Developed IP, without payment of royalty fees (except to the extent otherwise agreed). The Delivered Parent IP and the Required Parent IP shall together be referred to as the “**Parent IP**”. The Contractor shall implement procedures and systems to record and track Delivered Parent IP and Required Parent IP.

- 8.3.2 The Authority shall have the right to sub-license the Parent IP to the Contractor in perpetuity who in turn shall be entitled to grant sub-licences to such of its Subcontractors as are approved by the Authority to use the Parent IP in the performance of their Subcontracts, in each case without payment of royalty fees. Such sub-licence of Parent IP to the Subcontractors shall contain terms that are materially similar to the terms contained in the Authority's licence from the Parent Body Organisation and the Contractor's follow-on licence from the Authority.

- 8.3.3 Subject to the Parent Body Organisation's consent (such consent not to be unreasonably withheld or delayed), the Authority shall have the right to sub-license the Delivered Parent IP to other SLCs for use in relation to their activities falling within the Authority Field of Use on any Designated Sites (including the right for such SLCs to grant further sub-licences to their subcontractors limited to such purpose) without payment of royalty fees (except as provided in Clause 8.3.4A (Licence to Authority and Contractor)). The Authority's right to use and sub-license the Delivered Parent IP shall remain in force both during the term of this Contract and after this Contract has expired or has been terminated until the Authority reasonably determines that the Delivered Parent IP is no longer needed in relation to any Designated Sites for which the Authority has obtained the rights to use the Delivered Parent IP.

- 8.3.4 The Authority shall have the right to sub-license the Required Parent IP to third parties including other SLCs (subject in the case only of a license to a third party other than another SLC to the Parent Body Organisation’s consent, such consent not to be unreasonably withheld or delayed) for use in relation to their activities falling within

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

8.3.4A Any Parent IP that is of particular value to the Parent Body Organisation is detailed in Schedule 8 (Intellectual Property Schedule) (the “**Reserved Parent IP**”). Any licence granted by the Authority pursuant to Clauses 8.3.3 (Licence to Authority and Contractor) and 8.3.4 (Licence to Authority and Contractor) shall be subject to the payment of such reasonable royalty as the Authority and the Parent Body Organisation shall agree.

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

Licensing of Parent IP contained in Developed IP

8.3.5 For the avoidance of doubt, Parent IP that is contained in or forms the basis or background of any IP developed by or on behalf of the Contractor (including by Subcontractors) or is otherwise required for the use of such Developed IP, either

during the term of this Contract or after this Contract has expired or terminated shall, with respect to such Parent IP, be treated for licensing purposes in the same manner as Required Parent IP.

Infringement of Parent IP by Third Parties

- 8.3.6 In the case of any infringement or suspected infringement by any Third Party of Parent IP which is licensed to the Authority pursuant to this Clause 8.3 (Licence to Authority and Contractor), the Contractor, in consultation with the Authority, shall promptly notify the Parent Body Organisation and shall take such reasonable direction as the Parent Body Organisation may provide for purposes of the Parent Body Organisation's response to such infringement or suspected infringement.

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

The Contractor shall establish procedures (which shall be audited on reasonable notice by the Authority from time to time) under which the identification, protection, exploitation and ownership of Developed IP is evaluated in accordance with the principles set out in the provisions of this Clause 8.4 (Authority's Rights to IP developed by or on behalf of the Contractor and/or Subcontractors) and under which the Contractor shall seek approval from the Authority as required under this Clause 8.4 (Authority's Rights to IP developed by or on behalf of the Contractor and/or Subcontractors). IP created by or on behalf of the Contractor and/or by Subcontractors during the performance of this Contract ("**Developed IP**") shall be owned in accordance with the following provisions (subject to the terms of any agreement for introduction of Excluded Parent IP and any contrary terms agreed by the Authority in respect of any Subcontract):

Ownership by Authority of Developed IP created by the Contractor

- 8.4.1 The Authority shall own any Developed IP created by the Contractor, subject to any pre-existing rights of third parties and of the Parent Body Organisation. The Contractor hereby assigns to the Authority all its right, title and interest in any Developed IP created by it on or at any time after the date hereof.

Ownership of Developed IP by the Authority

- 8.4.2 Without prejudice to Clause 8.4.1 (Ownership by Authority of Developed IP created by the Contractor) the Authority shall own any Developed IP which the Authority, having regard to any views of OCNS, reasonably determines: (i) raises or which may raise security issues relating to the use of such Developed IP (including without

limitation where the use or disclosure of such Developed IP could compromise the security of any Designated Site, facilities, equipment or materials relating to any Designated Site); and/or (ii) is of Strategic Interest to the Authority and/or to United Kingdom business.

- 8.4.3 As between the Authority and the Contractor 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 IP including Developed IP.

Ownership of Developed IP created by or on behalf of Subcontractors

- 8.4.4 Not used

- 8.4.5 The Authority acknowledges that it may be appropriate, in certain circumstances, for such Developed IP that falls outside the provisions of Clauses 8.4.2 (Ownership of Developed IP by the Authority) and 8.4.3 (Ownership of Developed IP by the Authority) to be owned by the Subcontractor. The Contractor, on behalf of any Subcontractor, may give written notice to the Authority that the Subcontractor wishes to retain ownership of such Developed IP. Following receipt of such notice, the Authority, in consultation with the Contractor on behalf of any Subcontractor, shall determine the ownership of such Developed IP (such determination to be in the sole discretion of the Authority).

Access to and use of information by the Authority

- 8.4.6 Notwithstanding ownership of any Developed IP by the Contractor or Subcontractor and without prejudice to the provisions of Clause 4.2 (Records) and Clause 4.5 (Inspection and Audit), the Contractor shall ensure that the Authority shall be entitled to access, use and disclose all and any information created, received or maintained by or on behalf of the Contractor and the Subcontractor, the latter in the course of carrying out obligations under the relevant Subcontract, whether from use or application of the Developed IP or otherwise that is reasonably required by the Authority for any purpose insofar as permitted by Law. For the avoidance of doubt information shall not be treated as having been received by the Contractor on the basis that it is known to or in the possession of any:

- 8.4.6.1 Nominated Staff; or

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

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

Further Assurance

- 8.4.7 In respect of any Developed IP owned by the Authority pursuant to Clauses 8.4.1 (Ownership by Authority of Developed IP created by the Contractor), 8.4.2 (Ownership of Developed IP by the Authority) and 8.4.3 (Ownership of Developed IP by the Authority) and 8.4.5 (Ownership of Developed IP created by or on behalf of Subcontractors) the Contractor shall (and shall procure that any Subcontractor shall) execute such further documents and do such further acts as the Authority reasonably requires to give full effect to the terms of this Clause 8 (Intellectual Property) and perfect the Authority's title to any such Developed IP.

Identification of IP owned by the Subcontractor and Licence of IP owned by the Subcontractor to Authority

- 8.4.8 The Contractor shall procure that any Subcontractor identifies and declares to the Contractor prior to entering into its Subcontract any IP which the Subcontractor owns immediately prior to the commencement of the Subcontract which is to be used in the performance of the Subcontract. In respect of any such IP, the Contractor shall procure that the Subcontractor shall grant to the Authority a non-exclusive, perpetual, irrevocable, royalty-free licence to use such IP within the Authority Field of Use together with the right to license such IP to any third party including any other SLC without the consent of the Subcontractor, and permitting any SLC itself to sub-license its rights under any such sub-licence to any of its sub-contractors without the consent of the Subcontractor.

Licence to the Authority of IP licensed to the Subcontractor

- 8.4.9 In respect of any IP that is licensed to the Subcontractor immediately prior to the commencement of the Subcontract or at any time during the term of the Subcontract and is used by the Subcontractor in the performance of its Subcontract, the Contractor shall procure that the Subcontractor shall use all reasonable endeavours to procure a licence for the Authority on reasonable terms which enables the Authority to use such IP within the Authority Field of Use together with the right to license that IP to any third party including any other SLC without the consent of the licensor, and permitting any SLC itself to sub-license its rights under any such sub-licence to any of its sub-contractors without the consent of the licensor.

Licence of Developed IP from Subcontractor to Authority

8.4.10 Subject to Clause 8.4.11 (Licence of Background IP from Subcontractor to Authority) and Clause 8.4.10A (Licence of Developed 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 a non-exclusive, perpetual, irrevocable, royalty-free licence to use such Developed IP within the Authority Field of Use together with the right to license such Developed IP to any third party including any other SLC without the consent of the Subcontractor, and permitting any SLC itself to sub-license its rights under any such sub-licence to any of its sub-contractors without the consent of the Subcontractor.

8.4.10A The Contractor shall be relieved of its liability contained in Clause 8.4.10 (Licence of Developed IP from Subcontractor to Authority) to procure a Subcontractor licence in favour of the Authority to the extent that the Parties agree (acting reasonably) that it would be better value for money from the Authority's perspective to adopt an alternative course of action in relation to the Developed IP owned by the Subcontractor.

Licence of Background IP from Subcontractor to Authority

8.4.11 The Contractor shall procure that any Subcontractor shall grant to the Authority a non-exclusive, perpetual, irrevocable, royalty-free licence to use any IP owned by that Subcontractor that is contained in or forms the basis or background of any Developed IP ("**Background IP**") together with the right to sub-license such Background IP to any third party including any other SLC for use in relation to their activities falling within the Authority Field of Use without the consent of the Subcontractor and without payment of royalty fees, and permitting any SLC itself to sub-license its rights under any such sub-licence to any of its sub-contractors for use in relation to their activities falling within the Authority Field of Use without the consent of the Subcontractor and without payment of royalty fees.

8.4.11A The Contractor shall be relieved of its liability contained in Clause 8.4.11 (Licence of Background IP from Subcontractor to Authority) to procure a Subcontractor licence in favour of the Authority to the extent that the Parties agree (acting reasonably) that it would be better value for money from the Authority's perspective to adopt an alternative course of action in relation to the Background IP owned by the Subcontractor.

Contractor's Notification of Developed IP

8.4.12 The Contractor shall procure that any Subcontractor shall promptly notify the Contractor of any IP which is created and/or developed by the Subcontractor during the performance of its Subcontract. The Contractor shall promptly notify the Authority of any such Developed IP and any Developed IP created by the Contractor itself. To the extent that the ownership of Developed IP created by or on behalf of the Subcontractor has not been determined prior to the commencement of the Subcontract the Authority may (in line with the Authority's Policy, Strategy and Procedures as agreed or determined from time to time through Changes in accordance with Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure)) determine whether such Developed IP should be owned by the Authority in accordance with the provisions of Clauses 8.4.2 (Ownership of Developed IP by the Authority) and 8.4.3 (Ownership of Developed IP by the Authority) and 8.4.5 (Ownership of Developed IP created by or on behalf of Subcontractors).

Use of Developed IP by the Subcontractor

8.4.13 If the Authority so requires, the Contractor shall procure that, in the event that the Subcontractor exploits or licenses the use of Developed IP owned by the Subcontractor outside the Authority Field of Use, the Subcontractor shall negotiate in good faith with the Authority appropriate payment (which may include royalties and/or lump sum payments) to the Authority.

Licence to Parent Body Organisation

8.4.14 Subject to the reasonable terms of the Authority (which may include payment of reasonable royalties or fees), the Authority will grant to the Parent Body Organisation a world-wide licence (which is freely assignable or sub-licensable) to use for purposes other than activities falling within the Authority Field of Use any Developed IP which vests in the Authority pursuant to Clauses 8.4.1 (Ownership by Authority of Developed IP created by the Contractor), 8.4.2 (Ownership of Developed IP by the Authority) or 8.4.5 (Ownership of Developed IP created by or on behalf of Subcontractors), provided that where the basis or background of the Developed IP is Parent IP such licence to the Parent Body Organisation shall be on an exclusive basis. The Authority shall execute such further documents and do such further acts as the Parent Body Organisation reasonably requires to give full effect to the terms of this Clause 8.4.14 (Licence to Parent Body Organisation).

Exclusion of Parent IP from Developed IP

- 8.4.15 For the avoidance of doubt, Developed IP created by or on behalf of the Contractor (including Subcontractors) and which vests in the Authority pursuant to Clause 8.4.1 (Ownership by Authority of Developed IP created by the Contractor), 8.4.2 (Ownership of Developed IP by the Authority) and 8.4.3 (Ownership of Developed IP by the Authority) or 8.4.5 (Ownership of Developed IP created by or on behalf of Subcontractors) above shall exclude any Parent IP under Clause 8.3 (IP Contributed by Parent Body Organisation) or any Third Party IP under Clause 8.7 (Third Party IP) that may form the basis or background of such Developed IP.

Protection of Developed IP

- 8.4.16 Where any Developed IP vests in the Authority pursuant to Clauses 8.4.1 (Ownership by Authority of Developed IP created by the Contractor), 8.4.2 (Ownership of Developed IP by the Authority) and 8.4.3 (Ownership of Developed IP by the Authority) or 8.4.5 (Ownership of Developed IP created by or on behalf of Subcontractors), the Contractor shall seek (and shall procure that any relevant Subcontractor seeks) reasonable and necessary protection in respect of such Developed IP by way of patent applications or otherwise as the Authority may reasonably direct, at the Authority's costs to the extent Allowable in accordance with this Contract. The Contractor shall keep the Authority advised as to all developments with respect to any such applications and assign the rights arising therefrom to the Authority.

Warranty

- 8.4.17 The Contractor warrants (and shall procure that any Subcontractor warrants) that the use and licensing of any Developed IP within the Authority Field of Use (and in accordance with the terms of any relevant licence granted pursuant to this Contract) shall not infringe the IP rights of any Third Party.

Register of IP

- 8.4.18 The Contractor shall (and shall procure that any Subcontractor shall) maintain an up to date register of the details of all Developed IP including details of the owner of such Developed IP, and the terms on which any Developed IP is licensed by the Contractor (or Subcontractor, as the case may be) to any third party.

8.5 Infringement of IP owned by the Authority

8.5.1 The Contractor shall immediately give notice in writing to the Authority if it becomes aware of any:

8.5.1.1 actual, suspected or threatened infringement of any of the IP owned by the Authority (including Developed IP which vests in the Authority pursuant to Clause 8.4 (Authority's Rights to IP developed by or on behalf of the Contractor and/or Subcontractor) above) ("**Authority Owned IP**"); or

8.5.1.2 allegation, complaint, or Legal Proceedings made, raised or threatened by any Third Party that Authority Owned IP infringes the rights of any Third Party.

8.5.2 In the case of any actual or threatened infringement or suspected infringement by any Third Party of Authority Owned IP of which the Contractor is aware or ought reasonably to be aware:

8.5.2.1 the Contractor shall, in consultation with the Authority, decide what action, if any, to take including the bringing of Legal Proceedings in the name of the Authority;

8.5.2.2 the Contractor shall, subject to the Authority's approval (not to be unreasonably withheld or delayed), have control over and conduct of any such Legal Proceedings;

8.5.2.3 the Contractor shall keep the Authority informed as to all developments and steps taken by it or by any Third Party in relation to any infringement or suspected infringement;

8.5.2.4 the Contractor shall not knowingly make any admission other than to the Authority or with the Authority's consent and the Authority will provide the Contractor with all assistance as it may reasonably require and request in connection with the Contractor conduct of any Legal Proceedings. Such assistance may include the Authority at its cost, agreeing to be joined as a party in any such Legal Proceedings brought by the Contractor pursuant to Clause 8.5.2.2 (Infringement of IP owned by the Authority); and

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

8.6 Not used.

8.7 Third Party IP

- 8.7.1 In the event that the Contractor wishes to use third party IP for the purpose of fulfilling its obligations in relation to the Site under this Contract (“**Third Party IP**”) it shall discuss with the Authority whether the Authority wishes to have a licence of the Third Party IP. In the event that the Authority indicates a desire to have such a licence the Contractor shall use all reasonable endeavours to procure a licence for the Authority on reasonable terms which enable the Authority to use and to sub-license to the Contractor the Third Party IP and, if the Authority indicates a further desire, the Contractor shall use all reasonable endeavours also to procure for the Authority the right to sub-license the Third Party IP to other site licensee companies for use in relation to activities falling within the Authority Field of Use on any other Designated Sites. The Contractor also shall use all reasonable endeavours to procure that any licence from the third party to the Authority shall remain in force until the Authority reasonably determines that the Third Party IP is no longer needed in relation to the carrying out of its functions in relation to the Site and, where applicable, any other Designated Site. For the avoidance of doubt, this Clause 8.7.1 (Third Party IP) shall not apply to IP that is licensed by a third party to any Subcontractor to which the provisions of Clause 8.4.10 (Licence of Developed IP from Subcontractor to Authority) apply.
- 8.7.2 The Contractor shall (and shall procure that any Subcontractor shall) maintain an up to date register of the details of any Third Party IP licensed to the Contractor or the Subcontractor (as the case may be) for the purposes of this Contract or any Subcontract relating thereto including the principal terms in respect thereof.

8.8 Contractor's obligation to protect IP

The Contractor shall take all such reasonable and necessary steps to protect Authority Owned IP. Among other things, the Contractor shall keep the Authority informed of all matters relevant to the protection of the Authority Owned IP and, if requested by the Authority, make applications for patents, diligently prosecute any patent applications, respond to oppositions filed by third parties, assign the patent rights to the Authority and maintain any patents (including the payment of renewal fees). The Authority, at its cost, will provide the Contractor with all assistance as it may reasonably require and request in the protection and maintenance of the Authority Owned IP.

8.9 Use and Sharing of Information and Know-How

Subject to Clause 10 (Confidentiality, Security and Compliance with Law), the Contractor shall, save to the extent prohibited by applicable Law or any obligation of confidence imposed on the Contractor by any Subcontract or other agreement entered into by the Contractor in accordance with this Contract, share information and know-how relating to activities falling within the Authority's Field of Use with the Authority and with Third Parties as directed by the Authority.

8.10 Back-up and Storage

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

8.11 Documents and Other Materials

- 8.11.1 At the Authority's request the Contractor shall provide to the Authority any documents and other materials in any form and any other articles (including copies) in its possession or control bearing or embodying any of the Authority IP created on or after the Commencement Date subject to any pre-existing rights of third parties and the Parent Body Organisation.
- 8.11.2 In the event of expiry or termination of this Contract, the Contractor shall preserve and shall deliver-up to the Authority all documents and other materials in any form and all other articles (including copies) in its possession or control bearing or embodying any of the Authority IP subject to any pre-existing rights of third parties and the Parent Body Organisation.

9. INFORMATION TECHNOLOGY

9.1 NISR and Other Statutory Obligations

9.1.1 The Contractor shall at all times comply with, and the provisions of this Clause 9.1 (NISR and Other Statutory Obligations) shall be without prejudice to, any obligations, restrictions or directions imposed on the Contractor by:

9.1.1.1 the provisions of the NISR and any direction or approval given by the OCNS pursuant thereto; and

9.1.1.2 any other applicable Law or regulations relevant to information security.

9.1.2 The Contractor shall, if requested by the Authority, promptly provide to the Authority all information and documents necessary to evidence such compliance.

9.1.3 The Contractor shall promptly notify the Authority in the event that the Contractor becomes aware of:

9.1.3.1 any breach of Clause 9.1.1 (NISR and Other Statutory Obligations); or

9.1.3.2 any notice received by the Contractor alleging a breach or a possible breach of the matters referred to in Clause 9.1.1 (NISR and Other Statutory Obligations),

and the Contractor shall provide to the Authority all such information in relation thereto as the Authority reasonably requests.

9.2 Access to Authority IT Systems and the Site IT Systems

In the event that, with the agreement of the Authority, the Contractor has access to any Authority IT Systems, the Contractor shall comply with such reasonable requirements in relation to the security thereof as the Authority shall specify from time to time in writing. In the event that, pursuant to this Contract or otherwise with the agreement of the Contractor, the Authority has access to any of the Site IT Systems, the Authority shall comply with such reasonable requirements in relation to the security thereof as the Contractor shall specify from time to time in writing.

9.3 Inspections

Without prejudice or limitation to the Contractor's obligations under Clause 4.5 (Inspection and Audit), the Contractor shall allow the Authority to co-ordinate any inspection by or on behalf of the Authority of the Site IT Systems with any inspection thereof being performed by or on behalf of the OCNS, and shall permit the OCNS to share with the Authority the results of any such inspection by or on behalf of the OCNS.

9.4 Maintenance and Support and Business Continuity

9.4.1 Without prejudice to the Contractor's obligations under the LTPs, the Contractor shall at all times ensure that the Critical Site IT Systems are maintained and supported in accordance with Good Industry Practice, and in particular, subject to the provisions in Part 1 (Critical IT Systems) of Schedule 9 (Information Technology Schedule), the Contractor shall at all times ensure that all material components of Critical Site IT Systems are of a version which is supported by the manufacturer or supplier thereof.

9.4.2 The Contractor shall at all times maintain and put into effect business continuity and disaster recovery plans in respect of the Critical Site IT Systems consistent with ISO/IEC 17799 and Good Industry Practice.

9.5 Changes to Site IT Systems

9.5.1 Without prejudice to the Contractor's obligation to comply with the Regulatory Requirements of the OCNS and the HSE in respect of the Site IT Systems and its ability to make emergency fixes to the Site IT Systems in accordance with the Contractor's documented Internal Procedures (which procedures shall meet with the Authority's approval), the Contractor shall not without the Authority's prior written consent make any material alteration to any of the Critical Site IT Systems, including without limitation:

9.5.1.1 the introduction of any new data or voice circuits to or from the Site or new or altered interfaces to external IT Systems;

9.5.1.2 the introduction of any new or altered Software which requires the reconfiguration of any application external to the Site and not maintained by the Contractor, or which alters the interfaces referred to in Clause 9.8 (Data Interfaces); and

9.5.1.3 any alteration which has or may have a material impact on safety at the Site and/or the security of a Critical Site IT System.

- 9.5.2 Without prejudice to the Contractor's obligation to comply with the Regulatory Requirements of the OCNS and the HSE in respect of the Site IT Systems and its ability to make emergency fixes to the Site IT Systems in accordance with the Contractor's documented Internal Procedures (which procedures shall meet with the Authority's approval), the Contractor shall not without the Authority's prior written consent make any material alteration to any of the Site IT Systems which would adversely affect the separability of the Site IT Systems from any IT Systems owned or operated by the Contractor's Affiliates or any IT Systems external to the Site.
- 9.5.3 Any change to the hardware or Software comprised in a Site IT System shall be reflected in the Asset Register maintained pursuant to Clause 7.5 (Maintenance of Site and Authority Assets).

9.6 Deposit of Source Code

- 9.6.1 Subject to any provisions in Part 2 (Deposit of Source Code) of Schedule 9 (Information Technology Schedule), the Contractor shall adhere to Good Industry Practice in relation to the deposit in escrow of the Source Code of Software packages comprised in the Site IT Systems, having regard to the materiality and criticality of the Software concerned and the ease with which the same could be replaced and, without prejudice to the generality of the foregoing, the Contractor shall, if so requested in writing by the Authority, in respect of one or more such Software packages ensure that the Source Code thereof is deposited in escrow with the Escrow Agent for the benefit of the Contractor and the Authority on the Escrow Terms. The Contractor shall maintain a register of the Software packages deposited in escrow.
- 9.6.2 The Contractor shall ensure that any deposit made in accordance with Clause 9.6.1 (Deposit of Source Code) 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.

9.7 Release of Source Code

In the event that any Source Code deposited pursuant to Clause 9.6 (Deposit of Source Code) is released in accordance with the applicable escrow terms, the Contractor shall ensure that the licence referred to in Clause 8.7 (Third Party IP) shall include all IP subsisting in such Source Code.

9.8 Data Interfaces

The Contractor shall at all times maintain, and shall produce to the Authority upon request complete descriptions in such format as the Authority reasonably requires of

all interfaces through which data relating to the Site is transmitted or received as between the Contractor and any Third Party and/or as between the Site IT Systems located on the Site and any other IT Systems, and of the nature of the data so transmitted, such descriptions to include full definition of the relevant interfaces and the format in which such data is transmitted. During the first [Redacted] Months following the Commencement Date, the Contractor's obligation under this Clause 9.8 (Data Interfaces) shall be an obligation to use reasonable endeavours to maintain and produce such descriptions.

9.9 Transferability of Contracts

- 9.9.1 The Contractor shall at all times ensure that, save to the extent otherwise agreed in writing by the Authority, each IT Contract entered into on or after the Commencement Date shall provide that the rights and obligations (if any) of the Contractor thereunder which relate to the performance of the Contractor's obligations under this Contract are capable of being separately transferred to the Authority or its nominee without the consent of any counterparty to such IT Contract or other Third Party and without incurring any payment obligation or other additional liability under such IT Contract.
- 9.9.2 Where, having used all reasonable endeavours to do so, the Contractor is unable to procure the transferability of any IT Contract referred to in Clause 9.9.1 (Transferability of Contracts), the Contractor shall consult with the Authority and give the Authority such information in relation thereto as the Authority reasonably requests. The Authority will not unreasonably withhold consent to the Contractor entering into such IT Contract where the Contractor is able to demonstrate to the Authority's reasonable satisfaction that the proposed counterparty thereto will not agree to such transferability on commercially reasonable terms, and there is no acceptable alternative to such counterparty.

10. CONFIDENTIALITY, SECURITY AND COMPLIANCE WITH LAW

10.1 Confidential Information

10.1.1 Subject to Clauses 10.3 (Disclosure by the Authority) to 10.9 (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 Party (including all documents and information supplied in the course of Legal Proceedings commenced in accordance with this Contract) 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 Contract 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 Contract 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 Contract, whereupon to the extent that it is in the public domain this obligation shall cease. For the purposes of this Clause 10.1.1 (Confidential Information) all documents, materials and other information relating to a Utility Customer Contract shall be deemed to have been supplied by or on behalf of the Authority.

10.1.2 The Contractor shall not make use of this Contract or any information issued or provided by or on behalf of the Authority in connection with this Contract otherwise than for the purpose of complying with its obligations under this Contract and otherwise than as expressly provided for in this Contract except with the written consent of the Authority.

10.2 Contractor Right to Request Confidentiality

The Contractor may at any time request in writing, stating reasons, that the Authority keeps particular information confidential and does not disclose it to Third Parties. The Contractor may further request in writing at any time that, where the Authority discloses Information pursuant to Clause 10.3 (Disclosure by the Authority), the Authority shall make representations to the recipient of such Information as to the desirability of keeping such Information confidential. Any such request by the Contractor shall be accompanied by a document setting out in writing the requested representations. The Authority shall consider whether to make such representations.

10.3 Disclosure by the Authority

10.3.1 The Authority, having considered any request made by the Contractor under Clause 10.2 (Contractor Right to Request Confidentiality) may, save for information which is judged by OCNS to be security sensitive and marked as such (unless the recipient of information pursuant to this Clause 10.3 (Disclosure by the Authority) holds all relevant security clearances), disclose any and all information acquired by it under or pursuant to this Contract (the “**Information**”):

10.3.1.1 to the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the Government of the United Kingdom, the United Kingdom Parliament, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, Greater London Authority or any department, officer, agent, representative, employee, consultant or adviser of any of them;

10.3.1.2 to the Regulators;

10.3.1.3 to the extent required by applicable Law or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Procedure;

10.3.1.4 to bidders who have pre-qualified to participate in any relevant forthcoming tender process, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 10.3 (Confidential Information);

10.3.1.5 to insurers upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 10.1 (Confidential Information);

10.3.1.6 to professional advisers, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 10.1 (Confidential Information) for the purpose of:

10.3.1.6.1 the examination and certification of the Authority's or the Contractor's accounts; or

10.3.1.6.2 any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources;

10.3.1.7 to consultees under the Energy Act; and/or

- 10.3.1.8 to the National Audit Office.
- 10.3.2 So far as is practicable, the Authority shall give the Contractor reasonable notice of any proposed disclosure pursuant to Clause 10.3 (Disclosure by the Authority).
- 10.3.3 Notwithstanding the provisions of Clause 10.1 (Confidential Information), the Authority may, with the consent of the Contractor such consent not to be unreasonably withheld or delayed, further disclose the Information to persons not referred to in Clause 10.3.1 (Disclosure by the Authority).
- 10.3.4 Any determination as to whether it is reasonable for the Contractor to withhold its consent to disclosure under Clause 10.3.3 shall have regard to:
 - 10.3.4.1 compliance with the Authority's statutory functions and duties, including in particular the promotion of effective competition and value for money;
 - 10.3.4.2 relevant Government policy;
 - 10.3.4.3 the requirement to maintain security;
 - 10.3.4.4 the public interest; and
 - 10.3.4.5 the requirement to maintain openness and transparency.

10.4 Publication

- 10.4.1 The Authority having considered any request made by the Contractor pursuant to Clause 10.2 (Contractor Right to Request Confidentiality) may publish, in such form and at such times as it sees fit, the following:
 - 10.4.1.1 amounts of payments to the Contractor and any deductions made from the Contractor under this Contract;
 - 10.4.1.2 performance statistics;
 - 10.4.1.3 monitoring reports; and
 - 10.4.1.4 such information as the Authority reasonably requires to publish having regard to the list of considerations set out in Clause 10.3.4 (Disclosure by the Authority) above, including information it includes in its annual report.

10.4.2 The Authority shall give the Contractor reasonable notice of any proposed publication pursuant to this Clause 10.4 (Publication).

10.5 Disclosure by the Contractor

For the purposes of performing its obligations under this Contract or as required by any Parliamentary obligation, applicable law, the Regulators or pursuant to an order of any court of competent jurisdiction and to the extent reasonably required to do so, the Contractor may disclose without the consent of the Authority, any and all information acquired by it under or pursuant to this Contract save for information which is judged by OCNS to be security sensitive and marked as such (unless the recipient of information pursuant to this Clause 10.5 (Disclosure by the Contractor) holds all relevant security clearances) to:

10.5.1 the Regulators;

10.5.2 the extent required by any Parliamentary obligation, applicable Law or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Procedure;

10.5.3 insurers, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 10.1.1 (Confidential Information);

10.5.4 professional advisers including lenders, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 10.1.1 (Confidential Information);

10.5.5 Subcontractors, upon obtaining an undertaking of confidentiality equivalent to that contained in Clause 10.1.1 (Confidential Information); and

10.5.6 any department, officer, agent, representative, employee, consultant or adviser of any of the entities referred to in Clauses 10.5.1 (Disclosure by the Contractor) to 10.5.5 (Disclosure by 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 10.1.1 (Confidential Information), to obtaining such an undertaking of confidentiality.

10.6 Delivery Up

On termination of this Contract or the Parent Body Agreement, the Contractor shall ensure or procure that the Nominated Staff return to the Contractor or the Authority

(as applicable) all documents, materials or any information belonging to the Contractor or the Authority (as the case may be).

10.7 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 Contractor of this Clause 10.1 (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 10.1 (Confidentiality) by the Contractor shall also be appropriate remedies.

10.8 Freedom of Information Act

10.8.1 This Clause 10 (Confidentiality, Security and Compliance with Law) is subject to the FOIA and the EIR.

10.8.2 The Contractor shall facilitate the Authority's compliance with the FOIA and the EIR. If the Authority is required to provide information as a result of a request made to it under the FOIA or EIR and such information is in the possession of the Contractor or any of its Subcontractors but not the Authority then the Contractor shall provide such information to the Authority as soon as reasonably practicable. The Contractor shall provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to a Request for Information (as defined under the FOIA) within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the EIR.

10.8.3 The Contractor shall provide a nominated member of staff with sufficient authority to handle, co-ordinate and be responsible for the supply of information to the Authority for the purposes of compliance with this Clause 10.8.

10.8.4 The Authority shall be responsible for determining at its absolute discretion whether any information provided to the Authority is exempt from disclosure in accordance with the FOIA or EIR or is to be disclosed in response to a Request for Information.

10.8.5 The Contractor acknowledges that the Authority may, acting in accordance with the FOIA or EIR disclose information without consulting the Contractor, or following consultation with the Contractor and having taken its views into account.

10.8.6 The Contractor acknowledges that any lists or schedules provided by it outlining confidential information or commercially sensitive information are of indicative value only and that the Authority may nevertheless be obliged to disclose such information in accordance with this Clause 10.8 (Freedom of Information Act).

10.9 National Audit Office

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

10.10 Data Protection Act

10.10.1 Each Party to this Contract shall ensure that it complies at all times with the DPA or such other equivalent data protection legislation as may be relevant to its performance of this Contract in respect of all personal data processed by it.

10.10.2 In relation to all personal data of which the Contractor is data controller, the Contractor shall at all times comply with the DPA as a data controller if necessary, including maintaining a valid up-to-date registration or notification under the DPA covering the data processing to be performed in connection with its obligations under this Contract.

10.10.3 The Contractor shall, and shall procure that any Subcontractor shall, only undertake processing of personal data of which the Authority is data controller reasonably required in connection with the Contractor's obligations under this Contract and shall not transfer any personal data to any country or territory outside the European Economic Area.

10.10.4 The Contractor shall not disclose personal data of which the Authority is data controller to any person other than to:

10.10.4.1 Employees, Nominated Staff and Subcontractors to whom such disclosure is reasonably necessary in order for the Contractor to carry out its obligations under this Contract; or

10.10.4.2 the extent required by applicable Law or under a court order,

provided that disclosure under Clause 10.10.4.1 (Data Protection Act) above is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this Clause 10.10 (Data Protection Act) and that the Contractor shall give notice in writing to the Authority of any disclosure of personal data it or a Subcontractor is required to make under Clause 10.10.4.2 (Data Protection Act) above immediately it is aware of such a requirement.

10.10.5 The Contractor shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of personal data of which the

Authority is data controller and accidental loss or destruction of, or damage to such personal data, including but not limited to taking reasonable steps to ensure the reliability of Employees and Nominated Staff having access to the personal data and putting into place and maintaining relevant and appropriate systems and procedures.

10.10.6 The Authority may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Contractor and referred to in Clause 10.10.5 (Data Protection Act) above. Within thirty (30) Calendar Days of such a request, the Contractor shall supply written particulars of all such measures detailed to a reasonable level such that the Authority can determine whether or not, in connection with the personal data, it is compliant with the DPA.

10.10.7 For the purposes of this Clause 10.10 (Data Protection Act) the words "personal data", "data controller" and "processing" shall have the meanings given to these terms in the DPA.

10.11 Publicity

10.11.1 Adverse Publicity

Each Party shall notify the other Party as soon as reasonably practicable of any fact or occurrence of which the notifying Party is aware relating to the Authority, Contractor or the Parent Body Organisation which could in the reasonable opinion of the notifying Party be expected to cause adverse publicity to the Contractor or the Parent Body Organisation in relation to this Contract or to the Authority generally.

10.11.2 Announcements

10.11.2.1 Subject to the remaining provisions of this Clause, no Party shall release any announcement or despatch any announcement or circular, relating to this Contract unless the form and content of such announcement or circular have been submitted to, and agreed by, the other Party.

10.11.2.2 Nothing in this Clause 10.11.2 (Announcements) shall prohibit any Party from making any announcement or despatching any circular as required by Law or the rules of the UK Listing Authority or of the London Stock Exchange or any other regulatory body in which case, to the extent not inconsistent with legal obligations or the rules of the UK Listing Authority or of the London Stock Exchange, the announcement shall only be released or the circular despatched after consultation with the other Party and after taking into account the reasonable requirements of the other Party as to the content of such announcement or circular.

11. INDEMNITY, LIABILITY & INSURANCE

11.1 Authority Insurances

11.1.1 Without prejudice to the Contractor's obligations and liabilities to the Authority under this Contract and subject to Clause 11.1.2 (Authority Insurances), the Authority shall take out and maintain the Authority Insurances. The insured parties under the Authority Insurances shall be as follows.

11.1.1.1 covering the Authority, the Contractor, the Parent Body Organisation (in respect of their activities and liabilities connected with this Contract and the Parent Body Agreement only), and all Subcontractors in respect of their on Site activities:

11.1.1.1.1 All Risks Property Damage and Contract Works; and

11.1.1.2 covering the Authority, the Contractor, the Parent Body Organisation (in respect of their activities and liabilities connected with this Contract and the Parent Body Agreement only), but not any Subcontractor:

11.1.1.2.1 Public Liability;

11.1.1.3 subject to Clause 11.1.3, covering the Contractor (in respect of its liability under the Nuclear Installations Act 1965 in connection with its activities at or on the Site) and the Authority but not the Parent Body Organisation or any Subcontractor:

11.1.1.3.1 Nuclear Public Liability;

11.1.1.4 covering the Contractor but not the Parent Body Organisation nor any Subcontractor:

11.1.1.4.1 Motor;

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

11.1.1.5.1 Employer's Liability; and

11.1.1.5.2 any further insurances that the Contractor is required by Law to maintain.

11.1.2 If:

11.1.2.1 the Authority Insurances become unavailable;

11.1.2.2 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; or

11.1.2.3 for any other reason the protection or cover available to the Contractor or the Parent Body Organisation under the Authority Insurances materially diminishes in scope or amount,

then the Authority shall ensure that neither the Contractor nor the Parent Body Organisation has any greater financial exposure to any liability than as at the Commencement Date.

11.1.3 If there is any extension and/or increase of the liability and/or obligation of the Contractor to any person pursuant to any amendments made to the provisions of the Nuclear Installations Act 1965, the Authority shall ensure that adequate mechanisms are made available to the Contractor to ensure that there is in place such provision (either by insurance or by some other means) for sufficient funds to be available as required by, and that, so far as possible by funding means, the Contractor is able to meet any such liabilities or obligations pursuant to the Nuclear Installations Act 1965 as amended.

11.2 Acknowledgement by Contractor

11.2.1 The Authority shall provide to the Contractor policy terms and requirements of the insurers with whom the Authority Insurances are placed and the Contractor shall comply with such requirements. The Contractor will notify the Authority of any act, occurrence or failure which may:

11.2.1.1 lead to any claim being made under the Authority Insurances; or

11.2.1.2 render any of the Authority Insurances void, voidable, unenforceable, suspended or impaired in whole or in part or which may otherwise render any sum paid out under any of the Authority Insurances repayable in whole or in part.

11.2.2 The Contractor shall not and shall procure that its Subcontractors shall not take any action or fail to take any reasonable action or (insofar as it is reasonably within its power) permit or allow others to take or fail to take any action (in either case including failure to disclose any fact) as a result of which any of the Authority Insurances may be rendered void, voidable, unenforceable, suspended or impaired in whole or in part or which may otherwise render any sum paid out under any of the Authority Insurances repayable in whole or in part.

11.2.3 The Contractor shall ensure that provisions having similar effect to the provisions of Paragraph 4.1 (hh) or (kk) (Disallowable Costs) of Part 2 (Allowable and Disallowable Costs) of Schedule 6 (Finance Schedule) and imposing a liability in respect of Insurance Deductibles in similar proportions are incorporated into each and every Subcontract.

11.3 Not used

11.4 Not used

11.5 Immunity Matters

11.5.1 If any of the matters specified in Clause 11.5.2 (Immunity Matters) affects the Contractor (financially or otherwise), then the Contractor and the Authority shall each comply with their respective obligations specified in Clause 11.5.3 (Immunity Matters) to 11.5.8 (Immunity Matters) (inclusive).

11.5.2 The matters referred to in Clause 11.5.1 (Immunity Matters) are:

11.5.2.1 acts or omissions of the Contractor, its officers, directors, employees, Subcontractors and Sub-Subcontractors, in breach of Law, statutory duty or applicable Regulatory Requirements, or in breach of contract or giving rise to liability under Law (save that, to the extent that a failure by any of the Nominated Staff is a substantial element in such act or omission, such act or omission shall never constitute an Immunity Matter);

11.5.2.2 Non-Compliance With Operating Procedures (save that, to the extent that a failure by any of the Nominated Staff is a substantial element in the failure to comply with Operating Procedures, such non-compliance shall never constitute an Immunity Matter); and

11.5.2.3 the form and content of Operating Procedures,

together the “**Immunity Matters**”.

11.5.3 The Contractor's obligations referred to in Clause 11.5.1 (Immunity Matters) are as follows:

11.5.3.1 the Contractor shall as soon as and to the extent reasonably practicable on becoming aware of the existence of any Immunity Matter, notify the Authority of the nature of such Immunity Matter and the estimated effect on the Contractor's ability to comply with its obligations under this Contract;

11.5.3.2 take all steps reasonably necessary (taking into account the Contractor's obligation (set out in Paragraphs 4.3 (Disallowable Costs) and 4.4 (Disallowable Costs) of Part 2 (Allowable and Disallowable Costs) of Schedule 6 (Finance Schedule)) to manage Costs within the Current Budgets and the ASFLs) in accordance with Good Industry Practice to overcome and mitigate the consequences of the Immunity Matter;

11.5.3.3 inform and consult the Authority's Contracts Manager as soon as is practicable as to the actions undertaken or proposed in order to mitigate the effects of the Immunity Matter and take the Authority's Contracts Manager's reasonable views and advice into account;

11.5.3.4 provide written reports as often as the Authority reasonably requires of the Contractor's progress in mitigating the consequences of the Immunity Matter; and

11.5.3.5 so far as reasonably practicable provide any information relating to the Immunity Matter as the Authority may reasonably request.

11.5.4 If the Contractor is affected by an Immunity Matter, the Contractor shall be entitled to submit a Change Proposal to the Authority. Such a Change Proposal shall:

11.5.4.1 have as its objective the mitigation of the effects of the Immunity Matter and the resolution of any issues arising in relation thereto; and

11.5.4.2 comply with Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure).

11.5.5 If the Contractor submits a Change Proposal in accordance with Clause 11.5.4 (Immunity Matters), the Authority shall either:

11.5.5.1 accept such submission (provided that it does not breach any applicable Law and/or Regulatory Requirements); or

- 11.5.5.2 instruct (acting reasonably) the Contractor to adopt an alternative Change Proposal (in which case the Contractor shall comply with such instruction).
- 11.5.6 The Authority shall in any event respond to such submission as soon as reasonably practicable.
- 11.5.7 The implementation of a Change Proposal in accordance with Clause 11.5.4 (Immunity Matters) shall not make a Cost an Allowable Cost where it would otherwise be a Disallowable Cost pursuant to Part 2 (Allowable and Disallowable Costs) of Schedule 6 (Finance Schedule).
- 11.5.8 The following provisions apply in relation to the Immunity Matters identified in Clauses 11.5.2.1 (Immunity Matters) and 11.5.2.2 (Immunity Matters) above:
- 11.5.8.1 with effect from [Redacted] Months after the Commencement Date, any such matter shall cease to be an Immunity Matter for the purposes of this Contract to the extent that a failure by anyone engaged by the Contractor at Head of Operations Unit level (or its equivalent) or above (for the avoidance of doubt including the Nominated Staff) is a substantial element in the failure to comply with Operating Procedures;
- 11.5.8.2 with effect from [Redacted] Months after the Commencement Date, any such matter shall cease to be an Immunity Matter for the purposes of this Contract to the extent that a failure by anyone engaged by the Contractor at Team Leader level (or its equivalent) or above (for the avoidance of doubt including the Nominated Staff and any Head of Operations Unit) is a substantial element in the failure to comply with Operating Procedures; and
- 11.5.8.3 with effect from [Redacted] Months after the Commencement Date, any such matter and the form and content of Operating Procedures shall cease to be Immunity Matters;
- 11.5.8.4 without prejudice to any right the Authority may have to terminate this Contract, the Contractor shall have no liability to the Authority (whether under or in connection with this Contract, in negligence or otherwise) arising out of or in connection with any Immunity Matter;
- 11.5.8.5 notwithstanding any other provision of this Contract, there will be no Fee abatement by reason of any Defective Performance to the extent that such Defective Performance is an Immunity Matter or is caused by an Immunity Matter, although for the avoidance of doubt this provision does not prevent

any Fee abatement resulting from application of any other criteria applicable to Fee abatement;

11.5.8.6 notwithstanding any other provision of this Contract, no Cost shall become a Disallowable Cost by reason of an Immunity Matter or where such Cost is the direct result of an Immunity Matter, provided that the foregoing is subject to the provisions of Paragraph 4.1(t) (Disallowable Costs) of Part 2 (Allowable and Disallowable Costs) of Schedule 6 (Finance Schedule).

11.5.8A The immunity provisions set out in the preceding sub-clauses of this Clause 11.5 (Immunity Matters) are subject to the following:

11.5.8A.1 Not used;

11.5.8A.2 with effect from [Redacted] Months after the Commencement Date, the immunity will be lost if anyone engaged by the Contractor at Head of Operations Unit level (or above) knows, or ought reasonably to know, of the Non-Compliance with Operating Procedures and fails to take all reasonable steps to correct such non-compliance;

11.5.8A.3 with effect from [Redacted] Months after the Commencement Date, the immunity will be lost if anyone engaged by the Contractor at Team Leader level (or above) knows, or ought reasonably to know, of the Non-Compliance with Operating Procedures and fails to take all reasonable steps to correct such non-compliance;

11.5.8A.4 with effect from [Redacted] Months after the Commencement Date, the immunity will be lost in respect of the content of Operating Procedures; and

11.5.8A.5 the suitability and functionality of the Site IT Systems will only qualify as an Inherited Condition during the first [Redacted] months after the Commencement Date.

11.5A Inherited Conditions

11.5A.1 With effect from [Redacted] Months after the Commencement Date, the suitability and functionality of the Site IT Systems shall cease to be an Inherited Condition.

11.5A.2 If the Contractor's performance of any activity required by or included in the LTPs are, or are likely to be, materially adversely affected by Inherited Conditions whose existence was not known, and could not have reasonably been expected to become

apparent to the Nominated Staff or any other person who is provided to the Contractor in accordance with Clause 16B (Provision of Support to the SLC) of the Parent body Agreement by the application of Good Industry Practice at the time when the activity in question was incorporated into the LTP for the Contract Year in which its existence becomes apparent, the Contractor shall be entitled to submit a Change Proposal in accordance with Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure).

11.6 Liability Cap

11.6.1 Subject to Clauses 11.6.4 (Liability Cap), 11.6.7 (Liability Cap) and 11.10 (Review of Limit on General Liability), for each Contract Year the Liability Cap shall be as follows

11.6.1.1 for Contract Year 1, [Redacted];

11.6.1.2 for Contract Year 2, [Redacted];

11.6.1.3 for Contract Year 3, [Redacted];

11.6.1.4 for Contract Year 4, [Redacted]; and

11.6.1.5 for each of Contract Years 5 to 17 inclusive, [Redacted].

11.6.2 Subject to Clause 1.14.4 (Entire Agreement), the aggregate of the Contractor's liabilities arising in any one Contract Year when taken together with and after deduction of any liability discharged to the Authority pursuant to the Parent Body Agreement and falling within the scope of liabilities subject to the Liability Cap under the Parent Body Agreement for the same period shall not exceed the Liability Cap. Any liability arising after termination or expiry of this Contract shall for the purposes of this Clause 11.6.2 (Liability Cap) be treated as having arisen in the last Contract Year.

11.6.3 For the purposes of this Clause 11.6 (Liability Cap), "Contractor's liabilities" shall mean any and all of:

11.6.3.1 Disallowable Costs which are incurred in the Contract Year in question; and

11.6.3.2 the Contractor's liability to the Authority under or in connection with this Contract however arising.

For the avoidance of doubt, abatement of Fee pursuant to Part 8 (Abatement of Fee) of Schedule 6 (Finance Schedule) shall not constitute a Contractor's liability for the purposes of this Clause 11.6 (Liability Cap).

11.6.4 The Liability Cap shall only be adjusted during a Contract Year as a consequence of a Change. Any such adjustment shall be by way of agreed change in accordance with Clause 11.10 (Review of Limit on General Liability).

11.6.5 If the Liability Cap is reached the Authority shall (provided that the Contractor shall comply with Clauses 13 (Disputes) and 1.25 (Claims Handling)), indemnify the Contractor for the Contractor's liabilities in excess of the Liability Cap.

11.6.6 If the Liability Cap is reached the Authority shall be entitled to terminate this Contract.

11.6.7 The Liability Cap shall be increased at the end of each Contract Year by the percentage change in the RPIX between 1 April at the start of that Contract Year and 31 March at the end of that Contract Year. For these purposes the RPIX existing on any date shall be the RPIX figure last published before the relevant date.

11.7 Disallowable Costs

11.7.1 Subject to Clause 11.6 (Liability Cap), the Contractor hereby indemnifies the Authority against all Disallowable Costs incurred in any Contract Year to the extent that:

11.7.1.1 the Authority has paid or reimbursed the Costs to a Third Party.

11.8 Not used

11.9 Not used

11.10 Review of Limit on General Liability

Subject to Clause 1.16 (Variation), if at any time the Authority or the Contractor considers (acting reasonably) that the ratio of the Liability Cap to the Fee which the Contractor ought to earn (assuming the Contractor performs its obligations under the Contract in accordance with Good Industry Practice) has changed significantly since the Commencement Date, then it may propose a variation of this Contract to change the Liability Cap and the Parties shall consider the proposal in good faith with a view to ensuring that the said ratio is substantially the same as it was at the Commencement Date.

11.11 Consequential Loss

11.11.1 Neither Party shall be liable to the other Party for:

11.11.1.1 any indirect special or consequential loss or damage; or

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

11.11.2 For the avoidance of doubt this Clause 11.11 (Consequential Loss) shall not operate to prevent either Party from recovering any payments that are lawfully due to that Party from the other Party under this Contract including without limitation any payments due in respect of Allowable Costs.

12. TERMINATION

12.1 Termination Events

This Contract shall terminate as a result of:

- 12.1.1 early termination by the Authority caused by Contractor Default in accordance with Clause 12.6 (Termination or Remedy for Contractor Default);
- 12.1.2 Termination for Convenience by the Authority in accordance with Clause 12.8 (Termination for Convenience);
- 12.1.3 termination for Long Term Force Majeure by the Authority in accordance with Clause 1.9 (Force Majeure); or
- 12.1.4 termination by the Authority as a result of a Category A Force Majeure Event in accordance with Clause 1.9 (Force Majeure).

12.2 Contractor Default

Subject to Clause 12.3 (No Termination for Contractor Default), the following events shall give rise to an Authority right to terminate:

12.2.1 Breach of Contractor Obligations

A material breach by the Contractor of any of its obligations under this Contract, including but not limited to:

- 12.2.1.1 a failure by the Contractor to comply with applicable Law or Regulatory Requirements;
- 12.2.1.2 a material breach by the Contractor of Security Requirements;
- 12.2.1.3 Defective Performance by the Contractor of its obligations under this Contract where:
 - 12.2.1.3.1 a Defective Performance Notice is issued in accordance with Clause 2.12.1 (Defective Performance) and the Contractor becomes obliged to re-perform either partially or substantially any works or services pursuant to Clause 2.12.2 (Defective Performance); and

12.2.1.3.2 such Defective Performance is caused by:

12.2.1.3.2.1 a Gross Breach; and/or

12.2.1.3.2.2 a Persistent Breach; and

12.2.1.3.3 such Defective Performance has or might reasonably be expected to have a material adverse impact on:

12.2.1.3.3.1 Site safety and security; and/or

12.2.1.3.3.2 an LTP;

12.2.1.4 a material adverse finding is made against the Contractor by any one or more of the Regulators in relation to the Contractor's performance of its obligations under this Contract;

12.2.1.5 a material breach by the Contractor of its supply obligations to Customers under the Customer Contracts;

12.2.1.6 a material failure by the Contractor to comply with the provisions of Clause 5.12 (Pensions);

12.2.1.7 a material failure by the Contractor to comply with the provisions of Clause 10 (Confidentiality, Security and Compliance with Law);

12.2.1.8 a failure by the Contractor to comply with the provisions of Clause 1.17 (Assignment); and

12.2.1.9 a failure by the Contractor to report to the Authority a breach of the subcontracting requirements set out in Part 1 (Subcontract/Procurement Requirements – CT-15) of Schedule 5 (Subcontracting/Procurement Schedule),

which, if in the reasonable opinion of the Authority is remediable, but has not been remedied in accordance with Clause 12.6.3 (Remediable Breach);

12.2.2 Insolvency

The occurrence of an Insolvency Event in respect of the Contractor or the Parent Body Organisation or any of their Affiliates;

12.2.3 Revocation of Licence

12.2.3.1 Any revocation of all or part of any of a Nuclear Site Licence, any Environment Agency or Scottish Environment Protection Agency (as applicable) licence, authorisation, permit or consent or any other material licence or permit held by the Contractor the possession of which is necessary to enable the Contractor to operate the Site; or

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

unless in either case such revocation or threatened revocation is for the sole purpose of issuing a replacement licence which does not materially diminish the capacity or capability of the Site, to the Contractor;

12.2.4 Parent Body Agreement

12.2.4.1 The occurrence of a PBO Default under the Parent Body Agreement;

12.2.4.2 termination of the Parent Body Agreement by the Authority; or

12.2.4.3 upon the Parent Body Agreement ceasing to be valid and binding on the Parent Body Organisation;

12.2.5 Change in Control

The Parent Body Organisation undergoing a Change in Control or entering into a Relevant Partnering Arrangement in either case without having obtained the prior written consent of the Authority in accordance with the provisions of the Parent Body Agreement;

12.2.6 Failure to Remedy

A failure by the Contractor to remedy the breach specified in a Final Performance Warning Notice in accordance with Clause 12.4 (Termination for Failure to Remedy);

12.2.7 Liability Cap

The Contractor being liable under the terms of this Contract for an amount equal to or greater than the Liability Cap; and

12.2.8 Corrupt Gifts

The circumstances giving rise to the Authority right to terminate under Clause 1.15.2.6 (Corrupt Gifts).

12.3 No Termination for Contractor Default

The Authority will have no right to terminate this Contract for Contractor Default if the Contractor Default is caused by the Authority's failure to reimburse the Contractor for Allowable Costs pursuant to the provisions of Part 3 (Payment of Allowable Costs) of Schedule 6 (Finance Schedule).

12.4 Termination for Failure to Remedy

12.4.1 Except where the occurrence is caused by the Authority failing to reimburse the Contractor for Allowable Costs pursuant to the provisions of Part 3 (Payment of Allowable Costs) of Schedule 6 (Finance Schedule) if:

12.4.1.1 there is a breach of this Agreement, whether or not such breach is itself of a material nature;

12.4.1.2 the Contractor fails to pay creditors pursuant to its obligations under the provisions of Part 3 (Payment of Allowable Costs) of Schedule 6 (Finance Schedule);

12.4.1.3 there is a Failure to Protect the Supply Chain more than [Redacted] in any [Redacted] Month period; or

12.4.1.4 the Authority (acting reasonably) believes that the Contractor is demonstrating a pattern of behaviour which is reasonably likely to lead to a Contractor Default,

then the Authority may serve a notice on the Contractor (the "**Performance Warning Notice**"):

(A) specifying that it is a Performance Warning Notice;

- (B) giving reasonable details of the breach or anticipated Contractor Default and specifying the Authority's concerns; and
- (C) stating that such breach or anticipated Contractor Default is a matter which, if it recurs frequently or (in the case of a breach) continues, may result in a termination of this Contract, or requiring the Contractor to take steps to address those concerns by a specified date.

12.4.2 If, following service of a Performance Warning Notice, a breach specified or a substantially similar breach has continued beyond the specified date or recurred one or more times within six (6) Months after the date of service, then the Authority may serve another notice on the Contractor (the “**Final Performance Warning Notice**”):

12.4.2.1 specifying that it is the Final Performance Warning Notice;

12.4.2.2 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

12.4.2.3 stating that if such breach is still in being (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 Contractor Default with the result that this Contract may be terminated.

12.4.3 A Performance Warning Notice may not be served in respect of any breach or 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.

12.5 Duty to Notify

As soon as reasonably practicable after becoming aware of the same, the Contractor shall notify the Authority of the occurrence of any event which may give the Authority the right to terminate this Contract under Clause 12.2 (Contractor Default) including all significant information about the event.

12.6 Termination or Remedy for Contractor Default

12.6.1 Authority’s Termination Notice

12.6.1.1 If a Contractor Default has occurred the Authority may serve a termination

notice (the “**Authority's Termination Notice**”) on the Contractor.

12.6.1.2 The Authority's Termination Notice shall specify the type and nature of the Contractor Default that has occurred, giving reasonable details.

12.6.2 Irremediable Breach

If there has been a material breach of this Contract by 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 Contract shall then terminate on the date falling thirty (30) Calendar Days after the date of receipt by the Contractor of the Authority's Termination Notice.

12.6.3 Remediable Breach

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

12.6.3.1.1 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

12.6.3.1.2 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 12.7 (Remediation Programme).

12.6.3.2 If:

12.6.3.2.1 the breach is not remedied within the period specified in the Authority's Termination Notice; or

12.6.3.2.2 the Contractor fails to achieve any element of the agreed 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 and the Dispute Resolution Procedure does

not find against that rejection,

then the Authority may serve an Authority Termination Notice terminating this Contract either with immediate effect or on such period of notice not exceeding twelve (12) Months as it reasonably determines to be appropriate. If the Authority terminates on notice, it will use all reasonable endeavours, including liaison with the Regulators, to ensure that the period of notice is as short as possible.

12.6.4 Termination for Revocation of Licence

Where the Authority has issued an Authority Termination Notice in the event of a Contractor Default pursuant to Clause 12.2.3 (Revocation of Licence) which the Authority accepts (acting reasonably) has occurred through no fault of the Contractor, the Authority shall provide reasonable assistance to the Contractor in its discussions with HSE and/or EA or SEPA as applicable to procure the remedy of such Contractor Default.

12.7 Remediation Programme

12.7.1 The Remediation Programme shall specify in detail how the Contractor proposes to remedy its breach of this Contract, 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 Contractor anticipates that the breach will be remedied.

12.7.2 Where the Contractor proposes a Remediation Programme in accordance with Clause 12.6.3.1.2 (Remediable Breach), the Authority shall within thirty (30) Calendar Days from the date of receipt of the proposed Remediation Programme notify the Contractor whether the Authority accepts the proposed Remediation Programme (such acceptance not to be unreasonably withheld). Failure of the Authority to provide such notification shall constitute deemed acceptance by the Authority.

12.7.3 Where the Authority notifies the Contractor that it does not accept the Remediation Programme, the Parties 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 Clause 13 (Disputes).

12.8 Termination for Convenience

The Authority shall be entitled to terminate this Contract at any time and for any reason on giving reasonable notice to the Contractor such notice not being a period less than twelve (12) Months (“**Termination for Convenience**”).

12.9 No termination by Contractor

Without prejudice to the provisions of the Parent Body Agreement, the Contractor shall have no right to terminate this Contract.

12.10 Reasonable Costs on Termination

In the event of Termination for Convenience pursuant to Clause 12.8 (Termination for Convenience) the Authority shall pay the Parent Body Organisation such sum as is specified in Schedule 2 (Costs on Termination) of the Parent Body Agreement 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.

12.11 Accrued Liabilities

Termination of this Contract pursuant to this Clause 12 (Termination) shall be without prejudice to the Parties' liabilities which accrued prior to the date of termination.

12.12 Reasonableness of the Authority

If the Authority has terminated this Contract pursuant to this Clause 12 (Termination) and the Contractor disputes the reasonableness of the Authority's decision, the termination by the Authority shall remain effective but if the Authority's decision is found to be unreasonable in accordance with Clause 13 (Disputes) the Authority shall pay costs to the Parent Body Organisation as if such termination had been Termination for Convenience.

12.13 Defective Performance

The provisions of this Clause 12 (Termination) are without prejudice to the provisions of Clause 2.12 (Defective Performance), and vice versa.

13. DISPUTES

13.1 Requirement to Refer Disputes

13.1.1 Save as otherwise expressly provided in this Contract including in Clause 13.2 (Reasonableness of the Authority), any dispute or difference arising out of or in connection with this Contract, including, but not limited to, any question regarding its existence, interpretation, validity, construction or termination shall, if it cannot be resolved between the Contractor and the Authority by agreement, be resolved in accordance with the Dispute Resolution Procedure.

13.1.2 Neither Party shall commence any Legal Proceedings save in accordance with the Dispute Resolution Procedure.

13.2 Reasonableness of the Authority

13.2.1 Wherever in this Contract it is provided that the Authority shall reasonably determine (or words to similar effect) any matter, the Authority's determination pursuant to the relevant Clause shall prevail unless and until it is agreed or found to be outside a reasonable range of commercial options in context of this Contract, provided always that nothing in this Clause 13.2 (Reasonableness of the Authority) or the Dispute Resolution Procedure shall operate in a manner or result in a finding that is inconsistent with the Authority's statutory obligations or the Contractor's statutory regulatory or licence obligations. Where the Contractor's Costs relating to the reference of the dispute to the Dispute Resolution Procedure are Disallowable in accordance with Paragraph 4.1 (ee) (Disallowable Costs) of Part 2 (Allowable and Disallowable Costs) of Schedule 6 (Finance Schedule) the Authority shall claim its relevant costs from the Parent Body Organisation pursuant to the Parent Body Agreement. In the event that the Authority is found to have acted unreasonably, the Authority shall bear such costs. In determining what is reasonable, the Parties shall apply only private law and shall disregard public law definitions of reasonableness.

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

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

was affixed in the presence of:

.....

SIGNED BY)

)

)

)

for and on behalf of)

)

SELLAFIELD LIMITED)

)

.....
Authorised Signatory