

Schedule 6

Finance Schedule

Part 1: General

1. Total Remuneration

1.1 In respect of each Contract Year the only amounts payable by the Authority to the Contractor for the performance of the Contractor's obligations under this Contract shall be:

- (a) Allowable Costs incurred in the relevant Contract Year;
- (b) the Fee (which shall itself comprise the Base Fee, the Performance Based Incentives Fee ("**PBI Fee**"), the Efficiency Fee and the Shareline Fee) to the extent that it has been earned in respect of the relevant Contract Year and has not been subject to abatement under the provisions of Part 8 (Abatement of Fee) of this Schedule 6.

(together the "**Contract Price**"). For the avoidance of doubt, the Authority's obligation to make payments under the various indemnities in set out in this Contract fall outside the Contract Price.

1.2 The Authority and the Contractor shall, in respect of specific Tasks, be entitled to agree a mechanism for remunerating the Contractor which is different to that set out in Paragraph 1.1 (Total Remuneration) above. Nevertheless such remuneration shall still be deemed to be included within the Contract Price.

2. Other Service Providers

2.1 Nothing in this Contract shall prevent the Authority from engaging other service providers to undertake studies, give advice or provide consultancy or any services similar to those to be provided under this Contract (in each case to the extent allowed by Law or any Regulatory Requirement). Subject to such agreement as may be concluded by way of Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure), the Authority shall have no liability to the Contractor as a result of the Authority engaging such other service providers.

3. Payment Mechanics

- 3.1 The Authority shall make payments of the various elements comprising the Contract Price to the Contractor in accordance with the provisions of Part 3 (Payment of Allowable Costs) and Part 9 (Payment of Fee) of this Schedule 6.

4. Currency of Contract

- 4.1 All amounts of money in this Contract are expressed in pounds sterling (£). If the United Kingdom joins EMU any figure expressed in "£" and "sterling" in this Contract shall be converted into euro at the rate for conversion of sterling into euro established by the Council of the European Union pursuant to the Treaty (including compliance with rules relating to rounding in accordance with European Community regulations) and any reference to a figure in "£" or "sterling" shall mean that figure adjusted into euro.

5. Exclusive of VAT

- 5.1 The Contract Price is exclusive of VAT which shall be payable on the Contract Price at the rate from time to time provided by Law provided that a properly completed VAT invoice in respect of the amount of the relevant element of the Contract Price shall have been delivered to the Authority.

Part 2: Allowable And Disallowable Costs

1. Purpose

- 1.1 This Part 2 (Allowable and Disallowable Costs) sets out the basis on which Costs are treated as Allowable or Disallowable.
- 1.2 "Guidance notes" to this Part 2 (Allowable and Disallowable Costs) are for guidance only and are not, nor intended to be, contractually binding on either Party.

2. Allowable Costs

- 2.1 All Costs incurred by the Contractor arising out of or in connection with the performance of, or permitted by, this Contract (including any act, omission, default or neglect in connection with such performance, and including, for the avoidance of doubt, Costs paid to Subcontractor(s) under their Subcontract(s)) are "**Allowable Costs**" except to the extent that such Costs are Disallowable Costs or payments to the Parent Body Organisation by way of dividend under Clause 6.10.5.2 (Payments to Parent).
- 2.2 Subject always to Paragraphs 4.1(y) (Disallowable Costs), 4.1(qq) (Disallowable Costs) and 4.2 (Disallowable Costs) below, Costs which are incurred by the Contractor otherwise than in the performance of this Contract but which are also Allowable Costs are Costs payable to any Third Party as a result of the disclosure of Information by the Authority pursuant to Clause 10.3 (Disclosure by the Authority) or any publication by the Authority whether or not in compliance with Clause 10.4 (Publication) and any Costs of any Legal Proceedings in relation to such disclosure or publication, subject always to the Contractor having made all reasonable endeavours to mitigate the amount of the claim and:
 - (a) in the case of an Existing Agreement, to the Contractor having made reasonable efforts to obtain the agreement of the counterparty to such Existing Agreement to allow the disclosure of Information and publication contemplated by Clause 10 (Confidentiality, Security and Compliance with Law);
 - (b) in the case of an agreement entered into on or after the Commencement Date, to the Contractor having obtained the Authority's prior written consent to enter into that agreement on the basis that it does not allow the disclosure of Information and publication by the Authority contemplated by Clause 10 (Confidentiality, Security and Compliance with Law); and

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- (c) the Contractor having been authorised by the Authority to handle the defence of such matters and having adhered to the Authority's instructions given pursuant to Clause 1.25 (Claims Handling) of this Contract and/or clause 8.6 (Parent Body Organisation Handling) of the Parent Body Agreement.
- 2.3 Subject always to Paragraphs 4.1(ii) (Disallowable Costs), 4.1(ll) (Disallowable Costs), 4.1(qq) (Disallowable Costs) and 4.2 (Disallowable Costs) below, Contractor Historical Costs, Pension Costs, and Non Contractor Historical Costs and Transfer Scheme Losses and any Costs reasonably incurred in mitigating the Contractor's liability in respect of such Costs are Allowable Costs (providing always that any Cost which is a criminal sanction or penalty imposed by a Regulator shall always be a Disallowable Costs) notwithstanding that they might otherwise fall within the other provisions of Paragraph 4.1 (Disallowable Costs).
- 2.4 Subject always to Paragraph 4.1(qq) (Disallowable Costs), 4.1(rr) (Disallowable Costs) and 4.2 (Disallowable Costs) below, Costs incurred by the Contractor in satisfying a Sub Contract or a Sub Subcontract entered into prior to the Commencement Date will be Allowable Costs notwithstanding that they might otherwise fall within the other provisions of Paragraph 4.1 (Disallowable Costs).
- 2.5 The amount of the Allowable Costs shall be liable to reduction in accordance with the provisions of Clause 6.12.8 (Tax Credits), Clause 6.12.9 (Pre Commencement Reliefs) and Paragraph 10.4 (Ongoing Adjustments) of Part 3 (Payment of Allowable Costs) of this Schedule.

3. Advance Agreements

- 3.1 The Contractor may seek an Advance Agreement with the Authority that a particular Cost (or part of the Cost) will be treated as an Allowable Cost or that the accounting treatment that will be applied in respect of any particular Cost (or part of the Cost) will be different to that set out in Paragraph 5 below. No sign-off by the Authority of an Advance Agreement overrides the limits set out in Paragraph 4.2 (Disallowable Costs). An Advance Agreement is (subject to Paragraph 3.3 below) one:
- (a) which is expressed to be entered into for the purposes of this Paragraph 3.1;
 - (b) whose subject is limited to:
 - (i) Costs under this Contract; and
 - (ii) whether a Cost or part of a Cost (which may be specified by an amount of money or by reference to the Cost of a Task or Tasks) is to be treated as an Allowable Cost or given an accounting treatment different to that set out in Paragraph 5 (Accounting Basis) below; and

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- (iii) is for a specified period that does not exceed the term of this Contract.
- 3.2 If other consents are sought from the Authority in accordance with the relevant provisions of this Contract (for example, in respect of the Socio-Economic Development Plan and Internal Procedures) then the process for the giving of any such consent shall be kept separate from the entering into of any Advance Agreement so that:
 - (a) no consent nor any request for such a consent shall be included in any Advance Agreements; and
 - (b) the giving of any such consent shall not constitute an Advance Agreement.
- 3.3 An Advance Agreement should also be considered by the Contractor when it will incur Costs that are exceptional or abnormal in size or where particular accounting treatment is required. The Authority may agree (in its sole discretion) to the deferral of the recognition of the Cost or its amortisation over subsequent years for the purposes of determining compliance with an Annual Site Funding Limit, Current Budget and/or Capital Budget.
- 3.4 The Authority's approval of the Lifetime Plan (LTP) or other budgetary approval shall not be construed as an Advance Agreement affecting the Allowability of Costs.
- 3.5 To propose an Advance Agreement, the Contractor must submit its request in writing to the Authority. The Authority shall not unreasonably withhold its consent to an Advance Agreement and shall inform the Contractor in a timely manner whether the Advance Agreement is approved or rejected giving reasons for any rejection.
- 3.6 An Advance Agreement shall only come into effect upon it being signed by both the Authority and the Contractor.

4. Disallowable Costs

- 4.1 Subject to Paragraphs 4.2 (Disallowable Costs), 4.3 (Disallowable Costs) and 4.5 (Disallowable Costs) below and except when treated otherwise under an Advance Agreement, in respect of each Contract Year Costs incurred by the Contractor on or after the Commencement Date, in whole or in part, and any Associated Allocable Cost, are Disallowable Costs if they are:
 - (a) Costs of investments in shares and securities;
 - (b) Costs of raising and servicing capital, including short-term financing however represented save to the extent that:

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- (i) they arise under an Approved Working Capital Facility (including for the avoidance of doubt in respect of interest, fees and other charges payable under such facility) unless they relate to interest, fees and charges incurred as a consequence of the Contractor's failure to agree an Exceptional Item, or otherwise to comply with the agreed invoicing procedures; and
- (ii) they do not arise as a result of the Contractor's use of such facility in breach of Clause 6.5 (Cash Flow) or Clause 6.10 (Operation of Accounts); and
- (iii) they do not arise as a result of the Contractor's breach of the invoicing procedures set out in Part 3 (Payment of Allowable Costs) of this Schedule 6 (Finance Schedule); and
- (iv) the aggregate value in any Contract Year of such Costs which fall within sub paragraph (i) but do not fall within sub paragraphs (ii) and (iii):
 - (A) does not exceed the Approved Working Capital Allowance for the relevant Contract Year plus the aggregate of any Authority Entitled Interest which may accrue in the relevant Contract Year; and
 - (B) exceeds the aggregate of any Authority Entitled Interest which may have accrued in that Contract Year;
- (c) Costs of and losses on:
 - (i) financial hedges on instruments held to manage debt interest rate exposures;
 - (ii) financial hedges on instruments held for trading; or
 - (iii) market price and foreign currency hedges;

save in each case where they arise under foreign currency hedges for purchases of goods and services for which the relevant Costs are Allowable,
- (d) Extravagant Outlays (the Contractor is entitled to a full written explanation when these Costs are Disallowed by the Authority);
- (e) general reserves, contingent liabilities and provisions (including bad debt provisions);

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- (f) subscriptions and donations of a political nature;
- (g) donations, including cash, property and services, regardless of recipient (other than as may be provided for in an agreed Socio-Economic Development Plan);
- (h) Costs of research and development (including but not limited to that on which research and development tax relief can be claimed) save where this is reasonably required by the Lifetime Plan;
- (i) marketing, advertising and selling expenses;
- (j) Costs paid or payable to or for the benefit of the Parent Body Organisation or any Affiliates other than those permitted by Clause 6.3.1.13 (Financial Restrictions) and/or 6.10.5 (Payments to Parent);
- (k) Costs of the Contractor and any companies in which the Contractor, directly or indirectly, has a shareholding or any other form of economic interest arising out of mergers, business combinations and business re-organisations not covered under an Advance Agreement including:
 - (i) mergers and acquisitions;
 - (ii) de-mergers;
 - (iii) joint ventures;
 - (iv) raising capital;unless necessarily incurred in carrying out the LTP and with the consent of the Authority, such consent not to be unreasonably withheld or delayed;
- (l) travel Costs, subsistence and other human resources allowances in excess of those provided for in an Internal Procedure relating to human resources approved by the Authority;
- (m) appropriation of profits, transfer of profits to reserves, dividends paid or payable by the Contractor (excluding for the avoidance of doubt any dividends paid to the Parent Body Organisation in accordance with Clause 6.10.5.2 (Payments to Parent)) and/or corporation tax on the chargeable profits of the Contractor;
- (n) VAT, the foreign equivalent of VAT and any other Tax:
 - (i) which is charged to and recovered by the Contractor from any person

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as a result of any goods or services supplied by the Contractor; and

- (ii) for which the Contractor is then liable to account to any Taxation Authority;
- (o) VAT, the foreign equivalent of VAT and any other Tax in each case:
 - (i) to the extent that the same is eligible for recovery from a Taxation Authority; and/or
 - (ii) in respect of or in connection with any Disallowable Costs;
- (p) any Cost which relates to any VAT, the foreign equivalent of VAT or any other Tax (in each case incurred by any direct or indirect supplier of the Contractor) to the extent that the same is eligible for recovery from HM Revenue and Customs or any other Tax Authority;
- (q) Costs of membership in social, dining or other similar organisations unless required under the Contract and the LTP, and excessive costs for entertainment and/or social activities;
- (r) Costs for registration, maintenance or licensing of intellectual property not owned by, or licensed to the Contractor by, the Authority including costs of Parent IP licensed to the Contractor and/or Authority which is not Reserved Parent IP but excluding any reasonable commercial licence fee payable to a Subcontractor in accordance with a Subcontract entered into in accordance with this Contract;
- (s) royalties or amortised costs for a licence to use intellectual property when the Contractor has a royalty-free licence or right to free use of the intellectual property, or the intellectual property has been found to be invalid or unenforceable, or the intellectual property has expired and where the Contractor could not reasonably have been expected to know that no such royalties or costs were payable and cannot reasonably recover any such overpayment or unnecessary payment of such royalties or costs;
- (t) fines, interest and financial penalties (including any interest payable on such fines and financial penalties) imposed on or accepted by the Contractor or its Affiliates as a result of any actual or alleged breach of applicable Law or Regulatory Requirements (including failure to pay any Tax and the costs of the defence of any relevant Legal Proceedings and the obtaining of any out of court settlement involving the payment of any such fine, penalty or interest, other than due to any failure of the Authority to comply with its obligations under this Contract, provided that such costs of defence shall not be

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Disallowable where the matters giving rise to the relevant fines, interest or financial penalties occurred wholly prior to the Commencement Date);

- (u) Costs arising from being a claimant (or the equivalent for the relevant proceedings) in Legal Proceedings (and/or the preparation for such Legal Proceedings and/or obtaining any out of court settlement) except where:
 - (i) the Authority has specifically approved such activity for the purposes of Clause 6.3 (Financial Restrictions) of this Contract (such approval not to be unreasonably withheld or delayed); or
 - (ii) such arbitration or litigation or alternative dispute resolution (and/or the preparation for such arbitration, litigation or alternative dispute resolution) is:
 - (A) reasonably commenced for the purposes of satisfying Clause 7.6 (Necessary Consents), Clause 8 (Intellectual Property) or Clause 1.25 (Claims Handling) of this Contract; or
 - (B) commenced in accordance with the Dispute Resolution Procedure; or
 - (C) an attempt to commence judicial review proceedings against the Authority in connection with this Contract; or
 - (D) commenced to challenge any threatened or actual refusal to grant, non renewal or revocation of a Nuclear Site Licence or any other regulatory permit or consent which is essential to the Contractor's ability to operate all or any part of the Site or carry out the Commercial Operations Tasks in accordance with Law; or
 - (iii) such Costs relate to activities which the Contractor, acting reasonably, considers urgent and necessary for the Contractor's performance of its obligations to the Authority;
- (v) Costs incurred in the defence of any Third Party Claim and which the Contractor would not have incurred if it had complied with the Authority's instructions under Clause 14.3 (Third Party Claims) except to the extent that the relevant Costs could not reasonably be avoided by the Contractor through adherence to the Authority's instructions;
- (w) Costs incurred in connection with any civil Legal Proceedings brought by the Authority for violation of, or failure to comply with, Law or regulation by the

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Contractor (including its agents or employees), where a finding or ruling against the Contractor is made (or an out of court settlement is achieved unless the Authority agrees otherwise in such settlement);

- (x) Costs of preparing and submitting a bid or proposal and participation in any Authority procurement exercise (however, where the Contractor incurs Costs as a result of preparing information on behalf of the Authority, the Contractor should submit an Advance Agreement in order to obtain reimbursement of such Costs), provided that the foregoing shall not apply in relation to Costs incurred by the Contractor in supporting an Authority shared service initiative;
- (y) any amounts owed by the Contractor to any Third Party as a result of the disclosure of Information by the Authority pursuant to Clause 10.3 (Disclosure by the Authority) or any publication by the Authority whether or not in compliance with Clause 10.4 (Publication) to the extent that:
 - (i) the Contractor has failed to use all reasonable endeavours to mitigate the amount of the claim; and/or:
 - (ii) where, in the case of an agreement entered into on or after the Commencement Date, the Contractor has failed to obtain the Authority's prior written consent to the entering into of the relevant agreement with an express acknowledgement from the Authority that such consent is given in the knowledge that the agreement does not allow the disclosure of Information and publication by the Authority contemplated by Clause 10 (Confidentiality, Security and Compliance with Law); and/or
 - (iii) in respect of the Costs of any Legal Proceedings in relation to such disclosure or publication, the Contractor has not been authorised by the Authority to handle the defence and/or has not adhered to the Authority's instructions given pursuant to Clause 1.25 (Claims Handling) of this Contract and/or clause 8.6 (Parent Body Organisation Handling) of the Parent Body Agreement (except to the extent that the relevant Costs could not reasonably be avoided by the Contractor through inaction or adherence to the Authority's instructions);
- (z) Costs which are defined as Disallowable (or a term with the same or similar effect) in cost reimbursable Subcontracts;
- (aa) Costs attributable to the Nominated Staff or any Employees or any Authority Assets to the extent used by or provided to the Parent Body Organisation or any other person for any period of time for a purpose other than in fulfilment of the Contractor's obligations under this Contract;

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- (bb) Costs of pursuing or defending a claim to which clause 8.6 (Parent Body Organisation Handling) of the Parent Body Agreement applies;
- (cc) payments to creditors before they are due or where the creditor is already holding funds which can be used to satisfy the liability;
- (dd) Costs incurred in carrying out any activity (and/or any Costs which arise directly as a result of such activity being undertaken) which is not set out in the relevant Contract Year of the LTP and is not otherwise permitted in accordance with Clause 2.3.1 (No activities outside current Contract Year of LTP);
- (ee) Costs (including preparation Costs) relating to the reference of any dispute to the Dispute Resolution Procedure in the event that:
 - (i) it is agreed or determined (in accordance with Clause 13.2 (Reasonableness of the Authority)) that the Authority has acted reasonably; or
 - (ii) (to the extent that the dispute falls outside of the scope of Clause 13.2 (Reasonableness of the Authority)) the relevant dispute is agreed or determined substantially in favour of the Authority;provided that where a dispute is determined partly in favour of the Authority and partly in favour of the Contractor, then only an appropriate proportion of the relevant costs will be Disallowable;
- (ff) Costs (including preparation Costs) relating to the Contractor's pursuit of a claim against a Third Party (save where such Costs are incurred by the Contractor in pursuit of a claim against a Third Party where the Contractor proceeds in the manner directed by the Authority);
- (gg) the amount of any debt due and payable by the Contractor to the Authority pursuant to this Contract;
- (hh) where there has been Defective Performance:
 - (i) which constitutes Gross Breach or Persistent Breach, those Costs (to the extent that the Authority does not receive insurance proceeds in respect of the Costs in question) which are Disallowable in accordance with the Appendix to this Part of this Schedule; and/or
 - (ii) which is caused by the fraud of anyone engaged by the Contractor at Team Leader level (or its equivalent) or above, those Costs (to the

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extent that the Authority does not receive insurance proceeds in respect of the Costs in question) which are incurred in connection with such Defective Performance;

- (ii) Costs which are recoverable by the Contractor from one or more third parties but which the Contractor has not used reasonable endeavours to recover from such third parties;
- (jj) Costs which the Contractor is entitled to meet from a Customer Ringfenced Account;
- (kk) Costs incurred in a particular Contract Year by the Contractor that fall within any Vitiating Insurance Liability where the cause of the Cost becoming a Vitiating Insurance Liability was one or more of:
 - (i) fraud by anyone engaged by the Contractor at Team Leader level (or its equivalent) or above;
 - (ii) a Gross Breach; and/or
 - (iii) a Persistent Breach; and/or

provided that:

- (a) no Costs shall become Disallowable under this paragraph (kk) by reason of any matter that falls within the definition of 'Immunity Matter' or is the direct result of an Immunity Matter; and
 - (b) sub paragraphs (ii) and (iii) shall not apply in respect of any Costs which are Allowable in accordance with the Appendix to this Schedule 6 (Finance Schedule) Part 2 (Allowable and Disallowable Costs);
- (ll) any Contractor Historical Costs, Non Contractor Historical Costs, Pension Costs and Transfer Scheme Losses incurred as a result of the Contractor failing to take reasonable steps in mitigating the Contractor's liability in respect of such Costs;
 - (mm) save to the extent that any such Costs are Allowable in accordance with the Appendix to this Schedule 6 (Finance Schedule) Part 2 (Allowable and Disallowable Costs), Costs incurred as a result of one or more of:
 - (i) the Contractor's fraud, wilful or reckless default or Gross Breach; and/or

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(ii) a Persistent Breach

and which are covered by insurance but which fall within the deductible or excess under the relevant insurance, provided that no Costs shall become Disallowable under this paragraph (mm) by reason of any matter that falls within the definition of 'Immunity Matter' or is the direct result of an 'Immunity Matter';

- (nn) Costs incurred by the Contractor in relation to any insurance premium, save for any premium incurred by the Contractor in taking out any insurance that the Contractor is required by Law to maintain in circumstances where the Authority has failed to maintain such insurance in accordance with Clause 11.1.1.5.2 (Authority Insurances);
- (oo) interest payable to any third party as a consequence of late payment by the Contractor where the Contractor has been put in funds or has available working capital under an Approved Working Capital Facility (or would have had such available working capital had such working capital not been applied in meeting any Disallowable Costs);
- (pp) interest on working capital drawn down from the Approved Working Capital Facility to meet any payments other than Allowable Costs;
- (qq) (without prejudice to the Authority's obligation to make payments under Paragraph 7 (Transitional Balances) of Part 3 (Payment of Allowable Costs) of this Schedule 6 (Finance Schedule)) any Cost to the extent that the relevant Cost has been taken into account in the Transitional Balances for the purposes of Paragraph 7 (Transitional Balances) of Part 3 (Payment of Allowable Costs) of this Schedule 6 (Finance Schedule); and/or
- (rr) any Cost incurred by the Contractor in satisfying a Sub Contract or a Sub Subcontract entered into prior to the Commencement Date as a result of the Contractor's failure to take reasonable steps to mitigate its Costs in respect of the relevant Sub Contract or a Sub Subcontract.

4.2 Subject to Paragraph 4.3 (Disallowable Costs) below, in respect of any Contract Year:

- (a) if the aggregate value of all Current Costs incurred in that year (which but for this Paragraph 4.2 (Disallowable Costs) would be Allowable Costs) exceeds the aggregate of the Current Budgets for the relevant year, then for that year Allowable Costs with an aggregate value equal to the excess shall be treated as Disallowable Costs; and

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- (b) if the aggregate value of all Costs incurred in that year (which but for this Paragraph 4.2(b) (Disallowable Costs) would be Allowable Costs) exceeds the aggregate of the Annual Site Funding Limits for the relevant year, then for that year Allowable Costs with an aggregate value equal to the excess shall be treated as Disallowable Costs;

provided that there shall be no double counting between Paragraphs 4.2(a) and (b) (Disallowable Costs).

- 4.3 Notwithstanding Clause 6.1 (Funding Limits), Paragraph 4.2 (a) and/or (b) (Disallowable Costs) shall not apply to the extent that the Contractor can demonstrate that it has, in accordance with Good Industry Practice, managed the LTP for the relevant Contract Year including in particular:

- (a) the allocation of resources across;
- (b) the scheduling of and budgeting for; and
- (c) the monitoring and reporting of progress, and costs incurred in respect of,

the Tasks provided for in the LTP and the associated work which is therefore undertaken by the Contractor in the implementation of the LTP, in each case so as to avoid or (where unavoidable) minimise the extent of any such excess of Current Costs or (as the case may be) Costs referred to in Paragraph 4.2 (Disallowable Costs) above.

To the extent that, in satisfying its obligations under the previous paragraph, the Contractor wishes to make any changes to the nature and/or level of Costs incurred by the Contractor in implementing the LTP, the Contractor shall, as soon as reasonably practicable after becoming aware of the risk that the Current Budgets and/or the Annual Site Funding Limits for the relevant Contract Year are likely to be exceeded discuss such changes with the Authority and only make the changes after the Authority has given its agreement (not to be unreasonably withheld or delayed) to such changes.

- 4.4 For the purposes of Paragraph 4.3 (Disallowable Costs) above, in deciding whether the Contractor has taken appropriate steps to manage the LTP, the fact that such steps or changes may result in the achievement of any Payment Milestone being delayed (either temporarily or permanently) shall not be a reason for the Contractor to fail to take such steps or make such changes. Provided that the Contractor has acted in accordance with Good Industry Practice in seeking to satisfy its obligations under Paragraph 4.3 (Disallowable Costs) above, the Contractor may propose a Change (in accordance with Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure)) to the relevant Payment Milestone or the allocation of any PBI Fee or Efficiency Fee attached to such Payment Milestone

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so that the Contractor is not unfairly prejudiced. The Contractor shall not be entitled to request any Change to any ASFL and/or Current Budget.

- 4.5 Subject to Clause 1.14.4 (Entire Agreement), to the extent that the aggregate value of all Disallowable Costs together with any Contractor's liabilities (as defined in Clause 11.6.3 (Liability Cap)) in any Contract Year exceeds the Liability Cap for that Contract Year, such excess shall be deemed to be Allowable Costs.

5. Accounting Basis

- 5.1 Subject to Paragraph 5.3 (Accounting Basis) below, all Costs (including any Current Costs and any Capital Costs) and all Category II Revenue are to be determined for the purposes of the Annual Site Funding Limits, the Current Budgets, the Capital Budgets and the level of any Allowable and Disallowable Costs are to be determined for the purposes of this Schedule 6, on an accruals accounting basis in accordance with the Accounting Principles as if the transaction were being carried out directly by the Authority as though the Authority were a company limited by shares under the Companies Act 1985 and as modified for the following:

- (a) depreciation, impairment, adjustments to the carrying value of goodwill, revaluations, revalorisations, amortisation, movements on nuclear provisions and profits or losses on disposals of assets are excluded;
- (b) Costs related to long-term nuclear provisions are to be recognised at the point at which the underlying goods or services are received or the Cost becomes payable, whichever is later; *[GUIDANCE NOTE: The treatment of restructuring costs needs to be the subject of Advance Agreements.]*
- (c) Costs of creating long-term contract work-in-progress are recognised at the point at which the underlying goods or services are received or the Cost becomes payable, whichever is later;
- (d) pensions costs are to be recognised when each payment falls due for payment according to the funding agreements between the relevant scheme trustees and the Authority;
- (e) finance leases should be accounted for as if they were classified as operating leases in accordance with SSAP 21;

except in each case as may otherwise be described in an Advance Agreement.

- 5.2 Subject to Paragraph 5.3 (Accounting Basis) below, for the purposes of this Contract only, the Authority may determine, acting reasonably, the accounting treatment of any item of Current Cost, Capital Cost and Category II Revenue which requires the

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exercise of accounting judgment. The Authority must consult the Contractor before making such a determination and must explain to the Contractor in writing the reasons for its determination.

- 5.3 When in the sole discretion of the Authority it is sensible and prudent to do so, the Authority may agree to defer to a following Contract Year the recognition of part or all of a Cost which would otherwise be recognised in the current Contract Year and which would (but for the operation of this Paragraph 5.3 (Accounting Basis)) be treated as a Disallowable Cost.

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Appendix to Part 2 (Allowable and Disallowable Costs) of Schedule 6 (Finance Schedule)

This Appendix to Part 2 (Allowable and Disallowable Costs) of Schedule 6 (Finance Schedule) sets out the principles for determining the Contractor's liability for Disallowable Costs in connection with Defective Performance by reason of Gross Breach or Persistent Breach. It does not apply to Defective Performance where there is no Gross Breach and no Persistent Breach. Neither does this Appendix apply to any Gross Breach or Persistent Breach that falls within the definition of 'Immunity Matter' or is the direct result of an Immunity Matter, and no Costs shall become Disallowable by reason of any such Gross Breach or Persistent Breach.

For the purposes of this Appendix the following words shall have the following meanings:

Consequential Works	Works to reinstate, repair, decontaminate or otherwise make good damage (whether on Site or off Site) which are not Rectification Works.
Defective Works	Any part or element of any component of the LTP (or any activity necessarily ancillary thereto) which is defective due to Defective Performance by reason of Gross Breach or Persistent Breach. Only such part shall be treated as Defective Works for the purposes of determining the incidence of Disallowable Costs in accordance with this Appendix.
Rectification Works	Any works, necessitated by Gross Breach or Persistent Breach, without which the Re-performance Works cannot be carried out or which are required to undo the Defective Works (but which do not amount to Consequential Works), including but not limited to: <ul style="list-style-type: none">• Works to provide access to the location of Re-performance Works• Works to make the location of Re-performance Works safe such that Re-performance Works can be effectively or safely carried out• Demolition and/or reinstatement of the Defective Works

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	<p>but excluding any portion of any works required by reason of</p> <ul style="list-style-type: none">• such Rectification Works taking place after commissioning of the Defective Works or facility in which the Defective Works are located;• any radioactive or environmental contamination caused by or occurring after performance of the Defective Works; <p>to the extent not covered by the Authority Insurances.</p>
Re-performance Works	Any works required to re-perform Defective Works in accordance with Good Industry Practice.

Disallowable Costs will arise where the Contractor has undertaken work which amounts to Defective Performance and the reason for the Defective Performance is the Contractor's Gross Breach or Persistent Breach.

The following rules apply if there has been Gross Breach or Persistent Breach:

- (a) the Costs of Defective Works shall be Disallowable Costs to the extent that such Costs are wasted by reason of the Defective Performance; and
- (b) the Cost of Rectification Works shall be Disallowable Costs to the extent that such Costs are not covered by insurance (e.g. an insurance deductible or where the policy has been vitiated); and
- (c) the Costs of Re-performance Works and of Consequential Works shall be Allowable Costs; but
- (d) any Costs will be Disallowable if they fall into one of the categories of Disallowable Costs set out in Part 2 (Allowable and Disallowable Costs) of Schedule 6 (Finance Schedule), independently of whether they relate to Defective Performance.

Part 3: Payment of Allowable Costs

1. Purpose

1.1 This Part 3 sets out:

- (a) the process to be adopted for the payment of Allowable Costs to the Contractor;
- (b) a reconciliation process to ensure that the correct amount is paid to the Contractor; and
- (c) a process to ensure that, where any Costs are initially classed as Allowable Costs but subsequently become Disallowable Costs, such Costs are repaid to the Authority.

2. Invoicing and Payment Process

2.1 When, in accordance with Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management), the Parties are setting the LTP for a forthcoming Contract Year, the Parties shall as part of such process use their reasonable endeavours to agree:

- (a) the likely amount of Allowable Costs which are to be incurred by the Contractor, and the likely timetable for incurring such Allowable Costs, in such forthcoming Contract Year;
- (b) for each Accounting Monthly invoice that is to be issued by the Contractor to the Authority during the forthcoming Contract Year, the instalments in which the Authority shall settle such invoice and the dates on which such instalments are to be paid to the Contractor by the Authority (the “**Agreed Payment Profile**”);
- (c) the consequential cash flow requirements of the Contractor if it is to minimise its working capital requirements and the credit balances which it holds on the Contractor’s Payments Account (the “**Agreed Cash Flow Requirement**”); and
- (d) taking into account the Agreed Cash Flow Requirement and the Agreed Payment Profile, the net allowance which should reasonably be made by the Contractor for:
 - (i) those Costs to be incurred by the Contractor as a result of using the Approved Working Capital Facility to fulfil its obligations under this

Part 3: Payment of Allowable Costs

Contract; LESS

- (ii) the Authority Entitled Interest which the Contractor is likely to earn in the relevant Contract Year

(such allowance being the “**Approved Working Capital Allowance**”).

2.2 For the purposes of Paragraph 2.1(b) (Invoicing and Payment Process) above, the Parties shall structure the Agreed Payment Profile so that:

- (a) large anticipated Allowable Costs (including payroll costs) shall be paid by the Authority to the Contractor as and when such Allowable Costs are to be incurred by the Contractor;
- (b) routine smaller Allowable Costs shall be grouped together within one or more instalments;
- (c) VAT shall be dealt with in accordance with the principles in Paragraph 5 (VAT) below; and
- (d) the Approved Working Capital Allowance and the Authority Entitled Interest is minimised.

2.3 If the Contractor becomes aware that any invoice (other than one covered by the Exceptional Item regime referred to in Paragraph 4 (Exceptional Items) below) is likely to exceed that predicted in any of the cash flow forecasts provided for in Clause 6.5.2 (Cashflow) or as agreed as part of the Agreed Cash Flow Requirement, then the Contractor shall notify the Authority as soon as practicable after it becomes aware of this fact.

2.4 Within 15 Working Days of the end of each Month in which the relevant Accounting Month ended, the Contractor shall invoice the Authority for all Allowable Costs incurred during the Accounting Month just ended which are not covered by the Exceptional Item regime referred to at Paragraph 4 (Exceptional Items). The amounts incurred in the relevant Accounting Month shall be determined on an accruals accounting basis in accordance with UK GAAP, save in respect of purchase of stock.

2.5 The Contractor shall invoice for Allowable Costs incurred as a result of purchasing stock on a purchased basis, so that the invoice shall show the value (excluding VAT) of actual purchases of stock during the relevant Accounting Month as opposed to the value of stock consumed in the relevant Accounting Month. As such stock shall be the property of the Authority, the relevant invoice shall treat the purchase of such stock by the Contractor on behalf of the Authority as a taxable supply.

Part 3: Payment of Allowable Costs

2.6 Provided that:

- (a) the Contractor submits its invoices to the Authority in accordance with Paragraph 2.4 (Invoicing and Payment Process) above: and
- (b) the level of the instalments which the Authority must pay in order to settle such invoices is not greater than the level set out in the Agreed Payment Profile, the Agreed Cash Flow Requirement and any cash flow forecast requested by the Authority under Clause 6.5.2 (Cashflow),

then the Authority shall pay the Contractor in accordance with the Agreed Payment Profile for the relevant invoices.

2.7 If the level of the instalments which the Authority must pay in order to settle an invoice is greater than that set out in the Agreed Payment Profile, the Agreed Cash Flow Requirement and any cash flow forecast requested by the Authority under Clause 6.5.2 (Cashflow), then the Authority shall pay only the instalments of the invoice which are less than those within the Agreed Payment Profile. The Authority and the Contractor shall then use reasonable endeavours to agree an alternative payment profile for the balance of the invoice which is practicable (bearing in mind the Authority's cash flow position and its desire to seek to minimise the working capital requirements of the Contractor).

2.8 To the extent that Allowable Costs comprise salary costs relating to staff engaged by the Contractor, the Authority shall pay such Costs to the Contractor during the Accounting Month in which they are incurred by the Contractor, notwithstanding that such Costs shall be paid before the Contractor submits the relevant invoice to the Authority. To receive the advance payment of such invoice, the Contractor shall be required to notify the Authority of the level of the relevant Costs at least two clear Working Days in advance of the Costs being due for payment and provide the Authority with the documentation (as specified by the Authority at the start of the relevant Contract Year) required to support the Contractor's claim for such Costs.

2.9 If the Contractor fails to submit an invoice for a particular Accounting Month within 15 calendar days of the end of the relevant Month, then the dates for payment of the instalments of the relevant invoice shall be adjusted to those applicable to the invoice for the next following Accounting Month (although the Authority shall use reasonable endeavours to pay such instalments sooner).

2.10 If during any Contract Year there shall be any change to:

- (a) the ASFL;
- (b) the rates of interest applicable to the Approved Working Capital Facility which

Part 3: Payment of Allowable Costs

are outside of the control of the Contractor and/or the PBO;

- (c) the payment dates for any supplier; or
- (d) this Contract

which has a material impact on the Agreed Cash Flow Requirement, the Agreed Payment Profile and/or the Approved Working Capital Allowance, then the Parties shall use their reasonable endeavours to agree appropriate changes to the same for the remainder of the Contract Year.

- 2.11 The Agreed Cash Flow Requirement, the Agreed Payment Profile and the Approved Working Capital Allowance for the first Contract Year, shall be as specified in the document entitled 'Appendix to Part 3 of Schedule 6 to the Site Management and Operations Agreement for Sellafield dated 24 November 2008 (the "Contract")'.

3. Submission of Invoices

- 3.1 The Accounting Monthly invoice submitted by the Contractor under Paragraph 2.4 (Invoicing and Payment Process) above shall be accompanied by:

- (a) a description of the work and/or services to which the invoice relates;
- (b) a breakdown setting out in reasonable detail the Allowable Costs incurred and an explanation of what they relate to;
- (c) documentation supporting the sums claimed (including without limitation Subcontractor invoices, Sub-Subcontractor invoices, invoices for materials and other similar documents);
- (d) such other information and documentation as the Authority may from time to time reasonably require from the Contractor, provided that the Authority notifies the Contractor of such requirements; and
- (e) a statement signed by the Finance Director of the Contractor (or in his absence another director of the Contractor) confirming that the amount claimed by the Contractor under the relevant invoice is properly due to the Contractor.

- 3.2 In respect of Allowable Costs included within an invoice issued by the Contractor, the Contractor must separately specify:

- (a) the amount exclusive of VAT or overseas VAT (or its equivalent) for which the Contractor is liable;

Part 3: Payment of Allowable Costs

- (b) the amount of VAT or overseas VAT (or its equivalent) payable by the Contractor in respect of the relevant Allowable Costs;
- (c) the amount of VAT or overseas VAT (or its equivalent) which is payable by the Contractor in respect of the relevant Allowable Costs and which is irrecoverable from the relevant authorities.

In accordance with Paragraph 4.1(o) (Disallowable Costs) of Part 2 (Allowable and Disallowable Costs) of this Schedule 6 (Finance Schedule), VAT or overseas VAT (or its equivalent) which is recoverable by the Contractor from a Taxation Authority shall not be charged to the Authority as an Allowable Cost.

The Contractor shall only charge the Authority VAT in respect of Allowable Costs properly included within the relevant invoice.

3.3 The Authority shall be entitled to require reasonable further information from the Contractor for the purposes of determining whether a Cost which has been claimed is an Allowable Cost. Subject to Paragraph 3.4 (Submission of Invoices) below, in such circumstances the due date for payment of such Allowable Cost shall be whichever is the later of:

- (a) the date five Working Days after the date on which the information is provided by the Contractor to the Authority; or
- (b) the date on which such Allowable Cost would otherwise be reimbursed to the Contractor by the Authority under the provisions of Paragraph 2 (Invoicing and Payment Process) above.

3.4 If the Parties are in dispute as to whether or not a Cost has been properly claimed as an Allowable Cost by the Contractor, then such dispute shall be determined in accordance with the Dispute Resolution Procedure.

4. **Exceptional Items**

4.1 When, in accordance with Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management), the Parties are setting the LTP for a forthcoming Contract Year, the Parties shall as part of such process endeavour to agree an exceptional item threshold (the “**Exceptional Item Threshold**”) for those Allowable Costs which are unexpected or whose timing is unknown so that they can not be taken into account in the Agreed Cash Flow Requirement. Settlement of such costs shall then be the subject of arrangements set out in this Paragraph 4 (Exceptional Items).

Part 3: Payment of Allowable Costs

- 4.2 If:
- (a) an Allowable Cost in excess of the Exceptional Item Threshold arises during the course of a Contract Year; and
 - (b) such Allowable Cost was unexpected or its timing was unknown and consequently it was not taken into account by the Parties in the Agreed Cash Flow Requirement,

then such Allowable Cost shall be deemed to be an “**Exceptional Item**”.

4.3 Allowable Costs which are not an Exceptional Item are to be invoiced and paid under the normal invoicing and payment regime referred to in the preceding Paragraphs of this Part 3 (Payment of Allowable Costs).

4.4 If the Contractor becomes aware that it will incur an Allowable Cost which is an Exceptional Item, it shall as soon as reasonably practicable after becoming aware of the amount and timing of the payment for the relevant item provide the Authority with:

- (a) a VAT invoice or cost statement (if a VAT invoice is not appropriate) for the relevant Allowable Cost; and
- (b) all relevant supporting documents (including the due date for payment) and any other applicable information in such a form as the Authority may reasonably require from time to time

(such information being “**Exceptional Item Information**”).

4.5 Provided that the Authority has received all of the Exceptional Item Information which it reasonably requires:

- (a) if the Authority’s cash flow position reasonably allows, then the Authority shall in respect of the relevant Exceptional Item make a payment to the Contractor’s Payment Account not later than the Working Day before the due date for payment to the relevant supplier or (if later) by the date 5 clear Working Days after the date on which the Authority receives the relevant information; and
- (b) if the Authority’s cash flow position does not reasonably allow, the Authority to make the payment referred to in (a), then the Authority shall reimburse the relevant Exceptional Item as soon as reasonably practicable after the date on which the Contractor makes the corresponding payment to the relevant third party.

Part 3: Payment of Allowable Costs

4.6 In respect of any Exceptional Item, to the extent that:

- (a) the Authority's cash flow position does not reasonably allow the Authority to make the payment referred to in Paragraph 4.5(a) (Exceptional Items) above; and
- (b) failure by the Authority to make the relevant payment to the Contractor's Payment Account under Paragraph 4.5(a) (Exceptional Items) above would mean that the Contractor does not have sufficient working capital available to it (including that available under the Approved Working Capital Facility) to settle the relevant Exceptional Item,

then the Authority shall not be entitled to invoke the provisions of Paragraph 4.5(b) (Exceptional Items) above. Nothing in this Paragraph 4.6 (Exceptional Items) will affect any right of the Authority to abate the Fee in accordance with Part 8 (Abatement of Fee) of this Schedule 6 (Finance Schedule).

5. VAT

5.1 VAT included in any Category I Revenue or any Category II Revenue which is paid over to the Authority in accordance with Clause 6.8 (Category I and II Revenue) shall be repaid to the Payments Account of the Contractor on the day before the latest date upon which the Contractor is required to pay HM Revenue & Customs the VAT element of the Contractor's invoice which gave rise to the Category I or II Revenue.

5.2 VAT charged to the Authority by the Contractor in respect of Allowable Costs will be paid in line with the Agreed Payment Profile.

6. Payments Account

6.1 All payments by the Authority to the Contractor in respect of any Allowable Costs shall be paid by electronic transfer of funds to the Contractor's Payments Account.

7. Transitional Balances

7.1 This Paragraph 7 (Transitional Balances) applies to those amounts which prior to the Commencement Date:

- (a) had been properly invoiced by the Contractor to the Authority under any of:
 - (i) a site management and operations contract dated 1 April 2005 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; and

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- (ii) 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;

but

- (b) have not been settled by the Authority.

Such amounts are referred to as the “**Transitional Balances**”.

7.2 Within 60 Calendar Days of the Commencement Date, the Contractor shall supply to the Authority:

- (a) a schedule of the Transitional Balances detailing the amounts of the Transitional Balances, the dates of the relevant invoices and the amounts to which they relate; and
- (b) a copy of the invoices which have been issued by the Contractor to the Authority relating to the Transitional Balances.

Such information is referred to as the “**Transitional Balance Information**”.

7.3 After the Contractor has supplied the Transitional Balance Information to the Authority, the Contractor and the Authority shall meet and use their reasonable endeavours to agree on the amount of the Transitional Balances and the timing on which they Authority shall discharge the Transitional Balances. The timing shall be such as will minimise the Contractor’s working capital requirements but also minimise the credit balances held by the Contractor on its Contractor’s Payments Account.

7.4 The Authority shall discharge the Transitional Balances in accordance with the agreement reached under Paragraph 7.3 (Transitional Balances) above.

7.5 Nothing in this Paragraph 7 shall remove from the Authority its obligations in respect of Contractor Historical Costs as provided for in Part 2 (Allowable and Disallowable Costs) of this Schedule 6 (Finance Schedule). However, to the extent that the Contractor receives an amount in respect of a Contractor Historical Cost through it being a Transitional Balance, the Contractor shall not also be entitled to claim such amount as an Allowable Cost under Part 2 (Allowable and Disallowable Costs) of this Schedule 6 (Finance Schedule).

7.6 Where, after the Commencement Date, it is subsequently discovered that:

- (a) any amount paid by the Authority to the Contractor in respect of a Transitional Balance is not used by the Contractor in the settlement of a Contractor

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Historical Cost which gave rise to the relevant Transitional Balance, then the Contractor shall repay the relevant amount to the Authority; or

- (b) any amount included within the Transitional Balances is in excess of the actual Cost to which it relates, then the amount of the relevant Transitional Balances shall be reduced by the amount of the excess.

For the avoidance of doubt, if it shall be discovered that any amount included within the Transitional Balances is less than the actual Cost to which it relates, then the shortfall shall be dealt with as a Contractor Historical Cost.

8. Monthly Reporting

8.1 Within fourteen (14) Calendar Days of the end of each Month, the Contractor shall provide a report the ("**Monthly Reconciliation Report**") in such a form and containing such information as the Authority may reasonably require from time to time.

8.2 Subject to Paragraph 8.1 (Monthly Reporting) above, the Monthly Reconciliation Report shall set out each of the following in respect of the Accounting Month just ended:

- (a) the funds received into and paid out from the Contractor's Payments Accounts, the Contractor's Receipts Accounts, the Contractor's Fee Account, the Customer Ringfenced Accounts, the Foreign Exchange Accounts and any other accounts held by the Contractor;
- (b) the amounts received by the Contractor as Category I Revenue, Category II Revenue or otherwise (including any amounts released as revenue from the Customer Ringfenced Accounts);
- (c) the amounts expended by the Contractor in the proper performance of its obligations under this Contract in respect of Allowable Costs (such details to include a detailed breakdown of the Allowable Costs incurred, an explanation of what they relate to and supporting documentation in support of the Contractor's claim for reimbursement of the relevant Costs);
- (d) the amounts expended by the Contractor in respect of Disallowable Costs;
- (e) a reconciliation statement relating to invoices sent by the Contractor to the Authority in respect of Allowable Costs and cash payments made by the Contractor;
- (f) a reconciliation statement relating to the invoices sent by the Contractor to the

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Authority and payments made by the Authority to the Contractor's Payments Account;

- (g) any Exceptional Item charged to the Authority;
 - (h) amounts of expenditure expended and/or accrued against each Funding Limit (both in respect of the relevant Accounting Month and on a year to date basis);
 - (i) the amount of any Costs incurred in raising and servicing capital (including under the Approved Working Capital Facility) in the relevant Accounting Month and during the relevant Contract Year as compared to the Approved Working Capital Allowance for the relevant Contract Year;
 - (j) an analysis of daily cash balances against the Agreed Cash Flow Requirement; and
 - (k) in connection with sub-paragraphs (a) – (j) above, all relevant supporting documents and any other applicable information in such a form as the Authority may reasonably require from time to time.
- 8.3 The Contractor shall further provide any information requested by the Authority that enables the Authority to comply with its State Aid reporting obligations to the Department for Business, Enterprise and Regulatory Reform (or any successor Department).

9. Annual Reconciliation of Allowable Costs

- 9.1 Within 60 Calendar Days of the end of each Contract Year or as otherwise advised by the Authority giving reasonable notice, the Contractor shall produce information equivalent to that set out in the Monthly Reconciliation Report for the previous Contract Year (the "**Annual Reconciliation Report**") together with an audited balance sheet of the Contractor (the "**Annual Balance Sheet**").
- 9.2 The Parties shall then use their reasonable endeavours to agree the Annual Reconciliation Report and the Annual Balance Sheet and, if they cannot agree such documents within one calendar month, the Annual Reconciliation Report and/or the Annual Balance Sheet (as appropriate) shall be referred to Dispute Resolution.
- 9.3 Once agreed or determined in accordance with Paragraph 9.2 (Annual Reconciliation of Allowable Costs) above, the Annual Reconciliation Report and the Annual Balance Sheet (as the same may be agreed or determined) shall, subject to Paragraph 10 (Ongoing Adjustments) below, be binding on the parties.

Part 3: Payment of Allowable Costs

- 9.4 If the agreed or determined Annual Reconciliation Report and/or the Annual Balance Sheet show that the amounts invoiced by and paid to the Contractor by the Authority are less than the Allowable Costs incurred, then the excess shall be invoiced by the Contractor and paid by the Authority on the earlier of:
- (a) the due date for payment of the Allowable Costs; and
 - (b) 14 Calendar Days after the relevant documents are agreed or determined in accordance with Paragraph 9.2 (Annual Reconciliation of Allowable Costs) above.
- 9.5 If the agreed or determined Annual Reconciliation Report and/or the Annual Balance Sheet show that the amounts invoiced and paid to the Contractor by the Authority are more than the Allowable Costs incurred, then the Contractor shall, at the option of the Authority:
- (a) issue a credit note to the Authority for such excess (including any VAT on such amount);
 - (b) adjust its next invoice by an amount equal to such excess (including any VAT on such amount); or
 - (c) repay such excess (including any VAT on such amount) to the Authority within 14 days of being so required to do so by the Authority.
- 9.6 If the agreed or determined Annual Reconciliation Report and/or the Annual Balance Sheet show that the payments made by the Contractor to the Parent Body Organisation exceed the amounts allowed under this Contract, the Contractor shall procure that the Parent Body Organisation repays such excess to the Contractor no later than 14 Calendar Days after the relevant agreement or determination in accordance with Paragraph 9.2 (Annual Reconciliation of Allowable Costs) above.
- 9.7 On the termination of the Parent Body Agreement, the then current Contract Year shall be deemed to have come to an end for the purposes of this Paragraph 9 (Annual Reconciliation of Allowable Costs) and a new Contract Year shall be deemed to have commenced. For these purposes the Annual Site Funding Limits and the Current Budgets for the full Contract Year shall be apportioned on a reasonable basis between the part of the Contract Year before and the part of the Contract Year after the termination of the Parent Body Agreement.

10. Ongoing Adjustments

- 10.1 Where it becomes apparent to the Contractor and/or the Authority that any Costs which were treated as Allowable Costs should instead be treated as Disallowable Costs

Part 3: Payment of Allowable Costs

(for whatever reason) or any Disallowable Costs have been invoiced incorrectly as Allowable Costs, then:

- (a) where such Costs have not been invoiced, the Contractor shall no longer be entitled to invoice for such Costs;
- (b) where such Costs have been invoiced by the Contractor but not yet reimbursed to the Contractor by the Authority, the Contractor shall, at the option of the Authority, either:
 - (i) issue a credit note to the Authority for the relevant proportion of the relevant invoice (including any VAT on such amount); or
 - (ii) adjust its next invoice by the amount which should not have been included in the previous invoice (including any VAT on such amount); and
- (c) where such Costs have been invoiced to the Authority by the Contractor and reimbursed to the Contractor by the Authority, the Contractor shall immediately issue a credit note to the Authority and repay the relevant amount (including any VAT on such amount) to the Authority no later than 14 Calendar Days after it first becomes apparent that the Disallowable Costs have been invoiced incorrectly.

10.2 Subject to Clause 1.14.4 (Entire Agreement), the Authority shall (notwithstanding the termination of this Contract or the Parent Body Agreement) be entitled to reclaim from the Contractor:

- (a) Allowable Costs which have been reimbursed by the Authority but become Disallowable Costs (for whatever reason); and
- (b) Disallowable Costs invoiced to the Authority and reimbursed by the Authority (for whatever reason),

until the expiry of [Redacted] years from the end of the Contract Year in which the Costs were incurred or, [Redacted] years where the reason for the Costs becoming Disallowable is Defective Performance.

10.3 Where it becomes apparent to the Contractor and/or the Authority that any Costs which were treated as Disallowable Costs should instead be treated as Allowable Costs (for whatever reason) then the Contractor shall be entitled to include the relevant Costs within a subsequent invoice and the Authority shall then settle such invoice in accordance with the invoice payment arrangements referred to above. The Contractor's rights under this Paragraph in respect of any particular Costs, will,

Part 3: Payment of Allowable Costs

however, cease [Redacted] years after the end of the Contract Year in which the relevant Costs were incurred or [Redacted] years where the reason for the incorrect classification of the Costs was a breach of this Agreement by the Authority.

- 10.4 Where the Contractor receives any credit note, then to the extent that the Contractor receives any repayment in respect of that credit note then this shall be treated as Category I Revenue. To the extent that the Contractor does not receive any payment in respect of the credit note, then the Contractor shall utilise the relevant credit note where possible and, in these circumstances the amount of the Allowable Costs payable by the Authority to the Contractor shall then be reduced by the amount of the credit note so utilised.

11. Final Reconciliation of Allowable Costs

- 11.1 Following the termination of this Contract the Authority and the Contractor shall, within 60 days of the Month of termination, use their reasonable endeavours to agree a final reconciliation (the “**Final Reconciliation**”) of the amount of the Allowable Costs and the corresponding payments made and to be made by the Authority to the Contractor in respect of Allowable Costs as if the termination occurred at the end of a Contract Year. If the parties cannot agree the Final Reconciliation within one Month, it shall be referred to Dispute Resolution.
- 11.2 If this Contract does not terminate on 31 March, then for the purposes of the Final Reconciliation the Annual Site Funding Limits and the Current Budgets for the final Contract Year to 31 March will be apportioned on a reasonable basis between the Contract Year before termination and the Contract Year in which termination occurred.
- 11.3 If the Final Reconciliation shows that any Allowable Costs have not been paid to the Contractor, then these shall be paid within 14 Calendar Days of the Final Reconciliation being agreed or determined in accordance with Paragraph 11.1 (Final Reconciliation of Allowable Costs) above.
- 11.4 If the Final Reconciliation shows that too much has been paid to the Contractor in respect of Allowable Costs, then the Contractor shall be required to repay the excess to the Authority within 14 Calendar Days of the Final Reconciliation being agreed or determined in accordance with Paragraph 11.1 (Final Reconciliation of Allowable Costs) above.
- 11.5 Notwithstanding the Final Reconciliation, the Contractor shall be entitled to submit an invoice in respect of the Accounting Month or part Accounting Month ending on termination. This will then be dealt with in accordance with the provisions of this Part 3 and the invoice will be included in the Final Reconciliation.

12. Interest

12.1 If, by operation of this Part 3, the Contractor is obliged to repay money to the Authority or to issue the Authority with a credit note in respect of a Cost which it was wrongly believed was an Allowable Cost or a Cost which was initially treated as an Allowable Cost but which was subsequently recognised as a Disallowable Cost, then the Contractor shall pay the Authority, or (as the case may be) include within the relevant credit note, interest at the rate of [Redacted] per cent above the base rate of Lloyds TSB Bank PLC from:

- (b) the date of reimbursement of the relevant Cost by the Authority to the Contractor; or
- (c) the date on which the Cost was recognised as a Disallowable Cost,

whichever date is later, to the date on which the relevant amount is repaid to the Authority.

Part 4: Base Fee

1. Purpose

- 1.1 This Part 4 sets out how the Base Fee element of the Contract Price is to be determined in respect of each Contract Year.
- 1.2 The Base Fee is to be a fixed sum (subject to indexation) for each Contract Year.
- 1.3 The Base Fee will not be drawn from the ASFL.

2. Amount of Base Fee

2.1 Subject to Paragraph 2.2 (Amount of Base Fee) below and to the provisions of Part 8 (Abatement of Fee) of this Schedule 6 (Finance Schedule), in respect of each Contract Year the “**Base Fee**” shall be the amount for such year as specified in the table below:

Contract Year	Contract Year 1 (Part 1) (Commencement Date to 31.3.09)	Contract Year 1 Part 2 (1.4.09 to 31.3.10)	Contract Year 2 (1.4.10 to 31.3.11)	Contract Year 3 (1.4.11 to 31.3.12)	Contract Year 4 (1.4.12 to 31.3.13)
Amount	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]

Contract Year	Contract Year 5 (1.4.13 to 31.3.14)	Contract Year 6 (1.4.14 to 31.3.15)	Contract Year 7 (1.4.15 to 31.3.16)	Contract Year 8 (1.4.16 to 31.3.17)	Contract Year 9 (1.4.17 to 31.3.18)
Amount	[Redacted]	[Redacted]*	[Redacted]*	[Redacted]*	[Redacted]*

Contract Year	Contract Year 10 (1.4.18 to 31.3.19)	Contract Year 11 (1.4.19 to 31.3.20)	Contract Year 12 (1.4.20 to 31.3.21)	Contract Year 13 (1.4.21 to 31.3.22)	Contract Year 14 (1.4.22 to 31.3.23)
Amount	[Redacted]*	[Redacted]*	[Redacted]*	[Redacted]*	[Redacted]*

Part 4: Base Fee

Contract Year	Contract Year 15 (1.4.23 to 31.3.24)	Contract Year 16 (1.4.24 to 31.3.25)	Contract Year 17 (1.4.25 to 31.3.26)
Amount	[Redacted]*	[Redacted]*	[Redacted]*

* Such amounts shall be subject to the prevailing circumstances at the time of the relevant extension to the Parent Body Agreement

2.2 For the purposes of Paragraph 2.1 (Amount of Base Fee) above:

- (a) The Contractor's entitlement shall be deemed to accrue evenly throughout the relevant Contract Year and on a daily basis;
- (b) In the Contract Year in which the Parent Body Agreement is terminated, the relevant Contract Year shall be deemed to be split into two separate Contract Years and, when determining the level of Base Fee earned by the Contractor for each such deemed Contract Year, the Base Fee for each relevant Contract Year shall be apportioned across the deemed Contract Years on a pro rata basis.
- (c) The figures in respect of any Contract Year commencing on or after 1 April 2010 shall be increased on the first day of such Contract Year by the percentage change in the RPIX between 1 April 2009 and the 31 March falling immediately prior to the start of the relevant Contract Year. For these purposes the RPIX existing on any date shall be the RPIX figure last published before the relevant date.

Part 5: Performance Based Incentives Fee (“PB Fee”)

Part 5: Performance Based Incentives Fee (“PBI Fee”)

1. Purpose

- 1.1 This Part 5 sets out the basis on which the PBI Fee shall be calculated.
- 1.2 The PBI Fee is tied to the performance of the Contractor. The PBI Fee shall therefore be paid on achieving previously agreed objectives and milestones (being the Payment Milestones) which are agreed on an ongoing basis in accordance with Part 7 (Payment Milestones) of this Schedule 6 (Finance Schedule).
- 1.3 These objectives and milestones shall be taken primarily from the Lifetime Plan (LTP) and shall have been agreed on a yearly basis between the Contractor and the Authority, with the Authority (acting reasonably) reserving the right of final determination.
- 1.4 Payment Milestones shall be used by the Authority to drive the Contractor towards Site and Authority goals.
- 1.5 Upon achieving a Payment Milestone the Contractor shall then become entitled to earn the PBI Fee which the parties have agreed is to be apportioned to the relevant Payment Milestone.
- 1.6 In addition to setting direction, Payment Milestones shall also be used to measure, monitor, track and report progress.
- 1.7 PBI Fee shall not be drawn from the ASFL.
- 1.8 The Authority shall be entitled to reduce the PBI Fee under the Fee Abatement Provisions in Part 8 (Abatement of Fee) of this Schedule 6 (Finance Schedule), in the event of poor performance by the Contractor.

2. Maximum PBI Fee

- 2.1 The Contractor shall be entitled to earn PBI Fee in respect of the Contract Years ending on or before 31 March 2012.
- 2.2 The maximum PBI Fee which can be earned by the Contractor in each of such Contract Years shall be the proportion set out in the table below of the aggregate Annual Site Funding Limits. For these purposes the Annual Site Funding Limits for any Contract Year shall be those which are in force on the first day of the relevant Contract Year or (in respect of the first Contract Year) on the Commencement Date:

Part 5: Performance Based Incentives Fee (“PB Fee”)

Contract Year	Contract Year 1 Part 1 (Commencement Date to 31.3.09)	Contract Year 1 Part 2 (1.4.09 to 31.3.10)	Contract Year 2 (1.4.10 to 31.3.11)	Contract Year 3 (1.4.11 to 31.3.12)
Percentage	[Redacted]	[Redacted]	[Redacted]	[Redacted]

3. Earning PBI Fee

3.1 In respect of each Contract Year, the Contractor shall propose to the Authority the amount of the PBI Fee that shall be earned (subject to Part 8 (Abatement of Fee) of Schedule 6 (Finance Schedule)) in respect of each Payment Milestone, this figure being either:

- (a) a set amount of the PBI Fee awarded on a pass or fail basis; or
- (b) a variable amount of the PBI Fee, to be determined by reference to criteria on an incremental scale.

The Contractor shall submit such estimate and proposals to the Authority for review and approval, all of which shall be done in accordance with the timetable set by the Authority and notified to the Contractor in advance of the relevant Contract Year. In setting such timetable the Authority shall ensure that the timetable operates in parallel with the timetable, for the development and approval of Payment Milestones, specified by the Authority under Paragraph 3.2 (Determination of Payment Milestones) of Part 7 (Payment Milestones) of this Schedule 6 (Finance Schedule).

3.2 The Contractor and the Authority shall endeavour to agree the amount of PBI Fee that shall be earned by reference to Payment Milestones in parallel with agreeing the corresponding PAF and Payment Milestone in accordance with Part 7 (Payment Milestones) of this Schedule 6 (Finance Schedule). In seeking to reach such agreement the Contractor and the Authority shall:

- (a) take into account the Cost to the Contractor, and the benefit to the Authority, of achieving the relevant Payment Milestone; and
- (b) ensure that if any PBI Fee is to be allocated to a Payment Milestone which relates to a project in respect of which there are to be a number of Payment Milestones, most of the PBI Fee that will accrue in respect of such Payment Milestones shall accrue upon the completion of the relevant project.

3.3 For the avoidance of doubt the full amount of the maximum PBI Fee that the Contractor shall be entitled to earn in respect of each Contract Year shall be allocated across the Payment Milestones for the relevant Contract Year.

Part 5: Performance Based Incentives Fee (“PB Fee”)

- 3.4 Notwithstanding Paragraph 3.2 (Earning PBI Fee) above, if the relevant apportionment of PBI Fee across Payment Milestones has not been determined by 24 March in the Contract Year immediately preceding the Contract Year in respect of which the Payment Milestone will apply, the Authority shall be entitled, acting reasonably, to determine the apportionment as it considers appropriate.
- 3.5 Any PBI Fee which the Contractor shall earn as a result of achieving Payment Milestones shall be subject to abatement in accordance with Part 8 (Abatement of Fee) of this Schedule 6 (Finance Schedule).

4. Payment Milestone for first Contract Year

- 4.1 The apportionment of PBI Fee for the first Contract Year across the Payment Milestones for the first Contract Year shall be as set out in and to be developed from the Contractor’s document ‘Draft PBIs rev 8’.

5. Changes to apportionment of PBI Fee

- 5.1 In the event that the Authority or the Contractor wishes to make any change to a the apportionment of PBI Fee across Payment Milestones, then such change shall be made in accordance with Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure).

6. Unearned PBI Fee

- 6.1 Subject to Paragraph 6.2 (Unearned PBI Fee) below:
- (a) any failure by the Contractor to earn within any Contract Year all or any part of the PBI Fee apportioned to a particular Payment Milestone for such Contract Year shall result in such unearned PBI Fee no longer being available to the Contractor; and
 - (b) no unearned PBI Fee may be carried forward and made available to the Contractor in the next Contract Year.
- 6.2 In relation to the PBI Fee, in the event that an opportunity to perform the Tasks or other obligations in furtherance of a Payment Milestone is delayed beyond the then current Contract Year due to:
- (a) an event of Force Majeure; or
 - (b) a Change resulting from the demand or sanction of a Regulator, which is made or imposed other than as a result of acts or omissions of the Contractor and

Part 5: Performance Based Incentives Fee (“PB Fee”)

pursuant to which certain Tasks are to be performed in a later Contract Year;
or

- (c) an Authority instruction pursuant to Clause 3.6 (Authority Rights in Respect of Customer Contracts) (which shall be deemed a Change proposed by Authority),

then the Contractor shall be entitled to submit to the Authority (in accordance with Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure)) a request that the PBI Fee allocated to the Payment Milestone which has been so delayed shall be reallocated to Payment Milestones which remain to be performed in the relevant Contract Year and/or one or more alternative Payment Milestones.

- 6.3 If the relevant reallocation of PBI Fee cannot be agreed under Paragraph 6.2 (Unearned PBI Fee) above, the Authority shall be entitled, acting reasonably, to determine the reallocation (if any) as it considers appropriate in its sole discretion.

7. PBI Fee Records Management

PBI Fee payment documentation, together with all of the associated supporting documentation, shall be maintained by the Contractor as part of the Information Asset Register.

Part 6: Efficiency Fee

1. Purpose

1.1 This Part sets out the basis on which the Efficiency Fee shall be calculated. It is to be a designated proportion of the amount by which the actual costs incurred for a particular Contract Year are less than the anticipated cost of work actually performed in the relevant Contract Year. For these purposes the anticipated costs shall be determined using the estimating models existing when the contract is signed so that the Contractor then gets the benefit of efficiencies which it is able to introduce. These estimating models shall however be rebased upon each five year extension of the Parent Body Agreement.

2. Earning Efficiency Fee

2.1 In respect of each Contract Year, if the True Cost Variance (as defined in Paragraph 4 (True Cost Variance) below) for that Contract Year is a positive figure, then the Authority shall pay the Contractor an amount (the “**Efficiency Fee**”) equivalent to a proportion of such True Cost Variance determined under Paragraph 2.2 (Earning Efficiency Fee) below.

2.2 The amount of the Efficiency Fee shall be calculated applying the table below:

(1)	(2)	(3)	(4)
	Contract Years within the Initial Period as the same may be extended in accordance with Clause 2.2.5 (Term) of the Parent Body Agreement	Contract Years within the Second Period as the same may be extended in accordance with Clause 2.2.5 (Term) of the Parent Body Agreement	Contract Years within the Third Period as the same may be extended in accordance with Clause 2.2.5 (Term) of the Parent Body Agreement
Percentage that the True Cost Variance represents of the Budgeted Cost of Work Performed (adjusted as per Paragraph 4 (True Cost Variance) below but only where the	Efficiency Fee payable to the Contractor (being the relevant percentage of the True Cost Variance to the extent that it falls within the corresponding band set out in Column 1)	Efficiency Fee payable to the Contractor (being the relevant percentage of the True Cost Variance to the extent that it falls within the corresponding band set out in Column 1)	Efficiency Fee payable to the Contractor (being the relevant percentage of the True Cost Variance to the extent that it falls within the corresponding band set out in Column 1)

Part 6: Efficiency Fee

adjustments relate to the Budgeted Cost of Work Performed)			
0 to 10 %	[Redacted]	[Redacted]	[Redacted]
>10% up to 30%	[Redacted]	[Redacted]	[Redacted]
>30%	[Redacted]	[Redacted]	[Redacted]

3. Budgeted Cost of Work Performed

3.1 For the purposes of determining the Efficiency Fee for any Contract Year, the “**Budgeted Cost of Work Performed**” shall be the aggregate of all Costs (and Associated Allocable Costs) which:

- (a) were provided for in the Lifetime Plan (as changed in accordance with this Contract but subject to Paragraph 3.2 (Budgeted Cost of Work Performed) below) for the relevant Contract Year; and
- (b) relate to those activities which were undertaken in the relevant Contract Year.

3.2 For the purposes of Paragraph 3.1 (Budgeted Cost of Work Performed) above all Costs (and Associated Allocable Costs) shall be determined:

- (a) (in respect of the Initial Period (as the same may be extended in accordance with clause 2.2.5 of the Parent Body Agreement) (the “**Initial Efficiency Fee Period**”)) applying the estimating processes and procedures set out in PCP 09 but using the pricing and other information (including indexation policy) and the efficiency and performance level assumptions used by the Authority and the Contractor in agreeing the Lifetime Plan actually used for the period 1 April 2008 to 31 March 2009;
- (b) (in respect of the Second Period (as the same may be extended in accordance with clause 2.2.5 of the Parent Body Agreement) (the “**Second Efficiency Fee Period**”)) applying the estimating processes and procedures set out in PCP 09 but using the pricing and other information (including indexation policy) and the efficiency and performance level assumptions used by the Authority and the Contractor in agreeing the Lifetime Plan actually used for the first Contract Year falling wholly within the Second Efficiency Fee Period; and
- (c) (in respect of the Third Period (as the same may be extended in accordance with Clause 2.2.5 of the Parent Body Agreement) (the “**Third Efficiency Fee Period**”)) applying the estimating processes and procedures set out in PCP 09 but using the pricing and other information (including indexation policy) and

the efficiency and performance level assumptions used by the Authority and the Contractor in agreeing the Lifetime Plan actually used for the first Contract Year falling wholly within the Third Efficiency Fee Period.

- 3.3 For the avoidance of doubt when the Contractor and the Authority are seeking to agree the Lifetime Plan for any Contract Year and, in this context, are establishing the pricing and other information and the efficiency and performance level assumptions to be used for this purpose, the parties shall take into account the performance of the Contractor over the previous thirty six months and in the light of such performance use the pricing and other information (including indexation policy) and the efficiency and performance level demonstrated giving rise to the lowest reasonably achievable level of Cost estimate for activities to be undertaken in the relevant Contract Year.

4. True Cost Variance

- 4.1 For the purposes of determining the Efficiency Fee for any Contract Year, the “**True Cost Variance**” shall be determined by:
- (a) subtracting the Actual Cost of Work Performed from the Budgeted Cost of Work Performed in each case for the relevant Contract Year; and
 - (b) adjusting the resulting figure:
 - (i) by deducting any amounts to the extent that they were included within the Budgeted Cost of Work Performed but not included in the Actual Cost of Work Performed other than as a result of cost saving practices, methodologies, efficiencies or initiatives introduced by the Contractor after the Commencement Date; [*GUIDANCE NOTE: These might include windfall cost saving such as those resulting from a reduction in business rates*]
 - (ii) to exclude the effect of any errors in the Budgeted Cost of Work Performed and/or the Actual Cost of Work Performed which result from double counting, estimating errors or scope duplication;
 - (iii) by adding the amount by which any specific allowances for the Costs (including any Associated Allocable Costs) of commodities, materials, consumables and utilities included in the Budgeted Cost of Work Performed is less than the amount included within the Actual Cost of Work Performed for those commodities, materials, consumables and utilities despite the Contractor acting in accordance with Good Industry Practice in preparing the relevant LTP for the relevant Contract Year;

Part 6: Efficiency Fee

- (iv) by adding the amount of any Insurance Proceeds received by the Authority and/or the Contractor on account of any Costs included within the Actual Cost of Work Performed in the relevant Contract Year (but only to the extent that such Insurance Proceeds had not been taken into account in the Budgeted Costs of Work Performed for the relevant Contract Year);
- (v) by deducting the amount of any allowance for Costs (and any Associated Allocable Costs) within the Budgeted Cost of Work Performed associated with any Defective Works, Rectification Works and Consequential Works (as such terms are defined in the Appendix to Part 2 (Allowable and Disallowable Costs) of this Schedule 6 (Finance Schedule)) required pursuant to a Defective Performance Notice. For the purposes of this paragraph 4.1(b)(v) only the definitions “Defective Works”, “Rectification Works” and “Consequential Works” shall apply regardless of whether or not the Defective Performance forming the subject of the Defective Performance Notice referred to amounts to Gross Breach or Persistent Breach;
- (vi) Not used
- (vii) by adding the amount (determined using the principles set out in Paragraph 3.2 (Budgeted Cost of Work Performed) above) of those Costs included within the Actual Cost of Work Performed as a result of a Change under Paragraph 3 (Change Control) of Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure) but which were not taken into account in the Budgeted Cost of Work Performed;
- (viii) by adding the amount of any Contractor Historical Costs and any Non Contractor Historical Costs not included in the Budgeted Cost of Work Performed (to the extent such Contractor Historical Costs or, as the case may be, Non Contractor Historical Costs were included in the Actual Cost of Work Performed);
- (ix) by deducting the amount of any liability which the Authority incurs to a third party (other than any liability arising from any contract for or in connection with fuel reprocessing services or transport) as a consequence of a breach of this Contract by the Contractor but only to the extent that:
 - (A) the amount deducted is limited to that for which the Authority would have been liable had it used all reasonable efforts to

mitigate its liability; and

- (B) any part of the liability recovered through Insurance Proceeds will not be deducted;
 - (x) by adding the amount of any Disallowable Costs which were included within the Actual Cost of Work Performed; and
 - (xi) making such other adjustments as the parties may agree are necessary to ensure that the comparison of the Budgeted Cost of Work Performed against the Actual Cost of Work Performed when determining the True Cost Variance for the purposes of calculating Efficiency Fee is a comparison of like budgeted costs with like costs incurred by the Contractor.
- 4.2 For the purposes of determining the True Cost Variance, the Authority shall be entitled to require the Contractor to demonstrate that where there are Costs which were included within the Budgeted Cost of Work Performed for the relevant Contract Year but which were not included within the Actual Cost of Work Performed in that Contract Year, then the reason that such Costs were not included within the Actual Cost of Work Performed was as a result of cost saving practices, methodologies, efficiencies or initiatives introduced by the Contractor after the Commencement Date.
- 4.3 The Contractor shall maintain appropriate evidence files to prove where Cost savings arise as a result of cost saving practices, methodologies, efficiencies or initiatives introduced by the Contractor. Such files shall be maintained in the form, detail and to the standard from time to time required by the Authority and made available upon reasonable notice to the Authority and any third party appointed by the Authority for the purposes of reporting on the level of costs savings generated by the Contractor.
- 4.4 If any part of any liability which the Authority incurs to a third party (other than any liability arising from any contract for or in connection with fuel reprocessing services or transport) as a consequence of a breach of this Contract by the Contractor which would have been a Disallowable Cost had it been incurred by the Contractor and which has been paid or reimbursed by the Authority to a Third Party, it will not be taken into account for the purposes of Paragraph 4.1(ix) (True Cost Variance) above but the Authority will be entitled to set off the amount in question against any sums due to the Contractor under this Contract.

4A Insurance Proceeds

- 4A.1 When applying Paragraphs 4.1(v) (True Cost Variance) and 4.1(ix)(B) (True Cost Variance) above for the purposes of determining the True Cost Variance, no account shall be taken of any Insurance Proceeds which have not actually been received by the

Authority by the date on which it is necessary to determine the application of the relevant paragraphs (the “**Determination Date**”). If any Insurance Proceeds of the type referred to in those paragraphs are received by the Authority after the Determination Date, then the Parties shall make such payments between themselves as may be necessary to put them in the position that they would have occupied had the Insurance Proceeds been received prior to the Determination Date.

5. Arrangements for the payment of Efficiency Fee

5.1 For each Contract Year the Authority and the Contractor shall, applying the principles and following the timetable set out in Paragraph 6 (Milestone Payments for Efficiency Fee) below, agree the amount of Efficiency Fee which the Contractor is likely to earn in respect of the relevant Contract Year. In accordance with Paragraphs 3 (Intermittent On-Account Payments of PBI Fee and Efficiency Fee) and 4 (Intermittent Cessation of On-Account Payments and Clawback) of Part 9 (Payment of Fee) of this Schedule 6 (Finance Schedule), the Authority shall then make payments on account of such Efficiency Fee to the Contractor during the course of the relevant Contract Year. Subject to the other provisions of Part 9 (Payment of Fee) of this Schedule 6 (Finance Schedule), in accordance with the provisions of such Paragraphs 3 (Intermittent On-Account Payments of PBI Fee and Efficiency Fee) and 4 (Intermittent Cessation of On-Account Payments and Clawback):

- (a) [Redacted] % shall be paid to the Contractor on achievement of Payment Milestones to which such proportion of Efficiency Fee have been allocated in accordance with the provisions of Paragraph 6 (Milestone Payments for Efficiency Fee) below; and.
- (b) the balance shall be paid to the Contractor after the amount of Efficiency Fee payable in respect of the relevant Contract Year has been agreed or determined.

6. Milestone Payments for Efficiency Fee

6.1 In respect of each Contract Year the Contractor shall:

- (a) prepare an estimate of the amount of Efficiency Fee which the Contractor believes that it is likely to earn during the course of the relevant Contract Year; and
- (b) propose to the Authority:
 - (i) the amount of the portion of estimated Efficiency Fee (referred to in Paragraph 5.1(a) (Arrangements for the payment of Efficiency Fee) above) that shall be paid (subject to Part 9 (Payment of Fee) of this

Part 6: Efficiency Fee

Schedule 6 (Finance Schedule)) to the Contractor in respect of each Payment Milestone; and

- (ii) the extent to which the payment of any Efficiency Fee allocated to a Payment Milestone shall be dependant on that Payment Milestone being achieved by a certain date (and if so, the relevant date shall be specified).

The Contractor shall submit such estimate and proposals to the Authority for review and approval, all of which will be done in accordance with the timetable set by the Authority and notified to the Contractor in advance of the relevant Contract Year. In setting such timetable the Authority shall ensure that the timetable operates in parallel with the timetable, for the development and approval of Payment Milestones, specified by the Authority under Paragraph 3.2 (Determination of Payment Milestones) of Part 7 (Payment Milestones) of this Schedule 6 (Finance Schedule).

6.2 The Contractor and the Authority shall endeavour to agree:

- (a) the estimate of Efficiency Fee;
- (b) the amount of such estimate that shall be paid on achieving particular Payment Milestones; and
- (c) any date (if any) on which a Payment Milestone shall cease to operate

in parallel with agreeing the corresponding PAF and Payment Milestone in accordance with Part 7 (Payment Milestones) of this Schedule 6 (Finance Schedule). In seeking to reach such agreement the Contractor and the Authority shall:

- (a) take into account the cost to the Contractor, and the benefit to the Authority, of achieving the relevant Payment Milestone; and
- (b) ensure that if any estimated Efficiency Fee is to be allocated to a Payment Milestone which relates to a project in respect of which there are to be a number of Payment Milestones, most of the estimated Efficiency Fee that will accrue in respect of such project shall accrue upon the completion of the relevant project.

6.3 For the avoidance of doubt the full amount of estimated Efficiency Fee, that is to be paid by reference to Payment Milestones in the relevant Contract Year, shall be allocated across the Payment Milestones for the relevant Contract Year.

6.4 Notwithstanding Paragraph 6.2 (Milestone Payments for Efficiency Fee) above, if:

Part 6: Efficiency Fee

- (a) the relevant estimate of Efficiency Fee;
- (b) the relevant apportionment of estimated Efficiency Fee across Payment Milestones; and/or
- (c) any dates (if any) by which any Payment Milestone is to cease to operate for the purposes of earning Efficiency Fee

has not been determined by 24 March in the Contract Year immediately preceding the Contract Year in respect of which the Payment Milestones will apply, the Authority shall be entitled, acting reasonably, to determine such matters as it considers appropriate.

- 6.5 Any estimated Efficiency Fee which the Contractor shall earn as a result of achieving Payment Milestones shall be subject to the arrangements for the final determination of Efficiency Fee set out in Paragraph 6 (Reconciliation on Termination) of Part 9 (Payment of Fee) of this Schedule 6 (Finance Schedule) and abatement in accordance with Part 8 (Abatement of Fee) of this Schedule 6 (Finance Schedule).

7. Payment Milestone for first Contract Year

- 7.1 Not used.

8. Changes to apportionment of estimated Efficiency Fee

- 8.1 If the Authority or the Contractor wishes to make any change to the apportionment of estimated Efficiency Fee across Payment Milestones, then such change shall be made in accordance with Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure).

9. Failure to Achieve Milestones to which Efficiency Fee Attached

- 9.1 If any Payment Milestone which it is agreed or determined will on a certain date cease to operate for the purposes of earning Efficiency Fee, is not achieved by the relevant date, then the Contractor shall (subject to the provisions of Paragraph 6 (Reconciliation on Termination) of Part 9 (Payment of Fee) of this Schedule 6 (Finance Schedule) cease to be entitled to earn the Efficiency Fee attached to such Payment Milestone. In respect of other Payment Milestones to which Efficiency Fee is attached the Contractor shall (subject to the provisions of Paragraph 6 (Reconciliation on Termination) of Part 9 (Payment of Fee) of this Schedule 6 (Finance Schedule) and notwithstanding the end of the relevant Contract Year) remain entitled to the relevant instalment of Efficiency Fee attached to such Payment Milestone upon achievement of such Payment Milestone (provided that this shall occur before the termination of the Parent Body Agreement).

Part 6: Efficiency Fee

9.2 In the event that an opportunity to perform the Tasks or other obligations in furtherance of a Payment Milestone to which an instalment of Efficiency Fee is attached is delayed beyond the then current Contract Year, due to:

- (a) an event of Force Majeure; or
- (b) a Change resulting from the demand or sanction of a Regulator, which is made or imposed other than as a result of acts or omissions of the Contractor and pursuant to which certain Tasks are to be performed in a following Contract Year; or
- (c) an Authority instruction pursuant to Clause 3.6 (Authority Rights in Respect of Customer Contracts) (which shall be deemed a Change proposed by Authority)

then the Contractor shall be entitled to submit to the Authority in accordance with Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure) a request that the estimated Efficiency Fee allocated to the Payment Milestone which has been so delayed shall be reallocated to Payment Milestones which remain to be performed in the relevant Contract Year and/or one or more alternative Payment Milestones.

9.3 If the relevant reallocation of Efficiency Fee cannot be agreed under Paragraph 9.2 (Failure to Achieve Milestones to which Efficiency Fee Attached) above, the Authority shall be entitled, acting reasonably, to determine the reallocation (if any) as it considers appropriate.

10. Efficiency Fee Records Management

Efficiency Fee payment documentation, together with all of the associated supporting documentation, shall be maintained by the Contractor as part of the Information Asset Register.

Part 7: Payment Milestones

1. Purpose

- 1.1 The PBI Fee and part of the Efficiency Fee shall be paid (subject to the provisions for the abatement of Fee) upon the Contractor achieving previously agreed objectives and milestones (being the Payment Milestones) which are agreed on an ongoing basis.
- 1.2 These objectives and milestones shall be taken primarily from the Lifetime Plan (LTP) and shall have been agreed on a yearly basis between the Contractor and the Authority, with the Authority (acting reasonably) reserving the right of final determination.
- 1.3 Payment Milestones shall be used by the Authority to drive the Contractor towards Site and Authority goals.
- 1.4 Each Payment Milestone shall relate to performance of particular Tasks (or other obligations under the Contract) and will specify scope, schedule and cost, which must be attained by the Contractor in order to earn the relevant element of the PBI Fee and/or Efficiency Fee. Environment, safety & health (ES&H) will not be specifically incentivised by the Payment Milestones but the maintenance and enhancement of ES&H on the Site will be incentivised.

2. Process

- 2.1 The processes for determination/development, approval, change control, performance monitoring, validation and reporting of Payment Milestones are as set out in Paragraphs 3 (Determination of Payment Milestones) to 8 (Milestone Records Management) below.

3. Determination of Payment Milestones

- 3.1 Payment Milestones shall be established both to measure the performance of the Contractor within a Contract Year and to act as a way of deciding when instalments of Fee shall be paid to the Contractor throughout a Contract Year.
- 3.2 In respect of each Contract Year the Contractor shall propose:
 - (a) Payment Milestones for Tasks to be completed within the relevant Contract Year and for the implementation of cost and efficiency measures which will give rise to benefits to the Authority over subsequent Contract Years; and

Part 7: Payment Milestones

- (b) Payment Milestones (“**Multi Year Payment Milestones**”) for projects which will span a number of Contract Years and which may involve a number of Payment Milestones within successive Contract Years.

The Contractor shall submit such proposals to the Authority for review and approval, all of which shall be done in accordance with the timetable set by the Authority and notified to the Contractor in advance of the relevant Contract Year. The Payment Milestones shall incorporate the assumptions made by and the dependencies of the Contractor in relation to satisfaction of each Payment Milestone.

- 3.3 The Authority shall maintain a dialogue with the Contractor to ensure, so far as it is reasonably able, that the Contractor is kept informed of the Authority's views about the development of the Payment Milestones.
- 3.4 The Authority shall be entitled reasonably to require the Contractor to make modifications to any proposed Payment Milestone (including the assumptions and including the milestones for Payment Milestones spanning more than one Contract Year) prior to giving its approval of any Payment Milestone. In making its determination regarding the Payment Milestones the Authority shall act reasonably and shall have regard to the Lifetime Plan, the importance of particular activities to the Authority and the Authority's expected funding.
- 3.5 Notwithstanding Paragraphs 3.3 (Determination of Payment Milestones) and 3.4 (Determination of Payment Milestones) above, if the Payment Milestones for a Contract Year have not been agreed or determined by the parties by 24 March in the immediately preceding Contract Year, the Authority shall be entitled to determine such Payment Milestones as it considers appropriate having taken into account the criteria for Payment Milestones set out in Appendix A to this Schedule 6 (Finance Schedule).
- 3.6 In respect of each Contract Year, the Payment Milestones agreed by the Authority and the Contractor or determined by the Authority under this Paragraph 3 (Determination of Payment Milestones) shall be the Payment Milestones for the relevant Contract Year.
- 3.7 Where the Payment Milestones agreed or determined under this Paragraph 3 (Determination of Payment Milestones) for a particular Contract Year include Multi Year Payment Milestones, there shall be a prima facie presumption that those Multi Year Payment Milestones, which relate to later Contract Years, shall become the Payment Milestones used for the later Contract Years. Nevertheless the Payment Milestones used for a particular Contract Year shall be those determined after applying the foregoing provisions of this Paragraph 3 (Determination of Payment Milestones).

4. Performance Agreement Form

4.1 At the same time as agreeing the Payment Milestones for any Contract Year, a Performance Agreement Form (a “**PAF**”) in substantially the same form as that attached at Appendix B (Performance Agreement Form) shall be completed for each Payment Milestone, which shall specify:

- (a) the factual basis for each Payment Milestone, and specific benefits to be derived from completion of the Payment Milestone;
- (b) the Contractor's dependencies and assumptions underpinning its achievement of each Payment Milestone;
- (c) any criteria and metrics for validation, acceptance and valuation of performance of the Payment Milestone, such criteria including but not limited to:
 - (i) the scope of Tasks;
 - (ii) the time within which the Tasks must be carried out; and
 - (iii) the budget within which the Tasks must be carried out;
 - (iv) the standards to which the Tasks will be carried out; and
 - (v) the realisation of any benefits specified as flowing from the accomplishment of the Tasks.

4.2 The criteria for deciding whether a Payment Milestone has been satisfied shall be deemed to include the criterion that the Tasks which are the subject of that Payment Milestone must be completed in accordance with:

- (a) any standards specified in the PAF, the LTP or the Detailed Project Plans as applicable; and
- (b) the standards specified in Clause 2.2 (Standard of Performance).

4.3 The Contractor and the Authority shall endeavour to agree the relevant PAF at the same time as agreeing the corresponding Payment Milestone.

4.4 Notwithstanding Paragraph 4.3 (Performance Agreement Form) above, if the relevant PAF for a Payment Milestone has not been determined by 24 March in the Contract Year immediately preceding the Contract Year in respect of which the Payment

Part 7: Payment Milestones

Milestone will apply, the Authority shall be entitled, acting reasonably, to determine such PAF as it considers appropriate in its sole discretion.

- 4.5 In respect of each Contract Year, the PAFs for each Payment Milestone for that year as agreed by the Authority and the Contractor or determined by the Authority under this Paragraph 4 (Performance Agreement Form) shall be the PAFs for the Payment Milestones for the relevant Contract Year.

5. Payment Milestone

- 5.1 The Payment Milestones and associated PAFs for the first Contract Year are those set out in and to be developed from the Contractor's document 'Draft PBIs rev 8'.

[GUIDANCE NOTE: The Payment Milestones and PAFs for the remaining period of the first Contract Year following the entering into of the Parent Body Agreement will be set so that the Contractor will not be entitled to earn PBI Fee and/or Efficiency Fee in respect of activities arising before the PBO assumes responsibility for the Contractor]

6. Additional Payment Milestones and changes to Payment Milestones

- 6.1 In the event that the Authority or the Contractor wishes to make any change to a Payment Milestone or its associated PAF or to propose any additional or replacement Payment Milestones, then such change shall be made in accordance with Part 3 (Setting the LTP and Change Control) of Schedule 2 (Programme Management and Change Procedure).

7. Performance Monitoring, Validation and Reporting

- 7.1 The Authority shall monitor achievement of the relevant Payment Milestones, including achievement of milestones within Payment Milestones, and shall assess the Contractor's performance of the Tasks and other obligations in light of the criteria specified in the PAF for the relevant Payment Milestones.
- 7.2 The Authority shall actively monitor the Contractor's progress against the PAFs via Contractor reports and on-the-job assessment in accomplishing Payment Milestones.
- 7.3 The Contractor shall be required to prepare and submit performance reports in a manner and timetable satisfactory to the Authority (acting reasonably) and in particular must:
 - (a) maintain an adequate and accurate system for the proper calculation and collection of costs information and other data relating to assumptions,

Part 7: Payment Milestones

resources, work scope and progress required to assess compliance with the LTP under the terms of this Contract;

- (b) update and maintain that system as necessary; and
 - (c) train all required Employees in the use and maintenance of the system.
- 7.4 The Contractor's system for the calculation of data to assess compliance with the LTP shall be subject to the Authority's right to audit under Clause 4.5 (Inspection and Audit).

8. Milestone Records Management

The Contractor shall maintain an electronic master copy of all Payment Milestones and associated documentation. This will include all changes to Payment Milestones, whether approved or unapproved, all PAFs, all interim and final notices of completion and all interim and final validation forms.

Part 8: Abatement of Fee

1. Purpose

- 1.1 This Part sets out the circumstances in which the level of the Fee which would otherwise have been earned by the Contractor shall be subject to abatement as a result of performance failures by the Contractor.
- 1.2 Where this Schedule requires a percentage reduction in Fee, such reduction shall apply to the aggregate of all elements of the Fee.
- 1.3 To the extent that the level of the Fee for any Contract Year following any reduction is less than the amount of Fee that has already been paid to the Contractor for that Contract Year, then the Contractor shall be required to repay the shortfall to the Authority.

2. Total Abatement of the Fee

- 2.1 In respect of each Contract Year the level of the Fee which is payable to the Contractor (otherwise than as a result of this Part 8 (Abatement of Fee) of Schedule 6 (Finance Schedule)) shall be reduced by an amount equal to the aggregate amount of the reductions to the level of such Fee as determined by applying Paragraphs 3 (Reduction of Fee) to 4 (Process) of this Part 8 (Abatement of Fee) of Schedule 6 (Finance Schedule).
- 2.2 For the avoidance of doubt the provisions of Paragraphs 3 (Reduction of Fee) to 4 (Process) below shall be applied separately and independently to the Fee which is payable otherwise than as a result of this Part 8 (Abatement of Fee) of Schedule 6 (Finance Schedule).

3. Reduction of Fee

- 3.1 The Fee payable (otherwise than as a result of this Part 8 (Abatement of Fee) of Schedule 6 (Finance Schedule)) in respect of any Contract Year shall be liable to be reduced by a percentage amount of up to [Redacted]% by reason of shortcomings in the performance of the Contractor during the relevant Contract Year. The actual amount of the reduction shall be determined applying the criteria in the table below.
- 3.2 For the purposes of fee abatement only, the Contractor's performance will be categorised as Red, Amber or Green, as set out below. During each Contract Year the Authority shall communicate regularly to the Contractor the detailed assessments which are taken into account in determining its assessments.

3.3 Fee abatement will address the following performance aspects:-

- (a) operational performance, by reference to:
 - (i) Earned value metrics; and
 - (ii) HSSE Obligations;
- (b) procurement performance, by reference to:
 - (i) Submission of procurement plans required under the LTP for the relevant Contract Year on time and to quality standards required under the LTP for that Contract Year;
 - (ii) proportion of competed contracts, by number and value as compared to target levels proposed annually by the Contractor and determined by the Authority, acting reasonably;
 - (iii) proportion of contracts subject to incentive pricing as compared to target levels proposed annually by the Contractor and determined by the Authority, acting reasonably;
 - (iv) proportion of contracts placed within standard procurement lead times as compared to target levels proposed annually by the Contractor and determined by the Authority, acting reasonably;
 - (v) CT-15 reject rate; and
 - (vi) proactive supply chain engagement – annual submission of and adherence to a series of supply chain forum meetings;
- (c) performance against its then established Make-or-Buy Plan;
- (d) reporting performance:
 - (i) compliance with PCP13; and
 - (ii) integrity of self assessment in relation to this customer satisfaction regime;
- (e) relationships with:
 - (i) stakeholders;

- (ii) Regulators; and
 - (iii) Employees;
- (f) Cash-flow management performance – compliance with Clause 6 and Schedule 6 requirements; the timeliness and accuracy of the cashflow forecasts referred to in Clause 6.5.2 (Cashflow); the Contractor’s adherence to the Authority’s reasonable cashflow management requirements notified by the Authority to the Contractor from time to time; and the accuracy of the Contractor’s short term cashflow forecasting when compared to the submission of Accounting Monthly invoices and payment requests under Part 3 (Payment of Allowable Costs) of Schedule 6 (Finance Schedule);
- (g) compliance with contractual consent requirements;
- (h) compliance with Internal Procedures;
- (i) risk management – compliance with PCP10;
- (j) insurance claims record;
- (k) Change control performance by assessment of reject rate;
- (l) effectiveness of governance arrangements;
- (m) Nominated Staff continuity; and
- (n) Defective Performance of Subcontractors and Sub Subcontractors.
- 3.4 Before each Contract Year the Authority shall, in the course of setting Payment Milestones in accordance with Part 7 (Payment Milestones) of this Schedule 6 (Finance Schedule), determine and communicate to the Contractor the weighting of the performance aspects as proportions of the potential abatement sum. Any one aspect of performance may not be weighted at more than [Redacted]% of Fee; regardless of the aggregate of weightings, no more than [Redacted]% of Fee shall be subject to abatement. Subject to those limits the Authority shall act reasonably in determining the relevant weightings.
- 3.5 On the basis of its assessment the Authority shall determine, in respect of each aspect of performance, whether it should be treated as red, amber or green. Green equals no abatement, amber equals 50% abatement, red equals 100% abatement (abatement applied to allocated proportion for each above listed element). By way of illustration, if the Authority had determined that “procurement performance” should be weighted

at 5% (of Fee, hence 20% of the potential abatement), a rating of amber against procurement performance would result in a 2.5% abatement of Fee (50% x 5%).

3.6 In assessing performance the Authority shall:

- (a) apply the criteria set out in Paragraph 4 (Process) below;
- (b) take account of the Contractor's performance for the whole Contract Year in question;
- (c) not give undue consideration to either the best or the worst of the Contractor's performance; and
- (d) where relevant, take into account improving or deteriorating performance trends.

4. Process

4.1 Throughout each Contract Year the Contractor shall create and maintain an appropriate evidence file in respect of each aspect of performance.

4.2 On an Accounting Monthly basis the Contractor shall compile a self-assessment of its performance and submit a report to the Authority.

4.3 The Authority shall be entitled, at any time on giving reasonable notice, to assess the reliability of the Contractor's self-assessments by any reasonable and proportionate means. If the Authority considers that the Contractor's self-assessment process or the evidence upon which its self-assessments are based is less than optimal, it shall inform the Contractor of its concerns. If the parties are unable to resolve such concerns by agreement, they shall be entitled to use the Dispute Resolution Process to resolve them.

4.4 The Authority shall assess the Contractor's performance by reference to each quarter of the then current Contract Year and shall inform the Contractor of its current assessment no later than the last day of the Month following the quarter under assessment.

4.5 The Authority shall inform the Contractor of any Fee abatement arising in respect of any Contract Year no later than the end of the first Month immediately following that Contract Year.

4.6 The Authority shall be entitled to make any changes to the aspects of performance to be assessed, the weightings ascribed to them and the system for scoring its assessment, provided always that it acts reasonably, consults the Contractor before making any

Part 8: Abatement of Fee

such changes and provided that the amount of Fee liable to abatement never exceeds [Redacted] % of the Fee which would otherwise be payable.

Criteria

	<u>Characteristics</u> (Under the Characteristics column any one aspect of performance may not be weighted at more than 10%)	<u>Red</u>	<u>Amber</u>	<u>Green</u>	<u>Comments</u>
1a	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
1b	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]

Part 8: Abatement of Fee

	<u>Characteristics</u> (Under the Characteristics column any one aspect of performance may not be weighted at more than 10%)	<u>Red</u>	<u>Amber</u>	<u>Green</u>	<u>Comments</u>
2	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
3a	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
3b	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]

Part 8: Abatement of Fee

	<u>Characteristics</u> (Under the Characteristics column any one aspect of performance may not be weighted at more than 10%)	<u>Red</u>	<u>Amber</u>	<u>Green</u>	<u>Comments</u>
4	[Redacted]				
4.1a	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
4.1b	[Redacted]	[Redacted]	[Redacted]	[Redacted]	
4.2a	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
4.2b	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
4.3a	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
4.3b	[Redacted]	[Redacted]	[Redacted]	[Redacted]	
4.4a	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
4.4b	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
5	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
6a	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
6b	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
7	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
8	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
9	[Redacted]	[Redacted]	[Redacted]	[Redacted]	[Redacted]
10	[Redacted]	• [Redacted]	• [Redacted]	• [Redacted]	
11	[Redacted]	[Redacted]	• [Redacted]	[Redacted]	[Redacted]
12	Not used				
13	[Redacted]	[Redacted]			[Redacted]
14	[Redacted]	• [Redacted]	[Redacted]	• [Redacted]	[Redacted]

Part 8: Abatement of Fee

	<u>Characteristics</u> (Under the Characteristics column any one aspect of performance may not be weighted at more than 10%)	<u>Red</u>	<u>Amber</u>	<u>Green</u>	<u>Comments</u>
15	[Redacted]	[Redacted]	[Redacted]	[Redacted]	

Part 9: Payment of Fee

1. Purpose

- 1.1 This Part sets out how the Fee shall be paid to the Contractor.
- 1.2 During each Contract Year the Authority shall pay to the Contractor on a Monthly basis certain amounts on account of the Fee which is likely to be payable in respect of the relevant Contract Year. If it becomes apparent during the Contract Year that, as a result of the application of the provisions for the abatement of Fee, no Fee will be payable in respect of that Contract Year or that the advance payments will exceed the level of the Fee, then the Authority shall be entitled to stop paying the advance payments.
- 1.3 Following the end of the Contract Year, the Contractor and the Authority shall agree the level of the Fee and the Authority shall then pay the balance due to the Contractor or the Contractor shall then repay any overpayment to the Authority.
- 1.4 VAT on Fee shall only be paid by the Authority on the day before the day on which the Contractor has to account for such VAT to HMRC.

2. Regular On Account Payments

- 2.1 On the last day of each Month in each Contract Year (or if that day is not a Working Day on the next Working Day) or if later on the date 14 Working Days after the receipt by the Authority of a valid VAT invoice in respect of the relevant amount the Authority shall pay to the Contractor an amount equal to one twelfth of the VAT exclusive value of the Base Fee payable to the Contractor in respect of the relevant Contract Year. The Authority shall pay the VAT element of the Base Fee to the Contractor on the last Working Day prior to the latest date upon which the Contractor is required to pay such VAT to the Taxation Authority.
- 2.2 Any payment under Paragraph 2.1 (Regular on Account Payments) above shall be subject to the provisions of Part 8 (Abatement of Fee) of this Schedule 6 (Finance Schedule).

3. Intermittent On-Account Payments of PBI Fee and Efficiency Fee

- 3.1 Upon achievement (within the required timescale (if any)) of a relevant Payment Milestone (or milestone in relation to interim payments as specified in the payment schedule for any element of PBI Fee or any Efficiency Fee (as appropriate)), the Contractor may, within fifteen (15) Calendar Days, submit to the Authority an interim validation form or final validation form as applicable in substantially the same form as

Part 9: Payment of Fee

- that attached at Appendices C (Interim Validation Form) and D (Final Validation Form) respectively, requesting provisional payment of the PBI Fee or (as the case may be) Efficiency Fee payable in relation to the relevant Payment Milestone.
- 3.2 Upon receipt of such a request, the Authority shall determine if the following were accomplished, consistent with the relevant Performance Agreement Form:
- (a) specific, quantifiable performance outcomes were accomplished by the stated date of completion;
 - (b) conditions for Authority acceptance and approval were met;
 - (c) required standards of environment, safety, quality, and health were maintained; and
 - (d) performance was within established cost and schedule baselines,
- in each case by reference to the completion of the relevant Tasks in accordance with the standards specified in the PAF, the LTP or the Detailed Project Plans as applicable.
- 3.3 If the evaluation does not result in the Authority approving the request, the Authority shall notify the Contractor in writing of its reasons within fifteen (15) Calendar Days from the date of receipt of the request. In the event that the Authority does not approve the request, the Authority may, in its absolute discretion, nevertheless agree to the payment of a proportion of the PBI Fee or (as the case may be) Efficiency Fee payable in relation to the relevant Payment Milestone. In such event such payment shall be considered to have been made on account of the relevant portion of Fee payable on the full achievement of the relevant Payment Milestone.
- 3.4 In respect of payments of PBI Fee or (as the case may be) Efficiency Fee approved by the Authority under this Paragraph 3 (Intermittent On-Account Payments of PBI Fee and Efficiency Fee), the Contractor shall be entitled to submit a valid VAT invoice to the Authority in respect of the PBI Fee or (as the case may be) Efficiency Fee earned and the Authority shall provisionally pay such VAT exclusive value of the PBI Fee or (as the case may be) Efficiency Fee to the Contractor within 30 days of receipt of such invoice. Such payment shall be subject to Part 8 (Abatement of Fee) of this Schedule 6 (Finance Schedule) and (in the case of Efficiency Fee) the provisions of Paragraph 6 (Reconciliation on Termination) below. The Authority shall pay the VAT element to the Contractor on the last Working Day prior to the latest date upon which the Contractor is required to pay such VAT to the Taxation Authority.
- 3.5 In determining PBI Fee or (as the case may be) Efficiency Fee payable in accordance with this Paragraph 3 (Intermittent On-Account Payments of PBI Fee and Efficiency Fee) the Authority shall act reasonably.

4. Intermittent Cessation of On-Account Payments and Clawback

- 4.1 In respect of any Contract Year, to the extent that the Authority (acting reasonably) shall conclude that the aggregate level of any payments made by the Authority under Paragraphs 2 (Regular On Account Payments) and/or 3 (Intermittent On-Account Payments of PBI Fee and Efficiency Fee) above plus any payments of Shareline Fee are likely to exceed the level of Fee payable in respect of that year, the Authority shall be entitled to suspend any further such payments and to demand repayment of the amount by which the aggregate of the payments already made is reasonably likely to exceed the amount of the Fee for the relevant Contract Year.
- 4.2 The Contractor shall be required to satisfy any demand for repayment (including repayment of any associated VAT) under Paragraph 4.1 (Intermittent Cessation of On-Account Payments and Clawback) above within 30 days of receipt of the relevant demand.
- 4.3 At the same time as making any repayment under Paragraph 4.2 (Intermittent Cessation of On-Account Payments and Clawback) above, the Contractor shall be required to pay to the Authority interest on the amount repaid calculated from the date on which the relevant amount was paid to the Contractor to the date of repayment at the rate of three (3) percent above the base rate of Lloyds TSB Bank PLC. For these purposes any repayment shall be deemed to be related to the most recent payments of Fee made by the Authority under Paragraphs 2 (Regular On Account Payments) and/or 3 (Intermittent On-Account Payments of PBI Fee and Efficiency Fee) before being applied to later payments.

5. Final determination of Fee

- 5.1 At the end of each Contract Year, the Contractor shall review:
- (a) the extent to which the Contractor has satisfied the Payment Milestones for the relevant Contract Year;
 - (b) the extent to which the Contractor shall have satisfied the criteria necessary for the Contractor to earn Efficiency Fee;
 - (c) the aggregate level of the Allowable Costs for the relevant Contract Year;
 - (d) the Budgeted Cost of Work Performed and the True Cost Variance for the relevant Contract Year;
 - (e) the aggregate level of Base Fee, PBI Fee, Efficiency Fee and Shareline Fee earned by the Contractor in respect of the relevant Contract Year;

Part 9: Payment of Fee

- (f) the extent to which the provisions for the abatement of Fee in Part 8 (Abatement of Fee) of this Schedule 6 (Finance Schedule) apply to reduce the level of Fee payable to the Contractor in respect of the relevant Contract Year;
 - (g) the aggregate amount of Fee which shall have been paid to the Contractor during the relevant Contract Year and not repaid under Paragraph 4 (Intermittent Cessation of On-Account Payments and Clawback) above; and
 - (h) the aggregate amount of Fee which is payable to the Contractor in respect of the relevant Contract year.
- 5.2 Following the review referred to in Paragraph 5.1 (Final Determination of Fee) above the Contractor shall prepare a report (the “**Fee Reconciliation Report**”) setting out the result of such review and the Contractor’s calculation of the level of Fee payable in respect of the relevant Contract Year and shall deliver this report to the Authority within 60 days of the end of such year together with such supporting information as the Authority may from time to time require to enable the Authority to review the accuracy of the report.
- 5.3 The Authority shall, within 30 Calendar Days of receipt of the Fee Reconciliation Report, review such report and notify the Contractor whether it agrees with the report and if not the reasons why it does not so agree.
- 5.4 The Contractor shall provide the Authority with reasonable access to all information within the Contractor’s possession or control and all reasonable assistance required by the Authority, in each case for the purposes of such review.
- 5.5 If the Authority shall not agree with the Fee Reconciliation Report then the Authority and the Contractor shall negotiate in good faith with a view to reaching agreement on the changes if any which should be made to the report to ensure that it correctly records the matters to be set out in it.
- 5.6 If the Contractor and the Authority are unable to agree the matters to be set out in the Fee Reconciliation Report then such dispute shall be resolved in accordance with the provisions of Clause 13 (Disputes), pursuant to which the Contractor's right to dispute any aspect of Fee Reconciliation Report is limited to dispute as to whether the Authority's determination was reasonable.
- 5.7 The Fee Reconciliation Report as determined in accordance with the provisions of Clause 13 (Disputes), or if the Authority and the Contractor have been able to agree the same as aforesaid, the draft Fee Reconciliation Report as so agreed, or if the Authority shall not have served a notice under Paragraph 5.5 (Final Determination of Fee) above, the draft Fee Reconciliation Report delivered to the Authority in accordance with Paragraph 5.2 (Final Determination of Fee) above, shall in the

Part 9: Payment of Fee

absence of material manifest error be final and binding on the Authority and the Contractor.

5.8 To the extent that the aggregate amount of Fee which is payable to the Contractor in respect of the relevant Contract year exceeds the amount of any on account payments paid to the Contractor under Paragraphs 2 (Regular On Account Payments) and/or 3 (Intermittent On-Account Payments of PBI Fee and Efficiency Fee) above plus any payments made in respect of Shareline Fee and, in each case, not repaid under Paragraph 4 (Intermittent Cessation of On-Account Payments and Clawback) above, the Authority shall pay to the Contractor the amount of such excess (the “**Due Fee**”). The excess shall be payable in accordance with the following principles:

- (a) to the extent that any Payment Milestones (to which Efficiency Fee was allocated in accordance with Paragraph 6 (Milestone Payments for Efficiency Fee) of Part 6 (Efficiency Fee) of this Schedule 6 (Finance Schedule)) have not been satisfied, then the aggregate amount of Efficiency Fee allocated to such Payment Milestones shall be determined (the “**Remaining Efficiency Fee Payments**”);
- (b) to the extent that the Due Fee is less than or equal to the Remaining Efficiency Fee Payments, the Due Fee shall be apportioned across the relevant Payment Milestones pro rata to the original allocations of Efficiency Fee to such Payment Milestones and each apportioned part of the Due Fee shall then be paid in instalments upon the satisfaction of the relevant Payment Milestone (and in determining whether or not a Payment Milestone has been satisfied the provisions of Paragraph 3 (Intermittent On-Account Payments of PBI Fee and Efficiency Fee) above shall mutatis mutandis apply);
- (c) to the extent that the Due Fee exceeds the Remaining Efficiency Fee:
 - (i) the excess shall (subject to the receipt by the Authority of a valid VAT invoice) be paid to the Contractor within 30 Working Days of the Due Fee being determined; and
 - (ii) the balance of the Due Fee shall be paid upon the satisfaction of those Payment Milestones (to which Efficiency Fee was allocated in accordance with Paragraph 6 (Milestone Payments for Efficiency Fee) of Part 6 (Efficiency Fee) of Schedule 6 (Finance Schedule)) which were not satisfied at the end of the relevant Contract Year, with the amount payable on the satisfaction of each such Payment Milestone being that which was agreed or determined under Paragraph 6 (Milestone Payments for Efficiency Fee) of Part 6 (Efficiency Fee) of Schedule 6 (Finance Schedule) (and in determining whether or not a Payment Milestone has been satisfied the provisions of Paragraph 3

Part 9: Payment of Fee

(Intermittent On-Account Payments of PBI Fee and Efficiency Fee) above shall mutatis mutandis apply).

- (d) Notwithstanding Paragraphs (b) and (c) above, any element of the Due Fee which is allocated to any Payment Milestone shall cease to be payable in the event that the relevant Payment Milestone has not been or is not satisfied within any time period for its satisfaction agreed or determined under Paragraph 6 (Milestone Payments for Efficiency Fee) of Part 6 (Efficiency Fee) of this Schedule 6 (Finance Schedule).

The Authority shall pay the VAT on the Due Fee to the Contractor on the last Working Day prior to the latest date upon which the Contractor is required to pay such VAT to the Taxation Authority.

- 5.9 To the extent that the aggregate amount of Fee which is payable to the Contractor in respect of the relevant Contract Year is less than the amount of any on account payments paid to the Contractor under Paragraphs 2 (Regular On Account Payments) and/or 3 (Intermittent On-Account Payments of PBI Fee and Efficiency Fee) above plus any payments made in respect of Shareline Fee and, in each case, not repaid under Paragraph 4 (Intermittent Cessation of On-Account Payments and Clawback) above, the Contractor shall by way of repayment of overpaid Fee pay to the Authority the amount of such shortfall (including associated VAT) within 30 Working Days of the Fee Reconciliation Report being agreed or determined under this Paragraph 5 (Final Determination of Fee).
- 5.10 At the same time as making any repayment under Paragraph 5.9 (Final Determination of Fee) above, the Contractor shall be required to pay to the Authority interest on the amount repaid calculated from the date on which the relevant amount was paid to the Contractor to the date of repayment at the rate of [Redacted] percent above the base rate of Lloyds TSB Bank PLC. For these purposes any repayment shall be deemed to be related to the most recent payments of Fee made by the Authority under Paragraphs 2 (Regular On Account Payments) and/or 3 (Intermittent On-Account Payments of PBI Fee and Efficiency Fee) above before being applied to later payments.

6. Reconciliation on Termination

- 6.1 The provisions of Paragraph 5 (Final Determination of Fee) shall apply on a termination of the Parent Body Agreement and on the termination of this Contract as if the then current Contract Year ended on the date of such termination. To the extent that this Contract is not terminated on the termination of the Parent Body Agreement, then a new Contract Year shall be deemed to commence on the date following the date of such termination.

Part 9: Payment of Fee

- 6.2 For the purposes of Paragraph 6.1 (Reconciliation on Termination) above the Contractor shall propose an equitable apportionment of the Annual Site Funding Limits (for the purposes of determining the level of the Efficiency Fee for the two parts of the Contract Year in which the termination occurs) based on progress as against the costs, scope and schedule in the then current Contract Year of the LTP. This shall then be agreed with the Authority and in the absence of agreement the matter shall be determined in accordance with the provisions of Clause 13 (Disputes).

7. Account to which Fee paid

- 7.1 All payments of Fee including any payments on account of Fee shall be made to the Contractor's Fee Account.

8. Reclaiming PBI Fee and Efficiency Fee

- 8.1 If the Authority pays the Contractor PBI Fee in respect of the satisfaction of a Payment Milestone and following such payment it is discovered that there was Defective Performance in respect of such Payment Milestone, the Authority shall be entitled to repayment of the relevant PBI Fee and there shall be no further opportunity for the Contractor to earn such PBI Fee upon remedying the relevant Defective Performance.

- 8.2 If there shall be Defective Performance in respect of any Task and as a result the Contractor shall have earned Efficiency Fee which it would not have earned if the Task had been properly performed, then:

- (a) (to the extent that the relevant element of Efficiency Fee shall not have been paid to the Contractor) the Contractor shall lose an entitlement to such element; and
- (b) (to the extent that the relevant element of Efficiency Fee shall have been paid to the Contractor) the Authority shall be entitled to repayment of the relevant element.

- 8.2A At the same time as making any repayment under this Paragraph 8 (Reclaiming PBI Fee and Efficiency Fee), the Contractor shall be required to pay to the Authority interest on the amount repaid calculated from the date on which the relevant amount was paid to the Contractor to the date of repayment at the rate of three (3) percent above the base rate of Lloyds TSB Bank PLC. For these purposes any repayment shall be deemed to be related to the most recent payments of Fee made by the Authority under Paragraphs 2 (Regular On Account Payments) and/or 3 (Intermittent On-Account Payments of PBI Fee and Efficiency Fee) above before being applied to later payments.

Part 9: Payment of Fee

- 8.3 Subject to Clause 1.14.4 (Entire Agreement), the Authority's rights under this Paragraph 8 (Reclaiming PBI Fee and Efficiency Fee) shall (notwithstanding termination of this Contract) continue for a period of [Redacted] years following the relevant Defective Performance.

9. Retention of Fee Pending Transition Out

- 9.1 Notwithstanding the foregoing provisions of this Part 9 (Payment of Fee) of Schedule 6 (Finance Schedule) the Authority shall be entitled to withhold up to [Redacted] (excluding VAT) of the Fee payable to the Contractor in respect of each of the Contract Years which fall wholly or partly after the Authority notifies the Contractor that this Contract is to be terminated and/or the Parent Body Agreement is to be terminated or not extended provided that the maximum aggregate amount that the Authority shall be entitled to withhold at any one time under this Paragraph 9.1 shall not exceed £[Redacted] in aggregate (excluding VAT).
- 9.2 Any withholding that shall be made by the Authority under Paragraph 9.1 (Retention of Fee Pending Transition Out) above shall continue until such time as the Contractor and the PBO shall have complied to the reasonable satisfaction of the Authority with Clause 17 (Transition Out) of the Parent Body Agreement.
- 9.3 The figures of £[Redacted] and £[Redacted] in Paragraph 9.1 (Retention of Fee Pending Transition Out) shall be increased on the date on which the relevant notice is served by the Authority by the percentage change in the RPIX between 1 April 2009 and the date on which the relevant notice is served. For these purposes the RPIX existing on any date shall be the RPIX figure last published before the relevant date.

10. VAT

- 10.1 Notwithstanding the other provisions of this Part 9 (Payment of Fee) of Schedule 6 (Finance Schedule) any VAT which is payable on any Fee shall not be required to be paid by the Authority on the date on which the relevant Fee is otherwise payable and shall instead be paid by the Authority to the Contractor's Payments Account on the later of:
- (a) the Working Day before the day on which the Contractor is required to account to HM Revenue and Customs for the relevant VAT; and
 - (b) the fifth Working Day after the date on which the Contractor informs the Authority of the date on which the Contractor is required to account to HM Revenue and Customs for the relevant VAT.

Part 10: Initial Financial Limits

For the first Contract Year:

Sellafield

1. the Annual Site Funding Limit is £.....;
2. the Current Budget is £.....; and
3. the Capital Budget is £.....

Capenhurst

1. the Annual Site Funding Limit is £.....;
2. the Current Budget is £.....; and
3. the Capital Budget is £.....

Windscale

1. the Annual Site Funding Limit is £.....;
2. the Current Budget is £.....; and
3. the Capital Budget is £.....

Refer to the Side Letter in relation to the above Funding Limits

The detailed breakdown of these items and also of the individual levels within the PSWBS for each of Sellafield, Windscale and Capenhurst is set out in the LTPs.

Appendix A - Criteria for Evaluating Payment Milestones

- Justification for incentivising the Task must be provided with the benefits to the Authority clearly defined.
- Outcomes/results rather than processes shall be incentivised.
- The relevant baseline from which results or outcomes are to be measured must be defined.
- Schedule performance and technical performance must be defined along with estimated cost of the work to be performed.
- A cost incentive or cost constraint must be specified for each Payment Milestone.
- Conditions for acceptance of performance must be specified.
- The work scope being incentivised must be wholly within the Contractor's control with any dependencies and/or assumptions stated clearly, e.g. regulatory requirements, regulatory approvals, Authority approvals, etc.

**Appendix B
Performance Agreement Form**

Fiscal Year _____

SECTION I - PERFORMANCE OBJECTIVE AND RELATED INFORMATION			
Performance Objective:	WBS Element No(s):	Budgeted Cost of Work Performed Under This Objective: £	Maximum Available PBI Fee Associated With This Objective: £ Maximum Efficiency Fee Associated With This Objective: £
NOTE: Any changes to cost, schedule, or scope requires a Change Proposal to be processed, and a revised Performance Agreement.			
SECTION II - PERFORMANCE BASED INDICATOR			
Short Title:			
Objective:			
Justification for This Payment Milestone:			
SECTION III - PARTIAL FEE EARNINGS SCHEDULE (WHERE APPLICABLE)			
Where there is value to the Authority for partial completion of the objective, list the elements for which partial PBI Fee/Efficiency Fee may be earned, the percentage of PBI Fee/Efficiency Fee available for completion of each element, and the schedule by which the PBI Fee/Efficiency Fee may be earned. (Schedule identifies point(s) at which PBI Fee/Efficiency Fee may be earned - does not define completion.)			

SECTION IV - Performance Requirements

DEFINE COMPLETION:

Specify performance elements and describe indicators of success (quality/progress). Include baseline documents/data against which completion documentation should be compared.

DEFINITIONS:

COMPLETE DOCUMENTATION:

(In addition to the Interim and/or Final Notice of Completion form) the document(s) that should be submitted; data that should be available; and actions to be taken by evaluator to determine actual performance to the requirements stated above.

ASSUMPTIONS: State assumptions related to a performance milestone or element, if any.

<u>SIGNATURES</u>	<u>DATE SIGNED</u>		
Contractor			
Authority – Site Programme Manager			
Authority – Programme Controls			
Authority – Contracts Manager			

APPENDIX C

Interim Validation Form

Control Number:

1. Payment Milestone Number and Description:
2. Interim Milestone Identification Number and Description:
3. Method(s) Used to Determine Interim Milestone Incentive Was Accomplished:
4. Number of Pages Attached as Continuing/Supporting Documentation (If Any):
5. Interim Milestone Completion Date:
6. Location of Evidence File/Name/Phone No.:

SIGNATURES	DATE SIGNED
Contractor	
Authority – Site Programme Manager	
Authority – Programme Controls	
Authority – Contracts Manager	

Note: The Contractor must submit a copy of this Interim Validation Form to the Authority finance department.

Appendix D
Final Validation Form

Control Number:

Payment Milestone Number and Description:

Available PBI Fee: £_____ Available Efficiency Fee: £_____

PART I – TECHNICAL/SCOPE COMPLETION VALIDATION

1. Methodology for Validating Completion of Payment Milestone at the lowest level PBI Fee/Efficiency Fee is assigned: (Validator to provide brief description of the method used to validate completion of performance objective at the lowest level fee is assigned, i.e. if a performance objective has five milestones for which available PBI Fee/Efficiency Fee has been established, performance must be validated for each of the five milestones.)
2. Number of Pages Attached as Continuing/Supporting Documentation (If Any):
3. Performance Objective Completion Status (Check as appropriate):
100 Percent Completed: yes no
Partially Completed: yes no
Performance Objective Delayed: yes no
4. Recommended earned PBI Fee: £_____
5. Recommended earned Efficiency Fee: £_____
6. Provide a brief description of basis for response to Items 3, 4 and 5, including clarifying remarks regarding completion, degree of completion, or lack of completion for each Payment Milestone.

PART II – ACTUAL COST OF WORK PERFORMED VALIDATION

Based on the results of the Authority review, there is reasonable assurance that the actual cost of work performed, as reported by the Contractor in their cost performance reports (AWCP: £_____ against the Budgeted Cost of Work Performed: £_____), reflect actual costs incurred and these costs fall within the cost constraints for payment of PBI Fee/Efficiency Fee.

Recommended earned PBI Fee: £_____

Recommended earned Efficiency Fee: £_____

Note:

SIGNATURES	DATE SIGNED
Contractor	
Authority – Site Programme Manager	
Authority – Programme Controls	
Authority – Contracts Manager	

The Contractor must submit a copy of this Final Validation Form to the Authority finance department.